CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 2

CUSTOMS APPEAL NO. 10456 OF 2024

[Arising out of OIA-AHD-CUSTM-000-APP-95-24-25 dated 09/05/24 passed by Commissioner of Customs (Appeals) Ahmedabad]

INDIAN OIL CORPORATION LIMITED .....APPELLANT
Indian Oil Bhavan Sri Aurobindo Marg, Yusuf Sarai,
New Delhi, Delhi-110016

Vs.

COMMISSIONER OF CUSTOMS-
AHMEDABAD .....RESPONDENT
Office of the Pr. Commissioner of Customs,
1st Floor, Customs House, Opposite old High Court,
Navrangpura, Ahmedabad, Gujarat-380009

Appearance:

Shri HardikModh, Advocate for the Appellant

Shri Girish Nair, Assistant Commissioner (AR) for the Respondent

CORAM:
HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

FINAL ORDER NO. 10848/2025

DATE OF HEARING :30/04/2025
DATE OF DECISION : 29/09/2025

Dr. AJAYA KRISHNA VISHVESHA

This appeal is directed against the impugned order dated 9th May, 2024 passed by the learned Commissioner (Appeals) Customs, Ahmedabad vide which he rejected the appeal filed by the appellant and upheld the order passed by the Adjudicating Authority.

2. The facts of the case in brief are that the appellant had imported 3230969 MMBTLNG vide Bill of Entry No. 8597441 dated 9th May, 2022 and 3223960 MMBTLNG vide Bill of Entry No. 8947513 dated 3rd June, 2022. Both the above referred Bills of Entry were provisionally assessed as per appellant's letter dated 9th May, 2022 and 3rd June, 2022 respectively on the ground of non-availability of original documents, test report and final quantity in both the Bills of Entry. The appellant had self-assessed Customs duty under Section 17 (1) of the Customs Act, 1962 and paid Customs Duty accordingly. The Assessing officer granted out of Charge (OOC) to the imported goods i.e. LNG on the basis of available documents uploaded on e-sanchit. The appellant vide letter dated 29th June, 2022 requested the Commissioner of Customs Ahmedabad to allow exemption benefit of NIL duty as per comprehensive Economic Partnership Agreement (CEPA) between India and UAE and requested for refund of duty paid against both the Bills of Entry.

2.1 The Deputy Commissioner (Tech) Customs Ahmedabad vide letter dated 18th July, 2022 informed the appellant that "There was no declaration made in the Bills of Entry that the goods qualify as originating goods for preferential rate of duty under CEPA agreement between India and UAE. There was no mention of any Exemption Notification and the B/Es were filed with payment of applicable duty. The COO certificate which was uploaded on e-sanchit, was incomplete and the name of M/s. Indian Oil Corporation Ltd. and respective Invoice no. was not mentioned on it. The original copy of the Country of Origin (COO) Certificate was not produced which is necessarily required for defacement before giving Out of Charge of Cargo. Further, to get exemption from payment of duty on account of preferential rate of duty, the same has to be produced in original at the time of granting Out of Charge of Cargo for defacement. The COO produced was having incomplete information and no claim of exemption was mentioned in the Bill of Entry, hence exemption cannot be granted. Therefore, request for refund of duty paid does not arise as eligibility for granting refund of duty paid was without availing existing exemption notification".

2.2 The importer vide letter dated 27th September, 2022 submitted original documents for finalization of assessment of both the Bills of Entry. The Appellant vide letter dated 16.09.2022 again requested the Commissioner of Customs, Ahmedabad to allow exemption benefit of NIL duty as per the terms of above stated agreement and grant refund of duty paid by them without availing existing Exemption Notification.

2.3 The Bills of Entry No. 8597441 dated 9th May, 2022 and 8947513 dated 3rd June, 2022 were assessed provisionally under Section 17 (1) of the Customs Act, 1962 without claiming any exemption and on payment of Duty. The appellant had also uploaded Duty Calculation Sheet for both the Bills of Entry in e-Sanchit. The uploaded COO certificate were not considered a valid COO certificate by the department for claiming preferential rate of duty under CEPA as name of M/s. Indian Oil Corporation Ltd and respective Invoice number was not mentioned. Also, it was not in Annexure-'E' as prescribed vide Notification No.39/2022-Customs (NT) dated 30.04.2022.

2.4 A show cause notice dated 28th April, 2023 was issued to the appellant proposing finalization of assessment in respect of both the Bills of Entry under Section 18 (2) of the Customs Act, 1962 denying the exemption benefit of NIL duty under Notification No.39/2022-Customs (NT) dated 30th April, 2022 issued under CEPA between India and UAE.

2.5 The above SCN was decided vide Order-in-Original dated 5th June, 2023, wherein benefit of NIL Customs Duty under CEPA between India and UAE as per para 15 (11) of Notification No.39/2022-Cus (NT) dated 30th April, 2022 was denied on the ground that COO certificates was **issued retrospectively** and B/Es were ordered for final assessment under Section 18 (2) Customs Act, 1962 on final discharge quantity i.e. MMBTU 3193990.41 and 3162598.03 respectively having assessable value of Rs. 8,31,06,94,376/- and Rs. 8,38,38,73,435/- on payment of total duties Rs. 22,85,44,095/- and Rs. 23,05,56,519/- already paid vide challan no. 2039198698 and 2039515826 dated 16th May, 2022 and 16.06.2022 respectively.

2.6. Aggrieved with above order, appellant filed appeal before Commissioner of Customs (Appeals) who vide the impugned order dated 9th May, 2024 observed that as per Notification No. 81/2020-CUS (NT) dated 21st August, 2020, it emerges that to claim the preferential rate of duty under the trade agreement, the importer shall claim the same at the time of filing the Bill of Entry. He upheld the order of the lower authority denying benefit of preferential rate under CEPA between India and UAE as the appellant have not claimed any exemption benefit at the time of filing the Bills of Entry. Hence, the present appeal has been filed before this Tribunal.

3. The learned counsel for the appellant submitted that short issue involved in the matter is "whether the appellant is entitled to get benefit of exemption from payment of Customs Duty on Country of Origin (COO)

certificate issued retrospectively, when exemption was not claimed at the time of filing Bills of Entry or Out of Charge order. He further submitted that the trade faced the issue of non-acceptance of COO Certificate issued retrospectively at the time of finalization of assessment of Bill of Entry trade. On representations from the Trade, CBIC vide Instruction No. 21/2024-Cus dated 16.10.2024 after referring to Rule 15 (11) and Rule 21 (3) of Country of Origin Rules clarified as under:-

> *2.3 These provisions indicate that where preferential treatment was not claimed or extended at the time of import, the importer does not lose the right to claim the benefit upon subsequent submission of a valid COO within stipulated time frame, provided that authenticity of COO and product origin are not disputed. The requirement of uploading COO on e-Sanchit while filing Bill of Entry would not apply in this case, as the COO has been issued after the date of importation. A harmonious readingof the provisions is required so that the legal entitlement under the trade agreement is not nullified*
> *3. Further, Rule 15 (13) of the said rules provides that minor discrepancies, including typing or formatting errors, shall not render a COO invalid, provided the certificate corresponds to the products under import and such minor errors do not affect the authenticity of the COO or the accuracy of the information contained therein. In nutshell minor procedure discrepancies concerning rules of origin should not be seen as countering the intent of extending substantive benefit under trade agreement, unless such discrepancies cast a doubt on the originating status of the product.*

3.1 The learned Counsel for the appellant also submitted that identical issue came up before the same learned Commissioner (Appeals) in the case of **GAIL (India) Ltd**. herein the Adjudicating Authority denied the benefit of NIL rate of duty under India-UAE CEPA on the following grounds:-

(a) The Bills of Entry filed by GAIL were self-assessed without claiming exemption / NIL rate of duty on the basis COD certificate under India-UAE CEPA Notification.

(b) GAIL did not possess the required valid documents in prescribed format as required under Notification No. 39/2022-

CUS (NT) dated 30th April, 2022 to claim exemption of duty at the time of granting Out of Charge order.

(c) The Country of Origin Certificate was not available at the time of granting Out of Charge.

In this case, the learned Commissioner (Appeals) vide Order-in-Appeal No. AHD-CUSTM-000-APP-292-293-24-25 dated 31st January, 2025 allowed the appeal and remanded the matter to the Adjudicating Authority with a direction to finalize provisional assessment after considering the Instruction No. 21/2024 dated 16th October, 2024 issued by CBIC.

3.2 Learned Counsel argued that in the present case, learned Commissioner (Appeals) denied benefit of Exemption Notification on the premise that the appellant neither had COO certificate nor claimed the benefit at the time of filing of Bills of Entry or at the time of Out of Charge order. He upheld the order of lower authority as CBIC Instruction No. 21/2024 date 16.10.2024 was not available.

3.3. The learned Counsel submitted that when the appellant requested for claiming exemption benefit of Certificate of Country of Origin, the Bills of Entry were provisionally assessed. The Adjudicating Authority ought to have appreciated that when assessment was provisional, it is provisional for all purposes and he should not have denied the benefit to them merely on the premise that such benefit was not claimd at the time of filing of Bills of Entry or Out of Charge order. He also placed reliance on the following decided cases in support of his argument that when the assessment is provisional, it is provisional, for all purposes.

(a) **ManglorеChamicals Fertilizers Ltd** vs. **Deputy Commissioner** reported in 1991 (55) ELT 437 (SC)

(b) **Collector of Central Excise** vs. **PMT Machine Tools** reported in 1991 (55) ELT 592 (Tri.)

(c) **CCE Madras** vs. **Indai Tire and Rubber Company Ltd** reported in 1997 (94) ELT 495 (Mad)

(d) **Rajiv Mardia** vs. **CCE Indore** reported in 2000 (118) ELT 627 (Tri.)

(e) **Whirlpool of India Ltd** vs. **Commissioner of Customs, NhavaSheva** reported in 2001(127) ELT 239

(f) **Denso Haryana Pvt Ltd** vs. **Commissioner of Customs** reported in 2004 (176) ELT 548 (Tri.-Delhi)

(g) **AdaniWilmar Ltd** vs. **Commissioner of Customs Kandla** reported in 2012 (10) TMI 63 (Tri.-Ahd.)

3.4 The learned counsel prayed that the appeal may be allowed and the impugned order passed by the learned Commissioner (Appeals) may be set aside.

4. The learned Authorised Representative for the department reiterated the findings of the lower authority and submitted that the impugned order has been passed in accordance with Rule 3 (1) of the Customs (Administration of Rules of Origin under Trade Agreements)Rules, 2020 issued vide Notification NO. 81/2020-Cus. (NT) dated 21st August, 2020. There is no infirmity or illegality in the impugned order. Therefore, the appeal may be rejected and the impugned order passed by the learned Commissioner dated 9th May, 2024 may be upheld.

5. We have heard the rival submissions and perused the records. We find that the learned Commissioner (Appeals) has rejected appeal of the appellant on the ground that Certificate of Country of Origin was issued retrospectively and benefit of exemption was not claimed at the time of filing Bills of Entry and Out of Charge order. Rules 3 (1) of the Customs (Administration of Rules of Original under Trade Agreements) Rules, 2020

issued vide Notification No. 81/2020-Cus. (NT) dated 21st August, 2020 is reproduced below:-

> ***Rule 3 . Preferential tariff claim*** *: -(1) To claim preferential rate of duty under a trade agreement, the importer or his agent shall, at the time of filing bill of entry,-*
> *(a) make declaration in the bill of entry that the goods qualify as originating goods for preferential rate of duty under that agreement;*
> *(b) indicate in the bill of entry the respective tariff notification against each item on which preferential rate of duty is claimed;*
> *(c) produce certificate of origin covering each item on which preferential rate of duty is claimed; and*
> *(d) enter details of certificate of origin in the bill of entry, namely:*
> *(i) certificate of origin reference number;*
> *(ii) date of issuance of certificate of origin;*
> *(iii) originating criteria;*
> *(iv) indicate if accumulation/cumulation is applied;*
> *(v) indicate if the certificate of origin is issued by a third country (back-to-back); and*
> *(vi) indicate if goods have been transported directly from country of origin.*

5.1. The learned Commissioner interpreted the above provisions in a manner that if preferential rate of duty under trade agreement is claimed then the importer shall claim the same at the time of filing the Bill of Entry. We are of the view that in the present case, the assessments were provisional and, therefore, these are covered under Section 18 of the Customs Act, 1962 and not by the provisoins under Section 17 of the Customs Act. We agree with the law laid down in **Mangalore Chemicals and Fertilizers Ltd** (supra) and in **PMT Machines Tools** (supra) that in cases where assessment was made provisional for any purpose, it shall be considered as provisional for all purposes. Therefore, finding given by the learned Commissioner that the case laws relied upon by the appellant are not applicable in the present case is not correct. The Assessing Officer should have considered the claim of the appellant for granting benefit of preferential rate of duty under India-UAE CEPA at the time of finalization of provisional assessment if it otherwise satisfied the conditions of the notification. In this context, we would like to reproduce Instruction No. 21/2024-Customs dated 16th August, 2024 issued by the CBIC which is reproduced below:-

> *"**Subject: Retrospective issuance of Certificates of origin under India-UAE CEPA-reg***
> *Board is in receipt of trade representations citing implementation challenges being faced under the India-UAE CEPA. The issue primarily pertains to non-acceptance of retrospectively issued certificates of origin during finalization of provisional assessment and, consequent denial of preferential benefit under the CEPA. While procedural discrepancies such as non-marking of 'ISSUED RETROSPECTIVELY' column by the issuing authority and non-uploading of certificate of origin on e-Sanchit are cited as ground for rejection of claim, a substantive issue that section 149 of the Customs Act do not allow amendment in bill of entry after out-of-charge has also been raised.*
>
> *2. The matter has been examined vis-à-vis the extant legal provisions, including the rules of origin issued under India-UAE CEPA vide Notification No. 39/2022-Cus (NT) dated 30.04.2022. The said rules inter alia govern the procedure of issuing Certificates of Origin (COOs) by the concerned authorities of India and UAE.*
>
> *2.1 Rule 15 (11) of the said rules explicitly permits the retrospective issuance of COO, under exceptional situations:*
>
>> *(11) The Certificate of Origin shall be issued prior to, at or within a period of five working days of the date of exportation. However, under exceptional cases, where a Certificate of Origin has notbeen issued at the time of exportation or within five working days from the date of shipment due to involuntary errors or omissions, or any other valid reasons, the Certificate of Origin may be issued retrospectively, bearing the words "ISSUED RETROSPECTIVELY" in box 9 of the Certificate of Origin, with the issuing authority also recording the reasons in writing on the exceptional circumstances due to which the certificate was issued retrospectively. The Certificate of Origin can be issued retrospectively but no longer than twelve months from the date of shipment.*

2.2 Further, rule 21(3) provides for claiming of refund of excess duties paid in cases where a product would have qualified as an originating product when it was imported into the territory, but preferential treatment was not extended at the time of import:

> *(3) each Party shall, in accordance with its laws, provide that where a product would have qualified as an originating product when it was imported into the territory of that Party, the importer of the product may, within a period specified by the laws of the importing Party, apply for a refund of any excess duties paid as a result of the product not having been accorded preferential treatment.*

2.3 These provisions indicate that where preferential treatment was not claimed or extended at the time of import, the importer does not lose the right to claim the benefit upon subsequent submission of a valid COO within stipulate time frame, provided that authenticity of COO and product origin are not disputed. The requirement of uploading COO on e-Sancit while filing bill of entry would not apply in this case, as the COO has been issued after the date of importation. A harmonious reading of the provisions is required so that the legal entitlement under the trade agreement is not nullified.

3. Further, rule 15 (13) of the said rules provides that minor discrepancies, including typing or formatting errors, shall not render a COO invalid, provided the certificate corresponds to the products under import and such minor errors do not affect the authenticity of the COO or the accuracy of the information contained therein. In nutshell, minor procedural discrepancies concerning rules of origin should not be seen as countering the intent of extending substantive benefit under trade agreement, unless such discrepancies cast a doubt on the originating status of the product."

5.2 It is pertinent to note here that at the time of finalizing the provisional assessment of Bill of Entry No. 8597441 dated 9th May, 2022 and Bill of Entry No. 8947513 dated 3rd June, 2022, the above mentioned Instruction No. 21/2024-Customs issued by CBIC was not available. Therefore, we are of the view that the said Instruction is required to be considered by the Adjudicating Authority while finalizing the provisional assessment in this case.

5.3 In view of the above, we are of the opinion that the matter is liable to be remanded to the Adjudicating Authority with the direction to consider the issue of giving benefit of exemption to the appellant from payment of Customs duty on the basis of Certificate of Country of Origin retrospectively, which was not claimed at the time of filing Bills of Entry or Out of Charge order in the light of CBIC Instruction No. 21/2024-Customs dated 26.10.2024 and in the light of observations made in this order.

6. Consequently, the impugned order dated 09.05.2024 is set aside and the appeal is allowed by way of remand in terms of above observations. The appeal is allowed by way of remand.

(Order pronounced in the open Court on 29.09.2025)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

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