

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL NO. 51618 OF 2022

[Arising out of Order-in-Original No. 02/2020/MK Singh/2019/Pr.Commr./Import/ICD/
TKD dated 10.01.2020 passed by the Principal Commissioner of Customs, New Delhi]

Shellz India Private Limited

(Formerly Known as Tifosi Foods Pvt. Ltd.)
99, Main Chowk, Samaipur,
Delhi-110042

....Appellant

versus

Principal Commissioner of Customs (Import)

ICD, Tughlakabad, New Delhi

....Respondent

APPEARANCE:

Shri T. Chakrapani, Consultant for the Appellant
Shri Rajesh Singh, Authorized Representative for the Department

CORAM: **HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
 HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 11.12.2024
Date of Decision: 26.05.2025

FINAL ORDER NO. 50756/2025

JUSTICE DILIP GUPTA:

Shellz India Private Limited¹ has filed this appeal for quashing the order dated 10.01.2020 passed by the Principal Commissioner of Customs² denying the benefit of Notification No. 46/2011-Cus dated 01.06.2011³ in respect of the imports made by the appellant covered by the "country of origin" certificate issued to M/s. JB Cocoa SdnBhd⁴. The Principal Commissioner has, therefore, confirmed the demand of differential duty in respect of the imports made under eleven Bills of Entry under section 28(1) of the Customs Act, 1962⁵ with applicable

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1. **the appellant**
 2. **the Principal Commissioner**
 3. **the Exemption Notification**
 4. **Malaysian Company**
 5. **the Customs Act**

rate of interest under section 28AA of the Customs Act. However, the Principal Commissioner has dropped the demand of differential duty pertaining to the remaining thirty seven Bills of Entry for the reason that the extended period of limitation could not have been invoked under section 28(4) of the Customs Act in respect of these thirty seven Bills of Entry. The Principal Commissioner has also dropped the proposal made in the show cause notice for confiscation of the goods and imposition of penalty.

2. The appellant is engaged in the business of imports of goods and filed forty eight Bills of Entry for clearance of Cocoa Powder Low Fat imported from Malaysia during the period 17.07.2014 to 03.05.2018. As Malaysia and India are member countries of ASEAN and had preferential trade agreement, the appellant claimed exemption of customs under the Exemption Notification. The appellant, therefore, claimed nil rate of basic customs duty against the "country of origin" certificate in all the said Bills of Entry.

3. A show cause notice dated 30.01.2019 was issued to the appellant in respect of forty eight Bills of Entry alleging that the appellant had wrongly claimed the benefit of the Exemption Notification and had evaded payment of basic customs duty. The extended period of limitation contemplated under section 28(4) of the Customs Act in respect of thirty seven Bills of Entry was also invoked for the following reasons:

"18. On account of the foregoing facts and circumstances involved in the case as brought in the preceding paras, it appears that it is fit case for invoking extended period in terms of proviso to section 28(4) of the Customs Act, 1962. **Whereas, the importer have intentionally and deliberately**

procured Country of Origin Certificate of Malaysian origin by willful mis-statement and suppression of facts and when in fact the impugned goods did not qualify to be eligible for the same in terms of the provisions contained in Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Government of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009 [published vide Notification No. 189/2009-Cus(NT), dated 31.12.2009). The FTA certificates have been acquired on the basis of Local Value Added Content percentage, which has been manipulated by the parties in their favour (35%). However, during investigation, it is found that percentage of Local Value Added Content has been subjected to variation from 13% to 17% and thus, extended period for demanding differential customs duty is liable to be invoked as provided under Section 28(4) of the Customs Act, 1962. The importer was required to exercise due diligence while availing benefit of exemption notification. However, they proceeded to claim the benefit of said exemption notification on the basis of such fraudulently obtained Country of Origin Certificates by willful mis- statement and suppression of facts pertaining to the Country of Origin so obtained. **Therefore, the duty benefit claimed under Notification Nos. 46/2011-Cus dated 1.6.2011 for the imports of Cocoa Powder from M/s JB Cocoa and Guan Chong Cocoa, Malaysia" affected within the last five years are recoverable under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962."**

(emphasis supplied)

4. To support the aforesaid plea, reference was made in the show cause notice to the "country of origin" certificate issued for COCOA Beans from Ghana Origin wherein it appeared that the regional value content would only be in the region of 13-17 percent as against the

minimum qualifying value of thirty five percent. The show cause notices mentions that for the said import pertaining to 2011 and 2012, the matter was taken up for verification with the High Commission of Malaysia by a letter dated 10.01.2014. In reply, a letter dated 18.03.2014 was sent to the department that the Ministry of International Trade and Industry Malaysia completed the verification visit to both the factories to verify the information regarding raw material used in the production of cocoa powder for export to India and based on the verification visit and internal investigation of both the factories, the raw material used in the production of finished goods fulfilled the thirty five percent regional value content under the Free Trade Agreement, but the cost structure was not provided due to data privacy.

5. The Principal Commissioner recorded the following findings in the impugned order:

"29. From the above sequence of events as detailed in Para 28 above when seen in light of provisions detailed in Para 27 above, I find that the prescribed procedure for verification has been followed in this case. It is only after the said process, as prescribed in the Operational Certification procedure, letter F No 456/12/2013-Cus V dated 07.05.2014, communicating decision of denial of preferential benefit has been issued by CBIC.

30. As the final decision of denial of preferential benefit has been taken by CBIC, the COOS issued by MITI in this case stand liable for rejection and benefit of preferential rate of tariff is liable to be denied. The decisions of CESTAT in the case of M/s Alfa Traders Vs Commissioner of Customs, Cochin reported as 2007 (217) ELT 289 and M/s Surya Lights Vs Commissioner of Customs reported as 2008 (226) ELT 74 (Tri. Bang), as relied on in the SCN, are found to be squarely

applicable in this case. The demand of duty is therefore sustainable on this ground.”

6. The Principal Commissioner, however, held that the extended period of limitation could not have been invoked in respect of the thirty seven Bills of Entry. Accordingly, the benefit of the Exemption Notification was denied to the appellant for the eleven Bills of Entry and differential duty in respect of these eleven Bills of Entry which fell within the normal period of limitation was confirmed. The demand proposed in respect of the remaining thirty seven Bills of Entry was dropped for the reason that the extended period of limitation could not have been invoked.

7. The appellant has assailed that part of the order dated 10.01.2020 passed by the Principal Commissioner that has confirmed the differential duty amount in respect of eleven Bills of Entry with interest under section 28AA of the Customs Act.

8. Shri T. Chakrapani, learned consultant appearing for the appellant made the following submissions:

- (i)** The Principal Commissioner was not justified in denying the benefit of the Exemption Notification;
- (ii)** In respect of the eleven Bills of Entry no query was ever raised by the customs authorities even though the time gap between the submission of the Bills of Entry and the out of charge date was sufficient; and
- (iii)** The “country of origin” certificate issued by Malaysia in respect of these eleven Bills of Entry was never checked or verified and reliance has been placed on “country of origin” certificate pertaining to the period from 2011 to 2012 which do not relate to the appellant.

It is in respect of this "country of origin" certificate of the year 2011-12 that verification was carried out. Thus, that report could not have been taken into consideration for doubting the country of origin certificate in respect of the eleven Bills of Entry submitted by the appellant in 2017-18 and in support of this contention learned consultant placed reliance upon a Division Bench decision of the Tribunal in **Symphony International vs. C.C. Mundra**⁶.

9. Shri Rajesh Singh, learned authorized representative appearing for the department, however, supported the impugned order and submitted that it does not call for any interference in this appeal as detailed reasons have been given in the order. Learned authorized representative also submitted that:

- (i) The investigation by the Directorate of Revenue Intelligence revealed that the regional value content in the imported cocoa powder was only between 13-17% which is much below the required threshold contained in the Exemption Notification; and
- (ii) To support this contention learned consultant placed reliance upon decisions of the Tribunal in **Alfa Traders vs. Commissioner of Customs, Cochin**⁷ and **Surya Light vs. Commissioner of Customs, Bangalore**⁸;

6. Customs Appeal No. 10168 of 2021 decided on 23.01.2024
7. 2007 (217) E.L.T. 437 (Tri.-Bang.)
8. 2008 (226) E.L.T. 74 (Tri.-Bang.)

10. The submissions advanced by the learned consultant appearing for the appellant and the learned authorized representative appearing for the department have been considered.

11. The appellant had filed forty eight Bills of Entry for clearance of Cocoa Powder Low Fat imported from Malaysia during the period from 17.07.2014 to 03.05.2018 and claimed nil rate of basic customs duty against the "country of origin" certificate issued by Malaysia in terms of the Exemption Notification. The benefit of this Exemption Notification has been denied to the appellant for the reason that the regional value addition which was declared as thirty five percent in the "country of origin" certificate was not correct as the regional value content was between 13-17%. Such a finding has been recorded by the Principal Commissioner on the basis of an investigation carried out in respect of the Bills of Entry submitted during 2011-12 for the goods imported by M/s. Morde Foods Pvt. Ltd. It is in respect of such an investigation that a letter dated 10.01.2014 was sent by the department to the Malaysian High Commission for verification of the "country of origin" certificate and it is in respect of these "country of origin" certificates that a communication dated 18.03.2014 was sent by the Malaysian High Commission. Though the said letter specifically states that the regional value content was thirty five percent, but this was not accepted by the department as the cost structure was not provided due to data privacy reasons.

12. However, no attempt was made by the department for verification of the "country of origin" certificates issued to the appellant in respect of the imports made between 17.07.2014 to 03.05.2018 and the certificates have been discarded merely because of the reply submitted

by the competent authority in Malaysia in the letter dated 18.03.2014. The issue that arises for consideration is whether the present "country of origin" certificates could be ignored without causing any verification for ascertaining the correctness and only relying upon a letter sent by the authority in Malaysia regarding the imports made by the some other importers in the years 2011-12.

13. This precise issue was examined by a Division Bench of the Tribunal in **Symphony International**. Here also the Bill of Entry was submitted for import of Cocoa powder on 12.02.2018 and the benefit of the nil rate of basic customs duty under the Exemption Notification was availed. Subsequently, a show cause notice dated 30.05.2019 was issued to the said appellant challenging the "country of origin" certificate on the ground that the regional value content in the COCOA Beans from Ghana Origin was between 13-17 percent as against the minimum qualifying value of thirty five percent. The same letter dated 10.01.2014 sent by the department to the Malaysian Government for verification of the "country of origin" certificate was relied upon, as also the reply dated 18.03.2014 submitted by the Malaysian Government. The judgment of the Tribunal in **Alfa Traders** and **Surya Light** was also considered by the Tribunal. The Tribunal held that no attempt was made by the department to get the "country of origin" certificates issued in respect of the Bill of Entry dated 12.02.2018 verified from the Malaysian Government. The communication dated 18.03.2014 sent by the department referred in the show cause notice, therefore, could not be relied upon. The Tribunal held that the appellant had provided documentary evidence in the form of the "country of origin" certificate and the onus to prove that it was fake and not correct shifted to the

department but no attempt was made by the department to carry out verification with the Government of Malaysia. The decisions of the Tribunal in **Alfa Traders** and **Surya Light** were distinguished and it was held that the benefit of the Exemption Notification could not have been denied to the appellant. The relevant paragraphs of the decision are reproduced below:

"8. Considered. **It is clear from the factual narrative that, the certificate of origin in the present instance was issued by the designated authority i.e 'Ministry of International Trade and Industry (MITI) Malaysia' which is competent authority to issue such certificate under ASEAN FTA (AIFTA) mentioning the Regional Value content (RVC) to be much higher than stipulated 35% i.e. 47%. The Free Trade Agreement stands incorporated in the Customs Tariff vide Notification No. 46/2011-Cust., dated 01.06.2011 available to impugned product i.e. Natural Cocoa Powder originating from Malaysia. The differential duty of Rs. 6,44,233/- was demanded by the department, denying benefit on the ground that in another investigation taken up by DRI in respect of certificate of origin pertaining to another party in the year 2014, Cocoa Beans were suspected to be derived from Ghana and not Malaysia by that importer. The matter was taken up by director (ICD) of CBEC, New Delhi with the High Commissioner of Malaysia in Delhi vide letter F. No. 456/12/2013-Customs-V dated 10.01.2014 for verification. The party involved in that case of the year 2014, was M/s. Morde Foods Pvt. Ltd., and the exporters were two Malaysian companies. In response to the letter of Director (ICD), CBIC, New Delhi, the Ministry of International Traders Industry (MITI) vide letter dated 18.03.2014 informed CBEC that they had conducted internal investigation by visiting two factories of M/s. J B Cocoa and M/s. Guan Chong Cocoa who were suppliers in that case and both had confirmed that value addition**

of 35% was obtained at theirs. However, company did not provide cost data due to data privacy and since the Board was of the opinion that under AIFTA cost data cannot be denied, therefore, in the present case in the Year-2018, since impugned goods have been supplied by M/s. Guan Chong Cocoa as manufacturer, the proceedings for denial of exemption despite claim of 47% value addition have been initiated even without attempting to verify the documentary evidence by way of the Certificate of Origin by the designated authority issued under the agreement.

We find that this is nothing but attempt to make case on the basis of assumptions and presumptions even without as much as verification having been attempted to be made by the authorities. The same is therefore, not maintainable. Department has been provided a documentary evidence by way of a stipulated certificate from the designated authority under the agreement.

On production of such agreement which is in the nature of the documentary evidence, the onus to prove fakeness of its content or otherwise clearly shifts on the department. Unlike, the course of action adopted in respect of other importers who made imports in the Year-2014, the department has not even attempted to do verification with Government of Malaysia and has proceeded in the instant case, on the basis of following assumptions and presumptions without rebuttal of the documentary evidence procured and produced by the appellant:-

- That in absence of cost data in relation to imports in 2014, the certificate duly verified by the Malaysian authority was presumed to be in genuine even in this case, one of the party being same. Despite much higher claim of 47% CV claim by the appellant in this instance, four years later.
- It was also presumed that Malaysian authorities will not be able to get cost data on the manufacturing unit and will simply

agree to the percentage on the basis of their own verification of 47%.

- That there is no need of any verification and old verification or lack of it holds goods in the Year 2018 also.
- That the onus of getting the contents of certificate verified has shifted from Government to Government basis (G to G) to (G to I) basis i.e. Government to importer basis.

8.1 Case law relied upon by the department in the matter of M/s. SURYA LIGHT Vs. COMMISSIONER OF CUSTOMS, BANGALOR as reported in 2008 (226) E.L.T 74 (Tri. – Bangalore) and 2007 (217) E.L.T. 437 reported in ALFA TRADERS Versus COMMISSIONER OF CUSTOMS, COCHIN are clearly distinguishable, as in case of former invoice was faked and in the latter judicial notice of no production in country of origin of the relevant agricultural product was taken and percentage of value addition in concerned country was never in dispute.

9. In view of the forgoing, in the present case in the face of certificate of origin having been produced and no verification process having been conducted before issuance of show cause notice, the demand of duty cannot be sustained. We also find that the appellant has correctly relied from the decision of M/s. R.S INDUSTRIES (ROLLING MILLS) LTD. Versus COMMISSIONER OF C.EX., JAIPUT-I as report in 2018 (359) E.L.T. 698 (Tri. - De.) to emphasize that the certificate issued by the competent authority of exporting country is to be given weightage. Similarly, the decision of Hemang Resources Ltd V/S Commissioner of Customs (Prev.) Jamnagar of this bench as reported in 2022 (381) ELT 404 (Tri. Ahmed.) is squarely applicable, which made incumbent upon department to discharge burden to get verification done from concerned Government. **Therefore, in absence of such burden having been discharged or even having been attempted till such belated stage, the**

show cause notice cannot be sustained. Similarly, the decision of this bench in the matter of Alfakrina Exports V/s. Commissioner of Customs, Mundra vide Final Order No. A/11759/2023 dated 23.08.2023 which has relied upon various decisions of High Courts and Supreme Courts in holding that without check of authenticity of the Certificate of Origin issued by Malay Chamber of Commerce Malaysia, Certificate of Origin and consequent benefit cannot be denied, equally holds good in the present instance.”

(emphasis supplied)

14. The aforesaid decision of the Tribunal in **Symphony International** was subsequently followed by the Tribunal in **Kiara Ingredients INC vs. C.C. - Mundra**⁹. The relevant paragraph of the decision is reproduced below:

“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

9. **Customs Appeal No. 10025 of 2022 decided on 14.02.2024**

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."

15. The facts of the present case are similar to the facts of **Symphony International** and **Kiara Ingredients**. The exports were made much later between 17.07.2014 to 03.05.2018. No reliance could have been placed on the report submitted by the authority in Malaysia in respect of exports made by some other entity in 2011-12. This apart, even the Malaysian Government confirmed that the regional value content was thirty five percent which was stipulated in the Exemption Notification. In respect of the present exports made between 2014 to 2018 no attempt was made by the department to verify the "country of origin" certificate issued by the designated authority of the Malaysian Government. In the absence of any verification having been conducted, for the "country of origin" certificate could not have been discarded.

16. The demand of differential duty for the normal period of limitation was, therefore, not justified. Interest also, therefore, could not have been charged from the appellant.

17. The impugned order dated 10.01.2020 passed by the Principal Commissioner is, accordingly, set aside and the appeal is allowed.

(Order pronounced on **26.05.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)