IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 76046 of 2015

(Arising out of Order-in-Original No. KOL/CUS/AIRPORT/ADMN/31/2015 dated 25.08.2015 passed by Commissioner of Customs (Airport & Admn.), Kolkata)

M/s. Harshad Ajmera
(resident of 7, Sarat Bose Road, Kolkata-700020)

Appellant

VERSUS

Commr. of Customs (Airport), Kolkata
(15/1, Strand Road, Kolkata-700001)

Respondent

With

Customs Appeal No. 76047 of 2015

(Arising out of Order-in-Original No. KOL/CUS/AIRPORT/ADMN/31/2015 dated 25.08.2015 passed by Commissioner of Customs (Airport & Admn.), Kolkata)

Pritibala H Ajmera Proprietress of M/s. Divine Carrying
(Room No. 704, 7th Floor, 6, Abaninda Nath Thakur Sarani,
Kolkata-700017)

Appellant

VERSUS

Commr. of Customs (AirPort), Kolkata
(15/1, Strand Road, Kolkata-700001)

Respondent

<u>APPEARANCE :</u>

Shri Sudhir Mehta, Sr. Advocate & Smt. Riya Debnath, Advocate for the Appellant
Shri S. Chitkara & Shri S. Debnath, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.76326-76327/2025

Date of Hearing : 8 April 2025
Date of Decision : 8 April 2025

C/76046 & 76047 of 2015

Per R. Muralidhar

The petitioner imported 8 consignments of gold jewelry (unstudded and unbranded) from the manufacturer exporter of Thailand between the period 16-12 2011 and 29 -8- 2012.The goods were imported by the petitioner under the Free Trade Agreement entered into by between Union of India and Government of Thailand, which was duly notified by the Union of India by the Notification Number 101/2004 CUS (NT) dated 31 August 2004. The goods were covered by Tariff Notification Number 85/2004 dated 31 August 2004 whereby Basic Custom Duty was exempted upon submitting of the Certificate of Origin issued by the Government of Thailand in accordance with provisions of Interim Rules of Origin issued under Notification Number 101/2004 dated 31 August 2004. The Certificates of Origin issued under the Free Trade Agreement submitted by the appellant complied with Origin Criteria as provided in column 8 of the certificate that it fulfilled four digit criteria and Value Addition was shown as 22%.

2. On 16th of October 2012, a search was caused by the officers of DRI at the showroom of the petitioner and documents relating to the import and 156.67 gms. of gold jewelry imported from Thailand lying in the stock of the petitioner were also seized and petitioner was constrained to deposit ₹50,00,000 pending investigation. The officers of DRI Kolkata observed that only the making charges shown in the invoices would qualify for Value addition and not the indigenous gold and other inputs used in the gold jewelry. On 12th April 2013, a Show Cause Notice was issued under Section 124 read with Section 28 of the Customs Act by DRI, to the appellant firm, proprietor and her husband who was looking after the affairs of the firm. The petitioner filed a reply to the Show Cause Notice and the matter was heard by the adjudicating officer and no material was found and/or disclosed in the show cause notice on the basis of which the benefit under the Certificate of Origin could be denied. After the period of two years from the SCN, the DRI Kolkata issued an Addendum to the Show cause notice enclosing two documents bearing number 0303.03./1806 dated 26th June 2014 and

0303.0/2539 dated 1st October 2014, making them as part of the evidence towards the allegations against the appellants.

3. After due process, the Adjudicating authority by the order dated 25 August 2015, rejected the Certificates of Origin and confirmed the demand made in the show cause notice, confiscated the seized gold, giving option to redeem the same upon paying the Redemption Fine, confirmed Customs Duty on the eight imported consignments, imposed penalty on the firm, penalty on the appellant Pritibala Ajmera [Proprietor] and penalty on the appellant Harshad Ajmera. Being aggrieved by the Order in Original, the appellants have filed the present appeals before the Tribunal.

4. The Ld Senior Advocate, appearing on behalf of the appellants makes the following submissions :

4.1 The goods were released by the Department after the assessment and after proper verification of Certificates of Origins by the Assessing Officer.

4.2 The gold jewellery were manufactured in Thailand by using indigenous gold which were mined in plenty in gold mines situated in Thailand and other indigenous inputs were mixed in gold alloy used for manufacturing jewellery.

4.3 The petitioner Mr. Harshad Ajmera, the husband of the proprietrix of the firm, who was looking after the affairs of the petitioner explained in his statements to the DRI on 25 October 2012 and deposed that locally procured gold and alloy were used in the manufacturing of the Jewellery manufactured in Thailand.

4.4 The relevant part of the statement of Mr. Harshad Ajmera are set out here in below:

> "On being specifically asked about the PC of value addition in Thailand in respect of the article imported in Devine, invoice-wise, I said that the making

charges shown on the Invoices are not the only value addition. In Thailand while processing gold imported by Thailand, locally reprocessed gold/alloys are mixed and hence the value of those added makes/alloys will also come under the value addition for them gold articles imposed by device from Thailand."

"In response to service enquiry regarding the custom of value addition on the articles imported by Devine, I said that there was value addition of 22% PC. As the basis of this value addition only the constitutes issue by SAFTA authorities of Thailands can be produced presently I do not have any other documents which can be produced in support of value addition by way of adding prices of reprocess gold/alloyes to the price of imposed gold in Thailand and the quantum of such value addition being 22% P.C."

4.5 The Dept has not brought in any proper counter evidence to deny this claim. The two documents bearing number 0303.03./1806 dated 26 June 2014 and 0303.0/2539 dated 1 October 2014 issued by Kingdom of Thailand confirmed the certificates issued by its government as " ***truly issued***". Though it also stated that it could not verify from the exporter as to whether certificate was issued upon qualifying origin claims as of the entitlement under the Trade Agreement because of time constraints of "time response" under WTO protocol, still it is to be noted that the Kingdom of Thailand stuck to the validity of the certificates.

4.6 There was no material disclosed in the show cause notice that at any point of time the Government of India sent any request under Rule 15 of Thailand and India Rules of Origin for Preferential Tariff Concessions for Trade between India and Thailand notified by the notification number 101/2004 dated 31 August 2004, which is set out here in below:

(a) The importing Party may request a retroactive check at random and/or when it has reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the products in question or of certain parts thereof.

(b) The request shall be accompanied with the Certificate of Origin concerned and shall specify the reasons and any additional information suggesting that the particular given on the said Certificate of Origin may be inaccurate, unless the retroactive check is requested on a random basis.

(c) The Customs Authority of the importing Party may suspend the provisions on preferential treatment while awaiting the result of verification. However, it may release the products to the importer subject to any administrative measures deemed necessary, provided that they are not held to be subject to import prohibition or restriction and there is no suspicion of fraud.

(d) The issuing Authority receiving a request for retroactive check shall respond within three (3) months after the receipt of the request.

4.7 There is no case that any Certificate of Origin was sent for retroactive check, and there is no material that any of the Certificate of Origin was cancelled by Thailand Government or declared unacceptable by the Union of India.

4.8 In absence of any such materials, there could not be any case for doubting the Certificates of Origin and imports made by the petitioner.

4.9 The Rules for Preferential Trade were made on the lines of "Contracting Party's Accountability". They were not made in the lines of "Importers Accountability"/ "Exporters Accountability". The appellant submitted the Origin Certificates issued by the Designated Authority under the Notification and the Trade Agreement which were sent by the Government of Kingdom of Thailand being a contracting party that the goods covered under the Origin Certificate fulfilled origin criteria. Under the WTO protocol in case of "Contracting party's accountability" the certificate is to be issued upon proper verification of all factors as stipulated under World Custom Organisation which provided a guideline to the member countries on the issue of certificate of origin in cases of Preferential Trade.

4.10 Under the Originating Rules, the Government of Thailand sent certificates after due verification to the other Contracting State i.e. India for the purpose of verification of imported goods by wire. The imports were assessed on the basis of certificates issued by the Government of Thailand. The goods were released upon payment of duty applying the trade exemptions granted under the Treaty/ notifications issued by the respective country.

4.11 It appeared that Government of India and Kingdom of Thailand settled the matter in Panel Discussion and accepted the certificates and did not take up the matter further to any dispute resolution forum which would mean that Union of India accepted the certificates as " truly issued" as claimed by the Government of Thailand.

4.12 Under the WTO protocol Origin Certificates could be treated as cancelled by both the countries and if such mutual and consented action do not take place in that case the dispute is required to be referred to Dispute Settlement Scheme under WTO followed by Panel Discussion . No country unilaterally can reject a certificate under WTO protocol. Hence, all certificates remained valid.

4.13 In the subject case, all the 8 consignments were covered by the Certificates of Origin, and were certified to be covered by the lawful procedure and protocol of Thailand and issued by nominated and designated officer accepted by India. Therefore, the custom authorities in India or Union of India could not deny the benefit under the Trade Agreement and notification issued by the Government of India in this regard.

4.14 The dispute relates two sovereign countries in the subject case because of protocol of "Parties Accountability" between Union of India and Kingdom of Thailand. Citizen of both the countries have a statutory right to rely upon the treaty and action of the other country. When the Treaty was translated into statutory Regulations and notifications by the respective country it conferred statutory right enforceable in the respective country. For any fault or irregularity, the importer cannot be blamed.

4.15 For dispute resolution a special manner and mode is prescribed and the party who could raise such disputes. Custom Authorities had no jurisdiction to raise a dispute on coverability of the certificates. It is settled law that if law requires a particular mode of doing things than only that procedure need to be followed and all other modes stand barred. When the manner to act is provided, it shall be done only in that manner and no other manner, as held in ***A.K. Roy and Another* v. *State of Punjab and Others* reported in (1986) 4 SCC 326.** If a statute provides for a thing to be done in a particular manner then it has to be done in that manner and in no other manner. This principle is to be found in the decision of the Privy Council in ***Nazir Ahmed* v. *King Emperor*, AIR 1936 PC 253(II)** and has since been reiterated in several decisions of the Hon'ble Supreme Court and the Hon'ble High Courts. Reference is invited to the judgment of the Hon'ble Supreme Court in ***Chandra Kishore Jha* v. *Mahavir Prasad*, (1999) 8 SCC 266-para 17 (pages 272-3)** and ***Competent Authority* v. *Baranagore Jute Factory*, (2005) 13 SCC 477-para 5 (page 483 at 484).** The said principle was applied by the Division Bench of the Hon'ble Calcutta High Court in a recent decision in ***Shaw Wallace & Company Limited* v. *Union of India*, (2004) 267 ITR 248 (Cal.).**

4.16 Custom Authority in India are not designated parties for raising disputes related to Certificates of Origin under the Rules. Their action is without authority of law and without jurisdiction

4.17 In case of dispute between the countries, the matter is required to be settled by the countries mutually not by and between country and its subject/ citizen. The dispute cannot be relegated to an importer or an exporter. The parties to the agreement/treaty that is Union of India can file a complaint not the Custom Authorities.

4.18 As the none of certificate was cancelled and India did not make any claim on the Thailand on account of impugned certificates, no such claim can be made on an importer who relied upon the certificates issued under the treaty by the sovereign exporting country by Custom Authorities and the adjudicating authority.

4.19 The adjudicating authority passed the adjudication order, rejecting the certificates which could not be done by the adjudicating authority and therefore the action of the adjudicating authority in rejecting the certificates were without authority of law and without jurisdiction.

4.20 The appellant placed reliance upon the judgement of this Tribunal in case of **BDB Exports Private Limited versus Commissioner of Customs, Kolkata reported in 340 ELT P 662, Tribunal, Kolkata** in which the Honourable Tribunal relying on the various judgement of the Supreme Court and the High Court held that adjudicating authority cannot sit over the Certificate of Origin given by the designated authority and rejection unilaterally by a country would be without authority of law and without jurisdiction. Similar view has been taken by this Tribunal in the case of **So Ham trading Co versus Commissioner reported in 11 TMI 489 Cestat Kolkata.**

4.21 The Delhi bench in the case of **Meenakshi Exports versus Commissioner of Customs reported in 509 ELT. 689,** and this Tribunal in Kolkata also held that rejection by the adjudicating authority of the certificates would be without jurisdiction and denial of concession cannot be made when valid certificate is issued.

4.22 The Government of Thailand has certified that certificates as "***Truely Issued***" and therefore in the subject case the benefit of duty could not have been denied by the custom authorities.

4.23 The appellant states that the claim is also barred by limitation and the assessment all having been done and no assessment had been challenged or revised. It could not have been disputed by a fresh round of litigation under Section 124 of the Customs Act, 1962 as held by the Honourable Supreme Court in case **of ITC Ltd** reported in 2019 (9) TMI 802 and by this tribunal in the case of **Shahjahan Majumdar Vs. Commissioner reported in 2023 TMI page 1055.**

4.24 The Government of India notified Chapter V AA in the Customs Act, 1962 and added section 28 DA by Finance Act 2020, which permitted the adjudicating authority to reject the certificates in exercise of powers conferred under section 28DA of the Customs Act, 1962. This amendment has been done by the Finance Act 2020 with effect from 27th March 2 020 and this section can only be applied prospectively where protocol of "Importer's Accountability" has been introduced.

4.25 For the first time by the Finance Act, 2020 ,the burden to prove was partly shifted to the importer and the new law so made on the Trade Agreement can be applied only to the imports taking place thereafter and it will not be applicable to the subject imports which have taken place in the year 2011 and 2012.

4.26 It is also settled law that if new law and provisions are made, It would mean that there was no such law or provision prior to it. Reference is made to **Commissioner of C.Ex. Haldia Vs. Industrial Handling reported in 2022 GSTL 132 (CAL)**

4.27 The petitioner submits that there was no case for rejection of the Certificate of Origin and the Certificates of Origin filed by the appellant. If certificates were valid at the time of import, it could not be disputed by the Custom authorities at a later stage which has been so held by this Hon"ble Bench in the case of **Shri Shyam Synthetics Versus Principal Commissioner of Customs vide Final Order 75381/2025 dated 18th February 2025** following the judgment of the Supreme Court in the case of Sampat Mal Dugar – Union of India 58ELT Page 163 (SC). The appellant relies on the Final Order dated 18.2.2025, particularly relies on the Paragraphs 8.6, 8.7 and 8.8 of the judgement.

4.28 The importer is entitled to rely and act on the basis of the Certificates of Origin issued by a contracting party under the Trade Agreement, which binds all the parties of the Trade Agreement and the Trade Agreement does not allow any unilateral rejection of the Certificates of Origin under the Trade Agreement by any party.

4.29 An importer in the contracting party/ importing country can rely on the COOs signed by the designated authority agreed by and between two sovereign countries where the mechanism of dispute and resolution thereof are also provided under the Trade Agreement

4.30 There is no material that any such dispute on any of the COOs was ever raised in respect of the eight certificates which are subject matter of the case. Therefore, the case made out in the show cause notice is not sustainable.

5. In view of the above submissions, the Ld Senior Advocate prays that the impugned Order may be set aside.

6. The Ld. A R appearing for the Revenue, reiterates the detailed findings of the Adjudicating authority. He submits that the Certificates of Origin were sent for retroactive verification and it was confirmed by the Govt of Thailand that the importer could not provide proper information about the value addition. Since the very basis for the exemption granted is the valuation addition of not less than 20% and the

appellants have claimed 22 % value addition, even as the Invoices were showing making charges of less than 5 %, the communication of the Govt of Thailand is required to be read harmoniously with all these factual details.

7. Heard both the sides. Perused the written and oral submissions made by both the sides, along with the statutory provisions governing the import of the goods in question.

8. It would be important to go through the relevant portion of the **Thailand — Interim Rules of origin for preferential tariff concessions for trade between India and Thailand** issued vide Notification No. 101/2004-Cus. (N.T), dated 31-8-2004

Rule 2. Definitions. — For the purpose of the interim rules of origin :

"**A Party**" means the individual parties to the Agreement, that is either the Republic of India or the Kingdom of Thailand

"**Originating goods**" means products that qualify as originating in accordance with the provisions of Rule 4;

"**Preferential tariff treatment**" means the preferential customs duty rate and treatment available over the applied Most-Favoured-Nation customs duty to originating goods pursuant to the rules of origin;

"**Product**" means the product being manufactured, even if it is intended for later use in another manufacturing operation;

"Production" means methods' of obtaining goods such as growing, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, producing, processing or assembling etc.;

"**Product Specific Rules**" means the rules that specify that the non-originating materials have undergone a change in tariff classification or a specific manufacturing or processing operation, or satisfy an *ad valorem* criterion or a combination of any of these criteria;

Rule 3. Determination of Origin. — No product shall be deemed to be originating in either Party unless the conditions specified in these rules are complied with in relation to such products and to the satisfaction of the respective Government Authorities designated to issue the Certificate of Origin.

Rule 4. Originating Goods. — For the purposes of these rules, products imported by a Party shall be deemed to be originating and eligible for preferential tariff concessions' if they conform to the origin requirements under anyone of the following :

(a) Products which are wholly obtained or produced in the territory of the exporting Party as set out and defined in Rule 5 or

(b) Products not wholly produced or obtained in the territory of the exporting Party provided that the said products are eligible under Rule 6 or Rule 7, and Rule 8.

Rule 6. Not-wholly produced or obtained. — (a) For the purposes of rule 4(b), the following general criteria should be applied, provided that the final process of the manufacture is performed within the territory of the exporting party and subject to rule 8 :

(i) local value added content criterion,

(ii) a change in tariff classification criterion between the export product and all non-originating materials used in its production.

(b) Products specified in **Annexure-A** which fulfil one or a combination of the above criteria shall be considered as originating from the exporting Party provided that the final process of the manufacture is performed within the territory of the exporting Party and subject to Rule 8.

Rule 8. Minimal Operation and 'Processes. — The following operations or processes are considered to be insufficient to confer the status of originating products, whether or not there is a change in tariff classification :

(a) Operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, keeping in brine, ventilation, spreading out, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts, and like operations);

(b) Simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making-up of sets of articles), washing, painting, cutting;

(c) Changes of packing and breaking up and assembly of consignments;

(d) Simple slicing, and repacking or placing in bottles, flasks, bags, boxes, fixing on cards or boards, etc.;

(e) The affixing of marks, labels or other like distinguishing signs on products or their packaging;

(f) Simple mixing of products, provided the characteristics of the obtained products are not essentially different from those of mixed products;

(g) Simple assembly of parts of products to constitute a complete product;

(h) Disassembly;

(i) Slaughter of animals;

(j) Mere dilution with water or another substance that does not materially alter the characteristics of the goods;

(k) Simple cleaning, including removal of oxide, oil, paint or other coverings;

(l) Oil application; and

(m) A combination of any of the two operations referred to in (a) to (l).

Rule 14. Certification of Origin. — A claim that products shall be accepted as eligible for preferential concessions in the importing Party shall be supported by a Certificate of Origin issued by a Government authority designated by the exporting Party and notified to the other Party to the Agreement in accordance with the Operational Certification Procedures, as set out in Annexure- B.

ANNEXURE-A

Tariff item (HS2002)		Description of products	Applicable Rule
7113		**Articles of jewellery and parts thereof, of precious metal or of metal clad with precious metal**	
7.	711319	- - *Of precious metal, whether or not plated or clad with precious metal*	*Changed at 4-digit H.S. Level (Change to sub-heading 711319 from any other heading), provided that there is a Local Value Added Content not less than 20%.*

9. A careful reading of the above provisions clarifies that the product in question imported by the appellant firm would fall under Sl No.7 of the Annexure A of these Rules. The condition to be fulfilled is to the effect that the value addition should be less than 20%. Neither side disputes that the goods fall under this classification and the condition specified therein.

10. The main dispute arising is as to whether the value addition is above 20% as claimed by the appellant or is the value addition to the extent of about less than 5 % as is being claimed by the Revenue. The eligibility of otherwise of the Customs Duty exemption claimed by the appellant importer would hinge on this issue alone.

11. It would also be important to go through the relevant portion of the Notification No.84/2004 Cus dated 31.08.2004 as amended from time to time. Revenue does not deny the fact the goods would be covered under exemption Notification, except for the fact that the conditions specified under the **Interim Rules of origin for preferential tariff concessions for trade between India and Thailand** issued vide Notification No. 101/2004-Cus. (N.T), dated 31-8-2004, were not being met by the appellant. The Para 1 of the Notn No.84/2004 Cus dated 31.3.2004, reads as under :

> "In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods of the description as specified in column (3) of the Table below and falling under the

sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), as specified in the corresponding entry in column (2) of the said Table, *when imported into India from Thailand, from the whole of the duty of customs leviable thereon which is specified in the said First Schedule subject to the condition that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the exemption under this notification is claimed are of the origin of Thailand*, in accordance with provisions of Interim Rules of Origin, published with the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 101/2004-Customs (N.T.), dated the 31st August, 2004."

12. Basically, the importer has to first prove that the goods are of 'Origin of Thailand' to the satisfaction of the Dy / Asst Commissioner of Customs. This also should be in accordance with the Interim Rules of Origin. The first and foremost document which can be relied on to prove the Country of Origin that it is from Thailand, would be the Certificate of Origin. Annexure B of the Notification No.101/2004 Cus NT dated 31.8.2004, specifies the procedure to be followed in respect of such transactions. Hence, it would be material to go through the relevant provisions, which are extracted below :

ANNEXURE-B

OPERATIONAL CERTIFICATION PROCEDURES FOR INTERIM RULES OF ORIGIN FOR PRODUCTS ELIGIBLE FOR PREFERENTIAL TARIFF FOR THE EARLY HARVEST SCHEME UNDER THE FRAMEWORK AGREEMENT FOR ESTABLISHING FREE TRADE AREA BETWEEN THE KINGDOM OF THAILAND AND REPUBLIC OF INDIA

For the purpose of implementing the Interim Rules of Origin for the Early Harvest Scheme under the Framework Agreement for Establishing Free Trade Area between Thailand and India (ITFTA) the following operational procedures on the issuance and verification of the Certificate of Origin (Form FTA) and the other related administrative matters, shall be followed

Rule 1

The Certificate of Origin shall be issued by the Government authorities of the exporting Party.

Rule 2

(a) The Parties shall submit each other of the names and addresses of their respective Government authorities issuing the Certificate of Origin as well as provide specimen signatures and specimen of official seals used by the Government authorities.

(b) Any change in names, addresses, or official seals shall be promptly informed in the same manner.

Rule 3

For the purpose of verifying the conditions for preferential treatment, the Government authority designated to issue the certificate of origin (herein after referred to as issuing authority) shall have the right to call for any supporting documentary evidence or to carry out any check considered appropriate.

13. The procedure specified in the above three Rules clarifies that the specific Govt authorities have been designated to issue the Certificate of Origin. Their details are exchanged between India and Thailand. These authorities would carry out the necessary verification towards the claim made by the exporter, while issuing the Certificate of Origin.

14. We will next see the procedure for issue of the Certificate of Origin, which specified under Annexure B of the Notn No.101/2004 Cus dated 31.8.2004 :

APPLICATIONS

Rule 4

The manufacturer and/or exporter of the products qualified for preferential treatment shall apply in writing to the relevant Issuing Authority requesting for the pre-exportation verification of the origin of the products. The result of the verification, subject to review periodically or whenever appropriate, shall be accepted as the supporting evidence in verifying the origin of the said products to be exported thereafter. The pre-exportation verification may not apply to the products of which, by their nature, origin can be easily verified.

Rule 5

Before exporting the products under preferential treatment, the exporter or his authorized representative shall submit a written application for the Certificate of Origin together with appropriate supporting documents proving that the products to be exported qualify for the issuance of Certificate of Origin.

PRE-EXPORTATION EXAMINATION

Rule 6

The Issuing Authority shall, to the best of their competence and ability, carry out proper examination upon each application for the Certificate of Origin to ensure that :

(a) The application and the Certificate of Origin are duly completed and signed by the authorized signatory;

(b) The origin of the product is in conformity with the India-Thailand Interim Rules of Origin;

(c) The other statements of the Certificate of Origin correspond to supporting documentary evidence submitted;

(d) Description, quantity and weight of goods, marks and number of packages, number and kinds of packages, as specified, conform to the consignment to be exported.

ISSUANCE OF CERTIFICATE OF ORIGIN

Rule 7

(a) The validity of the Certificate of Origin shall be 12 months from the date of its issuance

15. The above procedures show as to how the overseas exporter wanting to export the goods under Preferential treatment would be subjected to filing of application, pre-export verification, filing of supporting documents for their claim towards eligibility, pre-examination to be taken up to ensure that the product is in conformity with the India-Thailand Interim Rules of Origin, along with other documentary evidence as well as checking as to whether the product, its description and other details match with the eligibility criteria. This shows that there is an elaborate procedure prescribed before the Certificate of Origin is issued by the designated authority at the end of the exporter. We then turn to the next Rules and procedures given therein.

Rule 8

To implement the provisions of Rule 5, Rule 6 and Rule 7 of the India-Thailand Interim Rules of Origin, the Certificate of Origin issued by the exporting Party shall indicate the relevant rules and applicable percentage of local value added content in Box 8.

Rule 9

Neither erasures nor superimpositions shall be allowed on the Certificate of Origin. Any alteration shall be made by striking out the erroneous materials and making any addition required. Such alterations shall be approved by an official authorized signing the Certificate of Origin and certified by the Issuing Authority. Unused spaces shall be crossed out to prevent any subsequent addition.

Rule 10

(a) The Certificate of Origin shall be issued by the relevant Issuing Authority of the exporting party at the time of exportation whenever the products to be exported can be considered originating in that Party within the meaning of the India-Thailand Interim Rules of Origin.

(b) In exceptional cases where a Certificate of Origin has not been issued at the time of exportation due to involuntary errors or omissions or other valid causes, the Certificate of Origin may be issued retroactively but no longer than 45 days from the date of shipment, bearing the word "ISSUED RETROACTIVELY".

16. The Box No.8 is required to be filled up about the value added. No overwriting, or corrections are allowed unless the same is allowed by the approving authorized official. The Certificate of Origin issued at the time of exportation can be taken as Originating in that country in terms of India-Thailand Interim Rules of Origin. Therefore, when the Certification or Origin is presented with the relevant details filled up at Box No.8, it can be taken as issued by the Govt of Thailand / by the Indian authority.

17. A reading together of the above procedures, along with the Notn No.85/2004 Cus dated 31.8.2004, clarifies that the importer can place full reliance on the Certificate of Origin issued by the authorized officials of Thailand, when claiming the exemption under this Notification. Now we look at the subsequent procedure

PRESENTATION

Rule 12

The Original Certificate of Origin shall be submitted to the Customs Authority at the time of lodging the import entry for the products concerned.

Rule 13

The following time limit for the presentation of the Certificate of Origin shall be observed :

(a) Certificate of Origin must be submitted to the Customs Authority of the importing Party within the validity period from the date of endorsement by the relevant Issuing Authority of the exporting Party;

(b) Where the Certificate of Origin is submitted to the relevant Government authority of the importing party after the expiration of the validity of the Certificate of Origin, such Certificate is still to be accepted when failure to observe the time-limit results from force majeure or other valid causes beyond the control of the exporter; and

(c) In all cases, the relevant Government authority in the importing party may accept such Certificate of Origin provided that the products have been imported before the expiration of the validity of the Certificate of Origin.

Rule 14

The discovery of minor discrepancies between the statements made in the Certificate of Origin and those made in the documents submitted to the Customs Authority of the importing Party for the purpose of carrying out the formalities for importing the products shall not *ipso facto* invalidate the Certificate of Origin, if it does in fact correspond to the said products.

Rule 15

(a) The importing Party may request a retroactive check at random and/or when it has reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the products in question or of certain parts thereof.

(b) The request shall be accompanied with the Certificate of Origin concerned and shall specify the reasons and any additional information suggesting that the particular given on the said Certificate of Origin may be inaccurate, unless the retroactive check is requested on a random basis.

(c) The Customs Authority of the importing Party may suspend the provisions on preferential treatment while awaiting the result of verification. However, it may release the products to the importer subject to any administrative measures deemed necessary, provided that they are not held to be subject to import prohibition or restriction and there is no suspicion of fraud.

(d) The Issuing Authority receiving a request for retroactive check shall respond within three (3) months after the receipt of the request.

18. These procedures specify that the Certificate of Origin is to be produced before the Customs Authorities. Minor discrepancies on its own will not invalidate the Certificate of Origin. Elaborate procedure has been

specified towards retroactive check, if the 'Importing Party' any doubt about the authenticity of the document or any part therof. After this we come to the final two procedures:

ACTION AGAINST FRAUDULENT ACTS

Rule 20

(a) When it is suspected that fraudulent acts in connection with the Certificate of Origin have been committed, the Government Authorities concerned shall cooperate for appropriate action to be taken in the respective Party against the persons involved.

(b) Each Party shall provide legal sanctions for fraudulent acts related to the Certificate of Origin.

Rule 21

In the case of a dispute concerning origin determination, classification of products or other matters, the Government authorities concerned in the importing and exporting Parties shall consult each other with a view to resolving the dispute

19. These procedures specify that in case of fraudulent acts committed towards the Certificate of Origin, the Govt Authorities should cooperate and appropriate action should be taken against the persons involved and the Govt authorities from both the sides should consult each other with a view to resolving the dispute.

20. Having gone through the statutory provisions, now we have to take a look at the factual details of the present case. The details of the Eight Consignments are as per the Table given below :

Sr No	Bill of Entry No	Date	Name of Manufacturer Exporter of Kingdom of Thailand	Invoice No	Certificate of Origin No and Date	Details of Coloum 8 of Certificate of Origin	Signature Verification Date	Airway Bill No
1	5480475	14.12.2011	Avis Jewel Co Ltd	079/2011	II2011-0008659 dt 14.12.2011	4 digit + 22%	19.12.2011	217 BKK 6900 5263
2	5709082	11.01.2012	Avis Jewel Co Ltd	004/2012	II2012-0000143 dt 10.01.2012	4 digit + 22%	12.01.2012	217 BKK 6900 5672

3	5907139	03.02.2012	Avis Jewel Co Ltd	008/2012	II2012-0000712 dt 02.02.2012	4 digit + 22%	06.02.2012	217 BKK 6900 5996
4	6625204	23.04.2012	Avis Jewel Co Ltd	025/2012	II2012-0002874 dt 20.04.2012	4 digit + 22%	24.04.2012	217 BKK 6806 5034
5	6804326	12.05.2012	Avis Jewel Co Ltd	026/2012	II2012-0003374 dt 10.05.2012	4 digit + 22%	15.05.2012	217 BKK 6806 5292
6	6971498	30.05.2012	Avis Jewel Co Ltd	034/2012	II2012-0003991 dt 29.05.2012	4 digit + 22%	01.06.2012	217 BKK 6806 4894
7	7615860	08.08.2012	AA22 Gold Co Ltd	H12G02	II2012-0006079 dt 07.08.2012	6 digit + 91.60%	09.08.2012	217 BKK 6036 3483
8	7796426	29.08.2012	AA22 Gold Co Ltd	H12G08	II2012-0006745 dt 28.08.2012	4 digit + 22%	30.08.2012	217 BKK 6036 4242

20. We also take a look at the relevant Certificates of Origin, which are reproduced below :

C/76046 & 76047 of 2015

ORIGINAL

1. Goods consigned from (Exporter's business name, address, country) AVIS JEWEL CO.,LTD. 14-16 T.D.BLDG.1 FROOL,ROOM 104 MAHAESAK ROAD, SURIYAWONG, BANGRAK, BANGKOK 10500 THAILAND TEL: 02-631-8871 FAX: 02-238-3740 TAX ID: 3034198248	Reference No. II2011-0008659 India-Thailand **FREE TRADE AGREEMENT** CERTIFICATE OF ORIGIN (Combined declaration and certificate) FORM FTA Issued in THAILAND (country)
2. Goods consigned to (Consignee's name, address, country) DIVINE 6 ABANINDRA NATH THAKUR SARANI 7TH FLOOR, ROOM NO 704 KOLKATA-700 017 INDIA	
3. Means of transport and route (as far as known) BY AIR FREIGHT	4. For official use

Page : 1 of 1

5. Item number	6.Marks and numbers of packages	7. Number and type of packages;description of goods (including quantity where appropriate and HS code of the importing country)	8.Origin criterion	9.Gross weight and value (FOB)	10.Number and date of invoice
1	ADDRESS	HS. CODE. 7113.19 GOLD JEWELLERY BRACELETS, CHAIN, BENDS, RINGS, PENDANT **** TOTAL: ONE (1) BOX**** FIVE HUNDRED THIRTY FOUR (534) PIECES**** Signature Verified Mrs. Pranee Phuangkham Appraising General Deptt. C. H. Kolkata	"4 digit + 22%"	5.20 KGS 163,378.09 USD	079/2011 14/12/2011

19/12/11

शिबु बनर्जी
Shibu Banerjee

11. Declaration by the exporter The undersigned hereby declares that the above details and statements are correct; that all the goods were produced in THAILAND (country) and that they comply with the origin requirement specified for those goods in the Free Trade Agreement for goods exported to INDIA (importing country) BANGKOK 10500 14/12/2011 Place and date, signature of authorized signatory	12. Certification It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct. SUVARNABHUMI AIRPORT (Mrs Pranee Phuangkham) 14 DEC 2011 Trade Technical Officer Professional Level Place and date, signature and stamp of certifying authority

No. 022350

C/76046 & 76047 of 2015

ORIGINAL

1. Goods consigned from (Exporter's business name, address, country)	Reference No. II2012-0000143 India-Thailand
AVIS JEWEL CO.,LTD. 14-16 T.D.BLDG.1 FROOL,ROOM 104 MAHAESAK ROAD, SURIYAWONG, BANGRAK, BANGKOK 10500 THAILAND TEL: 02-631-8871 FAX: 02-238-3740 TAX ID: 3034198248	**FREE TRADE AGREEMENT** **CERTIFICATE OF ORIGIN** **(Combined declaration and certificate)** **FORM FTA** Issued in **THAILAND** (country)
2. Goods consigned to (Consignee's name, address, country) DIVINE 6 ABANINDRA NATH THAKUR SARANI 7TH FLOOR, ROOM NO 704 KOLKATA-700 017 INDIA	
3. Means of transport and route (as far as known) BY AIR FREIGHT	4. For official use

5. Item number	6.Marks and numbers of packages	7. Number and type of packages;description of goods (including quantity where appropriate and HS code of the importing country) Page : 1 of 1	8.Origin criterion	9.Gross weight and value (FOB)	10.Number and date of invoice
1	ADDRESS	HS. CODE. 7113.19 GOLD JEWELLERY BRACELETS, CHAIN, BENDS, RINGS, PENDANT, BALI(EARRING), TOPS, NECKLACES **** TOTAL: ONE (1) BOX**** ONE THOUSAND SIXTEEN (1,016) PIECES****	"4 digit + 22%"	8.80 KGS 297,391.02 USD	004/2012 10/01/2012

Debited against Bill of entry No. 5709082 dt 11/01/2012

13/1/12

Signature Verified
Mrs. Pranee Phuangkham
Appraising General Deptt.
C. H. Kolkata

13/1/12
शिबु बनर्जी
Shibu Banerjee

11. Declaration by the exporter	12. Certification
The undersigned hereby declares that the above details and statements are correct; that all the goods were produced in **THAILAND** (country) and that they comply with the origin requirement specified for those goods in the Free Trade Agreement for goods exported to INDIA (importing country) BANGKOK 10500 10/01/2012 Place and date, signature of authorized signatory	It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct. SUVARNABHUMI AIRPORT (Mrs. Pranee Phuangkham) Trade Technical Officer Professional Level 10 JAN 2012 Place and date, signature and stamp of certifying authority

No. 010545

C/76046 & 76047 of 2015

ORIGINAL

1. Goods consigned from (Exporter's business name, address, country) AVIS JEWEL CO.,LTD. 14-16 TD BLDG, FLOOR 5TH, ROOM NO-501, MAHESAK ROAD, SURIYAWONG, BANGRAK, BANGKOK 10500 THAILAND TAX ID: 3034198248	Reference No. II2012-0000712 India-Thailand **FREE TRADE AGREEMENT** **CERTIFICATE OF ORIGIN** **(Combined declaration and certificate)** **FORM FTA** Issued in THAILAND (country)
2. Goods consigned to (Consignee's name, address, country) DIVINE 6 ABANINDRA NATH THAKUR SARANI 7TH FLOOR, ROOM NO 704 KOLKATA-700 017 INDIA	
3. Means of transport and route (as far as known) BY AIR FREIGHT	4. For official use

Page : 1 of 1

5. Item number	6.Marks and numbers of packages	7. Number and type of packages;description of goods (including quantity where appropriate and HS code of the importing country)	8.Origin criterion	9.Gross weight and value (FOB)	10.Number and date of invoice
1	ADDRESS	HS. CODE. 7113.19 GOLD JEWELLERY BRACELETS, CHAIN, BENDS, RINGS, PENDANT, BALI, TOPS, NECKLACES **** TOTAL: ONE (1) BOX**** ONE THOUSAND ONE HUNDRED TWENTY FIVE (1,125) PCS**** Debited against BG No. 5907138 Dt 3.2.2012 Signature Verified Orawan Silarat Appraising Central Deptt. C. H. Kolkata 06/2/12	"4 digit + 22%"	7.92 KGS 274,988.39 USD	008/2012 2/02/2012 06/2/12

11. Declaration by the exporter The undersigned hereby declares that the above details and statements are correct; that all the goods were produced in THAILAND (country) and that they comply with the origin requirement specified for those goods in the Free Trade Agreement for goods exported to INDIA (importing country) BANGKOK 10500 02/02/2012 Place and date, signature of authorized signatory	12. Certification It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct. SUVARNABHUMI AIRPORT -2 FEB 2012 MRS. ORAWAN SILARAT Place and date, signature and stamp of certifying authority

No. 010701

C/76046 & 76047 of 2015

ORIGINAL

1. Goods consigned from (Exporter's business name, address, country) AVIS JEWEL CO.,LTD. 14-16 TD BLDG, FLOOR 5TH, ROOM NO-501, MAHESAK ROAD, SURIYAWONG, BANGRAK, BANGKOK 10500 THAILAND TAX ID: 3034198248	Reference No. II2012-0002874 India-Thailand 39 FREE TRADE AGREEMENT CERTIFICATE OF ORIGIN (Combined declaration and certificate) FORM FTA Issued in THAILAND (country)
2. Goods consigned to (Consignee's name, address, country) DIVINE 6 ABANINDRA NATH THAKUR SARANI 7TH FLOOR, ROOM NO 704 KOLKATA-700 017 INDIA	
3. Means of transport and route (as far as known) BY AIR FREIGHT	4. For official use

5. Item number	6.Marks and numbers of packages	7. Number and type of packages;description of goods (including quantity where appropriate and HS code of the importing country) Page : 1 of 1	8.Origin criterion	9.Gross weight and value (FOB)	10.Number and date of invoice
1	ADDRESS	HS. CODE. 7113.19 GOLD JEWELLERY BRACELETS, CHAIN, BENDS, RINGS, PENDANT, BALI, TOPS, EARRINGS, BANGLES **** TOTAL: ONE (1) BOX**** TWO THOUSAND FIVE HUNDRED SEVENTY ONE (2,571) PCS****	"4 digit + 22%"	13.56 KGS 563,848.50 USD	025/2012 20/04/2012

Taken full vide B/E No 6625204 dt 23/04/12

Signature Verified
Miss. Rattana Khamengid
Appraising General Deptt.
C. H. Kolkata
24/04/12
Partha Basak, TA

11. Declaration by the exporter The undersigned hereby declares that the above details and statements are correct; that all the goods were produced in THAILAND (country) and that they comply with the origin requirement specified for those goods in the Free Trade Agreement for goods exported to INDIA (importing country) BANGKOK 10500 20/04/2012 Place and date, signature of authorized signatory	12. Certification It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct. SUVARNABHUMI AIRPORT R Khamengid 20 APR 2012 Trade Technical Officer Professional Level Place and date, signature and stamp of certifying authority

No. 020219

C/76046 & 76047 of 2015

1. Goods consigned from (Exporter's business name, address, country)
JEWEL CO.,LTD. 14-16 TD BLDG, FLOOR 5TH, ROOM NO-501, MAHESAK
ROAD, SURIYAWONG, BANGRAK, BANGKOK 10500 THAILAND TAX ID: 3034198248

Reference No. II2012-0003374 India-Thailand

51

FREE TRADE AGREEMENT
CERTIFICATE OF ORIGIN
(Combined declaration and certificate)
FORM FTA

Issued in THAILAND
(country)

2. Goods consigned to (Consignee's name, address, country)
DIVINE 6 ABANINDRA NATH THAKUR SARANI 7TH FLOOR, ROOM NO 704
KOLKATA-700 017 INDIA

3. Means of transport and route (as far as known)
BY AIR FREIGHT

4. For official use

5. Item number	6. Marks and numbers of packages	7. Number and type of packages; description of goods (including quantity where appropriate and HS code of the importing country) Page : 1 of 1	8. Origin criterion	9. Gross weight and value (FOB)	10. Number and date of invoice
1	ADDRESS	HS. CODE. 7113.19 GOLD JEWELLERY BRACELETS, CHAIN, BENDS, NECKLACES, PENDANT, EARRINGS, BANGLES **** TOTAL: ONE (1) BOX**** TEN THOUSAND SEVEN HUNDRED FIFTY SEVEN POINT EIGHT TWO (10,757.82) GMS****	"4 digit + 22%"	13.80 KGS 544,345.69 USD	026/2012 9/05/2012

Taken full vide
I/M/E no 6804324 dt 12/05/12

Signature Verified
Mrs. Orawan Silarat
Appraising General Deptt.
C. H. Kolkata

15/05/12
Partha Basak, TA

11. Declaration by the exporter
The undersigned hereby declares that the above details and statements are correct; that all the goods were produced in
THAILAND
(country)
and that they comply with the origin requirement specified for those goods in the Free Trade Agreement for goods exported to
INDIA
(importing country)
BANGKOK 10500 10/05/2012
Place and date, signature of authorized signatory

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

SUVARNABHUMI AIRPORT
MRS. ORAWAN SILARAT
10 MAY 2012
Place and date, signature and stamp of certifying authority

No. 020336

C/76046 & 76047 of 2015

ORIGINAL

1. Goods consigned from (Exporter's business name, address, country)	Reference No. II2012-0003991 India-Thailand
[illegible]IS JEWEL CO.,LTD. 14-16 TD BLDG, FLOOR 5TH, ROOM NO-501, MAHESAK ROAD. SURIYAWONG, BANGRAK, BANGKOK 10500 THAILAND TAX ID: 3034198248	**FREE TRADE AGREEMENT** **CERTIFICATE OF ORIGIN** **(Combined declaration and certificate)** **FORM FTA** Issued in THAILAND (country)
2. Goods consigned to (Consignee's name, address, country) DIVINE 6 ABANINDRA NATH THAKUR SARANI 7TH FLOOR, ROOM NO 704 KOLKATA-700 017 INDIA	
3. Means of transport and route (as far as known) BY AIR FREIGHT	4. For official use

5. Item number	6. Marks and numbers of packages	7. Number and type of packages; description of goods (including quantity where appropriate and HS code of the importing country) Page : 1 of 1	8. Origin criterion	9. Gross weight and value (FOB)	10. Number and date of invoice
1	ADDRESS	HS. CODE. 7113.19 GOLD JEWELLERY BRACELETS, CHAIN, NACKLACES SETS, RING **** TOTAL: ONE (1) BOX**** ONE THOUSAND SEVEN HUNDRED TWENTY (1,720) PCS****	"4 digit + 22%"	14.56 KGS 525,604.44 USD	034/2012 29/05/2012

Signature Verified
Mrs. Orawan Silarat
Appraising General Deptt.
C. H. Kolkata
01/06/12
Partha Basak

11. Declaration by the exporter	12. Certification
The undersigned hereby declares that the above details and statements are correct; that all the goods were produced in THAILAND (country) and that they comply with the origin requirement specified for those goods in the Free Trade Agreement for goods exported to INDIA (importing country) BANGKOK 10500 29/05/2012 Place and date, signature of authorized signatory	It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct. SUVARNABHUMI AIRPORT MRS. ORAWAN SILARAT 29 MAY 2012 Place and date, signature and stamp of certifying authority

No. 020488

C/76046 & 76047 of 2015

ORIGINAL

1. Goods consigned from (Exporter's business name, address, country) AA22GOLD CO.,LTD. 64/12 SOI SUKHAPIBAN 2 SOI 31, DOKMAI, PRAWES, [illegible]GKOK 10250 THAILAND TEL: 02-7270001 FAX: 02-7270030 TAX ID: 0105555073142	Reference No. II2012-0006079 India-Thailand FREE TRADE AGREEMENT CERTIFICATE OF ORIGIN (Combined declaration and certificate) FORM FTA Issued in THAILAND (country)
2. Goods consigned to (Consignee's name, address, country) DIVINE 6 ABANINDRA NATH THAKUR SARANI, 7TH FLOOR, ROOM NO.704 KOLKATA-700017 INDIA	
3. Means of transport and route (as far as known) BY AIR FREIGHT	4. For official use

Page : 1 of 1

5. Item number	6. Marks and numbers of packages	7. Number and type of packages; description of goods (including quantity where appropriate and HS code of the importing country)	8. Origin criterion	9. Gross weight and value (FOB)	10. Number and date of invoice
1	ADDRESS	HS. CODE. 7113.19 GOLD JEWELRY CHAINS, BRACELETS, RINGS **** TOTAL: SIX HUNDRED NINETY THREE (693) PIECES**** ONE (1) PACKAGES****	"6 digit + 91.60%"	8.50 KGS 285,514.36 USD	H12G02 7/08/2012

Signature Verified
Mrs. Pranee Phuangkham
Appraising General Deptt.
C. H. Kolkata
09/08/12
Partha Basak, TA
पार्थ बसाक

11. Declaration by the exporter The undersigned hereby declares that the above details and statements are correct; that all the goods were produced in THAILAND (country) and that they comply with the origin requirement specified for those goods in the Free Trade Agreement for goods exported to INDIA (importing country) BANGKOK 10250 07/08/2012 Place and date, signature of authorized signatory AA22GOLD CO., LTD.	12. Certification It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct. SUVARNABHUMI AIRPORT (Mrs. Pranee Phuangkham) Trade Technical Officer, Professional Level -7 AUG 2012 Place and date, signature and stamp of certifying authority DEPARTMENT OF FOREIGN TRADE GOVERNMENT OF THAILAND

No. 033002

ORIGINAL

1. Goods consigned from (Exporter's business name, address, country) AA22GOLD CO.,LTD. 64/12 SOI SUKHAPIBAN 2 SOI 31, DOKMAI, PRAWES, BANGKOK 10250 THAILAND TEL: 02-7270001 FAX: 02-7270030 TAX ID: 0105555073142	Reference No. II2012-0006745 India-Thailand **FREE TRADE AGREEMENT** CERTIFICATE OF ORIGIN (Combined declaration and certificate) FORM FTA Issued in THAILAND (country)
2. Goods consigned to (Consignee's name, address, country) DIVINE 6 ABANINDRA NATH THAKUR SARANI, 7TH FLOOR, ROOM NO.704 KOLKATA-700017 INDIA	
3. Means of transport and route (as far as known) BY AIR FREIGHT	4. For official use

Page : 1 of 1

5. Item number	6. Marks and numbers of packages	7. Number and type of packages; description of goods (including quantity where appropriate and HS code of the importing country)	8. Origin criterion	9. Gross weight and value (FOB)	10. Number and date of invoice
1	ADDRESS	HS. CODE. 7113.19 22K GOLD JEWELRY RINGS, NECKLACE SETS, CHAINS, BRACELETS, EARRINGS, PENDANTS **** TOTAL: FOUR HUNDRED SIXTY SEVEN (467) PIECES**** NINETY TWO (92) PAIRS**** THIRTY (30) SETS****	"4 digit + 22%"	8.50 KGS 297,712.49 USD	H12G08 28/08/2012

Taken in full vide BG no. 7796426 dt. 29/8/12

Mrs. Orawan Silarat

Signature Verified Appraising General Deptt. C.H. Kolkata

30/8/12

ATANU SENGUPTA (T.A.)

अतनु सेनगुप्त

30/8/12

11. Declaration by the exporter The undersigned hereby declares that the above details and statements are correct; that all the goods were produced in THAILAND (Country) and that they comply with the origin requirements specified for those goods in the Free Trade Agreement for goods exported to INDIA (importing country) BANGKOK 10250 28/08/2012 Place and date, signature of authorized signatory	12. Certification It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct. MRS. ORAWAN SILARAT Place and date, signature and stamp of certifying authority

No. 033178

21. From the above Certificates of origin, it is seen that the Box 8 is filled up with the details of value addition. The Declaration is signed by the exporting party. The Certificate is issued by the Authorized / Designated Authority of the Government of Thailand. The Certificate Issuing authorities have signed the Certificates of Origin, clearly giving their

names. Their Signatures have been verified by the designated officials of Customs Dept. in India. Annexure B to Rule 4 specifies that the overseas exporter should apply for 'pre-exportation verification' of the Origin of the Product. Annexure B to Rule 5 specifies that the exporting party should submit all the supporting documents to the effect that the goods in question qualify for preferential treatment.Annexure B to Rule 6 specifies the procedure to be followed the verifications to be taken up by the authority by way of proper examination, before the Certificate of Origin is issued. Thereafter the Certificate of Origin is to be issued.Under Annexure B to Rule 8, it is specified that the exporting party should indicate the relevant Rules and show the applicable percentage in Box 8. No erasures, physical superimposing is permitted in this document. Thereafter after due verification the designated authority issues the Certificate.

22. In the present case, after going through the Certificates of Origin reproduce above, it is observed that as the Declaration is duly signed by the exporter and the Certificate of Origin has been duly issued by the Designated authority, whose signature has been verified by the Indian Customs Officials. Therefore, prima facie, that all the due diligence verification, including verification of the documents supplied by the exporter, pre-exportation verification etc., have been duly carried out by the Designated authority at Thailand. There is no scope to doubt as to whether the due verification has been done or not, so long as the authenticity of the Certificate of Origin and its Authorized Signatories are found to be is not found to be fabricated.

23. Coming to the communication received by the Customs officials from Govt of Thailand, which is relied upon to take up the present proceedings, the relevant letters are extracted below:

147

No.0303.03/ ๑๕๐๖

Import Administration and Origin
Certification Division
Department of Foreign Trade
44/100 Nonthaburi 1 Road
Nonthaburi 11000, Thailand
Tel +66-2-547-4823 Fax +66-2-547-4807

๒๖ June 2014

Dear Sir,

Subject : Subsequent Verification of Forms FTA

We are writing with reference to your letters No. Ban/Com/212/9/2011 seeking our cooperation to verify the validity of Forms FTA Thai-India in respect of the genuineness and the correctness of covered consignments of goods declaring originated in Thailand when classify under heading 7113.19, as per attachment.

Having conducted a cross-examination, we confirm the authenticity of these Forms FTA Thai-India. They were truly issued by the Department of Foreign Trade.

Nevertheless, it was determined that the exporter failed to prove within a stipulate time frame, that the authorized consignments of goods were originating in Thailand according to the consent of preferential duty treatment. As a result, we are not in position to recognize that the goods covered by 102 of Forms FTA Thai-India are qualifying for the origin claim as of the entitlement.

With respect to the rest Forms FTA Thai-India, they are remaining in our process of administrative post control. The outcome will be gradually given to you.

Please be assured of our full co-operation.

Yours faithfully,

Y. Massinsuk

(Ms. Yoswadee Massinsuk)
Acting Director of Import Administration
and Origin Certification Division

Naveen Saxena
First Secretary (Economic & Commercial)
Embassy of the India, Bangkok

7

No.0303.03/ 2599

150

Import Administration and Origin Certification Division
Department of Foreign Trade
44/100 Nonthaburi 1 Road
Nonthaburi 11000, Thailand
Tel +66-2-547-4823 Fax +66-2-547-4807

1 October 2014

Dear Sir,

Subject : Subsequent Verification of Forms FTA

We are writing with reference to your letters No. Ban/Com/212/9/2011 dated 23 July 2013 and No. Ban/Com/212/9/2011-II-III dated 2 February 2014 seeking our cooperation to verify the validity of Forms FTA Thai-India in respect of the genuineness and the correctness of covered consignments of goods declaring originated in Thailand when classify under heading 7113.19, as per attachment.

Having conducted a cross-examination, we confirm the authenticity of these Forms FTA Thai-India. They were truly issued by the Department of Foreign Trade.

Nevertheless, it was determined that the exporter failed to prove within a stipulate time frame, that the authorized consignments of goods were originating in Thailand according to the consent of preferential duty treatment. As a result, we are not in position to recognize that the goods covered by 35 of Forms FTA Thai-India are qualifying for the origin claim as of the entitlement.

Please be assured of our full co-operation.

Yours faithfully,

Verachai Pienpermpat

(Mr. Verachai Pienpermpat)
Acting Director of Import Administration
and Origin Certification Division

Naveen Saxena
First Secretary (Economic & Commercial)
Embassy of the India, Bangkok

24. From the above letters issued by the Acting Director of Import Administration and Origin Certification Division, it is clear the certificates in question are authentic and have been ***Truly Issued*** by the Department of Foreign Trade. This is after the cross-examination has been conducted by them. However, this is qualified by the words '*the exporter failed to prove within stipulate time frame that the authorized*

consignments of the goods were originating in Thailand according to the consent of preferential duty treatment. As a result, we are not in a position to recognize that the goods covered under the 35 / 102 Forms of FTA Thai-India are qualifying for the origin claim as of the entitlement"

25. To summarize the communication of the Thailand Government :

(i) It is not denied that the Certificates of Origin are authentic and are not in the nature of forged documents.

(ii) It carries the necessary signature of the Authorized Person responsible for issuing the Certificate

(iii) Because of the above reasons, the document is mentioned as 'Truly Issued'.

(iv) Time frame has been given to the exporter to prove that the consignments were originating in Thailand, he failed to prove the same within the time frame.

(v) In view of the points (iv) the Thailand Govt is '*not in a position to recognize the goods under 35 consignments and 102 consignments as qualifying for the entitlement*.

26. There is nothing to suggest as to what kind of time-frame is being referred to by the Thailand Govt. We have seen from the Annexure B that a set of procedures are required to be followed, before the exporter is granted the Certificate of Origin by the Authorized Official. When the Certificates of Origin are duly signed by the Authorized Officials, and the Govt does not find them to them be forged, it is not clear as to why after about 2 years, some time-frame was given to the exporter, which they failed to honour, because of which the consignments are being held as not qualifying for the entitlement. If the Authorized Officials did not follow the procedure as specified, it is not clear as to what kind of action has been initiated against them or the exporter. Without any

proper and detailed explanation, issuing such a communication, is not in the correct spirit with which the countries have entered into Free Trade Agreement. Once it is confirmed that the Certificates are genuine and have been issued by the Authorized Officials, the importing Country and Importer can always carry the Bonafide belief about the content therein. The responsibility towards proper verification of the content within the Certificate is that of the Authorized officials of the exporting country. This responsibility cannot be brushed aside by a vague reason like '*time-frame not being followed by the exporter*' to deny the content at later stage after about 2 years.

27. Coming to the action taken at the Indian side, it is seen from the Certificates of Origin that the Customs Officials, have verified the document and the signature of the Authorized Official of the Thailand Govt. The Certificate also carries the necessary declaration by the overseas exporter. The transaction are properly covered by Invoice / Airway Bill and Payments through Banking Channels. This being the case, the Customs Officials have permitted the import after following the procedure prescribed for such consignments.

28. The procedure prescribed under Rule 15 [Notn 101/2004 dated 31 August 2004], towards retroactive check is as under :

> (a) The importing Party may request a retroactive check at random and/or when it has reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the products in question or of certain parts thereof.
>
> (b) The request shall be accompanied with the Certificate of Origin concerned and shall specify the reasons and any additional information suggesting that the particular given on the said Certificate of Origin may be inaccurate, unless the retroactive check is requested on a random basis.
>
> (c) The Customs Authority of the importing Party may suspend the provisions on preferential treatment while awaiting the result of verification. However, it may release the products to the importer subject to any administrative measures deemed

necessary, provided that they are not held to be subject to import prohibition or restriction and there is no suspicion of fraud.

(d) The issuing Authority receiving a request for retroactive check shall respond within three (3) months after the receipt of the request.

29. The two communications from Govt of Thailand are in respect of several consignments imported by various importers throughout the country and several exporters located at Thailand. These letters do not specify as to whether the concerned Certificates of Origin were sent by Indian officials, specifying the defect / error to be checked by Thailand.

30. Two letters from Indian Govt and the reply by Thailand are as under :

(a) Ban/Com/212/9/2011 dated 23rd July 2013

Thailand Letter dated 26th June 2014
[for 102 consignments]

(b) Ban/Com/212/9/2011-II-III dated 2nd February 2014

Thailand Letter dated 1st October 2014
[for 35 consignments]

31. In the first case, the Thailand Government has taken more than 11 months and in the second case they have taken nearly Seven months to furnish their reply. The Rule specifies that the reply should be given within 3 months.

32. The consignments were imported by the appellant between December 2011 to August 2012. From the letters of Thailand, it is seen that the retroactive check has been requested in respect of several consignments in respect of several overseas exporters. The very first letter from India is dated 23rd July 2013, that is much later after the imports.

33. If the Govt of Thailand states that these 35 + 102 consignments do not

qualify for the Preferential Treatment, it is to be taken that the Importers and Govt of India has been erroneously lead to believe that the goods qualify for the Preferential Treatment in the first place. Therefore, it becomes a matter to be sorted between both the Governments to ensure that proper action is taken against the contravening party. Since the contravention, if any, is emanating at the exporting country's end, it is for Thailand to come out as what kind of the contraventions have taken place, and what kind of action has been initiated by them against such party. From the communications, nothing on this count is coming forth. So far as the present importer is concerned, as on the date of import, the Certificate of Origin meets the requirement, with the Overseas Exporter giving the declaration and the same being authenticated by the Authorized Officials of the Thailand Government. Their Signatures have been verified by the Customs officials and only after this, the consignments have been allowed to be imported under concessional rate of duty. The requirements under the Notification have been met on the date of import. The same cannot be negated by a vague communication received from Thailand after more than 2 years, without coming out with the details of the contravention and action being taken by them.

34. None of certificates was cancelled or revoked by the Govt of Thailand. In such a case, no claim can be made on an importer who relied upon the certificates issued by the Authorized Officials of the exporting country. There is nothing to indicate that the appellant has in any way colluded with the alleged irregularity pointed by the Govt of Thailand after 2 years of issue of the Certificates of Origin.

35. Coming to the factual matrix of the present case :

- The Show Cause Notice No.181/KOL/APP/2012/1508-1509 was issued on 12.04.2013

- Personal Hearing was conducted on 18.07.2014, which was attended to by the counsel of the appellant

- The office of the Adjudicating authority sent a letter to the DD DRI to depute a well conversant officer to provide the necessary clarification of the fact of the case on the next date of Personal Hearing on 04.08.2014.

- While the counsel of the appellant attended the Personal Hearing on 4.8.2014, none appeared on behalf of the DRI.

- Vide Letter dated 4.8.2014, received by the Adjudicating authority on 6.8.2014, DRI requested that the adjudication process of the SCN may be kept in abeyance till further notice.

- The DRI office was intimated by the Adjudicating authority vide his letter dated 12.3.2015 about the written submissions of the appellant made on 4.8.2014

- Thereafter, the Addendum to Show Cause Notice was issued on 19th March 2015 [nearly after 2 years from the date of issue of SCN]

- Reply to Addendum was filed on 30.04.2015

- Further notes on the Addendum was filed by the appellant on 11th May 2015 at the time of Personal Hearing.

36. From the above details we find that as on the date of issue of the SCN, the Revenue had no documentary evidence to the effect that the Certificate of Origin or the contents therein were not correct. There is no mention of any retroactive verification process having been undertaken. The Personal Hearing was granted and was attended by the representative on 18.7.2014. None of the DRI officials attended the next PH held on 4.8.2014. The reply filed by the appellant was communicated to the DRI by the Adjudicating authority. Thereafter, after about 2 years of issue of the SCN, the addendum was issued incorporating the details of communication received from the Govt of Thailand.

37. In the case of **Kesar Marble And Granites Ltd. vs The Commissioner Of Customs**, the Bangalore Tribunal vide their Order dated 23 August, 2006, has held as under :

> 4.xxxxxxxxxxA similar issue cropped up before the CESTAT, New Delhi in the case of S.T.L. Exports Ltd. v. CC, Indore , wherein it is held that demand transformation from excise duty to customs duty belatedly more than 2 years of original notice is not permissible especially if at stage of reply to notice the Department did not realize its mistake. We are re-producing the Para 5 of the order:
>
>> 5. The original show cause notice dated 1.7.98 was issued within the normal period of limitation under Section 11A of the Central Excise Act by the Superintendent of Central Excise. That notice demanded Central Excise duty from the appellants under the above provision of law and also proposed to impose penalty on them under a Central Excise Rule. The party replied to the show cause notice in August, 1998 contending mainly that the show cause notice was without jurisdiction. After about two and a half years, the Superintendent issued a corrigendum dated 9.2.2001 which sought to transform the demand of duty and proposal of penalty from Central Excise to Customs. On a perusal of the appellants' reply to the show cause notice dated 1.7.98, we observe that their reply contained enough material to make the department realize the mistake of having invoked the Central Excise Act and Rules. It should have occurred to the Department at that stage that demand of duty should have been raised under the Customs Act. The Central Excise Act and the Customs Act are independent, self contained statutes. The nature of duty leviable and the basis of a demand thereof under the Central Excise Act are different from those under the Customs Act. Hence a demand of certain duty raised under one Act cannot be transformed into demand of a different duty under the other Act through a corrigendum to the show cause notice issued under the former Act, though it is open to the department to issue a corrigendum within reasonable time to amend a show cause notice under a given statute without enlarging the scope of, or otherwise changing the complexion of the case made out in, the original notice. The fact that the authority for issuing show cause notices under both the statutes is vested in the same officer is not a relevant factor in this context. We note that the amendments brought about by a corrigendum to show cause notice would normally date back to the notice itself and therefore, as in the instant case, a belated corrigendum for demanding one

kind of duty under one statute, to a notice issued earlier for demanding another kind of duty under another statute can be grossly prejudicial to the assessee's substantive right of pleading limitation under the former statute. An assessee's right to resist a demand of duty on the ground of limitation cannot be defeated by the Revenue in this manner. The DR has not shown to us any provision of law or cited any judicial authority in support of his defence of the corrigendum in question. We are of the considered view that the show cause notice dated 1.7.98 as amended by the so-called corrigendum dated 9.2.2001 should be treated as an original show cause notice issued on 9.2.2001 for demanding customs duty and imposing penalty under the provisions of the Customs Act. We also note that the larger period of limitation was not invoked for this demand. Obviously, the demand of customs duty raised on 9.2.2001 in respect of the raw material imported by the appellants during 1997-98 is barred by limitation under Section 28 of the Customs Act.

Further in the case of Carponix Pvt Ltd. v CCE Bangalore , *it has been held that after personal hearing, initiating fresh proceedings by issuing an addendum to the Show Cause Notice alleging new grounds of suppression, etc. and making out a new case of extended time limit is not permissible.*

38. In the present case, the Revenue had no evidence on the contents of the Certificates of Origin when the Show Cause Notice was issued. Even on the first date of Personal Hearing, wherein the appellant appeared for Hearing, the Revenue did not have any evidence. The Addendum has been issued after the appellant has filed their reply and the same was conveyed to the DRI. As has been held in the above decisions, this would definitely cause prejudice to the appellant.

39. Further, as we have observed above, the communication from Thailand, is vague. It neither denies the authenticity of the Certificate nor the same is revoked / cancelled. For the reason that the exporter could not provide the details '*within the time frame*', the Certificates of Origin are termed as not qualifying for the Preferential Treatment. There is nothing to show as to how it was held as qualifying for Preferential Treatment initially under the Certificate of Origin issued by the Authorized Officials, who are required to follow all the procedures to be followed as per Annexure B of the Rules, discussed in detail in the above

paragraphs.

40. The Communication also does not specify as to what kind retroactive follow up was made by the Govt of India and when was it made. Whether such request was specific to the COO number and the likely defect / error in the same.

41. Similar issue, had come up before the Kolkata Bench in the case of **Shri Shyam Synthetics Versus Principal Commissioner of Customs being final order 75381/2025 dated 18th February 2025**, wherein the Bench, issue was similar. The relevant portion of this Order is reproduced below :

C/76046 & 76047 of 2015

14

RUD - 5

No. 0307.07/ 153

RUD- 5

Import Administration and
Origin Certification Division
Department of Foreign Trade
563 Nonthaburi Road
Nonthaburi 11000 Thailand
Tel. 662-547-4823
Fax 662-547-4807

30 October 2023

Dear Sir,

Subject: Response to Verification of the Certificate of Origin Form AI

Reference is made to your letter No. Ban/Com/206/01/2022 dated 2 June 2023, requesting verification of genuineness and authenticity the 4 Forms AI exported by ASIAN IMPORT & EXPORT CO., LTD.

Import Administration and Origin Certification Division on behalf of Department of Foreign Trade is please to inform you that as follows,

1) The 4 Forms AI as above-mentioned were authentic and issued by the Department of Foreign Trade.

2) We did not receive any evidence from the exporter as above-mentioned. We, therefore, are not in a position to recognize that the goods covered by the above-mentioned 4 Forms AI were qualified for the origin claim under ASEAN-INDIA FTA. We, hence, have already revoked the 4 Forms AI issued for the exporter.

Please be assured of our full-operation.

Yours sincerely,

(Miss Lilin Kovudhikulrungsri)
Director of Import Administration
And Origin Certification Division

"8.6. We also observe that there is no document of revocation of the four certificates either addressed to Thailand for attestation as held by the Honourable Supreme Court in the case of Collector of Customs, Bombay versus East Punjab Traders reported in 1997 (89) E. T. 11 (S.C.).

8.7. We observe that apart from the three letters, there is no material in the Show Cause Notice, suggesting revocation of the certificate of origin or making of retroactive check also. <u>Thus, we find that there is also no document enclosed in the</u>

notice issued by any designated authority of India in this regard. We are of the view that the retroactive check is to be accompanied by certificate of origin and the reasons as to why retroactive check is requested are to be specified. However, we find that there is no such document available in this case.

8.8. It is also settled law that the if certificates at the time of import were valid, then their validity cannot be questioned on the basis of surmises. In this case, the evidences submitted by the investigation does not conclusively prove that the COOs submitted by the appellant were not genuine. On the contrary, the evidences submitted by the appellant indicate that the COOs submitted by the appellant are indeed genuine Accordingly, we hold that the appellant had rightly availed the benefit of Notification No. 46/2011-Cus. dated 01.06.2011 on 16 Bills of Entry by presenting 16 country of origin certificates. Consequently, we hold that the impugned order passed by rejecting the benefit of the said notification is not sustainable.

42. The ratio laid down in the above case law squarely applies to the facts of the present case.

43. We further observe that Section 28DA has been inserted in the Customs Act, 1962 with effect from 21st September 2020. The relevant portion is extracted below :

Section 28DA. Procedure regarding claim of preferential rate of duty. -

(1) An importer making claim for preferential rate of duty, in terms of any trade agreement, shall -

(i) *make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;*

(ii) *possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied*;

(iii) *furnish such information in such manner as may be provided by rules*;

(iv) *exercise reasonable care as to the accuracy and truthfulness of the information furnished*.

(2) The fact that *the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care.*

(3) Where the proper officer has reasons to believe that country of origin criteria has not been met, *he may require the importer to furnish further information, consistent with the trade agreement*, in such manner as may be provided by rules.

(4) Where importer fails to provide the requisite information for any reason, the proper officer may,-

(i) cause further verification consistent with the trade agreement in such manner as may be provided by rules;

(ii) pending verification, temporarily suspend the preferential tariff treatment to such goods:

Provided that on the basis of the information furnished by the importer or the information available with him or on the relinquishment of the claim for preferential rate of duty by the importer, the Principal Commissioner of Customs or the Commissioner of Customs may, for reasons to be recorded in writing, disallow the claim for preferential rate of duty, without further verification.

44. Based on the above amendment, a Public Notice was issued by Nava Sheva Port, which is reproduced below :

F.No. S/22-Gen- 20/2020-21/AM (I)/JNCH Dated: 10.09.2020
PUBLIC NOTICE NO. -114/2020-JNCH
DIN- 20200978NW00004T6948
Sub: Guidelines regarding implementation of section 28DA of the Customs Act, 1962 and CAROTAR, 2020 in respect of Rules of Origin under Trade Agreements (FTA/PTA/CECA/CEPA) and verification of Certificates of Origin- reg.

Attention of all the Importers, Exporters, Custom Brokers, Shipping Lines/Agents, Logistics Service Providers, passengers, advocates, tax practitioners and authorized representatives and all other stakeholders is invited to Board's Circular No. 38/2020-Customs dated 21.08.2020 issued vide F.No.15021/18/2020 (ICD) on the above mentioned subject. Reference is drawn to Chapter VAA and section 28DA of the Customs Act, 1962, which has been inserted vide clause 110 of Finance Act, 2020, and to Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (hereafter referred to as the CAROTAR, 2020) issued vide Notification No.

81/2020-Customs (N.T.) dated 21st August, 2020.

1.1 The aforementioned section and rules aim to supplement the operational certification procedures related to implementation of the Rules of Origin, as prescribed under the respective trade agreements (FTA/PTA/CECA/CEPA) and notified under the customs notifications issued in terms of section 5 of the Customs Tariff Act, 1975 for each agreement.

1.2 The *CAROTAR 2020 shall come into force on 21st September, 2020*, to provide sufficient time for transition and to ensure that the prescribed conditions in terms of rule 4 are compiled with. Necessary modifications in bill of entry format are being made to allow declaration in terms of rule 3(a) and 3(d) of CAROTAR, 2020.

3. The Rules of Origin, by virtue of which goods attain origin of a country, have evolved with subsequent reviews of trade agreements. Most trade agreements have moved from single general rule to specific rule for most of the tariff lines, with inclusion of vast array of processes which can confer origin. *Section 28DA makes it incumbent upon an importer to possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the Rules of Origin in the trade agreement, are satisfied. For this purpose, CAROTAR, 2020 has provided a form, containing list of basic minimum information which an importer is required to obtain while importing goods under claim of preferential rate of duty. Therefore, in case there is a doubt with regard to origin of goods, information would be first called upon from the importer of the goods, in terms of rule 5 read with rule 4 of CAROTAR, 2020, before initiating verification with the partner country in terms of rule 6.*

3.1 *Section 28DA of the Act further states that mere submission of a certificate of origin shall not absolve the importer of the responsibility to exercise reasonable care to the accuracy and truthfulness of the information supplied. Hence, the importer is required to provide information in terms of section 28DA(1) (iii) of the Act and as prescribed under CAROTAR, 2020, and has to take reasonable care to ensure the accuracy and truthfulness of the information furnished*.

5. Instruction no. 31/2016 – Customs dated 12.09.2016 vide F. No. 20000/4/2011- IC (ICD) stands superseded by the above mentioned Circular dated 21.08.2020.

45. The above amendment makes amply clear that the importer would be responsible to give a proper Declaration in the prescribed format about the genuineness of the transaction and contents of the Certificate of Origin. He is also required to take steps to ensure that the information furnished in the Certificate of Origin is correct. In other words, the importer has been made responsible to obtain necessary details and conduct proper verification before the Certificate of Origin is presented to claim the beneficial treatment. It is clear that these clauses have

come into effect from 20th September 2020 and prior to this no such clause existed in the Customs Act 1962 nor by of any Circular / Instruction etc. This is also fortified by the fact that no such details of Circulars have been invoked in the Show Cause Notice issued.

46. Therefore, in the present case, there was no specific responsibility cast upon the appellant to vouch for the authenticity of the contents of the Certificates of Origin.

47. The next point to be addressed is as to whether the Customs Officials can question the validity of the Certificate of Origin and reject the benefit under the concerned Notification. The Kolkata Bench in a similar issue in the case of **BDB Exports Pvt Ltd Vs CC (Prev) Kolkata – 2017(347) ELT 662 (Tri-Kol)** has held as under :

> 4.2 Karnataka High Court in the case of Yellamma Dasappa v. Commissioner of Customs, Bangalore (supra) also observed as follows :
>
> > "9. A valid certificate has been issued and the said certificate, even as on date, has not been withdrawn or cancelled for any alleged violation of the condition by the appellant. Unless the said certificate is cancelled, the Customs Authorities cannot impose customs duty. The seizure of the equipment is only a consequential act that would follow the cancellation of the certificate issued in favour of the appellant. So long as the certificate is not cancelled, the respondents could not, in our opinion, have initiated seizure proceedings in the case on hand. Petitioner-appellant was sent only a questionnaire and the said questionnaire has been answered by the appellant herein. No further action has been taken by the respondents. <u>The Director General of Health Services has also not issued any cancellation of certificate as on date. In these circumstances, we are clearly of the view that without withdrawing or cancelling the certificate already issued, the present seizure cannot stand</u>. Therefore we hold that the seizure effected by the respondents is not in accordance with law. The impugned order of the learned Single Judge, in these circumstances, requires to be set aside and accordingly the same is set aside."
>
> 4.4 In view of the above observations and the ratios laid down by the Courts certificates of origin produced by the Appellant cannot be discounted. There is no

evidence on record that designated authority of Bangladesh under SAPTA Rules was maliciously involved with the supplier of cloves and the Appellant.

9. It is observed from the SAPTA Rules that the concessions to member countries are as a result of commitments amongst the SAARC countries for enhancing, inter alia, the trade between the members contracting countries. Great trust is imposed under SAPTA Rules upon the designated authority of Govt. of the Exporting Contracting State as per Para 7 of the Schedule to SAPTA Rules. *To fulfil the commitments to SAARC nations a certificate of origin given by exporting contracting State cannot be scuttled by the department by conducting some local investigation creating confusion in extending the exemption benefits. As already observed a certificate of origin issued by the designated authority cannot be dishonoured unless cancelled by the same authority*.

5.2 In view of the above case law of Gauhati High Court *department cannot sit as on Adjudicator over the certificate of origin given by the designated authority under SAPTA Rules.* Only an appropriate authority of Bangladesh could have certified as to what could be the value addition, after satisfying about the nature of processing activities done by the supplier and the extent of expenses incurred by such supplier in carrying out the activities of cleaning, handling, storage, sorting, packing, etc.

6. In view of the above observations and *the settled proposition of law certificates of origin issued by the designated authority under SAPTA cannot be rejected which is the only requirement for the satisfaction of the Customs department under Notification No. 105/99-Cus., dated 10-8-1999*. Once on merit the case goes in favour of the main appellant, there is no question of confiscation of imported goods and imposition of penalties upon the appellants.

R.S. INDUSTRIES (ROLLING MILLS) LTD. Versus
COMMISSIONER OF C. EX., JAIPUR-I
2018 (359) E.L.T. 698 (Tri. - Del.)

5. We have heard both the sides and perused the appeal records. We note that the denial of exemption, as claimed by the importer, is on the ground that the value addition in Sri Lanka fall below 35%. We note that the certificates of origin have been issued by Competent Authority of Sri Lankan Government. The same is not in dispute. We already note that the certificate were not recalled or cancelled by the issuing authority. The only ground for denial of exemption is, the Zinc Ingots value subjected to assessment by Sri Lankan customs appears to be low. For this, support was drawn from LME price. We note that assessment of import of ingots was made by Sri Lankan Customs. The same cannot be varied here. We find it is not open to counterpart in India to reassess the goods which are not imported into India.

> 6.xxxxxxxxxxxx Even otherwise, we note that certificate of origin and the data submitted to get such certificates cannot be questioned based on statements of the importers. We find no record to the effect that the country of origin certificates issued by the Sri Lankan Government has been questioned by the Indian Authorities and follow up after import was done in order to cancel or recall the same. We note that the issue regarding country of origin certificate and questions of bonafideness was discussed in the bilateral meeting of working group between the two countries on 5-6-2002 it was agreed that no detention or hold up of cargo is to be ordered on the question of bonafideness of certificates. Verification, if any, can be done post-facto with the concerned local nodal focal points at the respective headquarters. This much has been recorded in the letter dated 5-10-2004 of Department of Commerce, Government of Sri Lanka addressed to Commissioner of Customs (Imports), JNPT. 7.

48. In So-Hum Trading Company Vs Commissioner of Customs (Preventive), Kolkata FINAL ORDER NO. 75687-75688/2021 dated 10 November 2021, the Tribunal has held as under :

> 12. We observe that the Country of Origin Certificates are conclusive evidence since these are issued by the Designated Committee of Bangladesh i.e. Export Promotion Bureau, *and in absence of any material on record to show that these were forged or its genuineness questioned by DRI or Indian Customs, these Country of Origin Certificates should be considered as substantive and conclusive evidence.* We find support from the decision of the Tribunal in the case of RS Industries (Rolling Mills) Ltd. (supra) and Minakshi Exports (supra). In the case of Minakshi Exports, the Tribunal held that in absence of any record to the effect that the Country of Origin Certificates issued by Bangladeshi Authorities have been questioned by the Indian Authorities and any follow up after import was done in order to cancel or recall the same, denial of Exemption benefit cannot be done. We also do not find any evidence on record of any overseas enquiry with the Bangladeshi supplier or confirmation with Bangladesh Customs or Bangladeshi Authority, and therefore the SAFTA Certificate cannot be unilaterally rejected. *We find that the past three Bills of Entry, the Proper Officer i.e. Assistant/Deputy Commissioner of Customs, Petrapole LCS had done value loading after due consideration and extended benefit of Exemption Notification on verification of documents like SAFTA Certificates, invoices etc. and thus we do not find any ingredient of collusion, willful misstatement or suppression of facts and accordingly the penalty imposed under Section 114A of the Act ibid is fit to be set aside.*

49. The genuineness of Certificate of Origin is admitted by the Thailand Government. The Notification requires the appellant to produce the Certificate of Origin at the time of import, which has been done by them. Therefore, we find that the ratio laid down in the above case laws are applicable to the present case also.

50. To summarize :

(1) The appellant has submitted the Certificates of Origin at the time of Imports. These Certificates have been checked for their authenticity by the Indian Customs officials duly verifying the details of the Authorized Officials certifying the same.

(2) On the dates of the import, no doubt was expressed on the contents of the Certificates of Origin. The Show Cause was issued much later after more than 1 to 2 years.

(3) Even at the time of issue of SCN, the Revenue had no authentic evidence to doubt the veracity of the Certificates of Origin.

(4) The appellant appeared for the Personal Hearing and made their submissions. DRI failed to appear for the PH granted. The submissions of the appellant were shared by the Revenue with DRI Officials.

(5) After about 2 years from the date of issue of SCN, filing of reply and appearance for Personal Hearing, an Addendum was issued based on the two letters received from Thailand Government. Under these letters, it has been admitted that the Certificates have been **'Truly issued'** and signed by the Authorized Officials.

(6) In order to 'Truly Issue' the Certificate of Origin, the officials at Thailand had to follow the procedure prescribed under Annexure B of the Rules. There is nothing to indicate that they failed to do so. The letter vaguely refers to the '*exporter not able to prove the origin details within the time frame'*. Nothing is indicated as to what kind of details were sought and what follow up was made up with them by Thailand authorities. There is nothing to indicate that any action has been taken by Thailand authorities against the exporters.

(7) The Certificates of Origin in question have neither been cancelled nor been revoked.

(8) Till the amendment carried out vide Section 28DA in 2020, the importer is not fastened with any responsibility to prove that they have undertaken any due diligence work to check the veracity of the contents of the Certificates of Origin.

(9) No evidence has been brought in to the effect that the appellant has played any role in the alleged contravention [which in itself is vague] by the overseas exporter.

(10) The cases laws are clear that once the Certificates of Origin have been submitted and their authenticity is not doubted, the Customs Officials in India cannot sit on the judgement on the contents of the same, at a much later date

(11) Addendum issued after 2 years of issue of SCN, that too after the appellant has filed their reply and the same has been shared with DRI, has caused prejudice to the appellant.

51. In view of the foregoing, we hold that the Revenue has not made out any legally sustainable case against the appellants.

52. We set aside the impugned orders in toto and allow the appeals filed by the appellants.

53. The appellants would be eligible for consequential relief, if any, as per law

(Operative part of the order was pronounced in the open court.)

Sd/-

(R. Muralidhar)

Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

pooja