IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11540 OF 2024

Covestro India Private Limited,
Office at SB-801, 8th floor, Empire Tower,
Cloud City Campus, Airoli,
Thane-Belapur Road, Navi Mumbai-400708. Petitioner

versus

1. Assistant Commissioner of Customs
Group II (G), NS-I, JNCS, Nhava Sheva,
Uran, Raigad-400707.
2. Commissioner of Customs (NS-III),
Turant Suvidha Kendra, First Floor,
JNCH, Nhava Sheta, Uran, Raigad-400 707.
3. Union of India through the Secretary,
Deptt. Of Revenue, Ministry of Finance,
North Block, New Delhi-110 001. Respondents

WITH
WRIT PETITION NO.12430 OF 2024

Covestro India Private Limited,
Office at SB-801, 8th floor, Empire Tower,
Cloud City Campus, Airoli,
Thane-Belapur Road, Navi Mumbai-400708. Petitioner

versus

1. Assistant Commissioner of Customs
Group II (G), NS-I, JNCS, Nhava Sheva,
Uran, Raigad-400707.
2. Commissioner of Customs (NS-III),
Turant Suvidha Kendra, First Floor,
JNCH, Nhava Sheta, Uran, Raigad-400 707.
3. Union of India through the Secretary,
Deptt. Of Revenue, Ministry of Finance,
North Block, New Delhi-110 001. Respondents

WITH
WRIT PETITION NO.12470 OF 2024

Covestro India Private Limited,
Office at SB-801, 8th floor, Empire Tower,
Cloud City Campus, Airoli,
Thane-Belapur Road, Navi Mumbai-400708. Petitioner

versus

1. Assistant Commissioner of Customs
Group II (G), NS-I, JNCS, Nhava Sheva,
Uran, Raigad-400707.
2. Commissioner of Customs (NS-III),
Turant Suvidha Kendra, First Floor,
JNCH, Nhava Sheta, Uran, Raigad-400 707.
3. Union of India through the Secretary,
Deptt. Of Revenue, Ministry of Finance,
North Block, New Delhi-110 001. Respondents

WITH
WRIT PETITION NO.12432 OF 2024

Covestro India Private Limited,
Office at SB-801, 8th floor, Empire Tower,
Cloud City Campus, Airoli,
Thane-Belapur Road, Navi Mumbai-400708. Petitioner

versus

1. Assistant Commissioner of Customs
Group II (G), NS-I, JNCS, Nhava Sheva,
Uran, Raigad-400707.
2. Commissioner of Customs (NS-III),
Turant Suvidha Kendra, First Floor,
JNCH, Nhava Sheta, Uran, Raigad-400 707.
3. Union of India through the Secretary,
Deptt. Of Revenue, Ministry of Finance,
North Block, New Delhi-110 001. Respondents

WITH
WRIT PETITION NO.12428 OF 2024

Covestro India Private Limited,
Office at SB-801, 8th floor, Empire Tower,
Cloud City Campus, Airoli,
Thane-Belapur Road, Navi Mumbai-400708. Petitioner

versus

1. Assistant Commissioner of Customs
Group II (G), NS-I, JNCS, Nhava Sheva,
Uran, Raigad-400707.
2. Commissioner of Customs (NS-III),
Turant Suvidha Kendra, First Floor,
JNCH, Nhava Sheta, Uran, Raigad-400 707.
3. Union of India through the Secretary,

Deptt. Of Revenue, Ministry of Finance,
North Block, New Delhi-110 001. Respondents

Mr.Dharan Gandhi with Ms.Aanchal Vyas for Petitioner.

Mr.Siddharth Chandrashekhar with Ms.Nyati Mankad, Ms.Priyanka Singh for Respondents in WP.11540/2024.

Mr.Siddharth Chandrashekhar with Ms.Sangeeta Yadav for Respondents in WP. Nos.12470/2024, 12432/2024, 12428/2024, 12430/2024.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 16th April 2026

ORAL JUDGMENT : (Per : G.S.Kulkarni, J.) :-

1. This is a batch of Petitions by the common Petitioner, hence the same are being disposed of by this common Judgment. Writ Petition No.11540 of 2024 is argued as a lead matter. The decision on this petition would also govern the other connected petitions. For convenience, we refer to the proceedings of Writ Petition No.11540 of 2024.

2. The Writ Petition in question is filed praying for the following substantive reliefs :

> "(a) that this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the impugned order dated 12.06.2024 (Exhibit Q) passed by Respondent no.1 and to allow the claim of preferential rate of duty as claimed in the Bill of Entries (Exhibit K to O).
>
> (b) This Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or direction, directing the Respondents, its servants, subordinates, agents and successors in office :

i. to forthwith withdraw and/or cancel the impugned order dated 12.06.2024 (Exhibit Q) passed by Respondent no.1 and to allow the claim of preferential rate of duty as claimed in the Bill of Entries (Exhibit K to O).

ii. to forthwith forbear from taking any steps whatsoever pursuant to or in implementation of the impugned order dated 12.06.2024 (Exhibit Q) passed by Respondent no.1.

(c) that this Hon'ble Court be pleased to issue a writ of prohibition or a writ in the nature of prohibition or any other appropriate writ, order or direction under Article 226 of the Constitution of India prohibiting Respondents from taking any steps in furtherance of the impugned order dated 12.06.2024 (Exhibit Q) passed by Respondent no.1.

(e) that this Hon'ble Court be pleased to declare the Public Notice bearing number 33/2024 dated 20.03.2024 (Exhibit H) and Public Notice bearing number 55/2024 dated 20.03.2024 (Exhibit J) issued by Respondent no.2 as unconstitutional and ultra vires the provisions of the Customs Act, Notifications and Rules issued thereunder and Article 14, 191(g) and 265 of the Constitution of India."

3. The Petitioner is aggrieved by the order dated 12th June 2024 passed by the Assistant Commissioner of Customs, Group-II, Nhava Sheva, Uran, Raigad, whereby the Petitioner's claim for the preferential rate of duty under the Notification No.046/2011 (ASIAN-India Free Trade Agreement (AIFTA), as asserted by the Petitioner under the Bills of Entry subject matter of the petition, has been rejected. The operative order is required to be noted, which reads thus :

"ORDER

9. I reject the claim of preferential rate of duty under notification No.046/ 2011 (ASEAN-India Free Trade Agreement [AIFTA]) claimed by the importer under Bills of Entry mentioned in the Table-A.

10. This order is issued without prejudice to any other action that may be taken against aforesaid goods and noticee or any other persons concerned under the Customs Act, 1962 or Rules made thereunder and being in force in India."

4. In the memo of the petition, the Petitioner has contended that it is incorporated in India and belongs to the Covestro group, which is engaged in the business of manufacturing and trading of polycarbonate resins, compounds and their intermediaries such as films, polyurethane raw materials, their formulations,

thermoplastic urethanes and their films, raw materials for the manufacturing of polyurethane based coatings, adhesives and specialties. The Petitioner's case is that for its business activities it regularly imports certain goods from the associated enterprises viz. Makrofol (speciality film roll), Bayfol (speciality film roll), Makrolon (polycarbonate resin), Bayblend (Polycarbonate resin) etc. Some of such goods are used as raw material for manufacturing and they originate in Thailand. It is the specific contention of the Petitioner that the Petitioner has been importing such goods for more than ten years.

5. The Petitioner has contended that India has entered into Free Trade Agreements with various South Asian countries, which *inter alia* provide for preferential rate of duties on import of certain goods, which the Petitioner has been claiming over a period of time. In such context, the Central Government notified various products vide Notification No.85/2004 on 31st August 2004 under the India-Thailand Free Trade Agreement, under which the Government has exempted duty of customs leviable thereon specified in the first schedule of the Customs Act, 1962 (`the Act') and in excess of the amount calculated at 50% of the rate specified in the corresponding entry in column (4) of the Table in the said Notification. The condition prescribed for claiming such preferential rate of duty is that the importer should prove 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 exemption under the Notification is claimed, are of the origin of Thailand in accordance with the provisions of Interim Rules of Origin published with the Notification of the Government of India in the Ministry of

Finance, Department of Revenue No.101/2004-Customs (N.T), dated 31st august 2004, which came into force from 1st September 2004. It is the Petitioner's case that the Central Government had notified interim rules of origin for preferential tariff concessions for trade between India and Thailand vide Notification No.101/2004, dated 31st August 2004. The said Notification prescribed rules for determining the origin of products. The consequence, according to the Petitioner, is that for the goods originating from Thailand on a valid Country of Origin (`CoO') certificate, if the goods were to be directly consigned to India, then the preferential rate of duty would be granted on the basis of such valid CoO issued by the Authority of Thailand. According to the Petitioner, the thrust is on the country of origin of the goods and it is only when the transportation of goods is through some other territory, that certain additional documents are required.

6. The Petitioner has set out different Notifications issued in this regard by the Central Government involving various products granting preferential rate of customs duty bearing Notification No.85/2004, dated 31st August 2004, Notification No.101/2004, dated 31st August 2004, Notification No.153/2009, dated 31st December 2009, Notification No.189/2009 dated 31st December 2009 and Notification No.153/2009, dated 31st December 2009 and Interim Rules of Origin, whereunder the Central Government notified, that the goods in respect of which an exemption under the notification is claimed, are of the origin of countries specified in accordance with provisions of Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations

(ASEAN) and the Republic of India) Rules, 2009, which also prescribe the rules for determining the country of origin.

7. The Petitioner has also referred to subsequent Notification No.46/2011 (Customs), dated 1st June 2011, which superseded Notification No.153/2009 (supra). The Notification No.46/2011 provided for preferential rate of duty in respect of goods specified therein from, *inter alia*, Thailand. In short, the case of the Petitioner is that under all such Notifications, the Petitioner had availed the duty benefit by claiming preferential rate of duty.

8. The Petitioner contends that Section 28DA was inserted by the Finance Act, 2020 to determine the place of origin, under which an importer making a claim of preferential rate of duty in terms of any trade agreement, shall make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement. The importer was also required to provide sufficient documents to show the country of origin, regional value of the imported goods and to show that the products are specified in the rules of origin in the trade agreement. Section 28DA is required to be noted, which reads thus :

> **"S.28DA – Procedure regarding claim of preferential rate of duty** -
>
> (1) An importer making claim for preferential rate of duty, in terms of any trade agreement, shall,—
>
> (i) make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;
>
> (ii) possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;
>
> (iii) furnish such information in such manner as may be provided by rules;

(iv) exercise reasonable care as to the accuracy and truthfulness of the information furnished.

(2) The fact that the importer has submitted (proof) of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care.

(3) Where the proper officer has reasons to believe that country of origin criteria has not been met, he may require the importer to furnish further information, consistent with the trade agreement, in such manner as may be provided by rules.

(4) Where importer fails to provide the requisite information for any reason, the proper officer may,–

i) cause further verification consistent with the trade agreement in such manner as may be provided by rules;

(ii) pending verification, temporarily suspend the preferential tariff treatment to such goods:

Provided that on the basis of the information furnished by the importer or the information available with him or on the relinquishment of the claim for preferential rate of duty by the importer, the Principal Commissioner of Customs or the Commissioner of Customs may, for reasons to be recorded in writing, disallow the claim for preferential rate of duty, without further verification.

(5) 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 a security amount equal to the difference between the duty provisionally assessed under section 18 and the preferential duty claimed:

Provided 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.

(6) Upon temporary suspension of preferential tariff treatment, the proper officer shall inform the Issuing Authority of reasons for suspension of preferential tariff treatment, and seek specific information as may be necessary to determine the origin of goods within such time and in such manner as may be provided by rules.

(7) Where, subsequently, the Issuing Authority or exporter or producer, as the case may be, furnishes the specific information within the specified time, the proper officer may, on being satisfied with the information furnished, restore the preferential tariff treatment.

(8) Where the Issuing Authority or exporter or producer, as the case may be, does not furnish information within the specified time or the information furnished by him is not found satisfactory, the proper officer shall disallow the preferential tariff treatment for reasons to be recorded in writing:

Provided that in case of receipt of incomplete or non-specific information, the proper officer may send another request to the Issuing Authority stating specifically the shortcoming in the information furnished by such authority, in such circumstances and in such manner as may be provided by rules.

(9) Unless otherwise specified in the trade agreement, any request for verification shall be sent within a period of five years from the date of claim of preferential rate of duty by an importer.

(10) Notwithstanding anything contained in this section, the preferential tariff treatment may be refused without verification in the following circumstances, namely:—

(i) the tariff item is not eligible for preferential tariff treatment;

(ii) complete description of goods is not contained in the (proof of origin);

(iii) any alteration in the (proof of origin) is not authenticated by the Issuing Authority;

(iv) (the proof) of origin is produced after the period of its expiry, and in all such cases, (the proof) of origin shall be marked as "IN APPLICABLE"

(11) Where the verification under this section establishes non-compliance of the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical goods from the same producer or exporter, unless sufficient information is furnished to show that identical goods meet the country of origin criteria.

Explanation.—For the purposes of this Chapter,—

[(a) "proof of origin" means a certificate or declaration issued in accordance with a trade agreement certifying or declaring, as the case may be, that the goods fulfil the country of origin criteria and other requirements specified in the said agreement;]

(b) "identical goods" means goods that are same in all respects with reference to the country of origin criteria under the trade agreement;

[(c) "Issuing Authority" means an authority or person designated for the purposes of issuing proof of origin under a trade agreement;]

(d) "trade agreement" means an agreement for trade in goods between the Government of India and the Government of a foreign country or territory or economic union."

9. It is the Petitioner's case that Rules for determining the country of origin were replaced in the year 2020 and the Central Government issued Customs

(Administration of Rules of Origin under Trade Agreements) Rules, 2020 (`CAROTAR 2020') vide Notification No.81/2020-Customs (N.T), dated 21st August 2020. The Rules were brought into force with effect from 21st September 2020. The Rules were applied to import of goods into India where the importer makes a claim of preferential rate of duty in terms of a trade agreement. The Petitioner has also referred to Circular No.38/2020, dated 21st August 2020, which was issued by the Central Board of Indirect Taxes and Customs (CBIC), Ministry of Finance, issuing clarification in terms of Section 28DA of the Act. The Circular aimed at supplementing the operational certification procedures related to implementation of Rules of Origin as prescribed under the respective trade agreements. It also stipulated that in case there is any doubt with regard to the origin of goods, information should first be called from the importer of the goods, in terms of Rule 5 read with Rule 4 of CAROTAR, 2020 before initiating verification with the partner country in terms of Rule 6.

10. It is on the aforesaid backdrop the Petitioner has contended that on 20th March 2024, the Respondent no.2 Commissioner of Customs, (NS-III), Turant Suvidha Kendra, Nhava Sheva, issued a public notice No.33/2024 stating that there are practical problems faced in case of third party invoicing, including cases where FOB value is not indicated in the CoO certificate, third party invoices do not mention FOB value etc and thereby prescribing additional requirements. As the Petitioner is aggrieved by issuance of such public notice, which according to the Petitioner has led to the passing of the impugned order, the said public notice is required to be extracted, which reads thus :

"OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-III),
TURANT SUVIDHA KENDRA, FIRST FLOOR, JAWAHARLAL
NEHRU CUSTOM HOUSE,
POST: SHEVA, TALUKA: URAN, DIST: RAIGAD,
MAHARASHTRA — 400707

DIN:20240378NV0000000C54 DATE:20.03.2024

PUBLIC NOTICE NO. 33/2024

Subject: Certain FTA certificate verification in TSK under CAROTAR Rules-2020-reg.

Attention is drawn towards Rule 4, 5 and 6 of Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (Notification No. 81/2020 - Customs (N.T.) dated 21st August, 2020) also known as CAROTAR Rules-2020, which mandates requisition of certain information from exporter of originating country. In cases where there is reason to believe that origin criteria prescribed in the respective Rules of Origin have not been met, Customs official may seek information and supporting documents, as may be deemed necessary. This requirement is further cemented by section 28DA(3) of the Customs Act, 1962 mandating importer to furnish further information to the proper officer in case of reasonable doubt regarding country of origin criteria.

2. The Turant Suvidha Kendra (TSK) official is responsible for verification of certain documents uploaded in e-sanchit module of ICES and defacing of original documents including FTA prescribed Country of Origin (COO) certificate (FTA certificate). In recent past, the following difficulties are being faced by the TSK official during verification and defacing of FTA certificate in case of 3rd Party invoicing:

(i) The presented FTA certificate does not provide FOB value in the requisite column.
(ii) The 3rd Party invoice does not indicate FOB value as mentioned in the FTA certificate along with other cost and services,
(iii) The 3rd Party invoice contains a greater number of items than mentioned in FTA certificate,
(iv) The CTH in the Bill of Entry filed on the basis of 3rd Party invoice does not match with the CTH indicated in the FTA Certificate.

3. As an alternative to rigorous process of verification of FTA certificate from the exporting country as laid down in CAROTAR Rules-2020 in each case, and as a measure to ease the verification and defacing procedure of such FTA certificate by TSK official, following procedures are being prescribed:

(i) The 3rd Party invoice which does not indicate FOB value as mentioned in FTA certificate along with other cost and services:

The importer will submit invoice of exporter of originating country on the basis of which FTA certificate was issued.

(ii) The 3rd Party invoice contains a greater number of items than mentioned in FTA certificate. The importer will submit invoice of exporter of originating country on the basis of which FTA certificate was issued and amend the Bill of Entry accordingly.
(iii) The CTH in the Bill of Entry filed on the basis of 3rd Party invoice does

not match with the CTH indicated in the FTA Certificate:
The importer will submit invoice of exporter of originating country on the basis of which FTA certificate was issued and amend Bill of Entry accordingly.

4. In case, the presented FTA certificate does not provide even FOB value in the requisite column, except the FTA certificate which do not have FOB value column (e.g. CEPA), the FTA certificate may be referred to Group for necessary verification from exporting country in terms of CAROTAR Rules- 2020.

5. It may be emphasized that section 28DA(4) of the Customs Act, 1962 provides that if importer fails to provide requisite information proper officer may cause verification of FTA certificate in terms of CAROTAR Rules, 2020.

6. All the previous Public Notices and Standing Orders on this issue stand modified to the above extent.

7. This Public Notice should be considered as a Standing Order for the concerned Officers and Staff of this Custom House.

8. Any difficulty faced in implementation of this public notice may be brought to the notice of AC/DC recharge of TSK.

Sd/-
(Ashwini Kumar)
Commssioner Of Customs (NS-III)

Copy to :

1. The Chief Commissioner of Customs, Mumbai Zone-II, Nhava Sheva.
2. The Commissioner of Customs, NS-I, NS-II, NS-III, NS-IV, NS-V, NS-GJNCH, Nhava Sheva.
3. Additional/ Joint/ Dy./ Asstt. Commissioners of Customs, JNCH, NhavaSheva.
4. AC/DC, EDI for uploading on JNCH website.
5. Office Copy"

11. The said public notice No.33/2024 in fact is stated to be suffering from serious infirmities including of the jurisdiction of the Commissioner of Customs who issued the same, which according to the Petitioner has brought the entire trade of the Petitioner and other similar importers to a stand still. It is the Petitioner's case that lot of hue and cry was raised against the said public notice and against the same many importers had approached CBIC being aggrieved by the criteria which was prescribed, which in fact according to the Petitioner had

amounted to complete deviation from the free trade agreement in question and also re-writing of the rules by publishing the public notice.

12. In such context, according to the Petitioner, on 8th June 2024 the CBIC specifically issued a letter addressed to the Commissioner of Customs, Mumbai Customs Zone-II, JNCH, Raigad issuing the following communication in regard to verification of FOB value indicated in the CoO Certificates issued as per ASEAN-India Trade in Goods Agreement, Notification No.189/2009-Cus (NT) dated 31st December 2009. The said communication is required to be noted, which reads thus :

"F.No. 20000/6/2015-OSD(ICD)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes & Customs
International Customs Division

Room No. 277 A, North Block, New Delhi- 110 001
Dated the 8th June, 2024

To,
The Chief Commissioner of Customs
Mumbai Customs Zone – II
JNCH, Raigad, Maharashtra.

Sir,

Subject: Verification of FOB value indicated on COO Certificates issued as per ASEAN-India Trade in Goods Agreement - Notification No. 189/2009-Cus (NT) dated 31.12.2009 – regarding.

Please refer to your letter dated 27.05.2024 in respect of the above-mentioned subject.

2. The issue raised has been examined. In this regard, observations are as follows:

i. As per extant provisions of CAROTAR, 2020 while the importer may be requested for supporting information but he is under no compulsion to submit commercially sensitive information such as the export invoice in case of third-party

invoicing. The bill-to-ship-to business model ensures commercial confidentiality in global value chains.

CAROTAR, 2020 does not require an importer to seek details, which may be business confidential. Rule 5(4) of CAROTAR 2020 provides that in case the importer fails to or is unable to provide sufficient information/documents, the verification process as prescribed under the trade agreement shall have to be initiated.

ii. Section 28DA read with Rule 3(2) of CAROTAR 2020 specifies the limited conditions under which the preference may be denied without initiating a venfication. In addition, Rule 5(5) specifies that a preferential claim can be denied without further veritication only when the intormation and documents fumished by the importer and available on record provide sufficient evidence to prove that goods do not meet the origin criteria prescribed in the respective Rules of Origin.

In the present case, it appears that the field officers are finding it difficult to verify value addition due to the unavailability of the export invoice, where third-party invoicing is taking place. Any verification, if required to be done, should only be carried out in terms of above legal provisions.

iii. Further, it is submitted that Article 22 of the Operational Certification Procedures for the Rules of Origin of AIFTA, allows third country invoicing provided the product meets the Origin Criteria under the AIFTA Rules of Origin.

As per Appendix A of AIFTA, FOB Price equals a sum of Ex-Factory Price and other costs. It is pertinent to mention that `other costs' covers those costs which are incurred in placing the products in the ship for export. Therefore, the Value Addition (VA) is to be calculated on the FOB value mentioned in the commercial invoice, issued by the manufacturer/supplier/consignor of AIFTA state. Moreover, the value indicated in the invoice raised by the consignor of AIFTA to the third party shall, in all probability, not be the same as the one mentioned in the sales invoice raised by the third party.

iv. The fact of VA at AIFTA country and VA considering third party invoice should also be determining factor whether a verification process is required under CAROTAR, 2020.

3. In view of the above, it is requested to re-examine the matter and provide comments/action taken in the matter. Further, it is mentioned that trade has represented delay in clearance of goods on account of the Public Notice issued by NS-II Customs Commissionerate. It is requested that goods may be released withut delay, if required including under the provisions of CAROTAR, 2020.

Encl : as above.

Yours Sincerely,

Sd/-
(Neetisha Verma)
STO(ICD)
Telephone no.(+91)1123094510
e-mail: icdsto-cbec@gov.in"

13. Consequent thereto and in supersession of the earlier public notice, a fresh public notice No.55/2024, dated 24th June 2024 was issued by the Commissioner of Customs, this time with the approval of the Commissioner of Customs, Respondent no.2, setting out guidelines for verification under the CAROTAR, 2020 of the CoO certificates issued under various preferential trade agreements commonly referred as Free Trade Agreements prescribing the procedure, rectifying the public notice No.33/2024 dated 20th March 2024. The said public notice No.55/2024, dated 24th June 2024 reads thus :

"OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-III),
TURANT SUVIDHA KENDRA, GROUND FLOOR,
JAWAHARLAL NEHRU CUSTOM HOUSE,
POST: SHEVA, TALUKA: URAN, DIST: RAIGAD,
MAHARASHTRA — 400 707

DIN: 20240678NV000000BA3C Dated:24.06.2024

Public Notice No. 55/2024

Subject: Guidelines for verification under CAROTAR 2020, of the Country of Origin Certificates (COO) issued under various Preferential Trade Agreements (commonly also referred to as Free Trade Agreements — FTAs) – reg.

Attention is drawn towards Section 28DA of the Customs Act, 1962, read with Rules 4, 5 and 6 of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020, notified vide Notification No. 81/2020-Customs (N.T.) dated, 21st August, 2020, also known as CAROTAR 2020, and CBIC Circular No. 38/2020-Customs dated 21.08.2020, which empower the proper officer to seek information and supporting documents from the importer claiming preferential rate of duty, if the proper officer has reason to believe that origin criteria prescribed in the respective Rules of Origin have not been met.

2. The officials of Turant Suvidha Kendra (TSK) are responsible for verification of relevant documents uploaded in e-Sanchit module of ICES and defacing of original documents, including the Country of Origin Certificate issued under the Preferential Trade Agreements (hereinafter referred to as FTA-COO). In recent past, following difficulties were being faced by the officials of TSK in verification and defacing of FTA-COO in case of third country invoicing:

(i) The presented FTA-COO does not provide FOB value in the relevant column;

(ii) The third country invoice does not indicate FOB value indicated in the FTA-COO;

(iii) The third country invoice indicates a greater number of items than indicated in the FTA-COO;

(iv) The Bill of Entry presented before Customs on the basis of third country invoice indicates a different CTH as compared to the CTH indicated in the FTA-COO.

3. The procedure for verification of the FTA-COO, as provided in Public Notice No.33/2024 dated 20.03.2024 has been reviewed in detail, taking into account the pattern of documentation in respect of third country invoicing for imports made with claim of benefit under the Preferential Trade Agreements, trade practices in vogue and in light of the relevant statutory provisions. In supersession of the procedure prescribed vide the said Public Notice, for verification of eligibility of benefit of the relevant FTA on the basis of scrutiny of documents, the following procedure is prescribed :

i. The importer will need to submit the FTA-COO indicating the FOB value in the relevant column of the FTA-COO, along with the third country invoice details. The amount of freight and insurance will also need to be disclosed, either in the third country invoice or by submission of freight certificate and insurance receipt. However, this will not be applicable in case of FTA-COO which does not have FOB value column, e.g. FTA-COO issued under India-Japan CEPA.

ii. If the INCOTERMS of third country invoices is FOB, and the FOB value indicated on the third country invoice is same as that indicated on the FTA-COO, the same prima facie indicates that the FOB value indicated on the FTA-COO includes the value addition (profit and other charges) of the third country supplier. The same is not permitted under the preferential Trade Agreements. In such cases, the importer shall include an explanation for the identical FOB values mentioned in the two documents, include an explanation for the identical FOB values mentioned in the two document, viz. FTA-COO and the third country invoice at the time of submission of self-assessed Bill of Entry.

iii. If the Bill of Lading which indicates “FREIGHT PREPAID”, and which is issued in favour of the Shipper located in the country of the origin (exporting country), then the importer will need to submit freight certificate if the freight has been paid by any person other than the Shipper indicated on the Bill of Lading.

iv. In the cases wherein the FTA-COO is issued on the basis of third country invoice, i.e. the details of the third country invoices are mentioned in the FTA-COO, then the values mentioned in the said two documents FTA-COO and third country invoice need to be in the same currency. This will help in quick verification of eligibility of benefit of the relevant FTA on the basis of scrutiny of documents.

v. If the third country invoice indicates a greater number of items than indicated in the FTA-COO, then benefit of FTA will be admissible to only the items covered in the FTA-COO and the balance items will be assessed at merit rate.

vi. If the third country invoice indicates a different CTH as compared to the CTH indicated in the FTA-COO, and the product description is the same in both the documents, then the importer will be required to self declare the preferred CTH in the Bill of Entry. The proper officer will scrutinize the documents and

take appropriate decision as part of assessment and as per provisions of the relevant FTA notifications including related non-tariff notification. In case the product description in the third country invoice and FTA-COO are different, the eligibility for FTA benefits will be scrutinized as per the provisions of the law.

4. The proper officer will give option to the importer for early clearance against bond and Bank Guarantee if the importer needs more time to submit information and supporting documents sought by the proper officer under Rule 5 of CAROTAR, 2020.

5. If verification request under Rule 6 of CAROTAR, 2020 is required to be sent, then the proper officer shall submit specific questionnaire to DIC (Directorate of International Customs), after obtaining necessary details from the importer.

6. This Public Notice should be considered as a Standing Order for the concerned officers and staff of the Custom House.

7. Any difficulty faced in implementation of this public notice may be brought to the notice of Assistant Commissioner in charge of TSK at e-mail address : tsk-jnch@gov.in.

8. This is issued with approval of the Chief Commissioner of Customs, Zone-II.

Sd/-
(Ashwini Kumar)
Commissioner of Customs,
NS-III, JNCH, Mumbai-II

Copy to :-

1. The Chief Commissioner of Customs, Mumbai Zone-II, JNCH.
2. The Commissioner of Customs, Nhave Sheva-General, I, II, III, IV & V, JNCH
3. The Deputy Commissioner of Customs, EDI Section, JNCH for uploading on website.
4. Office copy."

14. It is thus clear that in supersession of the public notice No.33/2024, dated 20th March 2024, a new procedure was prescribed for verification of eligibility for benefit to be availed under the relevant FTA on the scrutiny of documents in clauses 3(i) to (vi).

15. The Petitioner contends that insofar as the Bills of Entries (BoE) of the Petitioner are concerned, as per the requirements of law, the Petitioner made declarations referring to such notification under which preferential rate of duty was

claimed. Also, the relevant documents namely the seaway bill, commercial invoice with packing list, inspection certificate, certificate of origin, and end user letter were uploaded by the Petitioner. The Petitioner contends that, however, the Turant Suvidha Kendra while defacing the CoO (FTA), raised additional requirements as per public notice No.33/2024 (supra), which was in fact superseded by a subsequent public notice dated 24th June 2024. The additional requirements included the invoice by the exporter in the originating country to the supplier of the Petitioner. The Petitioner was unable to obtain such documents in time, as also the Petitioner required the goods urgently for its business purpose. In these circumstances, the Petitioner filed letters dated 25th April 2024, 4th May 2024, 9th May 2024 and 14th May 2024 and submitted that the BoE may be provisionally assessed as the Petitioner was ready to pay full duty under protest till the issues are resolved.

16. The Petitioner contends that, however, without an opportunity of being heard, the Respondent no.1 passed the impugned assessment order dated 12th June 2024, which does not dispute that the manufacturer of the goods is M/s.Covestro (Thailand) Co. Limited, Thailand and the supplier was M/s.Covestro (Hong Kong) Limited. The Petitioner contends that the limited doubt raised in the impugned order is that in the FTA, the FOB value is mentioned whereas in the invoice, CIF value is mentioned, as a result of which the FOB value cannot be ascertained from the invoice, and the breakup of third country invoice was not given as per public notice no.33/2024 (supra). In the absence of the manufacturer's invoice and breakup in respect thereto, the FTA benefit was denied to the Petitioner

purportedly under Section 28DA(4) and Rule 5(5) of the CAROTAR 2020. It was also held that the Petitioner has obtained the FTA certificate through mis-representation of actual FOB value.

17. It is on such backdrop, the Petitioner has filed this petition praying for the reliefs as noted by us hereinabove, contending that the impugned order dated 12th June 2024 is, *per se*, illegal and has caused serious prejudice to the Petitioner, as also it is passed without jurisdiction and solely based on a public notice which does not have any legal repercussions in law.

18. The Petition is opposed by filing a reply affidavit dated 21st September 2024 of Mr.A.K.Suman, the Assistant Commissioner of Customs, justifying the actions taken on the basis of public notice No.33/2024, dated 20th March 2024 and the impugned order. There is a rejoinder affidavit filed on behalf of the Petitioner dated 24th March 2026, *inter alia*, contending that the Central Board of Indirect Taxes & Customs International, Customs Division, Ministry of Finance, Department of Revenue, Government of India has stepped in and a clarification on certain aspects of origin procedures under free trade agreements is issued vide Instruction No.23/2024-Customs dated 21st October 2024. The clarification as issued by CBIC is required to be noted, which reads thus:

"Instruction No.23/2024-Customs

F.NO.20000/6/2015-OSD(ICD)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes & Customs International
Customs Division

Room No.277 A, North Block, New Delhi
Dated the 21st October 2024.

To,

All Principal Chief Commissioners/Chief Commissioners of Customs/Customs (Preventive)/Customs and Central Tax
All Principal Commissioners/Commissioner of Customs/Customs (Preventive)
All Principal Directors General/Directors General under CBIC.

Madam/Sir,

Subject : Clarification on certain aspects of origin procedures under free trade agreements (FTAs) – regarding.

The Board is in receipt of various representations, citing difficulties encountered in import clearance where third-party invoicing, allowed under the provisions of a trade agreement, has been used.

1.1 It has been represented that certain field formations are questioning the origin status of products imported under FTAs with third-party invoicing, particularly under the ASEAN-India FTA (AIFTA) upon comparing the value recorded on the certificate of origin (COO) and that declared on the third-party invoice. Instances have also been brought to notice where preferential claims have been denied in such cases without conducting verification of COO with the issuing authority to check its authenticity and/or accuracy of information contained therein.

2. In this regard, it is to note that third-party invoicing is a common business practice and a few trade agreements explicitly provide for it. For example, Article 22 of Operational Certification Procedures for the Rules of Origin for the AIFTA states that :

> "The Customs Authority in the importing Party shall accept an AIFTA Certificate of Origin where the sales invoice is issued either by a company located in a third country or an AIFTA exporter for the account of the said company, provided that the product meets the requirements of the AIFTA Rules of Origin."

3. It is pertinent to underline here that the purpose of a COO is to serve as a proof that the goods qualify as originating within the terms of an FTA irrespective of whether third party invoicing is involved or not. On the other hand, the seller's invoice, including a third party invoice where applicable, is the document relevant for customs valuation.

4. Where the proper officer has reason to believe that the subject product does not meet the prescribed originating criteria, he/she may seek information and supporting documents in relation to the originating status of the product, as may be deemed necessary, from the importer consistent with the trade agreement. When the requisite information is not provided by the importer or the information furnished is insufficient to assess origin criteria, the laid down process of verification gets triggered in terms of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR in brief) read with Section 28DA of the Customs Act, for which a reference is to be made by the proper officer to the issuing authority through the FTA Cell (under the Directorate of International Customs).

5. Further, it may be noted that both – the information being sought and the process of verification must be consistent with the trade agreement. It may also be

noted that CAROTAR does not obligate the importer to provide commercially confidential information, pertaining to the exporter/third party. Also, CAROTAR does not require an issuing authority or a seller to use a specific or same currency for declaring value in COO and invoice respectively.

6. Rule 5(5) of CAROTAR provides that the proper officer may deny a preferential duty claim without causing further verification on the basis of the information and documents furnished by the importer and available on record. However, it is emphasised that if the concerned trade agreement does not allow for outright denial without causing a verification in accordance with provisions laid down in the subject agreement, the provision of the trade agreement shall prevail. CBIC vide its Instruction No.19/2022-Customs dated 17.08.2022 has reiterated that in the event of conflict between the provisions of the trade agreement and CAROTAR read with Section 28DA, the provisions of the trade agreement shall prevail to the extent of the conflict.

7. In cases where non-compliance of origin criteria is established after following the due process, an speaking order must be passed following the principles of natural justice as well as the specific obligations in this regard covered in the respective FTA. Merely pointing out that the value addition is artificially inflated by wrongfully adding certain ineligible elements (e.g. freight) may not be sufficient to reject a claim, unless it is demonstrated that the value addition calculated as per formula prescribed in the trade agreement does not meet the threshold percentage point when such elements are removed.

8. It is requested that custom formations under your jurisdiction may be suitably sensitized on the issues elaborated above.

Yours sincerely,

Sd/-
(Neetisha Verma)
OSD (ICD)"

19. In pursuance of the said clarification, as issued by the CBIC, a fresh public notice No.10/2025, dated 23rd January 2025 has been issued by the Commissioner of Customs (NS-III),JNCH, Nhava Sheva, Uran clearly recording that in pursuance of the Board Instruction No.23/2024-Customs, dated 21.10.2024, Public Notice No.55/2024 dated 24.06.2024 issued by his Custom House, stands modified to the extent as written in the said instructions. It was also specified that the public notice shall be considered as a Standing Order for the

concerned officers and staff of his Custom House. The said public notice No.10/2025, dated 23rd January 2025 is required to be noted, which reads thus :

"OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-III),
TURANT SUVIDHA KENDRA, FIRST FLOOR,
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA, URAN,
DIST.RAIGD, MAHARASHTRA-400 707.

23-01-2025

PUBLIC NOTICE NO.10/2025

Subject : Clarification on certain aspects of origin procedures under Free Trade Agreements (FTAs) – reg.

Attention of the trade is drawn towards CBIS Instruction No.23/2024-Customs dated 21.10.2024, issued vide F.No.20000/6/2015-OSD(ICD) on the above-mentioned subject, and the same is brought to the notice of all concerned (copy enclosed).

2. Pursuant to the Board Instruction No.23/2024-Customs dated 21.10.2024, Public Notice No.55/2024 dated 24.06.2024 issued by this Custom House stands modified to the extent as written in the said instruction.

3. This Public Notice shall be considered as Standing Order for the concerned officers and staff of this Custom House.

4. Any difficulty faced in the implementation of this Public Notice may be brought to the notice of the Assistant Commissioner of Customs (In-charge) of TSK at Email : tsk-jnch@gov.in

5. This issues is with the approval of the Chief Commissioner of Customs, Mumbai Zone-II.

Encl : As above.

Sd/-
(Sanjeev Kumar Singh)
Commissioner of Customs, NS-III, JNCH"

20. Mr.Gandhi, learned counsel for the Petitioner would submit that in fact in view of the CBIC Instruction No.23/2024-Customs, dated 21st October 2024, the directions qua under public notice No.33/2024, dated 20th March 2024, were certainly not applicable. In such context, our attention was drawn to the said public notice, to submit that the preferential duty benefit has been rejected to the Petitioner simply on a mechanical application of public notice no.33/2024, dated

20th March 2024. To buttress this contention, our attention is drawn to observations in the order passed by the Assistant Commissioner in the impugned order dated 12th June 2024. The relevant text of the order dated 12th June 2024 is required to be noted which reads thus :

"DISCUSSION & FINDINGS

7. The department has made the assessment on the basis of the following facts :-

a) As per the documents submitted by importer at the time of filing bill of entry and later during assessment, it is evident that in Column 9, FOB value is mentioned. In invoices CIF value is mentioned. FOB value of FTA certificate cannot be ascertained and verified from the invoices submitted by the importer as the breakup of third country invoice was not given as per JNCH Public Notice 33/2024 dated 20.03.2024. Therefore, manufacturer's invoice and breakup thereof was sought from the importer.

b) … … …
c) … … …
d) … … …
(e) In view of the above, I find that FTA certificates of origin having reference number mentioned in the Table-A have been obtained through mis-representation of actual FOB value of the goods. Therefore, the claim of preferential rate of duty under Sr.No.484(I) of notification No.046/2011 (ASEAN -India Free Trade Agreement (AIFTA) on the basis of above said Certificates of Origin is liable for rejection."

(Emphasis supplied)

21. We find substance in the contentions as urged by the learned counsel for the Petitioner. Although learned counsel for the Respondents has opposed this petition by supporting the impugned order, he does not dispute that the CBIC has issued Notification dated 21st October 2024, which would be binding on the Respondent no.2 Customs House, and in fact following the same public notice No.10/2025, dated 23rd January 2025 has been issued by Respondent no.2. Therefore, the entire basis of the impugned order stands obliterated and/or extinguished. It is his submission that for this reason a fresh order is now required to be passed by completely following the mandate of law and more particularly

having regard to the subsequent developments which have taken place namely in view of Instruction No.23/2024-Customs, dated 21st October 2024 issued by CBIC and issuance of fresh public notice No.10/2025, dated 23rd January 2025 issued by Respondent no.2. We find substance in such contentions as urged by the learned counsel for the Petitioner. We find that the entire basis on which the impugned order was passed denying the Petitioner's preferential rate of duty under Notification No.46/2011, dated 1st June 2011, in respect of the free trade agreement with Thailand claimed by the Petitioner under the Bills of Entry, is now required to be reconsidered.

22. We may also observe that when it comes to the traders acting upon trade agreements entered between India with the other countries, it is necessary that instructions are issued, strictly in consonance with Section 151A of the Act, being solely the power of CBIC. We asked the learned counsel for the Respondents as to what is the source of power/jurisdiction in the Commissioner of Customs issuing a public notice and to point out a specific provision to that effect, invoked by the Commissioner to issue public notice No.33/2024, which directly dealt with issues under the free trade agreements under which the importers were acting, also the requirements and procedure which was prevalent for a long period, was sought to be modified by the Commissioner under the Public Notice. However, we are not informed of any specific provision for issuance of any such public notice. In any event, public notices cannot be issued in some manner which would dilute the effect and benefit which would be derived under the free trade agreements or obliterate the provisions of law or the circulars issued by the CBIC.

In such matters the approach on the part of the Commissioner is required to be extremely careful and adopted only upon an appropriate clarification/approval being granted by the CBIC and not otherwise, for the reason that any vague or unacceptable clarification not known to law, is likely to cause serious prejudicial disturbance in what is expected of the traders/importers in their smooth functioning, and also be counterproductive to the interest of the Revenue.

23. In this view of the matter, we are of the clear opinion that the entire basis of the impugned order has stood extinguished. The impugned order is accordingly required to be set aside and the proceedings being restored on remand to Respondent no.2 Commissioner of Customs, for a fresh order to be passed in accordance with law. The petition accordingly stands disposed of in terms of the following order :

ORDER

(i) The impugned order dated 12th June 2024 is quashed and set aside;

(ii) The assessment proceedings of the Bills of Entry in question stand restored to the file of Respondent no.1-Assistant Commissioner of Customs, Group II (G), NS-I, JNCS, Nhava Sheva, for fresh assessment to be undertaken and in regard to the claim of the Petitioner of preferential rate of duty under Notification No.46/2011 (Customs), dated 1st June 2011, and an appropriate order in accordance with law to be passed, as expeditiously as possible and in any event within eight weeks from the date a copy of this order is made available to him;

(iii) All contentions of the parties in that regard are expressly kept open;

(iv) Writ Petition No.11540/2024 stands disposed of in the aforesaid terms. No costs.

24. The parties are at *ad idem* that Writ Petition Nos.12430/2024, 12470/2024, 12432/2024 and 12428/2024 be also disposed of in terms of the aforesaid order. Although the impugned orders are similar in these petitions, the dates and the trade agreements are different. We accordingly dispose of Writ Petition Nos.12430/2024, 12470/2024, 12432/2024 and 12428/2024 in terms of the above orders. No costs.

(AARTI SATHE, J.) (G. S. KULKARNI, J.)