IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: C/32/2011

[Arising out of Order-in-Appeal No: 300 (GR.IV)/2010(JNCH)/IMP-280 dated 20th October 2010 passed by the Commissioner of Customs (Appeals), Nhava Sheva, Mumbai-II.]

For approval and signature:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	Yes
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

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Balex Pvt Ltd … ***Appellant***

versus

Commissioner of Customs (Imports)
Nhava Sheva ***…Respondent***

Appearance:

None for appellant

Shri Bhushan Kamble, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing: 14/03/2019
Date of decision: 14/03/2019

ORDER NO: A/85806 / 2019

Per: C J Mathew

This appeal lie against order-in-appeal no. 300 (GR.IV)/2010 (JNCH)/IMP-280 dated 20th October 2010 of Commissioner of Customs (Appeals), Nhava Sheva, Mumbai-II.

2. We have heard Learned Authorised Representative. None appeared for appellant and it is seen from the records that there has also been no representation from the appellant in the past. However, considering the narrow compass within which the appeal is to be decided, we proceed to do so with the assistance of Learned Authorised Representative and on consideration of the records.

3. Appellant filed bill of entry no. 601867/25.07.2009 for clearance of 24.62 MTs of 'aluminium alloy billet' claimed to be of Thai origin and entitled to benefit of concessional rate of duty in notification no. 85/2004-Cus dated 31st August, 2004.

4. It appears that the goods had been procured on 'high sea sale'

from the original importer, M/s Agrawal Metals and it has been held by the lower authorities that the details in certificate of origin, attesting to origin from Thailand, was not sufficient to allow the claim leading to recovery of differential duty. It is the confirmation of that which is in appeal before us.

5. According to the first appellate authority, the issue of retroactive certificate of origin which did not contain the name of the actual importer was not acceptable. Relying upon the rules of origin for preferential tariff concessions in trade between India and Thailand, it was held that the discrepancy was of such nature as warranted the rejection thereof with the consequential demand of concessional rate of duty.

6. There is no bar on the issue of retroactive certificate of origin. Certificates of origin are issued by the competent authority in the country of origin on an application by the exporter of the goods. It is but natural that, irrespective of 'high sea sale' or otherwise, the maintenance of confidentiality of further transaction with another buyer may deter the original importer from disclosing the details of ultimate importer to the exporter. Furthermore, there is no allegation of omission of any relevant particulars nor are the goods themselves lacking in conformity with that referred to in the certificate of origin. In the absence of such, the rationale adopted by

the lower authorities is not in order.

7. Accordingly, we set aside the impugned order and allow the appeals.

(Pronounced in Court)

(Ajay Sharma) **(C J Mathew)**
Member (Judicial) ***Member (Technical)***

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