

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH

Court No. IV

CUSTOMS APPEAL NO. 50726/2021

[Arising out of Order-in-Appeal No. CC(A) CUS/D-I/IMPORT/NCH/ 1519/2020-21 dated 09.03.2021 passed by the Commissioner of Customs, (Appeals), New Customs House, New Delhi.]

M J GOLD PVT LTD

Shop No.62, Pinki Complex
Chatta Ali Raza, Neel Ki Gali
Meerut, Uttar Pradesh 250002.

APPELLANT

Vs.

**PRINCIPAL COMMISSIONER OF
CUSTOMS (IMPORT),**

New Customs House, Near IGI Airport
New Delhi 110037.

RESPONDENT

Appearance:

Present for the Appellant : Ms Reena Rawat, Advocate

Present for the Respondent: Shri Gopi Raman, Authorised Representative

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER(JUDICIAL)

Date of Hearing : 08/09/2022

Date of Decision : 03-10-2022

FINAL ORDER No. 50954 /2022

PER DR. RACHNA GUPTA

The appellant herein is an importer who filed Bill of Entry No. 3060812 dated 31.08.2017 for clearance of goods declared as "22 K assorted jewellery (481 pieces). The said Bill of entry was filed by the appellant Customs Broker M/s. Jeena &

Company. The goods were otherwise imported under airway Bill No. 16051757930 dated 25.08.2017 and invoice No. 003/17 dated 23.08.2017 issued by M/s. P T Kinara Gilang Semesta Jl. Lebak Jaya Tengah No. 24, Surabaya 60134, Indonesia. The goods were declared to be of Indonesia origin and accordingly, the appellants importer claimed the benefit of nil rate of Basic Customs Duty (BCD) under S. No. 966 (I) of Notification No. 046/2011-Cus dated 01.06.2011 against Certificate of Origin No. 0086069/SBY/2017 dated 23.08.2017.

During verification of the aforesaid Bill of Entry, a questionnaire was issued to the appellant seeking certain information about verification of origin of the goods in question. The reply was submitted vide the appellants letter dated 26.10.2017. The department formed an opinion that the appellant had given the incomplete information about the origin of the gold from which the 481 pieces of assorted jewellery have been crafted. Accordingly, the goods were opined to not to be eligible for the benefit of aforesaid notification No. 46/2011 Cus dated 01.06.2011. Vide Order-in-Original No. 280/2017 dated 16.11.2017, re-assessment of the impugned Bill of entry dated 31.08.2017 was ordered denying the benefit of the said notification dated 01.06.2011. Being aggrieved the appeal was preferred which has been rejected vide the Order-in -Appeal bearing No. 339/2018 dated 09.03.202. Still being aggrieved, the appellant has filed the impugned appeal before this Tribunal.

2. I have heard Ms Reena Rawat, learned Advocate appearing for the appellant and Shri Gopi Raman, learned Authorised Representative for the department.

3. It is submitted on behalf of the appellant that the goods of the impugned Bill of Entry are in the form of 22 K gold jewellery as was purchased by the appellants from Indonesia. It is impressed upon that provisional office in Surabaya Indonesia

had issued the Country of Origin Certificate as is required in terms of Rule 13 of Notification No. 189/2009 dated 31.12.2009 which stand amended vide Notification No. 046/2011 dated 01.06.2011 to such an extent as is mentioned in the amended Notification. It is submitted that the said certificate has wrongly been doubted. The goods were 100% examined by the Departmental authorities, no difference in quantity or quality was noticed by the department. The denial on the sole ground that incomplete information to the questionnaire has been provided, is alleged to absolutely be wrong ground to deny the benefit of exemption Notification. It is impressed upon that only such information which could not be available with the appellant despite his due diligence has not been provided. The said information was otherwise not relevant for verification of the authenticity of Country of origin Certificate. Same has wrongly been made the basis of denial of duty exemption benefit to the appellant which was otherwise available in terms of amended Notification No. 046/2011 dated 01.06.2011. With these submissions, the order of Commissioner (Appeals) is prayed to be set aside and the present appeal is prayed to be allowed.

4. While rebutting the submissions, it is submitted by learned Departmental Representative that mere presentation of Certificate of Country of Origin or the facts that goods were direct consignment is not enough for claiming the benefit of impugned Notification. Since the Assessing Officer was not satisfied with respect to the authenticity of Certificate of Country of origin that he issued a questionnaire to the appellant. As apparent from questionnaire which got recorded in the Order-in-Original, it is apparent that for most of the questions, the appellant had failed to provide the information as was required by the Assessing Officer. Hence, there seems no infirmity in the Order under challenge. The appeal is accordingly, prayed to be dismissed.

5. Having heard the rival contentions, it is observed that vide the order under challenge the appellant is denied the duty exemption benefit for importing gold jewellery from Indonesia, despite Indonesia being the country in Appendix of the Notification No. 046/2011 dated 01.06.2011 which exempts the imports from Indonesia to such amount of duty as is mentioned in 4th column of said notification. Foremost the Notification is perused. It is observed that the Notification exempts the goods of the description as is specified in Column 3 of the Table appended thereon and falling under Chapter sub heading or tariff item of the first schedule to the Customs Tariff Act, 1985 as is specified in the corresponding entry in column 2 of the said table, from so much of the duty of customs leviable thereon as is in excess of the amount collected at the rate specified in column 4 of the said table, when the goods imported into the Republic of India when the goods from a Country listed in Appendix I. As already observed above, Indonesia is one of the country from Appendix I.

6. Further perusal of the Notification shows that such benefit is available to the importer if the importer proves to the satisfaction of the Deputy Commissioner or Assistant Commissioner of Customs, or as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin from the countries as mentioned in Appendix I or Appendix II, as the case may be], in accordance with provisions of the Customs Tariff Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, published in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 189/2009-Customs (NT), dated the 31st December 2009.

7. I further observe that this Notification is an amendment of earlier Notification No. No. 189/2009-Customs (NT), dated the 31st December 2009. Rule 13 thereof reads as follows:

"13. Certificate of Origin.- Any claim that a product shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin as per the specimen in the Attachment to the Operational Certification Procedures issued by a Government authority designated by the exporting party and notified to the other parties in accordance with the Operational Certification Procedures as set out in Annexure III annexed to these rules."

Perusal of the said Annexure III condition No. 7 therein is with respect to the issuance of said certificate of origin. It reads as follows:-

"7. ISSUANCE OF AIFTA CERTIFICATE OF ORIGIN

(a) The AIFTA Certificate of Origin shall be in International Organization for Standardisation (ISO) A4 size, and white paper in conformity with the specimen as in the Attachment to these Operational Certification Procedures. It shall be made in English. The AIFTA Certificate of Origin shall comprise one (1) original and three (3) copies. Each AIFTA Certificate of Origin shall bear a reference number as given separately by each place or office of issuance.

(b) The original copy shall be forwarded, together with the triplicate, by the exporter to the importer. Only the original copy will be submitted by the importer to the Customs Authority at the port or place of importation. The duplicate shall be retained by the Issuing Authority in the exporting party. The triplicate shall be retained by the importer. The quadruplicate shall be retained by the exporter.

(c) In cases where an AIFTA Certificate of Origin is not accepted by the Customs Authority of the importing party, such AIFTA Certificate of Origin shall be marked accordingly in box 4 and the original AIFTA Certificate of Origin shall be returned to the Issuing Authority within a reasonable period but not to exceed two months. The Issuing Authority shall be duly notified of the grounds for the denial of preferential tariff treatment.

(d) In cases where an AIFTA Certificate of Origin is not accepted, as stated in paragraph (c), the Issuing Authority shall provide detailed, exhaustive clarification addressing the grounds for the denial of preferential tariff treatment raised by the importing party. The Customs

Authority of the importing party shall accept the AIFTA Certificate of Origin and grant the preferential tariff treatment if the clarification is found satisfactory."

8. Apparently and admittedly, the Customs Authority while verifying the origin of goods had issued a questionnaire and denied the benefit on the ground that the complete questionnaire was not answered by the appellant creating a doubt about the Country of origin Certificate. The perusal of the condition No. 7 (c), as above makes it clear that in case of such doubt about the authenticity of Country of origin Certificate i.e. in case where the certificate of origin is not acceptable to the Customs Authorities of the importing country, then the certificate has to be returned back to the issuing authority that too within a reasonable period duly informing the grounds for the denial of preferential tariff treatment. Admittedly and apparently, the said procedure has not been followed by the Department. Though all the questions were not answered by the appellant but perusal of the questionnaire shows that the availability of information as was required under these questions was not feasible with the appellant. More so, appellant had handed over the original copy of Country of origin Certificate. The meaning of 'not answered the questionnaire' becomes utmost irrelevant in the light of Certificate of origin.

9. No inquiry as mandated by the Notification was conducted with respect to Country of origin Certificate which otherwise reveal that a Certificate has been issued by the Competent Authority of one of ASEAN country as mentioned under Appendix I of the Notification No. 46/2011 dated 01.06.2011. In the given circumstances, it was highly unacceptable that the Certificate should not have been accepted. Once all documents as required under Notification No. 046/2011-Cus dated 01.06.2011 have been provided by the importer and their authenticity has not been challenged by the verifying Customs

officers nor got verified from the issuing authority, there is no reason for the said Customs officer to hold that said certificate is not genuine. Demand of duty based upon reassessment ordered is actually not sustainable. I draw my support from the decision of CESTAT Hyderabad Bench in the case of **Commissioner of Customs, Hyderabad vs Riddi Siddhi Bullions Ltd.** reported as **[2017 (355) ELT 585 (Tri-Hyd)]** wherein it was held that the Adjudicating Authority cannot go beyond the provisions of Notifications that too to come to a conclusion based upon the assumptions and presumptions that the gold mined by the exporting country could not have been used by the supplier / manufacturer for producing the imported gold jewellery. It was held that the Notification provides for detailed verification process in case of reasonable doubt, it is not the case of the department that information was inconsistent with the certificate. In the absence thereof, it was held that the Adjudicating Authority could not have gone beyond the provisions of Notification.

10. I finally observe that the impugned Notification is a kind of preferential trade arrangement between States of Association of Southeast Asian Nations (ASEAN) and the Republic of India in order to facilitate free movement of trade. If the exemption sought under the applicable rules is denied on one or the other pretext that too based merely on assumptions and presumptions, it will hamper the free movement of trade between agreeing nations. Same is highly uncalled for and would rather render the entire exemption Notification otiose more so when on the face of the record, the Certificate of Origin is otherwise not disputed. Above all, the substantial benefit as that of exemption from payment of duty shall not be denied merely on procedural lapse.

11. In view of the entire above discussion, the sole ground for denying the benefit of duty exemption despite the valid Country of origin Certificate is not sustainable. The order under challenge is therefore, hereby set aside. Consequent thereto, the appeal stands allowed.

(Pronounced in the open Court on 03-10-2022)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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