

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

CUSTOMS APPLICATION (MISC) NO: 85712 OF 2023
(on behalf of appellant)
IN
CUSTOMS APPEAL NO: 89793 OF 2014

[Arising out of Order-in-Original No: MUM-CUSTOM-PAX-COM-05-14-15
dated 25th July 2014 passed by the Commissioner of Customs, Chatrapati Shivaji
International Airport, Mumbai.]

Keyur Shah
Flat No. 31, Oceanic Apartments, Rajab Ali Patel Road
Off: Bhulbhai Desai Road, Mumbai - 400026 *...Appellant*

versus

Commissioner of Customs
Chatrapati Shivaji International Airport, Sahar
Andheri (E), Mumbai 400099 *...Respondent*

WITH

CUSTOMS APPLICATION (MISC) NO: 85711 OF 2023
(on behalf of appellant)
IN
CUSTOMS APPEAL NO: 89795 OF 2014

[Arising out of Order-in-Original No: MUM-CUSTOM-PAX-COM-05-14-15
dated 25th July 2014 passed by the Commissioner of Customs, Chatrapati Shivaji
International Airport, Mumbai.]

Marvel Products & Exim Pvt Ltd
202 Avantikabhai Gokhale Road, Opera House
Mumbai *...Appellant*

versus

Commissioner of Customs
Chatrapati Shivaji International Airport, Sahar
Andheri (E), Mumbai 400099 *...Respondent*

WITH
CUSTOMS APPLICATION (MISC) NO: 85710 OF 2023
(on behalf of appellant)
IN
CUSTOMS APPEAL NO: 89805 OF 2014

[Arising out of Order-in-Original No: MUM-CUSTOM-PAX-COM-05-14-15 dated 25th July 2014 passed by the Commissioner of Customs, Chatrapati Shivaji International Airport, Mumbai.]

Mahapooja Products Ltd

202 Avantikabhai Gokhale Road, Opera House
Mumbai

...Appellant

versus

Commissioner of Customs

Chatrapati Shivaji International Airport, Sahar
Andheri (E), Mumbai 400099

...Respondent

AND

CUSTOMS APPEAL NO: 89899 OF 2014

[Arising out of Order-in-Original No: MUM-CUSTOM-PAX-COM-05-14-15 dated 25th July 2014 passed by the Commissioner of Customs, Chatrapati Shivaji International Airport, Mumbai.]

Commissioner of Customs

Chatrapati Shivaji International Airport, Sahar
Andheri (E), Mumbai 400099

...Appellant

versus

Marvel Gems & Jewellery Pvt Ltd

202 Avantikabhai Gokhale Road, Opera House
Mumbai

...Respondent

APPEARANCE:

Shri Aditya Ajgaonkar, Shri Rupal, Shri Krishna Shah and Shri Ahush Jain,
Advocates for the assessee-appellants

Shri Ranjan Kumar, Assistant Commissioner (AR) for Revenue

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85855-85858/2025

DATE OF HEARING: 05/12/2024
DATE OF DECISION: 04/06/2025

PER: C J MATHEW

Shri Keyur Shah, as Director in the two appellant-companies, is aggrieved over the detriments visited as consequences of show cause, in relation to import of 45 consignments effected at Mumbai as well as 124.21grams of ‘gold jewellery’ valued at ₹ 3,56,769 seized on 7th January 2013 and as many consignments at Chennai along with ‘gold jewellery’ against 4 nos. bills of entry by M/s Marvel Products & Exim Pvt Ltd while that in relation to imports of 10 consignments effected at Chennai by M/s Mahapooja Limited, that was adjudicated by order fastening duty liability of ₹ 21,74,21,862 under section 28 of Customs Act, 1962, along with applicable interest under section 28AA of Customs Act, 1962, and confiscation of the seized jewellery under section 111(d) and 111(m) of Customs Act, 1962 besides several penalties. This order¹ of Commissioner of Customs, Chhatrapati Shivaji Maharaj International Airport (CSMIA) found the importers to be ineligible for exemption, availed by furnishing ‘certificate of origin (CoO)’, as provided under notification no. 85/2005-Cus dated 85/2004-

¹ [MUM-CUSTOM-PAX-COK-05-01-14 dated 25th July 2014]

Cus dated 31st August 2004, owing to operation of rules² specified in notification no. 102/2004-Cus dated 31st August 2004 even as the basis of entitlement, viz., certificate of Foreign Trade Department, Government of Thailand, was not disputed for authenticity.

2. According to Learned Counsel for appellant, the impugned certificate was discarded to the extent that it asserted value addition of 22% only for adhering to the prescription, of contribution insofar as ‘jewellery’ is concerned, set out in the impugned notification. Reliance was placed on the decision of the Tribunal in *Romil Jewellery v. Commissioner of Customs* [2023 (9) TMI 462], in *Kiran Kotak & Company v. Commissioner of Customs, Mundhra* [2024-TIOL-460-CESTAT-AHM], in *So-Hum Trading Company v. Commissioner of Customs (Preventive), Kolkata* [(2021) SCC OnLine CESTAT 4732], and in *Alfakrina Exports v. Commissioner of Customs, Mundra* [(2023) SCC OnLine CESTAT 604]. It was further contended that the verification carried out with Kingdom of Thailand was deliberately suppressed and, in all probability, from having no adverse implications. He relied upon the specific mode for verification set out in rule 20 and 21 of Interim Rules for Determination of Origin for Preferential Tariff Concessions for Trade between India and Thailand, 2004³.

² [rule 4 and rule 6]

³ [notification no. 101/2004-Cus (NT) dated 31st August 2004]

3. According to Learned Authorised Representative, the finding that

‘5.15.I do not fully subscribe to above point of view. Rule 15 of Annexure B of Origin Rules inter-alia states that the importing Party may request a retroactive check 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. In the instant case, the accuracy of the information regarding the true origin of the products in question is under dispute. Therefore, a reference, as stated in Rule 15 above, has already been made in this regard. However, under the Origin Rules, it is incorrect to say that in all cases, the certificate of origin issued by the exporting country is to be accepted at first instance, as contended by Marvel Gems and Jewellery Pvt. Ltd. and M/s. Mahapuja Products Pvt Ltd. The Rule of Origin itself provide for rechecking of accuracy or correctness of the certificate issued, The case law of New Bombay Exports by Hon'ble Commissioner of Customs (Appeals) and The Hon'ble Tribunal reported at 2001 (138) E.L.T. 990 (Commr. Appls.) and 2009 (238) E.L.T. 540 (Tri. - Chennai does not conform to the circumstances of this case. It deals with goods wholly produced in a country while the matter to be decided in the present case pertains to value addition and deemed origin in case of good not produced in the country of export, and is therefore distinguished.’

in the impugned order is of relevance

4. It is seen from the impugned order that the adjudicating authority has concluded that ‘value addition’, prescribed for

exemption from duties on ‘gold jewellery’ imported from Thailand under the Agreement, is to be ascertained from the ‘making charges’ by ignoring the formula prescribed in rule 6(d) of the Interim Rules for Determination of Origin for Preferential Tariff Concessions for Trade between India and Thailand, 2004; the formula, which is intended to guide the competent agency in Thailand in certifying the origin as a determinant of ‘local value addition’ that, doubtlessly, would be in consonance with valuation provisions in their statute is a condition agreed upon in the treaty negotiation. There is nothing on record to demonstrate that the adjudicating authority was privy to both ‘value’ at which the materials had been imported into Thailand or that assessed on exports from Thailand; those are sovereign functions of the administration of the exporting country which is not subordinate to officers of customs under Customs Act, 1962. In the absence of any reference to ‘making charge’ in the Interim Rules or elsewhere, it is not open to officers of customs in India to venture upon some information made available in the ‘certificate of origin (CoO)’ for discard of the certificate without following procedure prescribed therein.

5. A process specifically enunciated in rule 15 of Interim Rules for Determination of Origin for Preferential Tariff Concessions for Trade between India and Thailand, 2004 has not been adhered to and there is no power vested in the adjudicating authority either by

the said Rules or from Customs Act, 1962 to substitute for the treaty provisions.

6. In *Noble Import Private Limited v. Union of India* [2015 SCC OnLine Hyd 411], it has been held that

‘18. Sri Avinash Desai, learned counsel for the petitioner, would submit that the information sought for by the adjudicating authority is incapable of being furnished by the importer. Even if we were to proceed on the premise that the said information could have been furnished by the petitioners herein, their failure to do so would only enable the concerned authority to have a retroactive check conducted in terms of Clause 16(a) of Annexure-III of the 2009 Rules, and then take action in terms of Clause 17, which reads as under :-

(a) If the importing party is not satisfied with the outcome of the retroactive check, it may, under exceptional circumstances, request verification visits to the exporting party. Prior to conducting a verification visit -

(i) the importing party shall deliver a written notification of its intention to conduct the verification visit, through the competent authority, simultaneously to :

(1) the producer/exporter whose premises are to be visited :

(2) the Issuing Authority of the party in the territory of which the verification visit is to occur :

(3) the competent authority of the party in the territory of which the verification visit is to occur; and...”

7. The impugned order has not rendered any findings on the formula determination, it has not been suggested that rule 15 of the said Rules had been invoked and the statements of co-noticee cannot, by the nature of ‘relevance’ institutionalised in Customs Act, 1962, be subjected to the test prescribed or not covered by exception in

‘(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable;’

in section 138B of Customs Act, 1962 owing to which the contents thereof are inadmissible in adjudication proceedings. In any case, the exemption being borne out of treaty negotiations, and subject to terms of negotiations set out in the enabling notifications, there can be no substitute for process so prescribed. We also find that reliance placed on the decision of the Hon’ble High Court of Madras in *Nakoda Unique Gold Pvt Ltd v. Union of India [2014 (300) ELT 10 (Mad)]* is misplaced on the facts therein, viz.,

‘13. The stand of the respondents in the counter is that while initiating proceedings under Section 124 of the Act, the fraud committed by the person is established. In the instant case, it is admitted that the Government of India has

written to the Kingdom of Thailand about the issuance of Certificate to the petitioner for availing exemption and the respondents are awaiting reply from the Kingdom of Thailand. Notwithstanding the outcome of the decision of the sovereign authority, namely, the Kingdom of Thailand, the respondents have got power to initiate proceedings against the petitioner. A reading of Section 124 of the Customs Act would make it clear that the respondents are empowered to issue show cause notice and proceed against the person alleged to have committed fraud, stating the ground on which they have initiated the proceedings. The respondents have substantiated that there was wrongful availment of exemption by the petitioner contrary to the law of our country and therefore, they have invoked Section 124 to issue the impugned show cause notice.

14. When such things are substantiated, as there is no prohibition in the said provision not to proceed against the importer, who has availed wrongful exemption of duty, this Court cannot restrain the respondents from proceedings further, unless there is anything contrary to law. Therefore, it is for the petitioner to go before the respondents, explain the case and request them to stall the proceedings, till a decision is taken by the Government authorities of the Kingdom of Thailand.'

as not only being inapplicable considering the stage of proceedings but also on facts being different. Above all, this is not a dispute over 'value' of impugned goods which would vest determination in officers of customs but about implementation of a negotiated treaty that, being comprehensive and self-contained, constrains sovereign exercise of

power by customs officials within its framework. The treaty has been entered into by the Republic of India with Kingdom of Thailand and the wisdom of according preferential rate in accordance therewith is not subject to affirmation of that wisdom by agency entrusted with customs assessment and clearance under Customs Act, 1962.

8. As far as the seized jewellery is concerned, the presumption in section 123 of Customs Act, 1962, though available to insinuate origin, is rebuttable upon which onus shifts to the customs authorities to establish that the gold was smuggled. Failure to do so cannot shift the burden back in the absence of clear finding that the documents submitted are not genuine. That onus has not been discharged in the impugned order.

9. For the above reasons, the action taken on the imported goods is without validity for having ignored the prescriptions on ascertainment of country of origin as well as the authenticity of the certification. The impugned order is set aside to allow the appeals.

(Order pronounced in the open court on 04/06/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)