**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 2

**Customs Appeal No. 75762 of 2021**

(Arising out of Order-in-Appeal No. KOL/CUS/CCP/AKR/645/2021 dated 12.08.2021 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

**M/s. Vippy Industries Limited** **: Appellant**
28, Industrial Area,
A.B. Road, Dewas (M.P.) – 455 001

**VERSUS**

**Commissioner of Customs (Preventive)** **: Respondent**
Custom House, 3rd Floor, 15/1, Strand Road,
Kolkata – 700 001

**WITH**

**Customs Appeal No. 76361 of 2024**

(Arising out of common Order-in-Appeal No. KOL/CUS/CCP/KS/53-56/2023 dated 23.01.2023 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

**M/s. Vippy Industries Limited** **: Appellant**
28, Industrial Area,
A.B. Road, Dewas (M.P.) – 455 001

**VERSUS**

**Commissioner of Customs (Preventive)** **: Respondent**
Custom House, 3rd Floor, 15/1, Strand Road,
Kolkata – 700 001

**WITH**

**Customs Appeal No. 76362 of 2024**

(Arising out of common Order-in-Appeal No. KOL/CUS/CCP/KS/53-56/2023 dated 23.01.2023 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

**M/s. Vippy Industries Limited** **: Appellant**
28, Industrial Area,
A.B. Road, Dewas (M.P.) – 455 001

**VERSUS**

**Commissioner of Customs (Preventive)** **: Respondent**
Custom House, 3rd Floor, 15/1, Strand Road,
Kolkata – 700 001

**WITH**

## Customs Appeal No. 76363 of 2024

(Arising out of common Order-in-Appeal No. KOL/CUS/CCP/KS/53-56/2023 dated 23.01.2023 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

**M/s. Vippy Industries Limited** **: Appellant**
28, Industrial Area,
A.B. Road, Dewas (M.P.) – 455 001

**VERSUS**

**Commissioner of Customs (Preventive)** **: Respondent**
Custom House, 3rd Floor, 15/1, Strand Road,
Kolkata – 700 001

**WITH**

## Customs Appeal No. 76364 of 2024

(Arising out of common Order-in-Appeal No. KOL/CUS/CCP/KS/53-56/2023 dated 23.01.2023 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

**M/s. Vippy Industries Limited** **: Appellant**
28, Industrial Area,
A.B. Road, Dewas (M.P.) – 455 001

**VERSUS**

**Commissioner of Customs (Preventive)** **: Respondent**
Custom House, 3rd Floor, 15/1, Strand Road,
Kolkata – 700 001

**AND**

## Customs Appeal No. 76365 of 2024

(Arising out of common Order-in-Appeal No. KOL/CUS/CCP/KS/53-56/2023 dated 23.01.2023 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

**M/s. Vippy Industries Limited** **: Appellant**
28, Industrial Area,
A.B. Road, Dewas (M.P.) – 455 001

**VERSUS**

**Commissioner of Customs (Preventive)** **: Respondent**
Custom House, 3rd Floor, 15/1, Strand Road,
Kolkata – 700 001

**APPEARANCE:**

Shri R.S. Roychoudhury and Shri C.L. Dangi, both Advocates, for the Appellant

Shri Sourabh Chakravorty, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)**
**HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NOs. 77865-77870 / 2024**

DATE OF HEARING: 10.12.2024

DATE OF DECISION: 17.12.2024

**ORDER: [PER SHRI K. ANPAZHAKAN]**

Customs Appeal No. 75762 of 2021 has been filed against the impugned Order-in-Appeal No. KOL/CUS/CCP/AKR/645/2021 dated 12.08.2021 passed by the Commissioner of Customs (Appeals), Kolkata.

1.1. Customs appeals C/76361/2024, C/76362/2024, C/76363/2024, C/76364/2024and C/76365/2024 have been filed against the common Order-in-Appeal No. KOL/CUS/CCP/KS/53-56/2023 dated 23.01.2023 passed by the Commissioner of Customs (Appeals), Kolkata.

1.2. As the issue involved in all these appeals are the same, they are taken up together for decision by a common order.

2. M/s. Vippy Industries Limited (hereinafter referred to as the "appellant") has imported goods from Bangladesh, under the description of Soya Acid Oil (Industrial Monocarboxylic Fatty Acids) (hereinafter referred to as "impugned goods") by declaring the same under the CTH 38231900. The Appellant, holding ICE No. 1188001469 had filed a Bill of Entry No. 9846093 dated 06.12.2020 for clearance of imported Soya Acid Oil at 'nil' rate of customs duty under SAFTA Notification No. 99/2011-Customs dated

09.11.2011. Bills of Entry nos. 9994509 dated 17.12.2020, 2472535 dated 23.01.2021, 3286499 dated 25.03.2021, 8313380 dated 18.04.2022, 4247619 dated 09.06.2021 were also filed for clearance of the said goods at 'Nil' rate of duty under the same notification.

2.1. The appellant submitted the certificates of origin SAFTA certificate in terms of Notification No. 99/2011-Customs dated 09.11.2011 read with Notification No 27/2013-Customs, (NT) dated 01.03.2013. However, the same was denied by the assessing officer on the ground that the originality of the subject goods i.e. soya acid oil, is doubtful and thus the SAFTA certificate of origin can only be accepted after proper verification. On perusal of the impugned bills of entry, queries were raised by the proper officer to the appellant-importer against the aforementioned bills of entry and requested to submit the carotar declaration along with supporting documents like cost sheets, etc., to confirm the claim of regional value criteria for extension of benefit under the said SAFTA notification. The appellant / importer failed to submit all relevant and requisite documents as were requested by the assessing officer in his queries. Accordingly, the proper officer assessed all the Bills of Entry by charging Basic Customs Duty, Swachh Bharat Cess as well as IGST on the imported goods. Due to urgency of materials, they deposited the duty amount **under protest** and cleared the impugned goods without availing the SAFTA benefit.

2.2. Thereafter, the appellant filed appeals before the Commissioner of Customs (Appeals), Kolkata as per the provisions of Section 128 of Customs Act, 1962.

2.2.1. In respect of Customs Appeal No. 75762 of 2021, the Ld. Commissioner (Appeals) has, vide the impugned Order-in-Appeal No. KOL/CUS/CCP/AKR/645/2021 dated 12.08.2021, rejected the appeal on the ground of time bar, as there was a delay of 6 days beyond the statutory time limit of 60 days in filing the appeal.

2.2.2. The remaining five appeals viz. Customs Appeal Nos. 76361, 76362, 76363, 76364 and 76365 of 2024 have been filed against the impugned Order-in-Appeal No. KOL/CUS/CCP/KS/53-56/2023 dated 23.01.2023 wherein the Ld. Commissioner (Appeals) has rejected the appeals on the ground that at the time of clearance of the goods, the importer had forgone the benefit of exemption under SAFTA and cleared the goods on payment of applicable duty under protest and held that when such benefit was forgone at initial stage, the said benefit could not be claimed by a subsequent act at a later stage. It was also alleged that the appellant-importer has failed to provide the origin related information as indicated in FORM 1 in terms of paragraph 4 of Rule 5 of Notification No. 81/2020 (NT) dated 21.08.2020. Accordingly, the appeals filed by the appellant were rejected by way of the impugned order dated 23.01.2023. Aggrieved against the impugned order dated 23.01.2023 passed by the Ld. Commissioner (Appeals), the appellant has filed these appeals.

2.3. In respect of Customs Appeal No. 75762 of 2021, we find that the issue involved is the same as that of the remaining five appeals. In this case, there was a delay of 6 days beyond the 60 days statutory time-period allowed to file the appeal. However, the

Commissioner (Appeals) is empowered to condone a delay up to 30 days beyond the statutory time period prescribed. As the delay is within the condonable period of 30 days, we condone the delay in filing this appeal. Further, we find that in the impugned order dated 12.08.2021, the Ld. Commissioner (Appeals) has not decided the appeal on merits. In the normal course, we would have remanded the case back to Commissioner (Appeals) to decide the issue on merits. However, in the present case, we find that five other appeals on the same issue are before us for decision. Thus, we observe that remanding this one case, which is on the same issue, would not serve any purpose. In the interest of justice and to avoid further delay, we decide to take up this appeal also for decision, after condoning the six days delay in filing the appeal before the Commissioner (Appeals).

2.4. Thus, all the six appeals are taken up together for decision by a common order.

3. It is the submission of the appellant that they have imported the goods, namely, Soya Acid Oil (Industrial Monocarboxylic Fatty Acids) from Bangladesh and filed Bills of Entry by classifying the same under the Chapter Heading 38231900 of Customs Tariff Act, 1975; the said goods are exempted at nil rate of customs duty under SAFTA vide Notification No. 99/2011-Customs dated 09.11.2011. It is stated that initially, at the time of the import of the subject goods under SAFTA, the Customs Officers did not demand for documents as required under Notification No. 81/2020 dated 21.08.2020, but rejected their claim for availing

benefit under the Notification mentioned above on the basis of following observation:

> *"Soyabeen/ Soyabeen oil is not abundantly available in Bangladesh nor Soyabeen oil is an indigenous product of Bangladesh. So, the originality of the subject goods, i.e. Soya Acid Oil is doubtful. So, SAFTA certificate of origin bearing reference Nos. can only be accepted after proper verification. In the meantime, you will have to assess the subject bill of entry provisionally on execution of proper bond and bank guarantee. You can also clear item on full payment of customs duty."*

3.1. The appellant submits that later, the proper officer has assessed the impugned Bills of entry by denying the benefit of the SAFTA notification, without giving an opportunity to them to submit the documents required under Notification No. 81/2020 dated 21.08.2020. Accordingly, the appellant submits that principles of natural justice have not been followed by the assessing officer while deciding the issue against them.

3.2. The appellant submits that Appendix I to the Notification No. 75/2006-Customs (NT) dated 30.06.2006 indicates that if origin criterion has been marked as A (Column 8 of Appendix I) then it is the certification that the imported goods under SAFTA was wholly produced in the exporter country. It is the submission of the appellant that in respect of all-subject bills of entry filed, the certificate submitted by them indicates that in all cases 'A' has been marked in box 8 of Appendix I and thus it is amply clear that that imported products were wholly produced or obtained in the exporter country which satisfies the condition for availing complete exemption from payment of Customs duty under SAFTA. Accordingly, they submitted that the benefit of the SAFTA notification cannot be denied to the impugned goods imported by them.

3.3. The appellant referred to the Order-in-Appeal No. KOL/CUS/CCP/KS/65-68/2024 dated 25.01.2024 passed by the Commissioner of Customs (Appeals), Kolkata in respect of Bill of entries nos. 3834224 dated 22.12.22, 3893613 dated 24.12.2022, 4252227 dated 19.01.2023 & 4387849 dated 28.01.2023, wherein "A" was mentioned in the column 8 of Appendix I; in a case similar to the case of the appellant involving imports subsequent to the present imports, the Ld. Commissioner (Appeals) allowed the appeals therein on the ground that the subject goods were produced / obtained in the exported country and thus the imported goods would be exempted from payment of Customs duty under the Notification *supra*. It is also pointed out that the said Order-in-Appeal dated 25.01.2024 of the Ld. Commissioner (Appeals) was accepted by the Department. Thus, the appellant prayed that the benefit of the SAFTA notification ought to be allowed for the imports under consideration in the present appeals.

3.4. The appellant also referred to the Order-in-Appeal No. KOL/CUS/CCP/KS/775/2023 dated 06.10.2023 passed by the Commissioner of Customs (Appeals), Kolkata wherein, on the basis of the documents required under Notification No. 81/2020 dated 21.08.2020 submitted by the appellant before the Commissioner (Appeals), Kolkata, the benefit of the SAFTA notification was allowed to them. They submit that in the present case also, they have submitted the certificate required under the

Notification No. 81/2020 dated 21.08.2020 along with supporting documents like cost sheet, etc., in respect of all the bills of entry. Accordingly, the appellant contended that they are eligible for the benefit of the SAFTA notification in respect of all the bills of entry under consideration in the present appeals.

4. The Ld. Authorized Representative of the Revenue submits that the appellant-importer failed to provide the origin related information as indicated in FORM 1 in terms of paragraph 4 of Rule 5 of Notification No. 81/2020 dated 21.08.2020. Accordingly, he supported the impugned orders denying the benefit of the SAFTA Notification in question to the impugned goods imported by the appellant.

5. Heard both sides and perused the appeal documents.

6. We observe that the appellant had filed the six Bills of Entry for clearance of imported Soya Acid Oil at 'nil' rate of Customs Duty under SAFTA Notification No. 99/2011-Customs dated 09.11.2011. As per Rule 4 of Notification No. 81/2020 (NT) dated 21.08.2020, an importer who claims preferential rate of duty shall:-

*"4. …*

*(a) Possess information as indicated in Form I, to demonstrate the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the Rules of Origin, are satisfied and submit the same to the proper officer* ***on request."***

*(b) Keep all supporting documents related to Form I for at least five years from date of filing of Bill of Entry and submit the same to the proper officer on request.*

(c) *exercise reasonable care to ensure the accuracy and truthfulness of the aforesaid information and documents.*

(Emphasis supplied)

7. In the present case, we observe that the appellant has submitted the Country of origin certificate as desired under the Notification 99/2011-Customs dated 09.11.2011. This is evident from the details incorporated by the Ld. Commissioner (Appeals) in Table-A under paragraph 1 of the impugned order dated 23.01.2023 (pertaining to Customs Appeal Nos. 76361 to 76365 of 2024), the details of which are as below:-

| *Sl. No.* | *e-file no. (CAPPL/COM/ CUSP/xxxx/xxxx-ADMN-O/o COMMR-CUS/APPL/ KOLKATA)* | *Assessment order No. and date* | *Bill of Entry No. and date* | *Description of goods* | *SAFTA COO certificate No. & Date* | *Origin criterion (see Notes overleaf* |
|---|---|---|---|---|---|---|
| *1* | *1746/2021* | *NIL* | *3286499 dt.25.03.21* | *Soya Acid Oil (Industrial Monocarboxylic Fatty Acids)* | *EPB/21/other/4299 dated 21.03.21* | *"A"* |
| *2* | *1784/2021* | *NIL* | *4247619 dt.09.06.21* | | *EPB/21/other/6003 dated 20.04.21* | *"A"* |
| *3* | *2766/2021* | *01/IMP /CUS/GJD-LCS/2021 dated 21.10.21* | *2472535 dt.23.01.21 & 9994509 dt.17.12.20* | | *EPB/20/other/568 dated 14.01.21 & EPB/20/other/11046 dated 10.12.20* | *"A"* |
| *4* | *1316/2022* | *NIL* | *8313380 dt.18.04.22* | | *EPB/22/other/6111 dated 10.04.22* | *"A"* |

7.1. A perusal of the above certificates submitted by the appellant indicates that in all cases "A" has been marked in column 8 of Appendix I, which establishes that the imported goods were wholly produced or obtained in the exporter country.

7.2. Further, in respect of Customs Appeal No. 75762 of 2021, we observe that the appellant has produced a copy of the relevant certificate of origin on record. After perusal of the same, we find that the same fulfils the condition for availing the benefit under the SAFTA Notification. The certificate of origin submitted by the appellant in this case is being reproduced below: -

**CERTIFICATE OF ORIGIN**
**( SOUTH ASIAN FREE TRADE AREA )**

1. Goods consigned from ( exporter's business name, address, country )

EPB REG NO-NT-434
JAMUNA EDIBLE OIL INDUSTRIES LTD.
BOIRAGITALA, GODAGARI, RAJSHAHI,
BANGLADESH

Reference No. EPB/2C/Other/ 10741

SOUTH ASIAN FREE TRADE AREA (SAFTA)
(combined declaration and certificate)

Issued in BANGLADESH
(country)

see notes overleaf

2. Goods consigned to ( Consignee's name, address, country )

VIPPY INDUSTRIES LTD.
INDUSTRIAL AREA, DEWAS-455001 MADHYA PRADESH, INDIA
GST NO [illegible] IEC NO [illegible] PAN NO [illegible]
EMAIL [illegible]

3. Means of Transport and route (as far as known)

SHIPMENT FROM : BHOMRA, BANGLADESH
TO GHOJADANGA, INDIA "BY LORRY/TANKER"

4. For Official use

| 5. HS code | 6. Marks and numbers of packages | 7. Number and kind of packages : description of goods | 8. Origin criterion (see notes overleaf) | 9. Gross Weight or other quantity | 10. Number and date of invoices | 11. f.o.b value in US $ |
|---|---|---|---|---|---|---|
| [illegible] | | COMMODITY: SOYA ACID OIL (INDUSTRIAL MONOCARBOXYLIC FATTY ACIDS) QUANTITY: [illegible] M.TONS PACKING: IN LOOSE TANKER "GOODS ARE OF BANGLADESH ORIGIN" CONFIRMATION NOTE NO. [illegible] DATE: 22.11.2020 EXP NO. [illegible], DATE: 29.11.2020 | "A" | NET WT [illegible] KGS | [illegible] DATE: 29.11.2020 | [illegible] |

12. Declaration by the exporter ;
The undersigned hereby declares that the above details and statements are correct : that all the goods were produced in

BANGLADESH
(country)

and that they comply with the origin requirements specified for those goods in SAFTA for goods exported to

INDIA
( importing country )

Dhaka. 03.12.2020
Place and date, signature of authorized signatory

13. Certificate
It is hereby certified on the basis of control carried out, that the declaration by the exporter is correct.

Md. [illegible]
Asst. Director
Export Promotion Bureau
Dhaka, Bangladesh

03 DEC 2020
Place and date, signature and stamp of certifying authority

VIPPY INDUSTRIES LTD. DEWAS (M.P.)

8. From the impugned orders, we observe that the Ld. Commissioner (Appeals) rejected the appeals filed by the appellant on the ground that at the time of clearance of the goods, the importer has forgone the exemption benefit under SAFTA since they had cleared the goods on payment of applicable duty under protest. It has been alleged that when such benefit was forgone at the initial stage, then the said benefit cannot be claimed by a subsequent act at a later stage. It is also alleged that the appellant importer failed to provide the origin related information as indicated in FORM 1 in terms of para 4 of Rule 5 of Notification No. 81/2020 dated 21.08.2020.

8.1. In this regard, the appellant submitted that on subsequent imports, the Ld. Commissioner (Appeals) allowed the benefit of the SAFTA Notification by citing the Order-in-Appeal No. KOL/CUS/CCP/KS/65-68/2024 dated 25.01.2024 wherein the Ld. Commissioner of Customs (Appeals), Kolkata substantiated that the benefit of any exemption may be claimed subsequently, even if it is not availed initially. In the present case, the appellant had made the payment under protest and hence, they are legally within their right to contest this issue.

8.2. Thus, we observe that under similar facts and circumstances, the benefit of the SAFTA notification which had not been claimed initially, has been allowed to the appellant at a later stage on submission of the country of origin certificate. Further, in the present case we observe that the appellant has produced the country of origin certificate as desired under the Notification 99/2011-Customs dated 09.11.2011, as is evident from the details incorporated by the Ld. Commissioner (Appeals) in the table provided at paragraph 1 of the impugned order dated 23.01.2023. Thus, we do not find any reason to deny the benefit of the SAFTA Notification to the appellant. Since the appellant has fulfilled the conditions stipulated in the Notification 99/2011-Customs dated 09.11.2011, we hold that the appellant are eligible for the benefit of the said notification.

9. Accordingly, we hold that the impugned orders denying the benefit of the SAFTA Notification 99/2011-Customs dated 09.11.2011 to the impugned goods imported by the appellant vide the six bills of entry are not sustainable. Consequently, we set aside the same.

10. In view of the above discussions, we set aside the impugned orders and allow all the six appeals filed by the appellant, with consequential relief, if any, as per law.

(Order pronounced in the open court on **17.12.2024**)

Sd/-
**(R. MURALIDHAR)**
MEMBER (JUDICIAL)

Sd/-
**(K. ANPAZHAKAN)**
MEMBER (TECHNICAL)

Sdd