CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

CUSTOMS APPEAL No. 86739 of 2024

(Arising out of Order-in-Appeal No. 831 to 835(Gr.II H-K)/2024(JNCH)/Appeals dated 24.06.2024 passed by the Commissioner of Customs (Appeals), Mumbai-II, JNCH, Nhava Sheva, Taluka-Uran, District-Raigad, Maharashtra)

Ansell India Protective Products Private Limited .... Appellants
706-707, Level 7, Wing F, Tower II
Sea Woods Grand Central, Sector 40, Nerul Node
Navi Mumbai – 400 706, Maharashtra.

VERSUS

Commissioner of Customs, Nhava Sheva-I .... Respondent
Jawaharlal Nehru Customs House (JNCH)
Nhava Sheva, Taluka-Uran, District-Raigad,
Maharashtra – 400 707.

with

(i) CUSTOMS APPEAL No. 86742 of 2024 (Ansell India Protective Products Private Limited);

(ii) CUSTOMS APPEAL No. 86743 of 2024 (Ansell India Protective Products Private Limited);

(iii) CUSTOMS APPEAL No. 86744 of 2024 (Ansell India Protective Products Private Limited);

(iv) CUSTOMS APPEAL No. 86745 of 2024 (Ansell India Protective Products Private Limited);

(Arising out of Order-in-Appeal Nos. 831 to 835(Gr.II H-K)/2024(JNCH)/Appeals dated 24.06.2024 passed by the Commissioner of Customs (Appeals), Mumbai-II, JNCH, Nhava Sheva, Taluka-Uran, District-Raigad, Maharashtra)

APPEARANCE:

Shri Sanjay Singhal, Advocate for the Appellant
Shri Jitesh Kumar Jain, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85912-85916/2025

Date of Hearing: 19.02.2025
Date of Decision: 18.06.2025

Per: M.M. PARTHIBAN

These appeals have been filed by M/s Ansell India Protecting Products Private Limited, Navi Mumbai (herein after, referred to as "the appellants", for short) assailing the Order-in-Appeal Nos. 831 to 835 (Gr.II H-K)/ 2024 (JNCH)/Appeals dated 24.06.2024 (herein after, referred to as "the impugned order") passed by the Commissioner of Customs (Appeals), Mumbai-II, Jawaharlal Nehru Customs House (JNCH), Nhava Sheva, Taluka-Uran, District-Raigad, Maharashtra.

2.1 Brief facts of the case, leading to these appeals, are summarized herein below:

2.2. The appellants herein have imported "Latex Rubber Surgical Gloves" from Sri Lanka and for this purpose they have filed Bills of Entry (B/E) No. 5341843 dated 02.04.2023 declaring the assessable value of the imported goods at Rs.1,25,39,101/- and determined the duty of customs payable as Rs.15,04,692/- by classifying the same under Customs Tariff Item 4015 1200 of the First Schedule to the Customs Tariff Act, 1975 and claiming concessional duty under List-5 of the Notification No.26/2000-Customs dated 01.03.2000 read with Notification No.19/2000-Customs (N.T.) dated 01.03.2000. The appellants have also submitted Country of Origin (COO) Certificate No. CO/ISFTA/2023/02536 dated 29.03.2023 along with other import documents in support of their claim for concessional duty. In respect of such imports, the commercial invoice has been issued by M/s Ansell Global Center (Malaysia) SDN BHD, Malaysia, which is called 'Third country invoicing' / 'third party invoicing'. Similarly, the appellants have also imported impugned goods in further consignments by filing B/E Nos. 5329524 dated 01.04.2023; 6389305 dated 13.06.2023; 7393863 dated 17.08.2023 and 7673599 dated 04.09.2023 in claiming the above said notification benefits under the respective B/Es.

2.3 The jurisdictional Assistant Commissioner of Customs in re-assessment of the imported goods had examined the importers claim for concessional duty of customs and have held as follows:

> (i) The customs Tariff Determination of Origin of Goods under the Free Trade Agreement between the Democratic Socialistic Republic of Shri Lanka and the Republic of India) Rules, 2000 notified vide Notification No. 019/2000-Cus. (N.T.) dated 01.03.2000, doesn't provide any provision for Third Country invoicing, therefore, it prima

facie appears that exemption for COO Certificates involving "Third Country Invoicing" is not available under Notification No. 026/2000-Customs dated 01.03.2000.

(ii) Alert Circular No. 03/2021 dated 18.02.2021 issued by Audit Commissionerate, Chennai wherein it is clarified that in case, the relevant Rules are not having exclusive provisions for accepting Certificate of Origin for which invoice is issued by a non-party and the name of the exporter who issued invoice is also not figuring in Box 1 of COO certificates, the exemption is not available for such consignments.

(iii) CBIC Circular No. 53/2000-Customs dated 08.12.2020 has clarified regarding Third Party Invoice in case of the goods originated in LDC countries notified vide Notification No. 096/2008-Cus. which is also silent upon provisions of third party invoicing. Accordingly vide the above mentioned circular the Board has taken view that where value of goods does not have impact on the originating status, i.e., the Originating Criteria is wholly obtained COO certificate issued under Notification No. 096/2008 third country invoicing may be allowed. However in the instant case for Notification 26/2000, the Board has not issued such circular further the goods under question are not Wholly Obtained therefore, it prima facie appears that the COO Benefit is not available in this case.

Accordingly, the original authority had passed an adjudication order dated 13.06.2023 in rejection of the claim of concessional duty of customs/ exemption notification benefit of preferential trade agreement under Notification No.26/2000-Customs dated 01.03.2000 in respect of various imports made by the appellants. Being aggrieved with the said original orders, the appellants have filed appeals before the Commissioner of Customs (Appeals), who vide Order-in-Appeal dated 24.06.2024, had rejected all the appeals filed by the appellants by upholding the original orders. Feeling aggrieved with the common impugned order dated 24.06.2024, the appellants have filed these appeals before the Tribunal.

3.1 Learned Advocate appearing for the appellants submitted at the outset that the 'third party invoicing' is only a trading arrangement between business entities and it has nothing to do with the origin of the goods, which is from Sri Lanka. This is not being disputed by the department. The only objection raised by the department is that the Country of Origin (COO) Certificate, does not have separate indication of the details of third party invoicing and therefore the notification benefit cannot be extended. In this regard, learned Advocate submitted that COO Certificate has been prescribed by a notification and neither the supplier nor the importer can add the information relating to third party/country invoicing details in such certificate.

3.2 Learned Advocate further submitted that the CBIC had issued instructions vide No.23/2024 dated 21.10.2024, wherein it has been clarified that COO certificate is only for the purpose of verifying the origin criteria of the goods, and the invoicing, whether direct or third party, is only for the purpose of valuation. He also referred to CBIC Circular No.53/2020 dated 08.12.2020 to substantiate his stand that value does not have any impact on origin criteria, then third party invoicing may be allowed in such cases.

3.3 In this regard, he relied upon the decision of Hon'ble Supreme Court in the case of *CCE Vs. Favorite Industries* – 2012 (378) E.L.T. 145 (S.C.) to state that no wording shall be added or subtracted from the words employed in a notification. He also stated that CAROTAR Rules, 2020 also prescribe only origin criteria to be specified in a COO certificate and does not have any provision dealing with direct invoicing or third party invoicing.

4. Learned Authorized Representative (AR) appearing for Revenue, reiterated the findings made by the Commissioner of Customs (Appeals), Mumbai-II in the impugned order. He further submitted that in view of the specific findings for denial of ISFTA exemption benefit recorded by the Commissioner (Appeals), the appeal filed by the appellants should not be entertained.

5. Heard both sides and perused the case records. The additional submissions made in the form written paper book was also perused carefully.

6. The short issue for determination before the Tribunal is whether denial of concessional basic customs duty under Notification No.26/2000-Customs dated 01.03.2000 read with Notification No.19/2000-Customs (N.T.) dated 01.03.2000, in respect of the impugned goods covered by the disputed imports, is legally sustainable or not?

7. In order to appreciate the issues under dispute, the specific legal provisions contained in the notifications relevant to the dispute i.e., Notification No.26/2000-Customs dated 01.03.2000 providing the concessional rate of customs duty; and Notification No.19/2000-Customs

(N.T.) dated 01.03.2000 providing for the procedure for implementing the Rules of Origin in extending the concession in the aforesaid notification, are extracted and herein given below for ease of reference.

1 st March, 2000

Notification No. 26/2000-Customs

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 specified in column (3) of the Table hereto annexed and falling under the Chapter, heading No. or sub-heading No. of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), specified in the corresponding entry in column (2) of the said Table, from so much of that portion of the applied rate of duty of customs as is specified in the corresponding entry in column (4) of the said Table, subject to the following conditions, namely:-

(1) the importer proves to the satisfaction of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be in accordance with the Customs Tariff (Department of Origin under the Free Trade Agreement between the Democratic Socialist Republic of Sri Lanka and the Republic of India) Rules, 2000 published with the notification of the Government of the India in the Ministry of Finance (Department of Revenue) No. 19/2000-Customs (N.T), dated the 1 st March, 2000 that the goods in respect of which the benefit of this exemption is claimed are of the origin of Sri Lanka;

(2) in respect of articles of apparel and clothing accessories specified in List 3 of the Table:-

(i) the exemption shall apply to a quantity of imports, hereinafter referred to as Tariff Rate Quota, not exceeding 8 million pieces computed from the 1 st day of January, in a calendar year, out of which a minimum of 6 million pieces shall be manufactured from fabrics of Indian origin exported from Sri Lanka to India.

Provided that for the period from the 1 st day of March, 2000 to the 31 st day of December, 2000, the Tariff Rate Quota shall not exceed 6.67 million pieces shall be manufactured from fabrics of Indian origin exported to Sri Lanka from India.

Provided further that the quantity of imports shall not exceed 1.5 million pieces in respect of each category of goods, as may be specified by the Government of India within the said Tariff Rate Quota.

(ii) the imports shall be made only through the ports of Mumbai and Chennai.

(3) in respect of tea, whether or not flavored, and goods of sub-heading No. 2101.20 specified in List 4 of the Table:-

(i) the exemption shall apply to a Tariff Rate Quota not exceeding 15 million kilograms computed from the 1 st day of January in any calendar year.
Provided that for the period from the 1 st day of March, 2000 to the 31 st day of December, 2000, the Tariff Rate Quota shall not exceed 12.5 million kilograms

(ii) the imports shall be made only through the ports of Calcutta and Cochin.

(4) the importer follows the procedure as may be specified by the Government of India from time to time.

Explanation: For the purpose of this notification:-

1. "applied rate of duty" means the standard rate of duty specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), with respect to the goods specified in the said Table, read with any other notification for the time being in force, issued in respect of such goods under sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) but not including the notifications of the Government of India in the Ministry of Finance (Department of Revenue) Nos. 236/89-Customs dated the 1 st September, 1989, 26/95-Customs dated the 16 th March, 1995 and 105/99-Customs dated the 10 th August,1999. "calendar year" means the period starting from the 1 st day of January and ending on the 31 st day of December of the same year.

S. No.	**Chapter, heading No or Sub-heading No.**	**Description of goods**	**Portion of the applied duty**
(1)	(2)	(3)	(4)
	LIST-1		
	2.03, 2.04, 02.05,0206.30, 0206.41, 0206.49, 0206.80, 0206.90, 02.07,0208.10, 0210.11, 0210.12, 0210.19, 06.03, 06.04, 07.02,0703.90, 07.04, 07.05,07.06, 07.07, 07.08, 07.09, 07.10, 07.11, 07.12, 07.14, 14.01, 14.02, 14.03, 1404.10, 1404.20,		
xxx	*xxx*	*xxx*	*xxx*
	LIST-4		
	0902.10, 0902.20, 0902.30, 0902.40, and 2101.20	All goods	50%
	LIST-5		
	1. All goods other than		50%
	a) goods mentioned in lists 1, 2 3 and 4		
	b) goods listed in the Annexure appended to this notification		

Customs Tariff (Determination of origin of goods under the Free Trade Agreement between the Democratic Socialistic Republic of Sri Lanka and the Republic of India) Rules, 2000

In exercise of the powers conferred by sub-section (1) of section 5 of the Customs Tariff Act, 1975 (51 of 1975), the Central Government hereby makes the following rules, namely :-

*1. **Short title and commencement.** - (1) These rules may be called the Customs Tariff (Determination of Origin of Goods under the Free Trade Agreement between the Democratic Socialistic Republic of Sri Lanka and the Republic of India) Rules, 2000.*

(2) They shall come into force on the date of their publication in the Official Gazette.

*2. **Application.** - These rules shall apply to goods consigned from the territory of either of the Contracting Parties.*

*3. **Determination of Origin .**- No product shall be deemed to be the produce or manufacture of either country unless the conditions specified in these rules are complied with in relation to such products, to the satisfaction of the appropriate Authority.*

*4. **Claim at the time of importation.** - The importer of the product shall, at the time of importation –*

(a) make a claim that the products are the produce or manufacture of the country from which they are imported and such products are eligible for preferential treatment under the India-Sri Lanka Free Trade Agreement, (hereinafter referred to as the Agreement), and

(b) produce the evidence specified in these rules.

Explanation: - For the purposes of this notification, "Preferential treatment" in relation to any product means the exemption granted under the notification of the Government of India in the Ministry of Finance(Department of Revenue), No. 26/2000- Customs dated 1st March, 2000 and includes preferential concessions.

*5. **Originating products.** - Products covered by the Agreement imported into the territory of any signatory party to the Agreement (hereinafter referred to as the Contracting Party) from another Contracting Party **which are consigned directly within the meaning of rule 9 , shall be eligible for Preferential Concessions** if they conform to the origin requirement under any one of the following conditions:*

(a) products wholly produced or obtained in the territory of the exporting Contracting Party as defined in rule 6; or

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

*6. **Wholly produced or obtained.** - Within the meaning of condition (a) of rule 5, the following shall be considered as wholly produced or obtained in the territory of the exporting Contracting Party, namely :-*

(a) raw or mineral products, including mineral fuels, lubricants and related materials as well as mineral or metal ores, extracted from its soil, its water or its sea bed;

(b) vegetable products, including agricultural and forestry products, harvested there;

(c) animals born and raised there;

(d) products obtained from animals referred to in clause (c);

(e) products obtained by hunting or fishing conducted there;

(f) products of sea fishing and other marine products from the high seas by its vessels;
(g) products processed and/or made on board its factory ships exclusively from products referred to in clause (f);
(h) used articles collected there, fit only for the recovery of raw materials;
(i) waste and scrap resulting from manufacturing operations conducted there;
(j) products extracted from the seabed or below seabed which is situated outside its territorial waters, provided that it has exclusive exploitation rights;
(k) goods produced there exclusively from the products referred to in clauses (a) to (j).

Explanation . - For the purposes of this notification: -

(A) "Vessels" shall refer to the fishing vessels engaged in commercial fishing, registered in the country of the Contracting Party and operated by a citizen or citizens of the Contracting Party or partnership, corporation or association, duly registered in such country, at least sixty per cent. of equity of which is owned by a citizen or citizens and/or Government of such Contracting Party or seventy five per cent. by citizens and/or Government of the Contracting Parties. However, the goods taken from vessels engaged in commercial fishing under Bilateral Agreements which provide for chartering/leasing of such vessels and/or sharing of catch between Contracting Party will also be eligible for Preferential treatment. In respect of vessels or factory ships operated by Government agencies, the requirements of flying the flag of the Contracting Party does not apply.

(B) "Factory Ship" means any vessel, as defined, used for processing and/or making on board goods exclusively from those products referred to in clause (f) of rule 6

7. Not wholly produced or obtained, -
(a) Within the meaning of condition (b) of rule 5, products worked on or processed as a result of which the total value of the materials, parts or produce originating from countries other than the Contracting Parties or of undetermined origin used does not exceed sixty five per cent. of the f.o.b. value of the products produced or obtained and the final process of manufacture is performed within the territory of the exporting Contracting Party shall be eligible for Preferential treatment, subject to the provisions of clauses (b), (c), (d) and (e) of this rule and rule 8.
(b) Non-originating materials shall be considered to be sufficiently worked or processed when the product obtained is classified in a heading, at the four digit level, of the Harmonised Commodity Description and Coding System different from those in which all the non-originating materials used in its manufacture are classified.
(c) In order to determine whether a product originates in the territory of a Contracting Party, it shall not be necessary to establish whether the power and fuel, plant and equipment, and machines and tools used to obtain such products originate in third countries or not.

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9. ***Direct consignment.*** *- The following shall be considered to be directly consigned from the exporting country to the importing country, namely :-*
(a) if the products are transported without passing through the territory of any country other than the countries of the Contracting Parties.
(b) the products whose transport involves transit through one or more intermediate countries with or without transhipment or temporary storage in such countries :
Provided that -
(i) the transit entry is justified for geographical reason or by considerations related exclusively to transport requirements;
(ii) the products have not entered into trade or consumption there; and
(iii) the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition.

xxx xxx xxx xxx

11. ***Certificates of origin.*** *- Products eligible for a Certificate of origin in the form annexed shall support Preferential treatment issued by an authority designated by the Government of the exporting country and notified to the other country in accordance with the certification procedures to be devised and approved by both the Contracting Parties.*

12. ***Prohibitions.*** *- Either country may prohibit importation of products containing any inputs originating from States with which it does not have economic and commercial relations.*

13. Co-operation between contracting parties :-

(1) The Contracting Parties will do their best to co-operate in order to specify origin of inputs in the Certificate of origin.

(2) The Contracting Parties will take measures necessary address, to investigate and, where appropriate, to take legal and/or administrative action to prevent circumvention of this Agreement through false declaration concerning country of origin or falsification of original documents.

(3) Both the Contracting Parties will co-operate fully, consistent with their domestic laws and procedures, in instances of circumvention or alleged circumvention of the Agreement to address problems arising from circumvention including facilitation of joint plant visits and contacts by representatives of both Contracting Parties upon request and on a case-by-case basis.

(4) If either Party believes that the rules of origin are being circumvented, it may request consultation to address the matter or matters concerned with a view to seeking a mutually satisfactory solution. Each party will hold such consultations promptly.

14. ***Review.*** *- These rules may be reviewed as and when necessary upon request of either Contracting Party and may be open to such modifications as may be agreed upon.*

CERTIFICATION OF ORIGIN

<table>
<tr><td colspan="3">1. Goods consigned from (Exporters' Business Name, Address, Country)</td><td colspan="3">Reference No.
INDO-SRI LANKA FREE TRADE AGREEMENT (ISFTA) (Combined declaration and certificate)
Issued in ....
Country
(See notes overleaf)</td></tr>
<tr><td colspan="3">2. Goods consigned to (Consignee's Name, Address, Country)</td><td colspan="3">4. For Official use</td></tr>
<tr><td colspan="3">3. Means of transport and Route (As far as known)</td><td></td><td></td><td></td></tr>
<tr><td>5. Tariff item number</td><td>6. Marks and numbers of packages</td><td>7. Number and kind of packages: description of goods</td><td>8.Origin Criterion (see Notes over-leaf)</td><td>9. Gross weight or other quantity</td><td>10. Number and date of invoice</td></tr>
<tr><td colspan="3">11. Declaration by the Exporter.
The undersigned hereby declares that the above details and statements are correct; That all the goods were produced in
....
Country
and that they comply with the origin requirements specified for those goods in ISFTA for goods exported to..
(Importing Country)
....
Place and date, signature of the authorized signatory</td><td colspan="3">12. Certificate
It is hereby certified, on the basis of control carried out that the declaration by the exporter is correct:

....
Place and date, signature and stamp of certifying authority.</td></tr>
</table>

I. General Conditions

To qualify for preference, products must :

(a) fall within a description of products eligible for concessions in the country of destination under this agreement;
(b) comply with ISFTA Rules of Origin. Each Article in a consignment must qualify separately in its own right; and
(c) comply with the consignment conditions specified by the ISFTA Rules of Origin. In general, products must be consigned directly within the meaning of Rule 9 hereof from the country of exportation to the country of destination.

II. Entries to be made in Box 8
Preference products must be wholly produced or obtained in the exporting Contracting Party in accordance with Rule 6 of the ISFTA Rules of Origin, or where not wholly produced or obtained in the exporting Contracting Party must be eligible under rule 7 or rule 8.
(a) Products wholly produced or obtained enter the letter 'A' in box 8.
(b) Products not wholly produced or obtained; the entry in box 8 should be as follows :
1. Enter letter 'B' in box 8 for products, which meet the origin criterion according to rule 7. Entry of letter would be followed by the sum of the value of materials, parts or produce originating from non-contracting parties or undetermined origin used, expressed as a percentage of the f.o.b. value of the products; [example 'B' - ( ) percent].
2. Enter letter 'C' in box 8 for products, which meet the origin criteria according to rule 8. Entry of letter 'C' would be followed by the sum of the aggregate content originating in the territory of the exporting Contracting Party expressed as a percentage of the f.o.b. value of the exported product : [example 'C' ( ) percent]."

8.1 Plain reading of the above tariff notification No.26/2000-Customs dated 01.03.2000 indicate that there are five categories of goods mentioned in List-1 to List-5, for which different 'applied rate of duty' have been provided, and the customs duty exemption at such 'applied rate of duty' has been granted under Section 25(1) of the Customs Act, 1962, in respect of the goods covered under the respective Lists. In respect of the impugned goods viz., "Latex Rubber Surgical Gloves" classifiable under CTI 4015 1200, these are covered under List-5 and are eligible for 50% applied rate of duty. In other words, if the basic customs duty is leviable at the standard rate of 20% advalorem, then under the aforesaid India-Sri Lanka Free Trade Agreement (ISFTA) concession, exemption from payment of basic customs duty to the extent of 10% adv. was given to the imports, subject to fulfilment of the requisite procedure prescribed under the No.19/2000-Customs (N.T.) dated 01.03.2000.

8.2 From the records of the case, it is found that there is no dispute with respect to classification of impugned goods, scope of coverage of impugned goods under Notification No.26/2000-Customs dated 01.03.2000, enabling the appellants eligible to claim the customs duty exemption. Therefore, the dispute lies in the narrow compass of examining whether the procedure prescribed under No.19/2000-Customs (N.T.) dated 01.03.2000 have been fulfilled with respect to 'Country of Origin' certificate.

8.3 In respect of the above issue of dispute, learned Commissioner of Customs (Appeals) has held that the notification prescribing the format of Country of Origin Certificate does not allow third-party invoicing anywhere in such COO certificate, and therefore concluded that the intent of notification is to disallow the benefit in case of consignments from third-party. The relevant paragraphs in the said impugned order are extracted and given below:

> *"7.8 I observe that Circular No.53/2020-Customs, dated 08.12.2020, has been issued by the CBIC, on the subject of Third-Party Invoicing in the case of Preferential Certificates of Origin issued in terms of DFTP for "wholly obtained goods" and is use of Third-Party Invoicing while claiming preferential tariff treatment in terms of DUTY-FREE TARIFF PREFERENCE (DFTP) SCHEME for LEAST DEVELOPED COUNTRIES, in respect of "wholly obtained goods". The notification says that Parent Notification, the Notification No. 29/2015-Cus. (N.T.) dated 10.03.2015 is silent upon provisions for third-party invoicing, i.e. commercial invoice for goods originating in the LDC is issued in the 3rd country and not by the consignor in the exporting country. It is a fact that some FTAs have specific provisions for Third-Party Invoicing wherein it is allowed, in cases where notification is silent and the participating states intend to extend the benefit to cases of import involving third-party invoicing, they have introduced guidelines/legislation as in the case of DFTP scheme.*
>
> *8. Therefore, I am of the opinion that the intent of the Notification No. 19/2000-Cus. (N.T.) dated 01.03.2000 herein is to not allow the benefit under Third-Party consignments."*

On perusal of the above, it transpires that the learned Commissioner of Customs (Appeals) had interpreted that the COO Certificate should have a specific column for mention of 'Third party invoice' details and in the absence of such column, the entire COO certificate is invalid for extending the concession granted under the Notification No.26/2000-Customs dated 01.03.2000.

8.4 On careful perusal of the documents and the records of the case, the fact that the impugned goods are covered by the Notification No.26/2000-Customs dated 01.03.2000, under List-5 is undisputed. Therefore, the short point in which the Revenue has held that the duty concession is not available on the impugned goods is only on account of the COO Certificates issued by the competent authority has not provided for any separate column to indicate the details of third party or third country invoicing. In this regard, we have carefully perused the Rule 11 of Customs Tariff (Determination of Origin of Goods under the Free Trade Agreement between the Democratic Socialistic Republic of Sri Lanka and the Republic of India) Rules, 2000 dealing with the Certificate of Origin. It provides that all products eligible under the ISFTA notification and for which for a Certificate of origin has been issued by an authority designated by the

Government of the exporting country, in the form annexed, shall be granted preferential treatment by the importing country. It is therefore clear that there is no specific requirement for indicating the third party invoicing details in the COO, in terms of legal provisions governing the procedure for grant of ISFTA concessions. Further, it is not in dispute that the impugned goods are 'wholly obtained', as Rule 7(b) of the Rules of 2000 state that in respect of Non-originating materials, it shall be considered to be sufficiently worked or processed to extend the ISFTA benefit, when there is change in the classification of the final product obtained, at the four digit level, of the Harmonised Commodity Description and Coding System, which is different from those in which all the non-originating materials used in its manufacture are classified. As the COO Certificates specifically provide that "*The Tariff Heading of the imported Raw materials has been changed at four digit level at the final Manufacturing process taken place within the Sri Lanka*", there is sufficient evidence to state that the impugned goods are of 'wholly obtained' from Sri Lanka. Furthermore, the COO certificates have been issued by the Commercial Research Officer, Department of Commerce, Colombo, Sri Lanka who are the proper authority for issuing such COO certificates, and there is no dispute on this point. In the above factual position, the conclusion arrived at by the learned Commissioner of Customs (Appeals) for denying the ISFTA duty concession in the present case is not supported by any legal basis and therefore on this ground, the impugned order is liable to be set aside.

8.5 On the issue of 'Third-country invoicing', within the context of WTO rules of origin, it refers to a situation where the commercial invoice for goods originating from an exporting country is issued by a third country, rather than the exporting country itself. This practice is recognized and permitted under various Free Trade Agreements (FTAs), including the ASEAN-India FTA. The key factor is that the Certificate of Origin (COO) must confirm the originating status of the goods, regardless of where the invoice originates. Even if the Customs authorities at the importing country have to deny the ISFTA duty concession, they need to verify the origin of goods based on the rules on COO and the procedure for co-operation as provided in Rules of 2000, has to be followed even with the issue of third-party invoicing, and ensure that the goods meet the criteria under the relevant FTA. Therefore, invoicing done from the exporter from the exporting country or third country invoicing is not determinative of the COO benefit and no such rules have been provided under the Rules of 2000.

9. We further find that in terms of the standard norms for verification of the documentary evidence on Origin, the Chapter 3 of the Specific Annex K of the Revised Kyoto Convention (RKC) to which India is also a signatory, deals with control of documentary evidence of origin. The principle of reciprocity governs the assistance, and the competent authority of the requested party shall only comply with the provisions if the competent authority of the requesting party would be able to furnish the assistance if the positions were reversed. The competent authority in the importing country may request the competent authority in the exporting country to carry out a control of the proof of origin - where there is reasonable doubts as to the authenticity of the document, or as to the accuracy of the information in the document, or on a random basis (which shall be kept to a minimum necessary to ensure adequate control). The various preferential trade agreements set out the requirements for the verification requests. The requested competent authority shall carry out the necessary controls and reply to the request by answering the questions put by the requesting competent authority as well as furnish any other information it may consider relevant and also set out deadlines for requesting verification and deadlines for replying to a request for verification. A request for control/ verification by itself shall not prevent the release of the goods, provided that they are not subject to import prohibitions or restrictions and there is no suspicion of fraud. These principles have also been incorporated in Rule 6 'Verification request' of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020. None of such request(s) have been initiated in the present case, to claim that it is a genuine case of verification of COO by the department. Therefore, the orders passed by the authorities below in denying the ISFTA duty concession is without any authority of law.

10. CBIC had issued a Circular No. 53/2020-Customs dated 08.12.2020, explaining that in the absence of a specific provision for third country invoicing/ third party invoicing or where the notification is silent on this aspect, by quoting the example of Notification No.29/2015-Cus.(N.T.) dated 10.03.2015, have clarified that where the value of goods does not have impact on the originating status, i.e., the originating criteria is "wholly obtained", then the Certificate Of Origin issued in terms of the relevant rules of origin and the commercial invoice issued by third-party/third-country may be accepted by the customs field formations. The extract of the said circular is given below:

Circular No. 53/2020 - Customs

F. No. 21000/11/2013-Director(ICD)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
International Customs Division
*****

Room No. 227A, North Block, New Delhi -110001
Dated: 8th December, 2020

To

The Principal Chief Commissioner / Chief Commissioner of Customs,
Ahmedabad/Bengaluru/Chennai/Delhi/Kolkata/Mumbai–I/Mumbai–II/Mumbai–III Zone.
The Principal Chief Commissioner / Chief Commissioner of Customs (Preventive),
Delhi/Patna/Tiruchirapalli.
The Principal Chief Commissioner / Chief Commissioner of Central Goods and Service Tax,
Bhopal/Bhubaneshwar/Guwahati/Hyderabad/
Meerut/Nagpur/Pune/Thiruvananthpuram/Visakhapatnam.

Madam / Sir,

Subject: Third Party Invoicing in case of Preferential Certificates of Origin issued in terms of DFTP for "wholly obtained goods"-regarding

The Board has received representations from trade with regard to use of third party invoicing while claiming preferential tariff treatment in terms of Duty Free Tariff Preference Scheme for Least Developed Countries (DFTP) in respect of "wholly obtained goods".

2. It has been learnt that Certificates of Origin (COOs) issued in terms of customs notification no 29/2015-cus (N.T), dated 10.03.2015 and with third party invoicing were earlier being accepted by the proper officer but that same has been discontinued after implementation of CAROTAR, 2020.

3. The matter has been examined. The notification no 29/2015-cus (N.T), dated 10.03.2015 is silent upon provisions for third party invoicing, i.e. commercial invoice for goods originating in the LDC is issued in the third country and not by the consignor in the exporting country. In some other notified preferential rules of origin, where specific provision for third party invoicing is provided, the origin of the good is nonetheless based upon the value addition done in the country of origin alone, with Free on Board (FoB) in country of origin being the base for arriving at the local value content.

4. With regard to notification no 29/2015-cus (N.T), read with notification no. 96/2008-Cus, dated 13.08.2008, which offers unilateral tariff concessions to LDC, the Board is of the view that where value of goods does not have impact on the originating status, i.e the originating criteria is 'wholly obtained', the Certificate of Origin issued in terms of Duty Free Tariff Preference Scheme for Least Developed Countries with third party commercial invoice may be accepted. This is subject to ensuring that the goods referred to in the Certificate of Origin, and the invoice correspond to each other and that the goods satisfy the applicable rules of origin. The normal due diligence to check for authenticity of COO and correctness of claim should continue to be observed. Needless to state the existing stipulation of RBI in regard to third party invoicing, would apply.

5. It is requested that necessary public notice may be issued in this regard.

From the above, it also transpires that CBIC circular issued is in support of extending the FTA duty concession, when such procedural rules are silent about the third country/third party invoicing.

11. We also find that the Reserve Bank of India vide its RBI/2013-14/14 Master Circular No.14/2013-14 July 01, 2013 providing for Master Circular on Exports of Goods and Services have also provided for certain conditions to be fulfilled in respect of third party payments in import/export transactions. The extract of the same is as below:

> *"(v) Third party payments for export / import transactions: Taking into account the evolving international trade practices, it has been decided to permit third party payments for export / import transactions can be made subject to conditions as under:*
> *a) Firm irrevocable order backed by a tripartite agreement should be in place. However, it may not be insisted upon in cases where documentary evidence for circumstances leading to third party payments / name of the third party being mentioned in the irrevocable order/ invoice has been produced subject to: (i) AD bank should be satisfied with the bona-fides of the transaction and export documents, such as, invoice / FIRC. (ii) AD bank should consider the FATF statements while handling such transaction.*
> *b. Third party payment should be routed through the banking channel only;*
> *c. The exporter should declare the third party remittance in the Export Declaration Form and it would be responsibility of the Exporter to realize and repatriate the export proceeds from such third party named in the EDF;*
> *d. It would be responsibility of the Exporter to realize and repatriate the export proceeds from such third party named in the EDF;*
> *e. Reporting of outstanding, if any, in the XOS would continue to be shown against the name of the exporter. However, instead of the name of the overseas buyer from where the proceeds have to be realised, the name of the declared third party should appear in the XOS;*
> *f. In case of shipments being made to a country in Group II of Restricted Cover Countries, (e.g. Sudan, Somalia, etc.), payments for the same may be received from an Open Cover Country; and*
> *g. In case of imports, the Invoice should contain a narration that the related payment has to be made to the (named) third party, the Bill of Entry should mention the name of the shipper as also the narration that the related payment has to be made to the (named) third party and the importer should comply with the related extant instructions relating to imports including those on advance payment being made for import of goods."*

From the above, it also transpires that RBI circular permits, third party payments in respect of import transactions in general and none of the above compliances have been alleged to have been violated in the present case before us.

12. We find that in an identical facts of case, denying the ISFTA benefit on account of the fact the Rules of 2000 are silent on the issuance of a COO retrospectively/retroactively in cases where the COO was not issued at the time of exportation or proximate thereto, but on a later date, the Hon'ble High Court of Madras in the case of *Aabis International Vs. Commissioner of Customs, Chennai Customs-II Commissionerate* - 2021 (377) E.L.T. 479 (Mad.) have held that the ISFTA benefit is extendable to the appellants, by quashing the order issued by the Customs in denying the FTA benefit. The relevant paragraphs of the judgement dated 17.06.2021 is given below:

"7. The Indian Sri Lankan Free Trade Agreement (ISFTA), which governs the import of the consignment in question is silent on this aspect and for this reason, the respondents would state that the COO needs further verification. As regards clarification issued by the Department of Commerce, they would eschew the same stating that it has not been received through proper channel. These explanations do not emanate in the course of correspondence between the parties or, most importantly, in the impugned order itself and are raised only in the counter.

8. The impugned order merely raises a demand of a sum of duty rejecting the exemption claimed and no reasons are set out therein for the rejection of the exemption. On this very ground, I could well set aside the impugned order as being bereft of reasons and non-speaking. For this purpose, I need only to refer to the celebrated judgment of the Supreme Court in the case of Mohinder Singh Gill and Another v. Chief Election Commissioner and Others (AIR 1978 SC 851) to the effect that an order, to be valid, has to speak for itself, containing reasons to sustain the same. It has to stand or fall on its own merit. It cannot be bolstered or supported by reasoning supplied as an afterthought, either by way of oral argument or by way of counter, as in the present case. To quote the Bench, 'Orders are not like old wine becoming better as they grow older'.

xxx xxx xxx xxx

14. In the present case, the claim for preferential duty has been rejected unilaterally and without assigning any reasons whatsoever by the Deputy Commissioner of Customs, an authority not competent to have rejected the claim as per the proviso to Section 28DA(4). Though the consignment has been imported in February, 2021, there has been no initiation of enquiry by the proper officer under sub-section (3) for further enquiry into the COO or any other aspect of the matter that he deems relevant. The impugned order rejecting the claim for exemption has come to be passed by the 2nd respondent, the Deputy Commissioner of Customs, who is not the competent authority to have rejected the claim of exemption, since such rejection could only have been by the Principal Commissioner or Commissioner and that too, for reasons to be recorded. This is a flaw that goes to the root of the matter, the procedure adopted in the impugned proceedings.

15. Sub-section (5) states that where the preferential rate of duty is suspended under sub-section (4), the proper officer may, on the request of the importer, release the goods subject to furnishing by the importer of security, of an amount equal to the difference between the duty provisionally assessed under Section 18 and the preferential duty claimed. The proviso states that the Principal Commissioner of Customs or the Commissioner of Customs may, instead of security, require the importer to deposit the differential duty amount in the ledger maintained under Section 51A.

16. This puts paid to the argument of Mr. Gunalan that a reference will be made under CAROTAR to the Verification Authority only if the petitioner remits 100% of the duty quantified. This submission is liable to be rejected straightaway in light of Section 28DA(5) which requires the importer to furnish security for 100% differential duty only as a pre-condition to release of the goods.

17. The scheme of Section 28DA does not permit raising of a demand for security for initiation of verification but only for release of the consignment. Circular No. 42 of 2020 to the extent to which it is transgresses the statutory scheme under Section 28DA, particularly sub-sections (4) and (5) thereof, is an excess of authority and is bad in law.

18. CAROTAR has been notified specifically to set out the procedure and facilitate exchange of information in case of issues arising from the application of the Articles of a Trade Agreement including conflicts in rate of duty, one by an importer and the other by the revenue. Regulation 6 provides for a request for verification to be made by the proper officer and is extracted below :

19. The timeline for response by the Verification Authority is set out in Regulation 63b, which is sixty days from date of request. In the present case, this request has not been initiated and the Department has been sitting pretty on the consignment despite requests for release, the petitioner repeatedly drawing attention to the fact that the consignment comprises perishable goods.

20. That apart and very relevantly, 'Verification Authority' is defined under Regulation 2(g) to mean the authority in the export country designated to respond to a verification request under a trade agreement. The certificate of origin in this case as well as the clarification obtained by the petitioner have been obtained from the Assistant Director acting for the Director General of Commerce in the Department of Commerce, Colombo. The designated authority under the IFSTA is the Director General of Commerce, Department of Commerce, also the authority which has issued the COO and subsequent clarification. The objection of the respondents in regard to the COO as well as their contention that the clarification dated 19-3-2021 ought to have been received 'through proper channel' is thus, in my view, hypertechnical, to say the least.

21. In the light of the discussion as above, I am of the view that the petitioner has satisfied the requirement of production of a valid COO in this case. I would hasten to add that the Department is not foreclosed from making further enquiry in regard to any apprehensions that they may still continue to harbour concerning the COO.

22. As far as the present litigation is concerned, the petitioner has made a strong enough case to persuade me to quash the impugned order and issue mandamus for release of the goods forthwith, in any event within one week from the date of issuance of this order. I also draw support from the fact that the petitioner has been relying on the very same documentation as in the case of the consignment in question, including the COO, in other ports not just in India, but in Tamil Nadu itself that is, the Thoothukudi port, and consignments are being released without demur. The response of the revenue to this submission is that such actions will not 'bind' the Chennai authorities. This position is not appreciated as authorities under a Central enactment are expected to adopt consistent views in regard to similar/identical transactions, especially when they relate similar/identical fact and legal patterns. Diametrically opposite conclusions are not expected to be drawn on identical questions of fact and law by statutory authorities.

23. This writ petition is allowed in the above terms. Connected miscellaneous petitions are closed. No costs."

13. In view of the foregoing discussions and analysis, and on the basis of the aforesaid judgement of the Hon'ble High Court, We do not find any merits in the impugned order passed by the learned Commissioner of Customs (Appeals) to the extent it has rejected the duty exemption/ concession claimed in respect of the impugned goods covered under List-5 of the Notification No.26/2000-Customs dated 01.03.2000 read with Notification No.19/2000-Customs (N.T.) dated 01.03.2000.

14. In the result, the impugned order dated 24.06.2024 passed by the learned Commissioner of Customs (Appeals), Mumbai-II is set aside and the appeals filed by the appellants are allowed in their favour, with consequential relief, if any, as per law.

(Order pronounced in the open court on 18.06.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha