Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10948 of 2021- DB

(Arising out of OIA-KDL-CUSTM-000-APP-008-010-21-22 dated 31/08/2021 passed by Commissioner (Appeals), CUSTOMS-Ahmedabad)

Jitendra Overseas **....... Appellant**
203 2ND FLOOR KRISHNA KUNJ BLDG
151 PREM KUMAR SHARMA MARG PANJRAPOLE
MAIN ROAD OPP SURYA NARAYAN MANDIR
MUMBAI, MAHARASHTRA

VERSUS

Commissioner Of Customs-Kandla **......Respondent**
CUSTOM HOUSE,
NEAR BALAJI TEMPLE,
KANDLA, GUJARAT

WITH

(i) Customs Appeal No. 10949 of 2021- DB (ASIA METALS AND FERRO ALLOYS)

(ii) Customs Appeal No. 10950 of 2021- DB (ASIA METALS AND FERRO ALLOYS)

(iii) Customs Appeal No. 10951 of 2021- DB (J POONAMCHAND AND SONS)

(iv) Customs Appeal No. 10952 of 2021- DB (J POONAMCHAND AND SONS)

(v) Customs Appeal No. 10960 of 2021- DB (SHRI BHAVANI METALS PVT LTD)

[(Arising out of OIA-KDL-CUSTM-000-APP-12-14-21-22 dated 06/09/2021 passed by Commissioner (Appeals) CUSTOMS-Ahmedabad)]

APPEARANCE:
Shri J C Patel, Advocate with Shri Rahul Gajera, Advocate for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10680-10685/2025

DATE OF HEARING: 07.03.2025
DATE OF DECISION: 07.03.2025

SOMESH ARORA

In this matter, the issue pertains to import of Tin Ingots by M/s. Trafigura India (P) Ltd from overseas supplier M/s. Trafigura PTE Ltd Singapore. They filed warehousing B/Es. The goods were subsequently cleared by 6 importers (including the present appellants). The clearance was made during the period from October to December, 2015 for which a show cause notice was issued by the department dated 6th November, 2018. The basis of the show cause notice as per the appellants is that verification of Certificate of Origin of some other party but in relation to the same supplier was conducted by the department in which certain discrepancies were found. Based on the assumption that the supplier being the same, there must be some offending goods or improper certification in this case also, the department has proceeded against the appellants.

2. The leaned Counsel for the appellants states that the preposition that the Certificate of somebody else, even if subjected to verification, cannot result in confirmation of demand against any other party has been well settled by this Tribunal. He refers to Tribunal order No. A/12060/2023 dated 15.09.2023 in the matter of Shirazee Traders Vs. CC Mundra which has been followed in number of other matters which are as follows: -

- Malas Food Product v CC-2024 (5) TMI 282-CESTAT-AHMEDABAD
- DP Chocolates v CC-2024 (8) TM1 266-CESTAT-AHMEDABAD
- Goldsmith Food Products v CC-2024 (5) TMIT 144-CESTAT-AHM
- MR Scientific Suppliers VC-2024 (2) TMI 741-CESTAT-AHM
- Kiran Kotak & Co. & others - ROM Order dated 03-12-2024

3. Learned AR confronted with the situation and the order of this Bench on the preposition that the certificate verification in relation to any other party, even if by the same supplier, cannot be relied upon, reiterates the findings of the lower authority.

4. We find that the matter is no more res-integra and has been decided by this Tribunal in the above-cited matter of Shirazee Traders Vs. CC Mundra, particularly in para 4 to 4.1 and 5 are relevant for our purpose and same are reproduced below: -

> *"4. Considered, we find that in the present case, the lower authorities have confirmed order simply on the basis of a communication of DRI which pertained to different parties about which verification was done. In the present instance, there is no evidence of department having conducted any verification of the certificate of origin as is the requirement under Annexure-III the Customs Tariff (determination of Origin of Goods under the Preferential Trade Agreement between the Governments of the Republic of India and Malaysia) Rules, 2011. The relevant Clause of Annexure-III (see under rule-14) is reproduced below:-*

"9. Origin verification.- (1) The customs authority of the importing Party may request the Issuing Authority of the exporting Party to perform a retroactive check at random or when it has reasonable doubt as to the authenticity of the certificate of origin or as to the accuracy of the information regarding the true origin of the goods in question or of certain parts thereof.

(2) The request for a retroactive check shall be accompanied with the relevant certificate of origin and shall specify the reasons and any additional information suggesting that the particulars given on the said certificate of origin may be inaccurate, unless the retroactive check is requested on a random basis.

(3) The Issuing Authority of the exporting Party shall, on receipt of such request, conduct a retroactive check on the cost statement of the exporter or the producer based on the current cost and prices and shall send a reply to the customs authority of the importing Party within three months of the date of receipt of request.

(4) The retroactive check process, including the actual process and the determination of whether the subject goods are originating or not, should be completed and the result should be communicated to the importer within six months of the date of presentation of the certificate of origin to the customs authority of the importing Party."

4.1 We find that to displace the certificate of origin issued by the Malaysian authority, which is in the nature of documentary evidence, verification process need to be done by the Customs Authorities of India by sending reference to issuing authorities to do a retroactive check. In the present instance, no such request for verification report in respect of the appellant has been brought on record. We find that this fails to comply with the requirement of the Annexure-III (ibid) of the relevant free trade agreement.

5. We are accordingly inclined to allow the appeal with consequential relief. Appeal is allowed."

5. In view of the foregoing, following the above decision, which has been followed in a number of other matters also, we are inclined to accept the appeal. Appeals are accordingly allowed, with consequential relief.

(Dictated & Pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha