

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
PRINCIPAL BENCH, WEST BLOCK NO.2,  
R.K.PURAM, NEW DELHI-110066  
**COURT**

**Appeal No. : C/51773/2022-DB**

[Arising out of the OIO - DLI-CUS-PREV-SKR-PR-COMMR-01-2022-23, dated -26/05/2022, passed by PRINCIPAL COMMISSIONER, CUSTOMS (PREVENTIVE). - NEW DELHI(PREV)]

**M/s Zubair Hashmi Trading**

**...Appellant**

2207, Shop No. 9, Balaji Market,  
Tilak Bazar, Delhi 110 066.

**Versus**

**Principal Commissioner  
of Customs (Preventive)**

**...Respondent**

New Custom House,  
New Delhi – 110 037

**APPEARANCE:**

Shri Kishori Lal, Advocate, Ms. Vandana Singh, Advocate and Shri B.K. Singh, Advocate for the appellant.  
Ms. Jaya Kumari, Authorized Representative for the Department

**CORAM:**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**

**HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER No. 50945/2022**

**DATE OF HEARING : 26.09.2022**

**DATE OF DECISION: 30.09.2022**

**Per P. Venkata Subba Rao**

M/s Zubair Hashmi Trading<sup>1</sup> filed this appeal to assail Order in Original dated 26.05.2022 passed by the Principal Commissioner of Customs (Preventive) New Delhi deciding the Show Cause Notice dated 18.04.2022 issued to the appellant whereby the benefit of the exemption Notification No. 99/2011-Cus dated 9.11.2011 was denied to the goods imported by the appellant, differential duty of Rs.

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<sup>1</sup> the appellant

95,55,958 was demanded under section 28(4) of the Customs Act along with interest under section 28AA. Further, the imported goods were confiscated under sections 111(m), 111(o) and 111(q) but were allowed to be redeemed on payment of fine of Rs. 3,76,000 under section 125 and penalties were imposed under sections 114A and 114AA.

2. The undisputed facts of the case are that the appellant imported Colchicum (Saanjan) Grade 3" and filed Bill of Entry No.7821136 dated 11.03.2022 at Inland Container Depot<sup>2</sup>, Tughlakabad to clear the goods claiming the benefit of Notification No. 99/2011-Cus which exempted the goods originating in Afghanistan from the whole of duty of Customs. The goods were detained, documents were called for, and statements were recorded by the officers of the Commissioner of Customs (Preventive) and a Show Cause Notice was issued to the appellant which culminated in the impugned order.

3. The undisputed legal position is that goods imported from Afghanistan are exempted from the whole of duty by Notification No.99/2011-Customs dated 9.11.2011 and that all goods originating in or exported from Pakistan are classifiable under Customs Tariff Heading 98060000 and are chargeable to customs duty @ 200% in view of the Notification No.5/2019 dated 16.02.2019 issued under Section 8A of the Customs Tariff Act, 1975. It must be noted that the Notification No. 99/2011 dated 9.11.2011 exempting the goods imported from Afghanistan fully from duty is issued under section 25(1) of the Customs Act, 1962 which empowers the Central

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<sup>2</sup> ICD

Government to grant exemptions. Notification No.5/2018-Customs dated 16<sup>th</sup> February 2019 covering the goods imported from Pakistan was issued under Section 8A of the Customs Tariff Act, 1975 which gives the Government emergency power to increase import duties. These sections and the notifications issued under them read as follows:

**Section 25 of the Customs Act**

**Section 25. Power to grant exemption from duty. -**

(1) If the **Central Government** is satisfied that it is necessary in the public interest so to do, it **may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.**

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**Notification No. 99/2011-Cus dated 9.11.2011**

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notifications of the Government of India, in the Ministry of Finance (Department of Revenue), No. 51/2008-Customs, dated the 21st April, 2008 [G.S.R. 297(E), dated the 21st April, 2008] and No. 85/2011-Customs dated 6th September, 2011 [G.S.R. 662(E), dated the 6th September, 2011], except as respects things done or omitted to be done before such supersession, **the Central Government, being satisfied that it is necessary in public interest so to do, hereby exempts all goods other than those mentioned in the ANNEXURE to this notification**, from the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India from a country listed in APPENDIX to this notification.

Provided that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods, in respect of which the benefit of this exemption is claimed, are of the origin of the country listed in the APPENDIX in accordance with the Rules of Determination of Origin of Goods under the Agreement on South Asian Free Trade Area (SAFTA), 2006, published in the notification of the Government of India in the Ministry of Finance (Department Revenue) No. 75/2006-Customs, (N.T.), dated the 30th June, 2006.

*Annexure*

S. No.	HS Code	Description
(1)	(2)	(3)
1	2203 to 2206	All goods
2	2207 10	All goods

3	2208	All goods
4	Chapter 24	All goods

APPENDIX

S. No.	Country
(1)	(2)
1.	People’s Republic of Bangladesh
2.	Kingdom of Bhutan
3.	Republic of Maldives
4.	Nepal
5.	Islamic Republic of Afghanistan

Section 8A of the Customs Tariff Act, 1975

**SECTION 8A. Emergency power of Central Government to increase import duties.** — (1) Where in respect of any article included in the First Schedule, **the Central Government is satisfied that the import duty leviable thereon under section 12 of the Customs Act, 1962 (52 of 1962) should be increased** and that circumstances exist which render it necessary to take immediate action, **it may, by notification in the Official Gazette, direct an amendment of that Schedule to be made so as to provide for an increase in the import duty leviable on such article to such extent as it thinks necessary :**

Provided that the Central Government shall not issue any notification under this subsection for substituting the rate of import duty in respect of any article as specified by an earlier notification issued under this sub-section by that Government before such earlier notification has been approved with or without modifications under sub-section (2).

(2) The provisions of sub-sections (3) and (4) of section 7 shall apply to any notification issued under sub-section (1) as they apply in relation to any notification increasing duty issued under sub-section (2) of section 7.

Notification No. 05/2019-Customs dated 16.02.2019

WHEREAS, the Central Government is satisfied that the import duty leviable on **all goods originating in or exported from the Islamic Republic of Pakistan**, falling under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), should be increased and that circumstances exist which render it necessary to take immediate action.

NOW, therefore, in exercise of the powers conferred by sub-section (1) of section 8A of the Customs Tariff Act, the Central Government, hereby directs that the First Schedule to the Customs Tariff Act, shall be amended in the following manner, namely :-

In the First Schedule to the Customs Tariff Act, in Section XXI, in Chapter 98, after tariff item 9805 90 00 and the entries relating thereto, the following tariff item and entries shall be inserted, namely :-

(1)	(2)	(3)	(4)	(5)
"9806 00 00	All goods originating in or exported from the Islamic Republic of Pakistan	-	200%	-"

4. Usually, goods are classified under various headings of the Customs Tariff based on the nature of goods. However, there are some exceptions: for instance, all goods imported as baggage or goods imported under Project Imports Regulations are classified under separate headings regardless of the nature of the goods. Notification dated 16.02.2019 issued under Section 8A of the Customs Tariff Act, 1975 classified all goods exported from or originating in Pakistan under a separate Customs Tariff heading 98060000 and it has also increased the Tariff rate of duty to 200%. The charging section for Customs duty is Section 12 of the Customs Act which levies duties at the rates specified in the schedules to the Customs Tariff Act, 1975. If the goods either originate in or are exported from Pakistan, they will be classifiable under a separate tariff heading 98060000 and will be chargeable to tariff rate of 200% duty and if not, they will be classified as per the tariff and will be charged to applicable duties read with any exemptions.

5. The question which we have to answer in this appeal is as follows:

*"Given the factual matrix of this case, were the imported goods of Afghanistan origin imported from Afghanistan to India transiting through Pakistan as asserted by the appellant and hence chargeable to NIL rate of duty OR were they exported from Pakistan and hence chargeable to 200% duty as decided in the impugned order?"*

6. According to the appellant, it imported the goods from Herat in Afghanistan to Inland Container Depot, Tughlakabad, Delhi. Since Afghanistan is a land-locked country, they were transported by road upto Chaman in Afghanistan-Pakistan border and then were again

transported by another truck from Chaman to Karachi port from where they were stuffed in a container under Customs supervision and shipped to ICD, Tughlakabad via Nhava Sheva port. Therefore, the goods were of Afghanistan origin and hence were fully exempted by Notification No. 99/2011. On the other hand, according to the Revenue, the goods were exported from Karachi, Pakistan and hence were chargeable to duty @ 200%.

7. Learned counsel for the appellant made the following submissions:

- (a) The goods were exported from Herat in Afghanistan. Invoice No. 001 dated 16/02/2022 was issued by the exporter M/s Ozair Zubair Hashmi Ltd., Herat Afghanistan in the name of the importer and indicating the country of origin as Afghanistan and this invoice was endorsed by the Afghanistan Chamber of Commerce and Industries.
- (b) The Country of Origin certificate dated 16.02.2022 issued by the Afghanistan Chamber of Commerce and Industries was produced before the original authority.
- (c) A phytosanitary certificate was also issued on the same date by the Plant Protection and Quarantine Department of the Ministry of Agriculture, Irrigation and Livestock.
- (d) A Transit Certificate was also issued by the Ministry of Industry and Commerce of the Government of Afghanistan on the same date indicating the names of the importer and the exporter and further certifying that the goods were of Afghanistan origin.

- (e) The Transport Note and the Trip Duration Report (TDR) both dated 21.02.2022 were issued by the transporter M/s. Bolan Logistics Pvt Ltd. and verified by the Customs Inspector of Transit Trade at Chaman border. This Transport Note indicates IGM No.321 dated 21.02.2022 and GD No. 326 dated 21.02.2022. The goods, in 505 bags weighing 2520 kg were transported in Vehicle TKL 426 which was sealed by TT Chaman Seal No. 217876 in the presence of the Customs officer.
- (f) The goods have transited Pakistan under the above Customs seal of the Pakistan Customs upto Karachi Port.
- (g) The Bill of Lading was issued by M/s Indus Logistics SDN, Malaysia as agents for the carrier M/s. Blue world shipping agencies Pvt Ltd. The goods were carried in Container No.INKU6707857 and sealed with Seal No. 00596 and sailed to Nhava Sheva in vessel MOL Growth 217. The Bill of Lading mentions the Port of Loading as Karachi for the reason that the goods were stuffed in a container and loaded in that port. The shipping line had not received goods before Karachi as they were transported in a custom sealed bonded truck from the border to Karachi port by a different transporter. The Bill of Lading mentions Nhava Sheva as the Port of Discharge and ICD Tughlakabad as place of delivery.
- (h) Thus, the transportation from Herat upto the Chaman border was done by a different organisation and transport from Chaman border to Karachi was under Custom bonded truck by

Bolan Logistics and transport from Karachi Port to Nhava Sheva by sea was by Blue World Shipping Agencies and as per the standard practice, all containers from Nhava Sheva destined to ICD Tughlakabad are transported by Rail by the public sector undertaking Container Corporation of India (CONCOR).

- (i) Since the goods were of Afghanistan origin the appellant is entitled to full exemption from the duty under the exemption notification.
- (j) The goods only transited through Pakistan and have not been exported from Pakistan and therefore, duty @200% cannot be charged.
- (k) The Principal Commissioner has denied the benefit of the notification for the reason that the Bill of Lading mentioned Port of Loading as Karachi- Pakistan which is not correct because the Bill of Lading was issued on behalf of the Carrier who shipped the goods in a container from Karachi to Nhava Sheva and the goods were carried by a different operator from Afghanistan up to Karachi.
- (l) The Principal Commissioner has also observed that the Transport Note and the Trip Duration Report (TDR) did not have the seal and signature of the Customs officer at the Port of Destination. Both these are meant for transiting cargo through Pakistan from Afghan-Pakistan border at Chaman to Karachi. The Goods Declaration GD-1 (Transshipment Permit) filed before the Pakistan Customs covers the land transport



from Port of Shipment (Kandahar) to Karachi which has a clear examination report of the Customs officers at Pakistan which links the road transport with the transport in container by ship to India.

- (m) The Principal Commissioner also observed that Transit Certificate dated 16.02.2022 does not have any seal or signature of the Pakistan Customs Authority. The reason is that it is a document issued by Ministry of Commerce of Afghanistan and is not a document of Pakistan Customs. However, on the insistence of Customs, they have got a copy of the same signed and stamped by the Superintendent, Pakistan Customs. Both copies were presented before us.
- (n) The Principal Commissioner also observed that the column Place of Receipt was left blank in the Bill of Lading. The reason for this was that the goods were received by the Shipping Line at Karachi Port itself and there was no separate place of receipt. The goods could not have been delivered anywhere else because they were moved under Customs bond of Pakistan Customs from the border up to Karachi. At Karachi port, they were stuffed and sealed in a container and shipped under Customs supervision and examination.

8. Learned authorised representative for the respondent Revenue reiterated the findings of the impugned order and in particular, she submitted as follows:

- (a) The Commercial Invoice, Country of Origin Certificate and Transit Certificate were all the same date, viz., 16.02.2022

which makes them very suspicious because these require different testing and examination of goods by different agencies.

- (b) The appellant claimed the benefit of the exemption notification and hence the burden is on it to prove that it is entitled to the benefit which it has not discharged. Reliance was placed on **Commissioner of Customs (Import) vs Dilip Kumar and Co.**<sup>3</sup>.
- (c) Transit Certificate submitted by the appellant was not signed by the Pakistan Customs authorities.
- (d) The Bill of Lading does not mention Herat, Afghanistan but mentions Karachi, Pakistan as the Port of Loading.
- (e) The denial of the benefit of the exemption notification and demand of duty, confiscation of the goods, and imposition of penalty are therefore, correct and proper and call for no interference.

9. We have considered the submissions on both sides and perused the records.

10. In the impugned order, the Principal Commissioner has not accepted the contention of the appellant that the goods were of Afghanistan origin and have been exported from Afghanistan for the reason that the Bill of Lading issued by the Shipping Line clearly indicated that the Port of Loading was Karachi and NOT Herat or any other place in Afghanistan. The Bill of Lading is the document of title. It is issued by the Master of the Vessel or his agent, say,

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<sup>3</sup> **2018(316) ELT 577 (SC)**

the Shipping Agent, acknowledging receipt of the goods. It indicates what has been received (say, container number so and so) and what it is said to contain, how it is sealed (seal number, etc.). If there are any remarks about the condition of the goods (say, leaking or damaged), it is called a 'dirty bill of lading' and otherwise, called a 'clean bill of lading'. The responsibility of the shipping line is to deliver to the consignee the container (or other form of goods) in the form in which it has been received on production of the Bill of Lading. Since the Master of the Vessel cannot wait for the consignee importer, the goods, in the manner in which they have been received are handed over to the Custodian (say, Port Trust or CFS, ICD, etc.) which, in turn, hands over the goods to the importer on production of the Bill of Lading, clearance from the Customs (in the form of Bill of Entry) and a delivery order issued by the Shipping Line (confirming clearance of its dues). Needless to say, the Bill of Lading cannot indicate anything which happened before the goods were received by the Master of the Vessel or his agent (the Shipping Line) because that is not the Master's responsibility. In this case, if the Shipping Line received the goods in Karachi Port to unload in Nhava Sheva and finally deliver in ICD Tughlakabad, the Bill of Lading mentions only these details. Therefore, the Bill of Lading cannot mention Afghanistan as the Port of Loading because that is not where the goods were received by the Shipping Line. We do not find anything in the exemption notification requiring that the same transporter has to transport the goods from the place of export upto the final destination. Therefore, denial of the benefit of the exemption on this basis is not correct.

11. The Principal Commissioner also doubted the documents which were submitted for the reason that the Invoice, Country of Origin Certificate and Transit Certificate were all issued on the same date 16.02.2022 and since these were to be issued by different authorities requiring inspections, he held that it would have been impossible to do so. We find that since the invoice was issued by the exporter itself and not by any authority it would not take much time to issue it. The Country of Origin Certificate was issued by the Afghanistan Chamber of Commerce and Industries cross referencing the invoice and also endorsing the invoice on the same day. The Transit Certificate was issued by the Ministry of Industry and Commerce on the same day. We find no good reason as to why one department of the Government and the Chamber of Commerce and Industries and the exporter itself cannot issue documents on the same date. There is no basis for formation of such a suspicion by the Principal Commissioner on this ground. The benefit of the exemption notification could not have been denied on this basis.

12. The Principal Commissioner further observed that the Transport Note and the Trip Duration Report (which cover the movement of goods in the truck from Afghanistan Pakistan border at Chaman to the Port of Karachi) had no signatures of the Customs officer of the Port of Destination.

13. Learned counsel submitted that the Port of Destination is Nhava Sheva or ICD Tughlakabad and hence they could not have been signed by the officer at Karachi.

14. We disagree. These documents cover only the movement of the goods in a bonded truck from Chaman (Afghanistan-Pakistan border) to Karachi by transporter M/s. Bolan Logistics. Therefore, insofar as these two documents are concerned, the port of destination is Karachi which is then the Port of Loading in the Bill of Lading issued by the Shipping Line. While these documents were signed at Chaman by the Pakistan Customs Officer, they were not signed by the Pakistan Customs Officer at Karachi. The suspicion of the Principal Commissioner is that this is a missing link in establishing that the goods which were imported into India were those covered by these two documents which, in turn, establish their origin in Afghanistan.

15. What is essential, in our considered view, is a continuous chain of documents which would establish that the goods exported under the Commercial Invoice in respect of which the Country of Origin Certificate was issued are the same goods which are imported by the Bill of Entry filed by the appellant in ICD Tughlakabad. The Bill of Entry was filed with respect to the goods imported under the Bill of Lading. Any Bill of Entry indicates the Rotation Number which indicates the Import General Manifest (IGM) filed by the Shipping Line and Line Number which indicates the Bill of Lading issued by the Shipping Line. This is how the Bills of Entry filed by the importers and the IGM filed by the Master of the Vessel are matched by the Customs Electronic Data Interchange system. The link between the Bill of Entry and the Bill of Lading is not in dispute in this case.

16. At the other end, the invoice issued by the exporter, the Country of Origin Certificate issued by the Chamber of Commerce in Afghanistan, the Transit Note and TDR issued by the authorities in Afghanistan and Pakistan are also not in dispute. The dispute arose for the reason that the Bill of Lading covers the movement of goods from Karachi to India while the Transit Note and TDR cover the movement of goods up to Karachi and a link between the two sets of documents is required to establish that both pertain to the same goods which are imported.

17. We find that the Goods Declaration GD-1 (Transshipment Permit) dated 21.02.2022 filed before the Pakistan Customs authorities, a copy of which was produced before us, has a detailed examination report indicating that 505 bags of Colchicum loaded from Afghanistan in Truck No. TKL 426 and sealed with seal no. 217876 on 21.02.2022 were examined and permitted to be shipped in Container No. INKU6707857. It is signed by the Superintendent of Pakistan Customs and Principal Appraiser of Pakistan Customs (presumably at Karachi Port) and it also bears the signature of the Customs Officer at Chaman (Afghanistan- Pakistan border). This document provides sufficient evidence to establish that the goods which were transported from Afghanistan on 16.02.2022 through the border at Chaman on 21.02.2022 in a Customs bonded truck were examined at Karachi port by the Customs Officers on 25.02.2022. The Container Number and other details in this document match with the Bill of Lading issued by the Shipping Line on the basis of which the Bill of Entry was filed by the appellant importer. This document also mentions the Truck No.

and seal under which the goods had moved under Customs bond from Chaman (Afghanistan- Pakistan border) to Karachi Port. In our considered view, the chain of documents is complete to establish that the origin of the goods was Afghanistan and that they were exported from Afghanistan, transited through Pakistan, stuffed in a container in Karachi Port and transhipped in a vessel to India.

18. Two other grounds of suspicion by the Principal Commissioner are that the Transit Certificate was not signed by the Pakistan Customs Officer and the Bill of Lading does not indicate the place of receipt of the goods and only mentions the Port of Loading as Karachi. We note that the Transit Certificate was issued by the Afghanistan authorities and not by Pakistan authorities. While the appellant got a copy of the Transit Certificate endorsed by the Pakistan Customs and produced later, we do not find it at all necessary. Indian Customs cannot insist that the importer has to get a document issued by the Afghanistan Government also signed/ endorsed by the Pakistan Customs and there is no such requirement in the exemption notification.

19. As far as the Bill of Lading is concerned, it is true that it does not indicate the place of receipt of the goods and only mentions the Port of Loading as Karachi. Ideally, the Shipping Line should have mentioned that it received the goods in Karachi port itself but any doubt as to which goods were shipped by the Shipping Line to India and for which the Bill of Lading was issued will be put to rest if the Goods Declaration GD-1 Form filed with the Pakistan Customs is perused as the Examination Report by the officers clearly links the goods which were

transported by road in a truck upto Karachi Port with the goods which were stuffed in the Container and shipped to India.

20. In view of the above, we find that the impugned order cannot be sustained. Accordingly, we allow the appeal and set aside the impugned order with consequential relief to the appellant.

(Order pronounced in Court on 30.09.2022)

**(Justice Dilip Gupta)**  
**President**

**(P. Venkata Subba Rao)**  
**Member(Technical)**