

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

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86363 OF 2023

[Arising out of Order-in-Original No: MUM-CUS-MMT-02-2023-24-ADJN-APSC dated 30th May 2023 passed by the Commissioner of Customs, Air Cargo Complex, Mumbai.]

Marvel Silver

61-63 Kanchwala Bldg, 2nd Floor, Room No 14
3 Dhanghi Street, Mumbai - 400003

... Appellant

versus

Commissioner of Customs

Air Cargo Complex

Awas Corporate Point, Makwana Lane
Andheri-Kurla Road. Behind SM Centre, Andheri (East)
Sahar. Mumbai - 400059

...Respondent

WITH

CUSTOMS APPEAL NO: 86373 OF 2023

[Arising out of Order-in-Original No: MUM-CUS-MMT-02-2023-24-ADJN-APSC dated 30th May 2023 passed by the Commissioner of Customs, Air Cargo Complex, Mumbai.]

Nilesh Pushpraj Jain

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3 Dhanghi Street, Mumbai - 400003

... Appellant

versus

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...Respondent

APPEARANCE:

Shri Sujay Kantawala and Ms Aishwarya Kantawala, Advocates for the appellants
Shri Krishna Murari Azad, Assistant Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 86730-86731/2025

DATE OF HEARING: 18/03/2025
DATE OF DECISION: 17/09/2025

PER: C J MATHEW

Though the proceedings culminating in order¹ of Commissioner of Customs, Air Cargo Complex (ACC), Mumbai, confirming demand of differential duty of ₹ 2,44,13,048 under section 28 of Customs Act, 1962, along with applicable interest thereon, confiscation of imported goods valued at ₹ under section 111 of Customs Act, 1962 though permitted to be redeemed under section 125 of Customs Act, 1962 on payment of fine of ₹ 3,25,00,000 and imposition of penalties on M/s Marvel Silver under section 114A and section 114AA of Customs Act, 1962 and on Shri Nilesh Pushparaj Jain under section 112 and section 114AA of Customs Act, 1962, in relation to ten consignments for the period from February 2018 to July 2018 is impugned here, the genesis was in a single consignment sought to be cleared against bill of entry no. 7500874/04.08.2018. It would appear that, as in the ten

¹ [order-in-original no. MUM-CUS-MMT-02-2023-24-ADJN-APSC dated 30th May 2023]

consignments covered in the present appeal, the single import sought benefit available to goods sourced from Thailand, under the ASEAN India Free Trade Agreement (AIFTA), enabled by notification no. 46/2011-Cus dated 1st June 2011 (at serial no. 966(1)) as amended by notification no. 96/2017-Cus dated 29th December 2017 but, owing to discrepancies between contents, as declared, and certification issued by competent authority to facilitate availment of exemption, the claim thereof was withdrawn by discharging liability of ₹ 37,99,601 under protest.

2. When proceedings were initiated against the goods and appellants herein *vide* show cause notice dated 30th December 2020, the template of the discrepancy in the single live consignment was placed on all eleven, including the ten earlier imports between February 2018 and July 2018, to conclude that certification entailing eligibility for exemption was inadequate and, hence, justified discard of submissions made on behalf of the noticees. In appeal thereupon, this aspect was particularly noted and, as recorded by the adjudicating authority, the order² of the Tribunal directed

‘19.3 From the above paras, it is clear that the reply of M/s Marvel Silver (dated 24.05.2021) submitted before CESTAT is different from the submission made before the department. Further, it is to submit that the above case has been sent back by the Hon'ble CESTAT on the ground that "the order has been

² [2022-TIOL-1189-CESTAT-MUM]

passed without taking into consideration the written submissions made by appellant 1 (i.e. M/s Marvel Silver) and needs to be sent back to the adjudicating authority for passing a speaking order taking into account all the submissions made."

The impugned order, notwithstanding the direction *supra*, chose to record a finding that the submission placed before the Tribunal was not the one that was before the original authority; in our opinion, a needless foray that has no place in *de novo* adjudication without challenge to the remand before the appropriate constitutional court. In any case, in the light of the remand order, it needs examination if the fresh adjudication has conformed to the terms of remand and the issue in dispute is now constrained thereby. The factual framework is now restricted to entitlement of exemption to the ten prior consignments.

3. Be that as it may, no less mystifying is the scale and range of scrutiny in the impugned order thus

‘20.2 From above, I find that M/s Marvel Silver has admitted inadmissibility of duty exemption benefit due to incomplete details in COO and voluntarily paid the duty for the Bill of Entry No. 7500874 dated 04.08.2018 (as mentioned in 3rd para of his letter dated 04.09.2018). The Show Cause Notice has specified details of similar imports under 10 different bills of entry as per details given in Annexure A of the Show Cause Notice. Further, while determining the issue of admissibility of exemption benefit, I find that the facts are identical and uniform to all Bills of Entry. The law is well settled that a person seeking to claim benefit of exemption from

duty under a specified notification is obligated to establish compliance with the prescribed conditions. As the exemption is not unconditional, compliance with the prescribed conditions would be the sine qua non for claiming the benefits. The defence has not questioned the condition of submitting COO. It is trite that the claimant has to submit a valid & complete COO certificate covering all required details of import goods as per the "Operational Certification Procedures" laid down in Annexure III of the said Rules. An incomplete COO would fail to sustain the claim for exemption benefit. I find that the defence is completely silent on the charges of discrepancies in the description of goods declared in the relevant bills of entry vis a vis the COO submitted by the importer. In other words, M/s Marvel Silver has not disputed the factum of non-coverage of goods declared on specified Bills of Entry in the COO presented by them. In fact, it is noted and recorded that the importer has not made any efforts in justifying the duty exemption benefit. I note that the case law quoted by the noticees deal with facts that are not in pari materia with the instant proceedings.

In the given facts & circumstances, I find that M/s Marvel Silver failed to provide valid & complete COOs for the goods imported under the specified bills of entry. As the importer failed to comply with the condition prescribed in Notification No. 46/2011-Customs dated 01.06.2011, I hold that they were not entitled to the benefit of exemption from payment of duty in terms of the said notification.'

after asserting that

'20.1 I have considered at length the material available on records including all defence submissions. Further, vide email dated 24.05.2023 Advocate Shri Sujay Kantawala (on behalf

of the Importer) stated that the entire Appeal paper book alongwith the annexures running into 280 pages may be considered while deciding the case. The dispute is related to determination of benefit of exemption from payment of Customs duty in terms of Notification No. 46/2011-Customs dated 01.06.2011 [Sr. No 966] issued in pursuance of the Asean India Free Trade Agreement (AIFTA).'

This is a cursory and peremptory disposal, so much the antithesis of the direction of the Tribunal even in enumerating the submissions let alone critically examining those, which would suffice to set aside the impugned order. Nonetheless, we now turn to the submissions made on behalf of both sides.

4. According to Learned Counsel for appellant, the impugned order has grievously erred in expanding the scope of *de novo* adjudication by fastening a fresh detriment that was not in the order examined by the Tribunal. He drew attention to the confiscation of the imported goods under section 111(o) of Customs Act, 1962 and, notwithstanding the non-availability of the goods, the entailing of redemption fine under section 125 of Customs Act, 1962. He relied upon the decision of the Hon'ble High Court of Bombay in *Commissioner of Customs (Import), Mumbai v. Finesse Creations* [2009 (248) ELT 112 (Bom)] affirmed by the Hon'ble Supreme Court. Learned Counsel further submitted that the sourcing of the impugned goods from Thailand is the factual bedrock of the impugned order as also the furnishing of the prescribed

‘certificate of origin’ and he contended that, absent a finding on the authenticity of the said documentation, denial of eligibility for exemption is not sanctioned either by the impugned notification or process of law. He further submitted that the error admitted, insofar as the live consignment is concerned, has not been replicated for the earlier imports.

5. Reliance was placed on the decision of the Tribunal in *Alfakrina Exports v. Commissioner of Customs, Mumbai* [2023 (9) TMI 86 – CESTAT Ahmedabad], in *Lilaram Gobindram v. Commissioner of Customs (Imports), Nhava Sheva* [2015 (9) TMI 928 – CESTAT Mumbai] and in *Devendran Coal International Pvt Ltd v. Commissioner of Customs (Imports), Chennai* [2024 (10) TMI 1139 – CESTAT Chennai].

6. According to Learned Authorized Representative, the facts relating to the live consignment bear out the irregularity in the earlier imports, too. He drew attention to the statement of the individual-appellant, as well as from employee of the customs broker, recorded during the course of investigation. He asserted, too, that in an era of self-assessment, it is the responsibility of the importer to substantiate claim for benefit of exemption notification.

7. It is settled law that an appellant cannot be placed in a more grievous situation merely from having sought appellate remedy

permitted by law. The first proceedings culminated in detriments that did not go beyond determining liability to confiscation and with no consequence of redemption on payment of fine. The foray by the adjudicating authority in that direction is in breach of jurisdiction in *de novo* proceedings. Moreover, the adjudicating authority appears to have lost sight of that which precluded such action earlier, and probably inspired by the decision in *re Creative Finesse*, as well as forestalled appeal at the instance of the competent authority for review of adjudication orders. In no uncertain terms, we hold the fastening of redemption fine under section 125 of Customs Act, 1962 to be not legal.

8. The exemption that was availed factors the *situs* of production of the goods, viz., one of countries that form the ASEAN economic bloc. The goods were cleared at the relevant times on submission of certification to that effect; denial thereof, and recovery by recourse to section 28 of Customs Act, 1962, would have to be founded on proposition of lack of validation of such claim. There is no finding that the impugned goods did not originate in Thailand. There is no allegation, let alone ascertainment, that the ‘certificate of origin’ corresponding to each of the impugned consignments is not authentic or not issued by the competent authority. There is no reasoning offered for concluding that the description of the impugned goods did not conform to the contents of the certificate or packing lists.

9. All that the adjudicating authority relied upon was the discrepancy insofar as the live consignment was concerned and the alacrity with which the claim for exemption was withdrawn, albeit ‘under protest’, in the face of impediment to clearance as such. The denial of exemption for earlier consignments on such fragile assumption of *modus operandi* does not sustain in the absence of reference, as prescribed in relevant rules, for questioning validity of the accompanying certificate and, in the absence of such ascertainment, to conclude that origin was not of Thailand. The factual matrix does not hold with the conclusions in the impugned order.

10. Consequently, the impugned order is set aside to allow the appeals.

(Order pronounced in the open court on 17/09/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)