CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Customs Appeal No. 87024 OF 2025

(Arising out of Order-in-Original No. 336/2024-25/CC/NS-I/CAC/JNCH dated 11.03.2025 passed by the Commissioner of Customs , NS-I, Nhava Sheva)

Lok Chemicals Pvt Ltd …..**Appellant**
741, Solitaire Corporate Park,
Chakala, Andheri Ghatkopar Link Road,
Andheri (East), Mumbai

Vs.

Commissioner of Customs, NS-I …..**Respondent**
JNPT Custom House, Nhava Sheva

APPEARANCE:

Shri Vipin K Jain, a/w Shri Vishal Agarwal & Shri Sunil Navandhar, Advocates for the appellant
Shri Ram Kumar, AC(AR) for the respondent

CORAM: **Hon'ble Mr C J Mathew, Member (Technical)**
Hon'ble Mr Ajay Sharma, Member (Judicial)

FINAL ORDER No: 85103/2026

DATE OF HEARING : 19.01.2026
DATE OF DECISION : 19.01.2026

PER: C J MATHEW

This appeal of M/s Lok Chemicals Pvt Ltd, has been filed against order[1] of Commissioner of Customs , NS-I, Nhava Sheva fastening duty liability of ₹ 3,05,89,642/- under section 28(4) of Customs Act, 1962, along with applicable interest under section 28AA of Customs Act, 1962, while imposing penalty of like amount under section 114A of Customs Act, 1962 and ₹32,00,00,000/- under section 114AA of Customs Act, 1962 even as goods, having been held liable for confiscation under Section 111(o) and 111(q) of Customs Act, 1962, were entailed with fine of ₹ 3,20,00,000/- in lieu of confiscation under section 125 of Customs Act, 1962.

2. The dispute stems from alleged ineligibility to exemption, available in notification no. 46/2011-Cus dated 1st June 2011 issued in pursuance of the ASEAN India Free Trade Agreement (AIFTA) Appellant, for 32 consignments of 'antimony trioxide' imported from Thailand and covered by prescribed certification of origin from that country. It would appear that the supply of 'antimony trioxide', and, especially by M/s Thai Unipet Industries Co Ltd and one other, who, too were exporters of the impugned goods, had been under investigation for documentary discrepancy. It appears from the records that several 'certificates of origin', drawn as samples from different importers, had been referred back to Government of Kingdom of Thailand for verification and one of the 32 was reported as having been revoked on

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[1] order-in-original no. 336/2024-25/CC/NS-I/CAC/JNCH dated 11th March 2025

application of the exporter there. Based on the said revocation, the certification pertaining to the other consignments were held as invalid with the aforesaid consequences.

3. Learned Counsel for appellant submitted that the certification of origin of the goods was in compliance with the scheme in the Agreement and the Rules of Origin for the ASEAN-India Free Trade Agreement inasmuch as ‘antimony oxide’ used in manufacture of the impugned goods originated in Myanmar – another signatory – and covered by cumulative rule of origin in rule 5 therein. It is further contended that the revocation of ‘certificate of origin’, even in circumstances other than this misunderstanding, could not be allowed to jeopardise entitlement of other imports without similar ‘retroactive check’ of each. It was also contended that these imports predate the more flexible Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 for operationalising section 28DA of Customs Act, 1962 after its incorporation[2]. Furthermore, he averred that, with such sweeping empowerment enabling determination by the designated officer against all identical goods emanating from the same supplier, such consequences may also be rescinded by appellate authority on valid ascertainment of determination not being legal and proper. Our attention was also drawn to the decision of the Tribunal in

[2] [Finance Act, 2020 (12 of 2020)] effective from 27th March 2020]

Marvel Silver & Nilesh Pushparaj Jain v. Commissioner of Customs, Air Cargo Complex, Mumbai [2025 (12) TMI 757- CESTAT MUMBAI].

4. Learned Authorised Representative for respondent submitted that the movement of 'antimony oxide' from Myanmar to Thailand was covered by a form other than Form AI prescribed in the relevant rules of origin. He further submitted that, in terms of section 28DA of Customs Act, 1962, the proper officer was competent to ascertain the facts pertaining to the import for determining the origin of the goods.

5. There is no doubt that one certificate of origin had been revoked, but, from the correspondence, there are no appearances of either lack of authenticity or non-conformity with leeway afforded by rule 2(b) of the Rules of Origin for the ASEAN-India Free Trade Agreement (AIFTA). It appears that, upon inquiry being instituted, a request was made for revocation. Indeed, the said Rules of Origin as well as the Operational Certification Procedures have no provision for revocation by any government authority. To read such revocation as tantamount to a report of verification contemplated in Article 16 of the Operational Certification Procedures is contrary to Agreement that has force of law and is egregious exercise of extra-legal authority.

6. Furthermore, by doing so, the adjudicating authority, by not taking recourse to Article 23 as logical course of action, appeared to

have concerned itself only with denial of benefit to the importer which is not consistent with responsible and responsive administration.

7. By venturing upon the extraordinary sweep of rule 7 of Customs (Administration of Rules of Origin under Trade Agreement) Rules, 2020 but, instead of following due process enshrined therein, proceeded to recover duty foregone, the saddling of consequences is tainted by breach of proper notice prescribed in section 28DA of Customs Act, 1962 even if the report on the single other 'certificate of origin', *i.e.* certificate of origin no. AI2019-0037008 dated 13th August 2019 corresponding to bill of entry no. 4567038 dated 20th August 2019, was considered as unfavourable.

8. This is particularly so as the movement of 'antimony oxide' from Myanmar was against D Form and in accordance with the bilateral agreement between Thailand and that country. That such transfer did not occur against A Form does not alter the principle of cumulative origin.

9. Nevertheless, we see that, other than the impugned certificate of origin, the imports have been effected against certificate of origin that had been issued by the competent authorities that were not subjected to the scrutiny prescribed in the respective rules. It would be inappropriate to deprive the benefit of exemption notification to imports where the connected certificate of origin had not been scrutinised and without

following the process of placing the importer on notice, not for recovery of duty, for invalidation of eligibility.

10. In *re Marvel Silver & Nilesh Pushparaj Jain*, it was held that –

> *"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."*

11. For the above reasons, we find that the detriment fastened on the appellant cannot sustain. Accordingly, the impugned order is set aside and appeal is allowed.

(Operative part in pronounced in open court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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