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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 76352 of 2025

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/DC/181/2025 dated 06.06.2025 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Bajrang Lal Agarwal **: Appellant**
Prop. M/s. Bengal Jute Corporation,
2, Mullick Street,
Kolkata – 700 007

VERSUS

Principal Commissioner of Customs (Port) **: Respondent**
15/1, Custom House, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri Sudhir Mehta, Sr. Advocate,
Ms. Riya Debnath, Advocate,
For the Appellant

Shri Samir Chitkara, Authorized Representative,
Shri Subrata Debnath, Authorized Representative,
For the Respondent

CORAM:

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

FINAL ORDER NO. 77530 / 2025

DATE OF HEARING/DECISION: 24.09.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Briefly stated, the facts of the case are that Mr. Bajrang Lal Agarwal, Proprietor, M/s. Bengal Jute Corporation , 2, Mullick Street, Kolkata – 700 007 (West Bengal) (hereinafter referred to as the "appellant") has imported 4 consignments of "Nylon Monofilament Fishing Net" manufactured in Malaysia from the foreign manufacturer supplier namely, M/s. Jentayu Industry of Malaysia under the Preferential

Trade Agreement entered into by and between the Union of India and Other contracting countries under Asian India Free-Trade Preferential Trade Agreement under Certificates of Origin issued by the Government of Malaysia. The appellant-importer submitted 4 certificates of Country of Origin (COOs) issued by the designated authority of the Government of Malaysia to India and the Customs Authorities accepted the same after verification. Accordingly, the appellant had availed the benefit of Notification No. 46/2011-Cus. dated 01.06.2011 on 4 Bills of Entry by presenting 4 country of origin certificates.

2. Later, after about 2 years, the Custom Authorities vide their email dated 19th February, 2021 referred the matter to Malaysian Authority for verifying 8 certificates issued in relation to import of stainless-steel items for retroactive check.

3. By another e-mail, which is relied upon in the Show Cause Notice, dated 19th June, 2021 which is in respect of COO no. KL-2020-AI-21-095346 dated 30-10-2020, it has been mentioned that 6 exporters including M/s. Jentayu Industry did not submit any application for COO for Stainless steel welded pipes and Tubes. On the basis of these two mails the investigation officer claimed that the importer was not eligible for the benefit of Notification No. 46/2011-Cus. as country-of-origin certificates issued in respect of all the 4 Bills of Entry were not valid. Accordingly, a Show Cause Notice was issued to the appellant demanding differential customs duty of Rs. Rs.31,07,086.00/-, along with interest and penalty.

4. The said Show Cause Notice was adjudicated vide the Order-in-Original No. KOL/CUS/ADC/PORT/GR3/107/2024 dated

05.12.2024 wherein the ld. adjudicating authority has rejected the benefit of exemption from Basic Customs Duty (BCD) availed by the appellant under Notification No. 46/2011-Cus. dated 01.06.2011 and re-assessed all the 4 Bills of Entry at applicable BCD rate of 10% vide Sl. No. 104 of Notification No. 82/2017-Cus.dated 27.10.2017, as amended. Consequent to re-assessment, the ld. adjudicating authority has determined the differential duty payable as Rs.31,07,086/- and confirmed the demand. The adjudicating authority has held that the goods are liable for confiscation and since the goods were already cleared, he imposed a redemption fine of Rs.10,00,000/- in lieu of confiscation under 125 of the Customs Act, 1962; a penalty equal to the amount of differential duty confirmed was imposed under Section 114A of the Act, along with a penalty of Rs.15,00,000/- under Section 114AA ibid.

4.1. The appellant preferred an appeal before the Commissioner (Appeal) and it was dismissed vide the impugned order dated 06.06.2025.

4.2. Aggrieved by the impugned order, the appellant has filed this appeal.

5. It is the submission of the appellant that enquiry conducted was in relation with import of steel pipes and certificates of origin in relation thereto whereas the goods imported by the appellant are monofilament fishing net and certificates are different and there is no dispute relating to the certificates issued to the appellant by Malaysian government. Therefore, the appellant contends that both the emails are neither related with the appellant nor has any remote connection with the appellant’s import; it is also argued that both the emails are photo copies and not

certified under Section 138C of the Customs Act 1962, hence it has no significance.

5.1. The appellant submits that another Alert Notice dated 09.09.2021 which is relied upon in the Show Cause Notice is the alert circular issued in relation with the import of Steel products and it alerted the assessing officers to exercise due diligence; that there is no other cogent material in the show cause notice to discredit the certificate.

5.2. It has been further submitted by the appellant that they had sought inspection of the email dated June 19, 2021 and email dated May 18, 2021, which was not granted. Thus, the appellant submits that no assumption or presumption can be drawn that the said any COOs referred in the mails were related to the appellant; in any event, they submit that on the basis of assumptions and presumptions, no demand can be raised.

5.3. The appellant also submits that the adjudicating authority, having chosen not to give inspection of the email, could not have relied upon the email dated June 19, 2021 and email May 18, 2021.

5.4. It is their further contention that there is no document of revocation of the four certificates either addressed to the exporter or the importer to whom it would have been issued, to the effect that it had been actually issued or was part of a formal communication; there is no authenticity of emails as held by the Honourable Supreme Court in the case of *Collector of Customs, Bombay versus East Punjab Traders reported in 1997 (89) E.L.T. 11 (S.C.).*

5.5. The appellant submits that apart from the two mails, there is no material in the Show Cause Notice, disputing any of the four certificates of origin or making of retroactive check also; there is also no document enclosed in the notice issued by any designated authority of India in this regard. They point out that under the treaty, the process of verification of the certificate of origin for retroactive check is mentioned in the Rules paragraph 16 of Annexure 3 to the Rules and the retroactive check is to be accompanied by certificate of origin and specify the reasons why retroactive check is requested on at random basis. They have submitted that there is no such document available in this case. It has also been submitted that no document is forming part of the Show Cause Notice to the effect that any request was made by the importing party i.e., the Union of India to the exporting party; the importing party is the Union of India, which is represented by the designated authority under the Ministry of Commerce or any delegated authority; there is no mentioning that any such power was delegated to the Custom authorities and there is no document in support of it; there is no case that the COOs were revoked either.

5.6. The appellant also makes the submission that it is also settled law that the if certificates at the time of import were valid, the imports would be valid.

5.7. Reliance has been placed by the appellant on the decision in the case of *M/s. Shree Shyam Synthetics v. Principal Commissioner of Customs (Port), Kolkata [Final Order No. 75381 of 2025 dated 18.02.2025 in Customs Appeal No. 75020 of 2025 (CESTAT, Kolkata)],* wherein, under similar facts and circumstances, this Tribunal has granted the benefit of Notification No. 46/2011-Cus. dated 01.06.2011 to the appellants therein.

5.8. In view of the above submissions, the appellant submits that the impugned order passed on the basis of conjunctures and surmises is not sustainable in law and prayed for setting aside the same.

6. The Ld. Authorized Representative of the Revenue submitted that the demand has been confirmed on the basis of the verification report from the issuing authority stating that though the certificates in respect of 8 COOs referred to in mail are in respect of Steel product, these mails cast a doubt on general conduct of the exporting company and the exporters. He therefore supported the impugned order demanding differential duty from the appellant.

7. The learned Senior Advocate for the appellant further submitted in reply that receipt of application by ePCO system is denied but the COOs are issued by the issuing country on the basis of underlying documents and verification required for issue of certificates. He states that these aspects are not doubted or denied; thus, he submits that if reliance is to be made on a document the connecting documents and the context all need to relied upon; an isolated document cannot be relied upon. He also points out that the emails are not free from doubt since these emails are neither authenticated nor inspected upon.

8. Heard both sides and perused the appeal records.

9. We find that the appellant has filed 4 Bills of Entry for clearance of goods viz. "Nylon Monofilament Fishing Net" manufactured in Malaysia from the foreign manufacturer supplier, namely, M/s. Jentayu Industries., Malaysia under the subject Preferential Trade Agreement. The appellant had availed the benefit of Customs Notification No. 46/2011 dated 01.06.2011 at the time of import and no objections were raised about the Country of Origin.

9.1. We observe that the emails relied upon in the Show Cause Notice relate to specific COOs numbers which are so mentioned. The 4 COOs pertaining to the appellant herein are not connected with these COOs. The mails mention that MITI did not receive any application from exporters via eCPO system.

10. None of the appellant's 4 COOs were sent for verification. We find that each country-of-origin certificate has been issued separately and thus, based on some/few verifications, it cannot be mechanically extended to all other country of origin certificates submitted by others. Thus, we are of the view that the demand raised on the basis of the emails is not legally tenable.

11. We also find that the adjudicating authority had chosen not to give inspection of the emails. Thus, the emails could not have been relied upon, more so as being a photocopy and unauthenticated. In this regard, we also find that there is no document of revocation or verification of the four certificates either addressed to the exporter or the importer to whom it would have been issued had it been actually issued or had it been part of a formal communication. There is no authenticity of certification by any Authority of Malaysia as and by way for attestation. Since there is

no authenticity of the emails, the same cannot be relied upon against the appellant, in terms of the judgement of the Honourable Supreme Court in the case of *Collector of Customs, Bombay versus East Punjab Traders reported in 1997 (89) E.L.T. 11 (S.C.).*

11.1. We observe that apart from the two mails there is no material in the Show Cause Notice, suggesting revocation of the certificate of origin or making of retroactive check also. We also find that there is no document enclosed with the 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.

11.2. It is also settled law that 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 do not conclusively prove that the COOs submitted by the appellant were not genuine. Accordingly, we hold that the appellant had rightly availed the benefit of Notification No. 46/2011-Cus. dated 01.06.2011 in respect of the 4 Bills of Entry by presenting 4 country of origin certificates. Consequently, we hold that the impugned order passed by rejecting the benefit of the said notification is not sustainable.

11.3. In this connection, we find it relevant to refer to the decision rendered in the case of *M/s. Shree Shyam Synthetics v. Principal Commissioner of Customs (Port), Kolkata [Final Order No. 75381 of 2025 dated 18.02.2025 in Customs Appeal No. 75020 of 2025 (CESTAT, Kolkata)],* wherein this Tribunal has examined an identical issue and thereafter observed as under: -

> *"8. We find that the appellant has filed 16 Bills of Entry for clearance of goods viz. "Nylon Monofilament Fishing net" manufactured in Kingdom of Thailand from the foreign manufacturer supplier M/s. Asian Import and Export Co. Ltd., Thailand under the Preferential Trade Agreement entered into by and between the Union of India and the Government of Thailand. The appellant had availed the benefit of Customs Notification No. 46/2011 dated 01.06.2011. At the time of import, no objections were raised about the Country of Origin*
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> *8.1. We observe that Custom Authorities at Kolkata vide its letter dated 27th April, 2023, referred the matter to Director International , Custom Division, Central Board of Indirect Taxes and Customs, North Block, New Delhi for verification of certificates of Country of Origin in respect of seven importers who had imported the goods from Asian Import and Export Limited and Maptresco of Thailand respectively. We observe that another letter which is relied upon in the Show Cause Notice is the copy of the letter dated 6th November, 2023 responding to the letter dated 20th April, 2023. It has been mentioned that a verification report number 0307.07153 dated 30th October, 2023 was forwarded by the Embassy of India, Thailand vide email dated October 30, 2023 qua 4 COOs mentioned in annexure A said to be issued from Thailand. However, we observe that there is no letter containing a list of 4 COOs. The annexure A to the said letter is also dated 6th November, 2023, which would mean that the Annexure A was not part of the communication sent from Thailand which is dated*
> *30th October, 2023.*
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> *8.2. We observe that that the appellant were able to procure the communication sent by Thailand Government sent to the Indian counterpart qua verification report which was related to 5 COOs and certified to be validly issued and confirmed as per the document number 0313.13 / 893 dated 22nd November 2 023, which was also submitted to the Department by the appellant in the course of investigation and admitted to be genuine in the proceedings. It proved that the letter dated 30th*

October, 2023 of Thailand Government was not related to the appellant's COOs.

………

8.4. We observe that the Department has extended the verification report in respect of the 3 country of origin certificates cited above to all the 16 country of origin certificates submitted by the appellant as mentioned in Table-B of the Show Cause Notice, on the basis of said letter which has forwarded the verification Report No. 0307.07/153 dated 30.10.2023 received from the Embassy of Thailand, which is not sustainable. We observe that each country of origin certificate has been issued separately and based on some/few verifications, it cannot be mechanically extended to all other country of origin certificates submitted by them. Thus, we observe that the demand raised on the basis of the three verification reports said to have been received from the issuing authority, to all the 16 Bills of Entry, is not legally tenable.

8.5. We observe that the adjudicating authority had chosen not to give inspection of the email. Thus, we also observe that the letter dated June 2, 2023 number BAN/COM/206/1/2022 could not have relied upon as it was a photocopy and was not addressed to any authority. At the bottom of the letter name of one Dharmendra Singh, Embassy of India, Bangkok is mentioned but he is not the addressee of the letter. Thus, we find that this letter does not have any evidentiary value in the fact and circumstances of the case.

8.6. We also observe that there is no document of revocation of the four certificates either addressed to the exporter or the importer. to whom it would have been issued had it been actually issued or had it been part of a formal communication. There is no authenticity of certification by any Authority of 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.L.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. Thus, we find that there is also no document enclosed in the 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.

9. In view of the above discussions, we hold that there is no evidence available on record to reject the duty self-assessed by the appellant. Thus, we set aside the differential duty of Rs.1,16,02,167/- confirmed along with interest in the impugned order. Accordingly, we hold that the goods are not liable for confiscation and hence, we also set aside the redemption fine of Rs.10,00,000/-imposed in lieu of confiscation under 125 of the Customs Act, 1962. Since the mis-declaration of COO certificates submitted by the appellant has not been established, we hold that penalty imposed under Section 114A of the Customs Act, 1962 is not legally sustainable and accordingly, we set aside the same.

10. In the result, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law."

The factual matrix of the above case being similar to that of the case on hand, we find that the ratio laid down therein is squarely applicable to the instant case.

12. In view of the above discussions, we hold that there is no evidence available on record to reject the duty self-assessed by the appellant and thus, we set aside the demand of differential duty of Rs.31,07,086/- confirmed along with interest in the impugned order.

13. Accordingly, we hold that the goods are not liable for confiscation. Hence, we also set aside the redemption fine of Rs.3,00,000/- imposed in lieu of confiscation under 125 of the Customs Act, 1962. Since mis-declaration of COO certificates submitted by the appellant has not been established, we hold that penalties imposed on the appellant under Sections 114A and 114AA of the Customs Act, 1962 are not legally sustainable and accordingly, we set aside the same.

14. In the result, we set aside the impugned order and allow the appeal, with consequential relief, if any, as per law.

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

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

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

Sdd