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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 76153 of 2024

(Arising out of Order-in-Appeal No. KOL/CUS(Port)/KS/387/2024 dated 24.06.2024 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. United Sales Agency **: Appellant**
1/A, Grant Lane,
Kolkata – 700 012

VERSUS

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

APPEARANCE:

Shri Bhaskar Thakkar, Chartered Accountant,
Smt. Sneha Nandi, Advocate,
For the Appellant

Shri Ashwini Kr. Choudhary, Authorized Representative,
For the Respondent

CORAM:

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

FINAL ORDER NO. 77788 / 2025

DATE OF HEARING: 17.11.2025

DATE OF DECISION: 26.11.2025

ORDER: [PER SHRI R. MURALIDHAR]

The appellant imported 'Bicycles' of different models from overseas supplier namely, M/s. MZH Maju Industry, Lot 1250 Batu 8 Suangkang, 42500 TLK Pangulima Garang, Selangor, Malaysia, by filing Bill of Entry No. 5297439 dated 21.02.2018 through its Customs Broker, M/s. M.K. Saha and Co. The said Bill of Entry was RMS facilitated as well as self-assessed to duty under the provisions of Section 17(1) of the Customs Act, 1962. They availed the

preferential rate of customs duty benefit for the said goods imported from M/s. MZH Maju Industry, Malaysia under Notification No. 53/2011-Cus. dated 01.07.2011 on the basis of Certificate of Origin No. KL-2018-AI-21-005075 dated 20.02.2018.

2. A Show Cause Notice was issued to the appellant on 20.02.2023, alleging that the COO submitted by the appellant was among those found "inauthentic" relying on the communication dated 19.01.2023 (No. DRI/DZU/23Enq-15/2022/2025) issued by the Directorate of Revenue Intelligence (DRI), Delhi Zonal Unit, on the basis of verification undertaken by the FTA Cell of the Central Board of Indirect Taxes & Customs (C.B.I.C.) with the authorities in Malaysia and Thailand. The said Show Cause Notice demanded Rs.9,40,035/- under Section 28 of the Customs Act, 1962, being the customs duty allegedly short-paid by the appellant, along with interest and penalty.

2.1. After due process, the adjudicating authority vide Order-in-Original No. KOL/CUS/PORT/JC/Gr.-V/98/2023 dated 25.08.2023 held that the Certificate of Origin was unauthenticated and accordingly, denied the benefit of preferential rate of duty under Notification No. 53/2011-Cus. dated 01.07.2011 and demanded the differential customs duty of Rs.9,40,035/-, along with interest and penalty.

2.2. On appeal, the Ld. Commissioner (Appeals) has dismissed their appeal vide Order-in-Appeal dated 24.06.2024.

2.3. Therefore, the appellant is before the Tribunal.

3. The Ld. Consultant appearing on behalf of the appellant submits that the demand confirmed in the order is fundamentally unsustainable as it seeks to reopen assessments that had already attained finality; each of the import consignments in question had been subjected to final assessment under Section 17 of the Customs Act, 1962, which were not appealed against by the Department and hence, the said assessments became final. It is thus submitted that since the said assessments became final, the same could not be revisited by the Department by way of a demand under Section 28 of the Act, unless such assessments stood modified or set aside. He submits that in case the Revenue was not satisfied with the authenticity of the Certificates of Origin, they should have filed appeal against the self-assessed Bills of Entry, as has been held by the Hon'ble Supreme Court in the case of *ITC Ltd. v. Commissioner of Central Excise, Kolkata-IV [2019 (368) E.L.T. 216 (S.C.)];* unless the final assessments are challenged and/or modified, no demand of alleged differential duty under Section 28 can be sustained. In view of these submissions, he prayed that the impugned order be set aside and the appeal be allowed.

4. The Ld. Authorized Representative representing the Revenue submitted that during the course of verification of COOs with Malaysia and Thailand, the FTA Cell of the CBIC has detected several non-authentic COOs, as informed by the Issuing Authorities of these countries. He also submits that the DRI, Delhi Zonal Unit vide their letter dated 19.01.2023 informed that many COO certificates have been reported to be unauthentic by the Issuing Authority in Malaysia and Thailand; the said letter also informed that the Ministry of International Trade and

Industry, Malaysia (MITI) had intimated that they had never received any Certificate of Origin application from the suppliers listed in the annexure to the said letter, which includes the instant supplier, namely, M/s. MZH Maju Industry. He submits that since it has already been established that the overseas exporter did not have proper registration enabling them to issue the COO Certificate, there is no question of treating the COOs already submitted by the appellant at the time of import as authentic documents so as to enable them to get the benefit of the preferential rate of duty as per the said Notification; only on account of these factual details, the ld. adjudicating authority confirmed the demand of Rs.9,40,035/-, along with interest and penalty. He thus prayed for rejection of the present appeal.

5. Heard both sides, perused the appeal papers and other documentary evidence placed before us.

6. We find that the consignment in question was imported vide Bill of Entry No. 5297439 dated 21.02.2018, under Certificate of Origin No. KL-2018-AI-21-005075 dated 20.02.2018. In case the Department wanted to contest these earlier imports based on the directions contained in the letter dated 19.01.2023 issued on the basis of communications received from the FTA Cell, proper verification should have been undertaken in respect of the said Certificates of Origin, which has not been done in this case. Just on assumptions and presumptions, the authenticity of the Certificate of Origin cannot be doubted so as to deny the benefit of preferential rate of duty under Notification No. 53/2011-Cus. dated 01.07.2011.

7. We also find force in the appellant's argument that the assessments were completed by the appellant and the same were not challenged by the authorities to get the same re-assessed without providing the benefit of the said Notification in view of the allegation that the Certificate of Origin was unauthenticated. It is a fact on record that the Bill of Entry in question was self-assessed to duty under Section 17(1) of the Act, which had not been challenged by the Revenue. After nearly four years, the company was served with the Show Cause Notice dated 20.02.2023, alleging that the COO submitted was among those found non-authentic as per the verification undertaken by the FTA Cell of the C.B.I.C. with Issuing Authorities in Malaysia and Thailand. In the case of *ITC Ltd. (supra),* the Hon'ble Supreme Court has held as under: -

> *"47. When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act."*

7.1. Relying upon the above judgement, this Bench, in the case of *Rajib Saha v. Commissioner of Customs (Preventive), Shillong [Final Order Nos. 76465-76466 of 2023 dated 24.08.2023 in Customs Appeal No. 75278 and 75279 of 2016 (CESTAT, Kolkata)]*, has held as under: -

> *"11. We observe that the ratio of the above said decision is squarely applicable in this case. We find that the impugned order passed demanding differential duty without challenging the original assessment of the Bills of entry is not sustainable. Hence, the demand is not sustainable on this count also."*

8. Applying the ratio of the above cited case-laws, we hold that the confirmed demand of Rs.9,40,035/-, along with interest and penalty, is not legally sustainable. Hence, the impugned order stands set aside.

9. In the result, the appeal is allowed. The appellant would be eligible for consequential relief, if any, as per law.

(Order pronounced in the open court on **26.11.2025**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd