CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70052 of 2021

(Arising out of Order-in-Original No.14/Pr.Commr/NOIDA-CUS/2020-21 dated 26.10.2020 passed by Principal Commissioner of Customs, Noida)

M/s India Trade Link Private Limited

.....Appellant

(B-35/3, G.T. Karnal Road, Industrial Area, Delhi-220033.)

VERSUS

Principal Commissioner of Customs, Noida

....Respondent

(Concor Complex, P.O. Container Depot, Greater Noida, Gautam Budh Nagar, Uttar Pradesh-201311.)

WITH

Customs Appeal No.70379 of 2021

(Arising out of Order-in-Original No.14/Pr.Commr/NOIDA-CUS/2020-21 dated 26.10.2020 passed by Principal Commissioner of Customs, Noida)

Principal Commissioner of Customs, Noida

.....Appellant

(Concor Complex, P.O. Container Depot, Greater Noida, Gautam Budh Nagar, Uttar Pradesh-201311.)

VERSUS

M/s India Trade Link Private Limited

....Respondent

(B-35/3, G.T. Karnal Road, Industrial Area, Delhi-220033.)

APPEARANCE:

Shri Atul Gupta, Advocate for the Appellant/Party
Shri A.K. Choudhary, Authorized Representative for the Respondent/Revenue

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.-70327-70328/2025

DATE OF HEARING : 25.04.2025
DATE OF DECISION : 28.05.2025

PER-RAJEEV TANDON:

Being aggrieved with the Order-in-Original No.14/Pr.Commr/NOIDA-CUS/2020-21 dated 26.10.2020 passed by Principal Commissioner of Customs, Noida confirming a duty of Customs of Rs.1,42,05,759/- along with interest besides imposing equal amount of penalty on the appellant, the appellant has filed the impugned appeal.

2. The show cause notice in the matter was issued to the appellant invoking extended period of limitation inter alia stating that the appellant has evaded payment of appropriate Customs duty by misrepresenting facts and improperly assessing the self-assessed import in the bill of entry to avail benefit of Notification No.46/2011-CUS dated 01.06.2011 which was not admissible to the importer. It is the revenue's case that as the importer mis-stated the facts at the time of import, therefore the said short payment of duty and for which act, the importer has also rendered himself liable for appropriate penal action under section 114A of the Customs Act, 1962.

3. The facts of the case are that vide 18 Bills of Entry, filed for import of tin ingots from Malaysia, during the period 22.11.2013 to 27.12.2016, the appellant cleared the same availing the benefit of exemption Notification No.46/2011-CUS in terms of agreement on trade in goods under the Framework Agreement on Comprehensive Economic Co-operation between India and Association of South-East Asian Nations. It is the case of the appellant that they furnished valid Country of Origin (COO) Certificate at the time of clearance of the impugned goods, as were provided to them by the supplier of the impugned goods M/s. Malaysia Smelting Corporation, Malaysia and sought concessional rate of duty in terms of Sl.No.1002 of Notification No.46/2011-CUS dated 01.06.2011.

4. The Ld. Counsel submits that based upon the satisfaction of the said Certificates the department allowed them clearance at the concessional rate, as they had complied with the provisions of Customs Tariff (Determination of Origin of Goods under Preferential Trade Agreement between the Governments of the Member states of the Association of South East Asian Nations and Republic of India) Rules 2009 as notified vide Notification No.189/2009-CUS(NT) dated 31.12.2009.

5. The revenue has charged the appellants for mis-representing the subject matter. The show cause notice points out that the investigations were initiated pursuant to complaints received from domestic industries, regarding alleged violation of rules of origin under the FTA, regarding imports of tin ingots from M/s. Malyasia Smelting Corporation (MSC) (also the supplier in the present case). The show cause notice alleges as below :-

> *"8. Whereas it is seen that in the instant case, the Tin ingots imported by the party were found to have been produced by Malaysia Smelting Corporation (MSC), Malaysia who procured the COO in violation of the Rules of Origin of the Indo-ASEAN (FTA), in terms of Notification No. 189/2009-Cus(NT) dated 31.12.2009 and of the India Malaysia Preferential Trade Agreement Rules, 2011.*
>
> *9. Whereas it is also seen that the importer noticee got the goods cleared out of charge from Customs on payment of Customs duty at the preferential rate of 0% in place of the effective rate of duty applicable on goods imported was 5%.*
>
> *10. Whereas evidence brought out in investigation by the DRI shows that the benefit of preferential duty of Customs does not appear to be admissible on the imported tin ingots from Malaysia manufactured by M/s Malaysia Smelting Corporation (MSC), Malaysia. Therefore, it appears that the importer noticee is required to pay the effective rate of duty of Customs on the import of tin ingots in place of the preferential rate of duty of Customs as availed by them at the time of import of the consignment of tin ingots, along with interest thereon.*
>
> *11. Whereas in terms of Section 17 of the Customs Act, 1962, an importer noticee entering any imported goods under Section 46 through a Bill Entry shall save as otherwise provided in Section 85, self-assess the duty, if any, leviable on such goods. In the instant case, the importer noticee failed to assess the goods correctly and evaded the payment of duty of Customs. Since, the importer noticee self assessed the goods wrongly, non-levy of customs duty on the subject goods is the sole responsibility-of the importer-noticee. The importer-noticee mis-represented the facts in the Bill of Entry (B/E) by availing the benefit of Notification No.46/2011-Cus dated 01.06.2011 which was not admissible in their case. The importer notice mis-stating the facts mentioned above, has made himself liable to be penalized under the provisions of Section 114A of the Customs Act, 1962."*

6. Thus, from the above, the foremost and very pertinent question arises about invocation of extended period of limitation based on elements of suppression, willful misstatement or collusion on the part of the appellant. As noted from records the appellant tendered a detailed reply before the lower authority, pointing out that there was nothing in the show cause notice, to allege a positive act on their part for any of the ingredients of Section 28(4). It is necessary to consider and point out that the appellants submitted the Country of Origin(COO) Certificate duly issued by the appropriate authority, in the country of export. In case the said COO Certificate was improper or incorrect, it had to be shown that such a certificate was issued at the instance of the appellant-importer, that he had conscious knowledge of the inaccuracies and falsification, in the said certificate. Unfortunately, there is nothing in the show cause to even suggest that the appellant was in some way instrumental in obtaining an allegedly imperfect COO Certificate which was not based on true facts and was based on a costing data of the year 2013. We are not in agreement with the departmental authorities that the importer steps into the shoes of the supplier and therefore can be proceeded against in law, invoking extended period.

7. The officers of the department also acted upon the said COO Certificates and had allowed the import of goods at concessional rate of duty. Subsequently, even if any infirmity in the said certificate issued to the exporter, came to light, to charge the appellant invoking extended period, the department has to establish that the appellant had willfully got it manipulated, had knowledge about the impugned infirmities and lacunae and the usage of wrong figures, in the computation of value addition and the importer had deliberately and willfully submitted the said certificates with intent to evade duty. Any wrong, detected as a result of the said certificate issued in the country of export, based on certain wrong premises from the supplier of the said country, without establishing knowledge on part of the importer and his active collusion in the matter cannot be sustained. We do not find any evidence brought out in the notice to this effect, alleging

involvement of the appellant in the issuance of the improper COO Certificate. Loose and unspecific allegations that the investigations found out that suppliers/traders, supplied free of cost raw material (tin ore) of origin of non-ASEAN countries to MSC (the Malaysian exporter) for smelting and conversion to tin ingots and that the smelting charges paid by traders/suppliers for conversion reflected the true value addition(RVC) in Malaysia which in percentage terms of total FOB value did not meet the origin criteria for goods of Malaysian origin under the ASEAN Rules of Origin. That being the basis for issuance of COO Certificate, however nowhere points out the manner in which the appellant may have played any/active role in getting such irregular certificates. Also there's is no evidence to sustain the charge of supply of tin ore free of charge, other than a bland statement. Moreover, there is nothing in law that casts a burden on the importer to be aware of the factual details that go into the issuance of such a COO certificate. No malafides can thus be attached to the importer. Nothing prevented the authorities to slap the notice within normal period of limitation. If the said goods were cleared at Nil rate as per such COO Certificates issued and not at the otherwise leviable rate of 5% advance the importer cannot be faulted upon.

8. It is quite evident, that the importer would unhesitatingly rely on and believe in the veracity of the documents as are supplied to him by the exporter. To state that the importer was also involved in issuance and obtaining of such COO Certificates without any evidence cannot be justified. The impugned COO Certificates are issued by the Government authorities of Malyasia and any omission/misrepresentation therein cannot be faulted to be the doings of the importer. Under the circumstances, it is therefore evident that the extended period of limitation would not be applicable to the present proceedings. In this regard the appellants have also placed reliance in the case of **Kiara Ingredients Inc v. CC, Mundra in Customs Appeal No.10025 of 2022 (Final Order No.A/10400/2024 dated 14.02.2024)**. Para 6 of the said order issued under identical circumstances is reproduced hereinbelow for ready reference.:

> *"6. Considered. We find that in the instant case, the certificate was duly got verified through the Government to Government process and Malaysian authorities have not doubted the issuance of genuine certificate of origin nor its contents. However, the department in the absence of cost data has placed the whole burden of proof on the appellants, despite documentary evidence coming to the fore by way of certificate of origin and same getting verified from Malaysian authorities. It is clear the cost data of Malaysian manufacturer having been provided or having been denied is a matter between Government to Government and cannot be held against the appellants, as no one will part its cost data to any buyer as same is generally considered confidential. In case the agreement between Malaysian Government and Indian Government had some provision for providing cost data of the supplier company then such condition could have been taken up with the Malaysian Government or action could have been taken under the preferential duty agreement by Indian Government. Failure of Indian authorities to get more detailed verification or underlying cost data from the Malaysian Government authorities cannot be held against the appellant, who discharged their burden to claim benefit by producing the relevant prescribed document under the agreement and the Customs notification. On production of such evidence, it was for the department to discharge the burden as shifted on it."*

9. In the case of **Uni Colloids Impex Pvt.Ltd. v. Commissioner of Customs [(2024) 20 Centax 344 (Tri.-Ahmd)]**, this Tribunal in a case of verification of Country of Origin Certificates, doubting the genuineness of the said certificates wherein procedure prescribed under Rule 9 had not been adhered to, did not accept the department's contention of denial of concessional rate of duty in terms of the relevant exemption Notification.

10. The ld.Counsel for the appellant has also argued that the impugned show cause notice was not adjudicated within the timelines prescribed in law and hence the impugned order would not sustain. Having arrived at the conclusion that the show cause notice invoking extended period is unsustainable, we are of the view that question for consideration of this argument can as well be deferred and not warranted to be considered at this juncture. We therefore refrain from offering any comment on this plea.

11. In view of our observations aforesaid, it is clear that the demand made in the impugned show cause notice, would not survive as there is nothing in the notice/order to impute knowledge and willful intent on the part of the appellant to deliberately submit an incorrect improper Country of Origin Certificate with intent for evasion of duty.

The impugned order passed by the Principal Commissioner of Customs, NOIDA, is therefore set aside.

12. The Revenue has also filed appeal in the matter seeking to impose penalty on the appellant under Section 114A of the Customs Act 1962, as proposed vide Para 13(iii) of the Show Cause Notice impugned in the matter. However, we find that the ld.Principal Commissioner has in pursuance of her order imposed on the appellant, equal amount of penalty, as the duty confirmed. The relevant Para 13 of the notice as well as that of the order are extracted below:

Show Cause Notice

13. Now therefore, M/s India Trade Link Pvt Ltd., B-35/3, G.T. Karnal Road, Industrial Area, Delhi-110033 are required to show cause to the Commissioner of Customs, Noida Customs Commissionerate, Concor Complex, P.O. Container Depot, Greater Noida, as to why-

i) the duty of customs amounting to Rs 1,42,05,759/- should not be demanded from them under sub section (4) of Section 28 of the Customs Act, 1962.
ii) interest as applicable on the amount mentioned at i) above should not be demanded from them under section 28AA of the Customs Act, 1962.
iii) a penalty equal to the amount of the duty of customs mentioned at Si no. i) above should not be demanded from them under the provisions of section 114A of the Customs Act, 1962.

Order in original

i) I order to recover Duty of Customs amounting to Rs.1,42,05,759/- (Rupees One Crore Forty Two Lakh Five Thousand Seven Hundred Fifty Nine Only) from M/s India Trade Link Pvt Ltd.,B-35/3,0.T.Kernal Road, Industrial Area, Delhi-110033 under sub section (4) of Section 28 of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

ii) I impose penalty of Rs. 1,42,05,759/-(Rupees One Crore Forty Two Lakh Five Thousand Seven Hundred Fifty Nine Only) to M/s India Trade Link Pvt Ltd., B-35/3,G.T.Karnal Road, Industrial Area, Delhi-110033 under Section 114A of the Customs Act, 1962.

That being so in the first place there being no demand made to impose & recover the penalty, equal to the amount of duty + interest confirmed, the Revenue cannot stake such a claim by way of their cross objections/appeal. Moreover, the said question was already answered by the Hon'ble Karnataka High Court in the case of **Commissioner of Customs & Sales Tax,Bangalore** v **Sony Sales Corporation 2021(376) ELT 472 Kar**, that the two expressions were to be read distinctively and "the word" or "in law cannot be read as "and." The Revenue's appeal thus lacks merit and cannot be sustained.

13. In view of our discussions above the appeal filed by the appellant importer succeeds, while the appeal of the department stands dismissed

(Pronounced in open court on 28.05.2025)

Sd/-
(RAJEEV TANDON)
MEMBER (TECHNICAL)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

SB