Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.1

Customs Appeal No. 10121 of 2019
(Arising out of Order-in-Original No. MUN-CUSTM-000-18-18-19 dated 22.10.2018 passed by Commissioner of Customs-Mundra)

Imperial Fibres Pvt. Ltd. **...Appellant**
Vardhman Central Mall Nehru Vihar
New Delhi-110054

VERSUS

C.C.-Mundra **...Respondent**
Office of the Principle Commissoinerate of Customs, Port
User Buld. Custom House Mundra,
Kutch Gujarat-370421

WITH

Customs Appeal No. 10122 of 2019
(Arising out of Order-in-Original No. MUN-CUSTM-000-18-18-19 dated 22.10.2018 passed by Commissioner of Customs-Mundra)

Varun Goyal **...Appellant**
Director of Imperial Fibres Pvt. Ltd.
S-96 Vardhman Central Mall, Nehru Vihar
North Delhi-110054

VERSUS

C.C.-Kandla **...Respondent**
Office of the Commissioner of Customs,
Near Balaji Temple, Kandla, Kachchh
Gujarat-370210

APPEARANCE:
Shri Manish Saharan, Advocate appeared for the appellant
Shri Girish Nair, Authorised Representative appeared for the Respondent

CORAM:
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER NO. 10594-10595/2026

DATE OF HEARING: 07.08.2026
DATE OF DECISION:31.08.2026

SOMESH ARORA:

M/S. Imperial Fibres Private Limited are engaged in import and trading of "Polyester Knitted Fabrics" falling under CTH 60053200 from China & Malaysia.

1.1 It was learnt by the officers of Directorate of Revenue Intelligence (hereinafter referred to as "DRI") that the appellant had imported "Polyester Knitted Fabrics" by mis declaring the country of origin as

'Malaysia', whereas goods were being actually imported from China. Thus, the Noticee No.1 had mis-declared the country of origin as 'Malaysia' to wrongly avail the benefit under notification no. 46/2011-Cus dated 01.06.2011.

1.2 Based on the above input, the goods imported under Bill of Entry no. 8606858 dated 16.03.2015 filed at Mundra Port & SEZ, Mundra were examined under Panchnama dated 17.03.2015. and samples were drawn from the containers and sent for testing.

1.3 The DRI, Ahmedabad Zonal Unit, Ahmedabad vide letter F. No. DRI/AZU/CI/ENQ-09/2015 dated 08.04.2015 requested the Director (International Customs), Central Board of Excise and Customs, New Delhi to cause necessary verification of the COO Certificates, which was eventually responded much later than prescribed 3 months period on 14.10.2016.

1.4 A simultaneous separate inquiry was also initiated by the Customs, ICD Ballabhgad, Faridabad against Noticee No. 1 in respect of the imports at ICD Ballabhgad, vide letter dated 28.12.2015 had also requested the Additional Director (Policy), Directorate of Revenue Intelligence, New Delhi to cause necessary verification and verify the genuineness of the COO Certificates.

1.5 That the CBEC, Department of Revenue, Ministry of Finance, Govt. of India vide letter dated 14.10.2016 informed MITI had concluded that all the referred COO certificates were not authentic and the actual COO certificates with the said reference numbers belonged to some other company.

1.6 In his statement dated 07.05.2015,Shri Varun Goyal explained that they had shifted import from China to ASEAN Countries because of the concession in rate of duty. The statement was not particularly culpatory against Shri Varun Goyal and was recorded on 09.03.2016 in which he stated that he had received certificate from the supplier and that there was no reason for him to believe the same was not genuine. On 19.01.2016, he again confirmed the consignment under the documents to be genuine. That the statement of Sh. Varun Goyal was again recorded on 09.11.2016 under Section 108 of the Customs Act, 1962, wherein he, interalia, stated that: He confirmed the facts stated in his earlier statement recorded on 09.03.2016 & 19.09.2016;

1.7 He said that he had nothing to comment about the authenticity or genuineness about the coo certificates attached with their import documents in respect of import from M/S Ocean Edition SDN, Bf-II), Malaysia as the said certificates were sent by the exporter in Malaysia. On being asked why they had imported fabric from Malaysia on higher prices than the purchase price in China, he stated that after availing of preferential tariff benefit in respect of COO certificates the purchase price was not much higher for import from Malaysia.

1.8 That the goods imported from Malaysia was of better quality, therefore they imported the goods from Malaysia at higher price;

1.9 That a show cause notice dated 15.01.2018 was issued to the appellant. That the appellant vide their reply dated 30.07.2018 vehemently denied all the allegations made in the show cause notice but the Ld. Commissioner as per the appellant without appreciating the facts of the case passed the impugned order in original and confirmed the duty with interest and penalty.

2. Appellants have taken the following grounds during hearing:

2.1 The learned Commissioner has erred in his finding that evasion of Customs duty on the basis of fake/fabricated COO Certificates is clearly established on account of (i) mis-match in the signature of Mr. Anande Raj A/L Punjawaley (AuthorisedSignatory) on COO Certificates and the Specimen Signature forwarded by the CBEC; (ii)

Verification Report received from Ministry of International Trade & Industry [B/IITI], Malaysia informing that 15 COO Certificates were not authentic and the actual COO Certificates belonged to some other Company; (iii) similarity in pattern and style of the first invoice issued by Malaysian Supplier and last invoice issued by Chinese supplier and (iv) confessional statement dated 03.04.2017 of Varun Goyal, Director.

2.2 Following are the grounds taken by the party:

A. Out of 29 certificates of origin only 15 verified and demand confirmed against all.

It is an undisputed fact that demands have been confirmed against all of the 29 certificates while only 15 certificates have been verified as per the department's own admission. Even if we accept department version, the demand can be confirmed for only those certificates which have been verified and around half of the demand gets dropped. It is a settled law that demands can be confirmed against only those which have been verified not for those which are not verified.

- 2018 (364) E.L.T. 1017 (Tri. - Mumbai) Sunil Traders vs CCE Nhava Sheva

Classification - Change of classification for earlier imports - In absence of drawing of any sample from previous consignments for examination, change of classification merely on the ground that goods i.e., buttons imported from same source and having identical descriptions to that of live consignment, not sustainable.

- 2. 2001 (134) E.L.T. 285 (Tri. - Kolkata) Shalimar Paints vs CCE Calcutta

Classification of goods - Test report can be basis of classification only for products for which samples were drawn and not for those for which no samples were either drawn or samples were drawn but no test report. The Revenue drew samples of 9 items out of 30 different items. Out of the said samples relating to 9 items, the test reports have been supplied to the appellants only in respect of 4 items. Admittedly there is no test report relatable to the remaining 5 items of which samples were drawn or in respect of the balance items for which no samples were drawn at all. Test reports, if at all could be made applicable only to the 4 items in question to which it belonged. The balance 26 products would be classified under Heading 27.15 on the basis of the declarations made by the appellant which is based upon their technical literature as well as the production records for which the Revenue has not adduced any evidence to the classification to Heading 32.10.

The above judgment has been upheld by Hon'ble Supreme Court 2002 (145) E.L.T. A242 (S.C.) [16-07-2001] in CCE vs Shalimar Paints.

Even if Department's allegation of Certificate of origin being not authentic can be accepted, it can be applied to only those certificates for which the verification report was sent or received not for those which were never verified or sent for verification. Therefore, the proportionate demand should be dropped immediately.

B. Limitation

The dispute period in the case is 2014-15 while the show Cause Notice has been issued on 15.01.2018 which is way beyond the normal period. To invoke the extended period the department had to prove that the appellant was involved in the said fraud committed by the exporter which the department has failed to prove. Initially, the allegation was that goods were of Chinese origin for which samples were taken but results never shared, the mismatch of signatures was never verified by the department. No confessional statement is on record. Department failed to prove malafide on part of the appellant to invoke extended period.

There is whole jurisprudence established by various supreme court judgments that to invoke extended period it has to be established that the appellant importer was involved in said "fraud".

- 2013 (288) E.L.T. 161 (S.C.) Uniworth Textiles vs CCE

Demand - Limitation - Mala fide of noticee - Burden to prove it is on Department, who makes the allegation - Onus to prove bona fide conduct is not on noticee - Section 28 of Customs Act, 1962.

Demand - Limitation - Fides of conduct of noticee - Specific and explicit averments challenging them are mandatory to invoke extended period under proviso to Section 28 of Customs Act, 1962.

This single judgement has relied upon atleast 10 supreme court judgments and held to invoke extended period department has to prove that appellant was involved in the so called fraud, without establishing malafide on part of the appellant extended period cannot be invoke. In recent judgement of Hon'ble Cestat Principal Bench New Delhi **(2024) 16 Centax 351 (Tri.-Del) Whirlpool of India vs CCE** held as under:

> Recovery - Limitation period - Extension of period - Appellant (importer) purchased Duty Entitlement Passbook Scheme (DEPB) Scrips issued to one Super Trading Co. (exporter) - Bill of Entry was filed on 28-4-2012 with claim of exemption under DEPB authorisation dated 20-3-2012 purchased from exporter - Show Cause Notice was issued on 3-9-2015 invoking extended limitation period, alleging that (a) DEPB authorisation was obtained on forged export bills which was to be cancelled ab initio; and (b) importer had not checked exporter's credentials - Order-in-Original upheld invocation of extended period, and it was upheld by Commissioner (Appeals) without findings on limitation - HELD: Extended limitation period could be invoked only in case of non-payment or short payment of duty due to aggravating factors of "collusion, wilful misstatement or suppression of facts" none of which were alleged or established against importer - Hence, extended limitation period could not be invoked and demand was hit by limitation - Section 28 of Customs Act, 1962.

- M/s India Trade Link Private Limited vs CCE Noida) FINAL

  ORDER NO.-70327-70328/2025 dated 28.05.2025.

> "In case the said COO Certificate was improper or incorrect, it had to be shown that such a certificate was issued at the instance of the appellant-importer, that he had conscious knowledge of the inaccuracies and falsification, in the said certificate. Unfortunately, there is nothing in the show cause to even suggest that the appellant was in some way instrumental in obtaining an allegedly imperfect COO Certificate which was not based on true facts and was based on a costing data of the year 2013. We are not in agreement with the departmental authorities that the importer steps into the shoes of the supplier and therefore can be proceeded against in law, invoking extended period."

The department has relied upon the case of case of Munjal Showa on the issue of limitation, while the said judgement decided the limitation issue, when fraud is proved and forgery is established not a single judgment of earlier Supreme Court decision has been considered while passing the decision. The years of jurisprudence cannot be wiped starting from all the way from 1989 CCE VS Chemphar Drugs & Leminents 40 ELT 76 SC to all the way to 2013 Supreme Court Judgment in case of Uniworth Textiles vs CCE 2013 (288) ELT 161 by just one line specific to the particular facts of the case. The said judgment of Munjal Showa & Afloat have been regularly distinguished by Hon'ble Cestat in number of cases which is also distinguishable in the impugned matter. Since the whole demand is barred by limitation the whole demand including the penalties is liable to be dropped.

C. On Merits of the Case

a) Samples were drawn from the consignment on 17.03.2015 and sent for testing till date nothing reported about the test results. (RUD 1 attached).

b) Question 2 & 3 of RUD 11 clearly shows even after availing exemption if goods are of China origin the price paid by the appellant will be higher so importing goods via Malaysia of chinese origin does not make sense, the only reason of importing goods from Malaysia was the quality of goods. The fact has been pointed out by the department only.

c) Rule 7 (c)of 189/2009 clearly mentions if Certificate of Origin is not accepted same shall be returned to issuing authority within reasonable period not exceeding 2 months which clearly has not been done (letter issued after more than 1 yr).

d) Rule 7 (d) of 189/2009 the issuing authority will provide detailed exhaustive explanation addressing grounds raised by importing authority, (no details mentioned, only comment that not authentic, COO belongs to other company)

e) Rule 23. (a) When it is suspected that fraudulent acts in connection with the AIFTA Certificate of Origin have been committed, the relevant Government Authorities concerned shall co-operate in any action taken against the persons involved. (b) Each party shall be responsible for providing legal sanctions against fraudulent acts related to the AIFTA Certificate of Origin. Department never tried to find out whether the appellant had committed any such act.

In fact the so called verification report received for 15 certificates of origin out of 29 only remark received is "not authentic belongs to some other company" such remark can be the starting point of investigation not the end of it. It seems when department got what they were looking for they stopped the investigation all together. Whereas Rule 7(d) provides that issuing authority shall give exhaustive explanation addressing the grounds raised while in this case not a single ground has been answered by the issuing authority like regarding mismatch of signatures, origin of goods etc.

Not a single evidence has been provided to prove the goods were of Chinese origin or what benefit was derived to import chineese goods at a higher price from Malaysia when goods were cheaply available from China at much lower price even after considering the benefit of notification.

Because Appellant had bona-fidely imported the goods and submitted COO Certificates as received from the foreign supplier. The Appellant did not have any reason to doubt the authenticity of those certificates. Even the Customs Officers who examined the documents and who had specimen signature of the Issuing Authority did not find any difference. The Reliance is placed on the judgment of the Hon'ble Gujarat High Court in the case Kapadia Enterprises Vs U.O.I., 2013 (287) ELT 255 (GUJ) wherein it was held in that the words 'such person or his agent' in Proviso to Section 11 A are extremely significant. It cannot be accepted that statute envisages invocation of extended period of limitation against a person who had nothing to do with such fraud, collusion, misstatement etc.

That the failure to adhere to rules and it clearly shows the notifications, rules etc., were not followed for verification. Moreover extended period demand was raised when there was not a shred of evidence available against the appellants. The demands may be set aside and the amount deposited during investigation may be refunded.

3. The department on the other side in rebuttal put forth the following:-

3.1 M/s. Imperial Fibres Pvt. Ltd (Importer) was engaged in import and trading of "Polyester Knitted Fabrics" falling under CTH 60053200 at Mundra Port and ICD Patparganj. Based on inputs that the importer was mis-declaring the Country of Origin of the imported goods as 'Malaysia' instead of 'China' to wrongly avail the benefit of Notification No. 46/2011-Cus dated 01.06.2011, goods imported vide Bill of Entry No. 8606858 dated 16.03.2015 at Mundra Port were examined under Panchnama dated 17.03.2015. Search was also conducted at the office premises of the importer at Delhi.

3.2 During the course of investigations in the matter, it was found that:

(i) There was a significant mis-match in the signature of Shri Ananda Raj A/L Punjawaley (Authorised Signatory of MITI) appearing on all the manipulated /fabricated Country of Origin (COO) Certificates when compared with his Specimen Signature forwarded by CBEC vide letter F.No.456/18/2011-CUS.V dated 07.02.2014.

(ii) The Verification Report received from Ministry of International Trade & Industry (MITI), Malaysia vide letter No. BPA (S)0.3:4:11/3 dated 05.10.2016 which was forwarded by CBEC vide letter F.No.

456/04/2010-CUS.V dated 14.10.2016) wherein it was informed that all the referred 15 COO Certificates were not authentic and the actual COO Certificates with the said reference numbers belonged to some other company.

(iii) There was similarity in pattern and style of the first invoice issued from Malaysian supplier and the last invoice issued by the Chinese Supplier, indicating that the Invoice No. IMP01/14/M dated 04.06.2014 for the first import from Malaysia was prepared either in China or in India, when they switched over their import from China to Malaysia to claim the benefit of Not. No. 46/2011-Cus dated 01.06.2011.

(iv) Shri Varun Goyal, Director of M/s. Imperial Fiber Pvt Ltd, in his statement dated 03.04.2017 admitted that he was aware about the fact that the overseas suppliers were exporting Chinese Origin goods to them with fabricated COO Certificates. He admitted that the overseas supplier had informed him that Shri Kian of M/s. Ocean Edition SDN BHD, Malaysia assured them that he would arrange the COO Certificate from Malaysia at any cost. Shri Varun Goyal also admitted that their import was cheaper than import from China and they were benefitted financially. Further, on being shown the signature of Shri Ananda Raj A/L Punjawaley on the COO Certificates and the Specimen Signatures forwarded by the competent Malaysian Authority to the Government of India, he accepted that the signatures did not match and were different. He also agreed to pay the differential duty and applicable interest in respect of the import against the manipulated / fabricated COO Certificates. Show cause notice issued and matters was decided against the appellant.

3.3 With regard to the contention of the importer that out of 29 Bills of Entry, verification of COO Certificates was done for only 15, the Adjudicating Authority found that the importer had indulged in the modus operandi of arrangement of fabricated /manipulated COO Certificates and they continued the practice even after initiation of inquiry with the Overseas Customs Authority and therefore verification of the remaining COO Certificates was not sought by DRI. Keeping in view the significant mis-match in the signature of Mr. Ananda Raj A/L Punjawaley (authorized signatory of MITI) when compared to the officially available specimen signature in all the available COO Certificates, it was established that the same had been fabricated and so, the Adjudicating Authority found that duty demand in respect of the remaining 14 consignments was not merely based on assumption and presumption but backed by material evidence on record.

3.4 Further, with regard to the importer's submission that there was no reference to any COO Certificate in respect of Bill of Entry No. 6106734 dated 15.07.2014, on seeking clarification, DRI vide their letter dated 09.10.2018 informed that with regard to the subject B/E, the COO Certificate was not available in the document received from Customs, ICD Ballabgarh, Faridabad. DRI had also tried to obtain the import documents from HDFC Bank, New Delhi where the import documents had been submitted by the importer but the said COO Certificate could not be provided by them too The Adjudicating Authority observed that till June 2014, the importer was importing goods from one supplier of China only but subsequently, they shifted to Malaysia and the subject Bill of Entry was the first import from Malaysia. The uncanny similarity in pattern and style of the first invoice issued by the Malaysian Supplier and the last invoice issued by the Chinese Supplier indicates that the Malaysian Invoice was either prepared in China or in India. Coupled with the confessional statement dated 03.04.2017 of the director Shri Varun Goyal, the Adjudicating Authority found that the non-availability of the COO Certificate in respect of the subject B/E was not fatal to the duty demand as the modus operandi had been clearly established on the basis of material evidence on record.

3.5 With regard to the importer's contention that the COO Certificates were not sent for verification to the Malaysian authorities within the statutory period of two months as per Rule 7(c) (Annexure III) of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of the member states of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, (Origin Rules) 2009, the Adjudicating Authority found that the instant case was not merely a case of rejection of the COO Certifictes as envisaged in the said Rule 7(c) but was a clear cut fraudulent act by way of fabrication of the COO Certificates wherein the mis-match with specimen signatures was confirmed by the Verification Report received from MITI, Malaysia. Hence, the case was covered under Rule 23 of the Origin Rules, 2009 wherein no time limit has been prescribed and hence the contention of the importer in this regard does not hold water.

3.6 Further, importer contended that as per Rule 7(d) of the Origin Rules, 2009, where an AIFTA Certificate of Origin is not accepted, the Issuing Authority shall provide detailed, exhaustive clarification addressing the grounds for denial of the preferential tariff treatment but the Verification Report is silent on that count. The Adjudicating Authority found that as this being a case of fraudulent act, is correctly covered under Rule 23 and hence the defense submission is rejected.

3.7 With regard to the verification report received from MITI wherein it had been mentioned that the 15 COO Certificates were "not authentic, Actual CO belongs to other company", the Adjudicating Authority found that it had been categorically reported by MITI that the said 15 COO Certificates were not authentic, which obviously means that the same are fake / fabricated and no further clarification is required so as to identify the "other company" as mentioned in the verification report.

3.8 Further, with regard to the contention that the confessional statement dated 03.04.2017 of Shri Varun Goyal, Director, the Adjudicating Authority found that the statement recorded before Customs Officers under Section 108 of the Customs Act, 1962 is admissible as evidence. The allegation made by the noticees at the stage of adjudication was just an afterthought and cannot be given cognizance. In this regard, the Adjudicating Authority placed reliance on the following judgements:

(i) Judgement of the Hon'ble Supreme Court in the case of Romesh Chandra Mehta vs State of West Bengal 1999 (110) E.L.T. 324 (S.C.)
(ii) Judgement of Hon'ble Supreme Court in the case of Percy Rustomji Basta vs State of Maharashtra-1983 (13) E.L.T. 1443 (S.C.)
(iii) Judgement of Hon'ble CESTAT, Mumbai in the case of Rajesh Tarachand Sajdeh vs Collector of Customs, Bombay 1983 (12) E.L.T. 623 (C.E.G.A.T.)

3.9 The Adjudicating Authority further found that the material evidence available on record clearly showed that the importer had resorted to mis-declaration of COO by producing fake / fabricated COO Certificates before the Customs authority with an intent to wrongly avail the benefit under Not. No. 46/2011-Cus dated 01.06.2011 to evade Customs Duty. Hence, the condition of sub-section (4) of Section 28 of the Customs Act, 1962 is fulfilled in the instant case and differential duty of Rs.2.29,01,929/- was recoverable from the importer under the provisions of Section 28(4) of the Customs Act, 1962 by invoking the extended period of time alongwith interest at the prescribed rate in terms of Section 28AA of the Customs Act, 1962.

3.10 The Adjudicating Authority found that as differential duty was recoverable from the importer under Section 28(4) of the Customs Act, 1962, imposition of penalty under Section 114A is a natural corollary as the situation in which duty can be demanded invoking the provisions of Section 28(4) i.e. cases involving collusion or willful mis-statement or suppression of facts. Therefore the importer was liable for penalty under Section 114A of the Customs Act, 1962

3.11 The Adjudicating Authority found that as the importer had deliberately indulged in producing fake / fabricated COO Certificates before the Customs authority with intent to wrongly avail the benefit of Not. No. 46/2011-Cus dated 01.06.2011 to evade Customs Duty, it was a fit case for imposition of penalty under Section 114AA of the Customs Act, 1962.

3.12 Further, with regard to Shri Varun Goyal, Director of M/s. Imperial Fiber Pvt Ltd. the Adjudicating Authority found that it was established from the material evidence available on record in the form of his confessional statement dated 03.04.2017 that he had willfully mis-declared the COO in the Bills of Entry in contravention of the provisions of Section 46(4) of the Customs Act, 1962 and had actively involved himself in the act of mis-declaraiton of COO by arranging fabricated / manipulated COO Certificates in connivance with the foreign suppliers with an intent to wrongly avail the benefits of the exemption notification and evade payment of Customs Duty as he was the financial beneficiary of the profit earned in the sale of the impugned goods. These acts of omission and commission on the part of the Director had rendered the subject imported goods liable for confiscation under Section 111(m) and 111(0) of the Customs Act, 1962 and Shri Varun Goyal, Director liable for penalty under Section 112(a) of the Act. Further, he had knowingly and intentionally made, signed or caused to be made, signed and fabricated documents which were knowingly presented to the Customs authorities for which he was liable for penalty under Section 114AA of the Customs Act, 1962. The AR relied on following case laws:

- CC (Prev) vs Afloat Textiles (I) P. Ltd. 2009 (235) ELT 587 (SC)
- Friends Trading CO. vs UOI 2011 (267) ELT 33 (P&H)
- Munjal Showa Ltd. 2022 (382) ELT 145 (SC)
- Nemichand Desarlla 2025 (26) Centax 433 (Mad.)
- Conybio Healthcare Pvt. Ltd. 2022 (1) Centax 97 (Mad.)
- Star Industries vs CC (Imports) 2015 (324) ELT 656 (SC)
- CC-Madras vs D. Bhoormull 1983 (13) ELT 1546 (SC)
- Trafigura India Pvt Ltd. 2023-TIOL-737-HC-AHM-CUS

4. As per time granted to either side to make further submission, in a time bound manner, the advocate for the appellant submitted as follows:

I. That the department has placed reliance upon the judgment in *Trafigura* to contend that once substantive provisions of the Customs Act are invoked, any procedural non-compliance under the Rules of Origin becomes irrelevant. Such reliance is wholly misplaced because the controversy in *Trafigura* arose in an entirely different legal setting.

II. That in *Trafigura*, India (P) Ltd. Vs UOI as reported in 2023-TIOL-737-HC-AHM-CUS, the principal case of the petitioners was based upon Article 24 of Appendix D to AIFTA, namely the treaty mechanism relating to consultation and dispute resolution between the importing and exporting countries. The grievance of the petitioners in that case was that before initiating proceedings under the Customs Act, the authorities ought to have followed the said Article 24 mechanism.

III. That the Hon'ble High Court in *Trafigura* held that Article 24 was not incorporated into the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of ASEAN and the Republic of India) Rules, 2009 and therefore, being an omitted treaty provision, it could not be directly enforced in Indian courts.

IV. That thus the ratio of *Trafigura* is confined to the proposition that where a provision of the treaty has not been transformed into domestic law, the same cannot be invoked in derogation of the municipal law and in such a situation domestic law will prevail.

V. That the present case stands on an entirely different footing. In the present matter, the appellant is not seeking enforcement of any omitted treaty provision. The appellant is relying upon Rule 7(c) and Rule 7(d) of the 2009 Rules themselves, which are admittedly incorporated domestic provisions and form part of the binding statutory framework.

VI. That Rule 7(c) specifically provides that where an AIFTA Certificate of Origin is not accepted by the Customs Authority of the importing party, such Certificate of Origin shall be marked accordingly and the original Certificate of Origin shall be returned to the issuing authority within a reasonable period not exceeding two months, and the issuing authority shall be duly notified of the grounds for denial of preferential tariff treatment.

VII. That Rule 7(d) further provides that in such a case the issuing authority shall provide detailed and exhaustive clarification addressing the grounds for denial of preferential tariff treatment raised by the importing party and the Customs Authority of the importing party shall accept the Certificate of Origin and grant the preferential tariff treatment if the clarification is found satisfactory.

VIII. That therefore, unlike *Trafigura*, the present case concerns not an omitted provision, but express domestic rules which the department was bound to follow. The department cannot rely upon *Trafigura* to avoid compliance with Rule 7(c) and Rule 7(d), because that would amount to extending the judgment far beyond the issue it actually decided.

IX. That the department appears to rely upon Rule 23 relating to fraudulent acts in connection with the AIFTA Certificate of Origin in order to contend that in cases of alleged fraud there is no necessity to comply with Rule 7(c) and Rule 7(d). Such interpretation is wholly untenable.

X. That Rule 23 merely provides that where fraudulent acts are suspected, the relevant governmental authorities shall cooperate in any action taken against the persons involved and each party shall be responsible for providing legal sanctions against fraudulent acts related to the Certificate of Origin. Rule 23 nowhere states that Rule 7(c) and Rule 7(d) become redundant or inapplicable in cases of alleged fraud.

XI. That on the contrary, where fraud is alleged, the requirement of a proper and exhaustive inquiry becomes even more stringent. If the authorities propose to deny preferential treatment on the basis that the Certificate of Origin is not authentic or is tainted by fraud, then the obligation of setting out the exact grounds and obtaining a detailed and exhaustive clarification from the issuing authority becomes more important and not less.

XII. That a general provision relating to fraudulent acts cannot be read so as to override specific procedural safeguards expressly governing the non-acceptance of a Certificate of Origin. The correct construction is that Rule 23 may justify a deeper investigation, but it cannot be read to dispense with the requirements of Rule 7(c) and Rule 7(d).

XIII. That the department's reading of *Trafigura* as if it grants blanket immunity from procedural compliance is fundamentally incorrect. *Trafigura* does not lay down that once the Revenue invokes substantive provisions of the Customs Act, all procedural obligations under the Rules of Origin can be ignored. It only holds that a treaty clause omitted from domestic law cannot be enforced as though it were part of the statutory rules.

XIV. That even on facts, the present case is materially distinguishable from *Trafigura*. In *Trafigura*, the Court proceeded on the basis of a developed factual record and detailed findings emerging from investigation, retroactive checks and verification material, which led to a specific finding that the Regional Value Content had been wrongly shown and that the goods did not satisfy the Rules of Origin.

XV. That in the present case, according to the facts of the case, samples were drawn and sent for testing, however no test report was produced or supplied to establish that the goods were in fact of Chinese origin. Further, according to the facts of the case, out of 29 Certificates of Origin only 15 were verified, yet the demand has been confirmed in respect of all 29 certificates.

XVI. That according to the facts of the case, the so-called verification report merely states that certain Certificates of Origin were not authentic and that the actual certificates belonged to another company. Such a bare remark may at best be the starting point of investigation but cannot be treated as the end of the inquiry, particularly when Rule 7(d) requires detailed and exhaustive clarification on the precise grounds raised by the importing authority.

XVII. That in the present case there is no comparable factual finding that the appellant had conscious knowledge of any alleged falsity in the Certificate of Origin or was party to the alleged fraud. Therefore, the findings in *Trafigura* regarding suppression and invocation of the extended period under section 28(4) cannot be readily applied to the present matter.

XVIII. That *Trafigura* was a case where the Court found on facts that the importers had wrongly availed exemption on the basis of misrepresented Regional Value Content. The present case, on the other hand, concerns failure to follow incorporated procedural rules, incomplete verification, absence of crucial evidentiary material, and lack of proof of conscious involvement of the importer.

XIX. That therefore the judgment in *Trafigura* is clearly distinguishable both in law and on facts. It cannot be cited for the proposition that Rule 7(c) and Rule 7(d) need not be complied with, nor can it be treated as a blanket authority to cure serious procedural lapses and evidentiary deficiencies in the present case.

XX. That accordingly, the reliance placed by the department on *Trafigura* deserves to be rejected and the said judgment ought to be confined strictly to its own factual and legal context.

5. We have gone through the submission made by either side and taken note of all the evidences, case laws placed before us which are relevant to the context.

5.1 We find that the Exemption Notification concerned in the instant case is for trade augmentation and preference, between ASEAN Countries and India based on the underlying Rules of W.T.O. We also find that in Trafigura India Private Limited vs Union of India, reported in 2023-TIOL-737-HC-AHM-CUS, the Hon'ble High Court of Gujarat has held that making an international treaty, a Municipal Act is legislature prerogative of the Member Countries. However the Rules of International Law including treaty, per se, are not implementable or enforceable in the Member States and that the same have to be incorporated in the State Law or Municipal Law and the Rules have to be framed accordingly. And sovereign states, in such a case i.e. India in this instance is free through Government to give effect to some or all treaty provisions, while incorporating in the legal statutes. A treaty provision which is omitted shall not be enforced in Courts of Law in India, if the legislature chooses not to give it the force of law. The Hon'ble High Court also indicated that Article 24 has not been enacted in Customs Tariff (DOGPTA between Asean and Republic of India) Rules, 2009 and the same, therefore, has not been given statutory recognition in this country. Therefore, no remedy would lie qua for the provision of Article 24 of the Treaty in Indian Courts and that the State Law would prevail over the International Rules of Treaty Provisions, even in situation of conflict between the two, The Municipal Law, The State Law will prevail. The doctrine was propounded by the Hon'ble Court that Article 24, which has not received the legislative mandate of the State cannot have efficacy of law within India. Non-observance of mechanism of Article

24, therefore cannot invalidate the action taken by the Customs Authorities under the provisions of Customs Act. We being mindful of the ruling of the Hon'ble High Court of Gujarat (being our jurisdictional court) approach the facts and legality in this matter. We find that we are concerned in this particular case with Rule 7 of Determination of Origin of Goods (under the Preferential Trade Agreement between the Government of Member of States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India) Rules 2009 brought in force vide notification No. 189/2009-Cus (NT), the relevant rules read as follows:-

> "7. Issuance of aifta certificate of origin
>
> (a) The AIFTA Certificate of Origin shall be in International Organisation 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."

5.2 We find that clause (c) & (d) deals with the situation where AIFTA Certificate of Origin is not accepted by the Customs Authorities of the Importing country, clause (c) is specific that AIFTA Certificate in such a case shall be returned to the issuing authority within the country of export within a reasonable time but not exceeding two months, and the grounds of denial shall also be notified. The issuing authority shall provide detailed clarification and addressing the grounds for the denial of preferential tariff by the importing authority. The Customs authority of the importing party shall accept the AIFTA Certificate of Origin and grant the preferential tariff treatment when the clarification is found satisfactory. Therefore, one thing is clear from the Rule as to how within the frame work of adopted Rules the certificate produced shall be dealt with by the Indian Customs Authorities. Therefore, strictly speaking, we have to agree with the submission of the appellant that in the present matter the Trafigura reasoning is not applicable, as we are concerned not with any Article of treaty, but a duly incorporated provision. The department during arguments also sought to rely on Rule 23 under the header "Action against Fraudulent Acts", reproduced below:

> *"23(a) when it is suspected that fraudulent acts in connection with the AIFTA Certificate of Origin have been committed, the relevant Government Authorities concerned shall co-operate in any action taken against the persons involved.*
> *(b) Each party shall be responsible for providing legal sanctions against fraudulent acts related to the AIFTA Certificate of Origin."*

5.3 It is clear that mandate in this rule is in relation to conduct between two member countries who are party to the agreement i.e. Malaysia & India in this instance once the fraudulent acts in connection with AIFTA Certificate of Origin are established. The Rule 23 in no way lays down that once a fraud is suspected by a member country all the procedural obligations as are contained in other Rules and origins of procedure can be ignored and set to rest. In fact it is through the process of the following of the Rules that the fraudulent act has to be established. We find that as provided in Rule 23(a) &

(b), it has not been shown that Malaysian Government has taken action against parties involved in suspected fraudulent action, or India Government has asked for it. The alleged fraud therefore, remains in domain of allegation, rather than established. We find that in the instant case, department had done its testing on the impugned goods i.e. "Polyester Knitted Fabric" but no test reports were produced or supplied to establish that the goods were infact of Chinese Origin. Further it also noted by us that out of 29 certificate of origin furnished by the appellants, only 15 were verified yet the demand has been confirmed in respect of all 29 certificates. It appears that in the instant case, Bill of entry was filed on 16.03.2015 at SEZ Mundra Port and same was examined on 17.03.2015 and searches at the premises of the appellant were conducted on 26.03.2015. On 08.04.2015, the Director International Customs was requested to cause necessary verification of this COO Certificate issued by the designated Malaysian Authority due to some mismatch in the signature appearing on the certificate. It further appears that the CBEC Department of Revenue, Ministry of Finance, Government of India, vide letter dated 24.08.2016 informed the Customs Authority, ICD Ballabhgarh and Additional Director, DRI Ahmedabad that the verification first sent to the port to the Malaysia vide Board's Notification dated 29.03.2026 followed by a letter reminder dated 02.08.2016. However no response regarding verification of the said

COO has been received from Malaysian Authorities. CBEC also informed that as per Rule 16(a)(ii) of Notification No. 189/2009-Cus(NT) dated 31.12.2009 pertaining to 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 ther Republic of India] Rules, 2009 that *"the issuing authority shall respond to the request promptly and reply within three months after receipt of the request for retroactive check".* It appears that after the stipulated period of 3 months even it counted from 29.03.2016 on 14.10.2016 High Commission of India, Kualalampur forwarded verification report received from Ministry of International Trade & Industry (MITI), Malaysia regarding the COO Certificates referred to them by the Indian Government. Appellants have contended that apart from not providing test reports, even no Hand-writing expert was involved to allege that the signatures on the certificate are different from the specimen signature in the custody of Revenue Department and that bare open eyes comparison by a non-expert on signature has been done. Appellants seek to place reliance on the ruling of Hon'ble Madras High Court in the matter of CC-Imports vs Flamingo (DFS) Pvt. Ltd. 2010 (251) ELT 348 (MAD), wherein it has mentioned that any portion in signature can only be undertaken by technical experts. Same has not been done in this case nor are the signature being denied by the Malaysian Authority in its verification report only it states that same were issued to someone else. We also find that in 14 of the certificates bearing signatures were not sent to the issuing authority. The explanation by the department for not undertaking this statutory obligation are far from consulting. We, therefore, find that the verification process in totality has not been followed and there has been inordinate delay in obtaining the certificate and for conducting retroactive check for considering validity of certificate. In the matter of Mahadev Metaliks Pvt. Ltd. vs UOI 2016 (331) ELT 424 (A.P.) dealing with the same rules, the Hon'ble H.C. of A.P., in para 24, 25, 26 and 27, dealt with the requirement of time bound retroactive check and inter alia, held that the time frame within custom authorities could have done a retroactive check on Bill of Entry filed on 23.06.2015 should have been done by 22.08.2015, however in the present case, the same period ended on 15.05.2015 from the date of filing. Above paras are reproduced below:

> "24. We may note that there appears to be a mistake in Rule 16(a)(iv) particularly in making a reference to the 'Issuing Authority, which should be read in the context as "Importing Authority".
>
> 25. The of the learned Additional Solicitor General that there is six months' timeframe available for the purpose of conductintration of the leneck the same is liable to be rejected, for the reason that the time limit provided to the issuing authority in Rule 16(a)(i) is itself three months after receipt of the request for retroactive check, which contemplates two to a specified Rule kinds of check one is a longtime check, which is not relating to any party and the oth 16(a)(ii) deals with where reasons where reasonable doubts have arisen with respect to authenticity or accuracy of a document, which is treatment while awaiting result of the required to be verified. In which there is a provision for suspension of preferential tariff treatment verification. In contrast Rule 16(a)(iv) would come ould come into play in cases where the origin of goods is in doubt. So far as the cases where the origin of goods is in doubt, which is relatable to Rules 3 to 6 of the Rules. The outer limit of six months is provided to the exporting party and not to the Customs authorities in considering the validity or otherwise of the certificate. Further, Rule 16(e)(1) party and that the entire process of retroactive enquiry would commence only after the Customs authorities of in terms of the procedure. In other importing party notifying about the non-acceptance or rejection of the certificate of origin in words the question of conducting retroactive enquiry itself would not arise unless and until such procedure is followed as contemplated under the agreement and there is no binding obligation on the part of the issuing authority to conduct a retroactive enquiry/verification, if any request is made beyond two months as the timeframe agreed to in the Operational Certification Procedure for rejection of a certificate in terms of Rule 7(c) of the Rules is only two months.

> 26. In the present case, the bill of entry was filed on 23-6-2015 and time within which the Customs authorities could have refused the certificate and commenced the request for retroactive check would be 22-8-2015.
>
> 27. The question of conducting a retroactive check even assuming that there is no requirement of rejection (in fact there is no rejection of the certificate of origin in the present case), but there being a doubt that is required to be verified into, the same ought to have been commenced as soon as the bill of entry was presented or within a reasonable time of presentation of the bill of entry. Whereas in the present case to a specified query that was put by the Court to the learned Additional Solicitor General submitted, on instructions, that as on date the only action which has been taken by the authorities are the letters written by the 3rd respondent to the Commissioner and who in turn addressed a letter to the Director, International Customs Division, seeking an enquiry to be conducted. In other words even as on today, there are no steps which have been taken in terms of Rule 16(a) for the purpose of retroactive enquiry."

5.4 Further, we find that these samples were sent in respect of 29 Certificate of Origin, only 15 certificates were received beyond the stipulated time stating, "Non authentic. Actual COO belongs to other Company". Report does not mention about signatures. We also find that on the day of drawing punchnama dated 16.03.2015 samples were drawn but the reports of the same were not provided to the appellants nor are in record with us. The report of the samples drawn are required to be furnished by the department even if the same were not in manner indicating that the goods were of Malaysian Origin or otherwise. Furnishing of belated test analysis report at this stage will not serve any purpose. On the point of invocation of extended period of limitation despite a non-committal statement throughout by Shri Varun Goyal, which has been interpreted as admission by the department to suit its purpose. The party has sought to rely on the decision of M/s India Trade Link Private Limited vs Principal Commissioner of Customs, Noida, Final Order No. 70327-70328/2025, particularly the para 5,6 and 7 reproduced below:

> "5. The revenue has charged the appellants for mis-representing the subject matter. The show cause notice points out that the investigations were initiated pursuant to complaints received from domestic industries, regarding alleged violation of rules of origin under the FTA, regarding imports of tin ingots from M/s. Malyasia Smelting Corporation (MSC) (also the supplier in the present case). The show cause notice alleges as below :-
>
>> "8. Whereas it is seen that in the instant case, the Tin ingots imported by the party were found to have been produced by Malaysia Smelting Corporation (MSC), Malaysia who procured the COO in violation of the Rules of Origin of the Indo-ASEAN (FTA), in terms of Notification No. 189/2009-Cus(NT) dated 31.12.2009 and of the India Malaysia Preferential Trade Agreement Rules, 2011.

9. Whereas it is also seen that the importer noticee got the goods cleared out of charge from Customs on payment of Customs duty at the preferential rate of 0% in place of the effective rate of duty applicable on goods imported was 5%.

10. Whereas evidence brought out in investigation by the DRI shows that the benefit of preferential duty of Customs does not appear to be admissible on the imported tin ingots from Malaysia manufactured by M/s Malaysia Smelting Corporation (MSC), Malaysia. Therefore, it appears that the importer noticee is required to pay the effective rate of duty of Customs on the import of tin ingots in place of the preferential rate of duty of Customs as availed by them at the time of import of the consignment of tin ingots, along with interest thereon.

11. Whereas in terms of Section 17 of the Customs Act, 1962, an importer noticee entering any imported goods under Section 46 through a Bill Entry shall save as otherwise provided in Section 85, selfassess the duty, if any, leviable on such goods. In the instant case, the importer noticee failed to assess the goods correctly and evaded the payment of duty of Customs. Since, the importer noticee self assessed the goods wrongly, non-levy of customs duty on the subject goods is the sole responsibility-of the importer-noticee. The importer-noticee mis-represented the facts in the Bill of Entry (B/E) by availing the benefit of Notification No.46/2011-Cus dated 01.06.2011 which was not admissible in their case. The importer notice mis-stating the facts mentioned above, has made himself liable to be penalized under the provisions of Section 114A of the Customs Act, 1962."

6. Thus, from the above, the foremost and very pertinent question arises about invocation of extended period of limitation based on elements of suppression, willful misstatement or collusion on the part of the appellant. As noted from records the appellant tendered a detailed reply before the lower authority, pointing out that there was nothing in the show cause notice, to allege a positive act on their part for any of the ingredients of Section 28(4). It is necessary to consider and point out that the appellants submitted the Country of Origin(COO) Certificate duly issued by the appropriate authority, in the country of export. In case the said COO Certificate was improper or incorrect, it had to be shown that such a certificate was issued at the instance of the appellant-importer, that he had conscious knowledge of the inaccuracies and falsification, in the said certificate. Unfortunately, there is nothing in the show cause to even suggest that the appellant was in some way instrumental in obtaining an allegedly imperfect COO Certificate which was not based on true facts and was based on a costing data of the year 2013. We are not in agreement with the departmental authorities that the importer steps into the shoes of the supplier and therefore can be proceeded against in law, invoking extended period. 7. The officers of the department also acted upon the said COO Certificates and had allowed the import of goods at concessional rate of duty. Subsequently, even if any infirmity in the said certificate issued to the exporter, came to light, to charge the appellant invoking extended period, the department has to establish that the appellant had willfully got it manipulated, had knowledge about the impugned infirmities and lacunae and the usage of wrong figures, in the computation of value addition and the importer had deliberately and willfully submitted the said certificates with intent to evade duty. Any wrong, detected as a result of the said certificate issued in the country of export, based on certain wrong premises from the supplier of the said country, without establishing knowledge on part of the importer and his active collusion in the matter cannot be sustained. We do not find any evidence brought out in the notice to this effect, alleging involvement of the appellant in the issuance of the improper COO Certificate. Loose and unspecific allegations that the investigations found out that suppliers/traders, supplied free of cost raw material (tin ore) of origin of non-ASEAN countries to MSC (the Malaysian exporter) for smelting and conversion to tin ingots and that the smelting charges paid by traders/suppliers for conversion reflected the true value addition(RVC) in Malaysia which in percentage terms of total FOB value did not meet the origin criteria for goods of Malaysian origin under the ASEAN Rules of Origin. That being the basis for issuance of COO Certificate, however nowhere points out the manner in which the appellant may have played any/active role in getting such irregular certificates. Also there's is no evidence to sustain the charge of supply of tin ore free of charge, other than a bland statement. Moreover, there is nothing in law that casts a burden on the importer to be aware of the factual details that go into the

> issuance of such a COO certificate. No malafides can thus be attached to the importer. Nothing prevented the authorities to slap the notice within normal period of limitation. If the said goods were cleared at Nil rate as per such COO Certificates issued and not at the otherwise leviable rate of 5% advance the importer cannot be faulted upon."

We find that the Coordinate Bench at Allahabad had clearly indicated that there has to be a positive act on the part of Importer in India to obtain a COO Certificate which was improper and incorrect that the same was issued at the instance of the appellant-importer, that he had conscious knowledge of the inaccuracies and falsification in the said certificates. We are in agreement with the reasoning provided for absence of conciousness knowledge. The collusion or any wilful misstatement or suppression of facts which permits extended period to be invoked under section 28(4) of the Customs Act cannot be alleged. We find that the show cause notice in this case has invoked extended period by invoking Section 28(4). The misstatement alleged to invoke extended period in the show cause notice by the department cannot be said to be wilful or based on any suppression of facts so as to make available extended period to the department. This is more so when on the basis of atleast three statement recorded of Shri Varun Goyal, he has been categorically stating that he had no knowledge of what transpired at the end of issuing authority and at the exporter in Malaysia. We therefore, find that the delay as per terms stipulated in the Rules for retroactive verification as well as inissuing show cause notice by the department is rather delayed. We therefore, on ground of limitation both in conducting verification as well as issuing show cause notice, hold that the proceeding cannot be sustained. Even in the case of Indras Agencies Pvt. Ltd. vide Final Order No. 41416/2025 dated 02.12.2025 in para 17 & 18, the Coordinate Bench at Chennai observed as follows in relation to section 28(4):

17. From the perusal of the abovementioned provisions, it is evident that extended period of five years can be invoked only in the cases of collusion, wilful misstatement and suppression of facts by the person who is liable to pay the duty i.e. the Importer/Noticee. Since the SCN does not have any such allegation as against the appellant, much less evidence let in of any such positive act on the part of the appellant that would constitute the ingredients required to invoke the said provisions for demand of duty, we are of the considered view that sans any such allegation and proof of any of the ingredients of collusion, or any wilful misstatement or suppression of facts by the importer, put to the notice of the importer, recourse to the said provisions of Section 28(4) of the Customs Act, 1962 cannot be taken by the Revenue to demand the duty foregone consequent to the utilisation of the transferred DFIA licence by the appellant.

18. Our aforesaid view stands fortified by the decision of the Hon'ble High Court of Punjab & Haryana in the decision in Commissioner of Customs, Amritsar v. Vallabh Design Products, 2007 (219) ELT 73 (P & H), wherein it has been held as under:

> "9. After hearing learned Counsel for the parties, we are of the considered view that this appeal is devoid of any merit. The assessee-respondent admittedly is not a party to the fraud. There are categorical finding that it had purchased DEPB from the open market in the bona fide belief of its being genuine. The assessee-respondent had paid full price and accordingly had availed the benefit.
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> 10. It is also worth noticing that the assessee-respondent was issued a show cause notice dated 10-6-2002 (P-2) before cancelling the DEPB, which was obtained by M/s. Parker Industries, however, **we are of the view that notice under Section 28 of the Customs Act could not be issued to the assessee-respondent because a period of six months stipulated by Section 28 of the Customs Act stood already expired and the rights of the parties had been crystalised, the imports having been affected on 15-11-1997. The revenue cannot avail the extended period because the assessee-respondent has not been accused of mis-representation, collusion or suppression of facts within the meaning of proviso to Section 28 of the Customs Act."**
>
> It is seen that the Hon'ble Supreme Court has dismissed the Civil Appeal No. 4503 of 2008 filed by Commissioner of Customs, Amritsar against the said Judgement, reported as **Commissioner v. Vallabh Design Products - 2016 (341) E.L.T. A222 (S.C.)**."

5.5 To conclude that allegation has to be against the appellant of doing anything positive to invoke extended period and such ingredients have to be clearly spelt out to the importer. Even in 2013 (288) ELT 161 (SC) Uniworth Textile Ltd. vs CCE-Raipur in para 25 and 26, the Hon'ble Supreme Court has held as follows:

> **"25.** Moreover, this Court, through a catena of decisions, has held that the proviso to Section 28 of the Act finds application only when specific and explicit averments challenging the *fides* of the conduct of the assessee are made in the show cause notice, a requirement that the show cause notice in the present case fails to meet. In *Aban Loyd Chiles Offshore Limited and Ors.* (supra), this Court made the following observations :
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> > "21. This Court while interpreting Section 11-A of the Central Excise Act in *Collector of Central Excise* v. *H.M.M. Ltd.* (supra) has observed that in order to attract the proviso to Section 11-A(1) it must be shown that the excise duty escaped by reason of fraud, collusion or willful

> misstatement of suppression of fact with intent to evade the payment of duty. It has been observed :
>
> *'...Therefore, in order to attract the proviso to Section 11-A(1) it must be alleged in the show-cause notice that the duty of excise had not been levied or paid by reason of fraud, collusion or willful misstatement or suppression of fact on the part of the assessee or by reason of contravention of any of the provisions of the Act or of the Rules made thereunder with intent to evade payment of duties by such person or his agent. There is no such averment to be found in the show cause notice. There is no averment that the duty of excise had been intentionally evaded or that fraud or collusion had been practiced or that the assessee was guilty of wilful misstatement or suppression of fact. In the absence of any such averments in the show-cause notice it is difficult to understand how the Revenue could sustain the notice under the proviso to Section 11-A(1) of the Act.'*
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> *It was held that the show cause notice must put the assessee to notice which of the various omissions or commissions stated in the proviso is committed to extend the period from six months to five years. That unless the assessee is put to notice the assessee would have no opportunity to meet the case of the Department. It was held :*
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> *...There is considerable force in this contention. If the department proposes to invoke the proviso to Section 11-A(1), the show-cause notice must put the assessee to notice which of the various commissions or omissions stated in the proviso is committed to extend the period from six months to 5 years. Unless the assessee is put to notice, the assessee would have no opportunity to meet the case of the department. The defaults enumerated in the proviso to the said sub-section are more than one and if the Excise Department places reliance on the proviso it must be specifically stated in the show-cause notice which is the allegation against the assessee falling within the four corners of the said proviso...."*
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> (Emphasis supplied)
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> **26.** Hence, on account of the fact that the burden of proof of proving *mala fide* conduct under the proviso to Section 28 of the Act lies with the Revenue; that in furtherance of the same, no specific averments find a mention in the show cause notice which is a mandatory requirement for commencement of action under the said proviso; and that nothing on record displays a willful default on the part of the appellant, we hold that the extended period of limitation under the said provision could not be invoked against the appellant."

5.6 From the above it is clear that the malafide conduct of the appellant has to be on record to prove that the ingredient of Section 28(4) were required to be invoked. Similarly in 2013 (287) ELT 255 (Guj) Kapadia Enterprise vs UOI, it has been clearly held that if a person is not involved to a fraud or collusion or wilful misstatement, he cannot be subjected to extended period. Para 20 and 21 reproduced below are relevant in this regard:

> "**20.** Strangely, the revenue authority was of the opinion that a person who is not party to a fraud or collusion or wilful mis-statement, may avoid penal consequences but not extended period of limitation. To us, the logic does not appeal. Our conclusion gets further support from the observations made by the Apex Court in the case of *Union of India* v. *Rajasthan Spinning and Weaving Mills* (supra) noted above.
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> **21.** Under the circumstances, quite apart from and in addition to the decision of the Division Bench of this Court in the case of *Commissioner of C.Ex. & Customs* v. *D.P. Singh* (supra), the decisions of the authorities are legally not sustainable. The same are, therefore, quashed and set aside. Resultantly, the petitioners are held entitled to retain the rebate previously sanctioned and paid over. The authorities are refrained from seeking any recovery thereof. If during the pendency of this petition in view of no interim relief being granted, such rebate is already recovered, the same shall be refunded to the petitioners with simple interest at the rate of 9% per annum from the date of recovery till actual refund. The petition is disposed of accordingly. Rule made absolute. No costs."

5.7 It is further seen that the various statements were recorded from time to time of the appellant. The statement dated 07.05.2015 was not culpatory and the appellant stated that the transaction was genuine and same was maintained in his statement dated 09.03.2016, 19.09.2016, 09.11.2016 and 03.04.2017 however, when being confronted with the signatures of Shri Anand Raj issuing officer of the certificate that the specimen certificate available with the department for the second time, while recording all statements he stated that the signatures appeared to be different (which is an opinion, even not of expert). It is therefore, concluded by us that statement are not culpatory and in the last statement dated 03.04.2017, the appellant expressing his opinion and not as an handwriting expert stating something cannot be taken to be a culpatory statement about the underlying transaction specially, when he has been maintaining about the payment having been made to the Malaysian supplier and has explained the situation which made him shift from his earlier imports from China to Malaysia. In this context, we find that a fraud committed certainly has consequences but the same has to be proved by tangible evidence and not by a simple assertion from Malaysian authorities about the certificate just stating that 15 certificates are not verified and that too not talking about Issuer's signature. The underlying correspondence, the right to cross examination which is available in relation to foreign documents as well as various points as to what kind of verification was conducted and the details thereof are required to be all provided to the appellants to meet the serious allegation of fraud which can visit a lot of consequences once proved. We find that the evidence adduced by the department woeful lacks in this regard. The following analysis with the help of a case law enables us to appreciate as to what all is wrong in the departmental evidence indicating that 15 bills of entry are not verified. In this regard, we are relying on the order of M/s Findoc Impex vs Commissioner of Customs-Ludhiana & Ors, vide order No. 60488-60490/2026 dated 05.08.2026 which in turn is based on the decision of Shakti Traders pronounced by Allahabad Bench of the Tribunal vide Final Order No. 70548-70553/2024 dated 30.08.2024. The finding available from para 28-42 indicating the process to be required for any kind of verification or any overseas inquiry has been outlined in the aforesaid decisions is reproduced below:

> "28. We find that the Tribunal has discussed the issue relating to the admissibility of evidence obtained from the Customs Overseas Intelligence Network (COIN). We find that Tribunal and Courts have been holding that unauthenticated documents cannot be relied upon and that the documents must be obtained following due procedure. Tribunal held in the case of Agarwal Metals and Alloys 2021(378) ELT 155 (Tri-Ahm)
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>> 11.8 In respect of report given by First Secretary (Trade), Embassy of India, Brussels is concerned we are of the view that the adjudicating authority has wrongly placed reliance on the same. We are in agreement with submission of Appellant that the invoices and supporting documents with the report has no relevance as the same were not authenticated and relates to transaction between two different parties of which the Appellant is not a party of. The department through the First Secretary (Trade), Embassy of India, Brussels had obtained a report of the Belgium Customs Authorities along with its enclosures. We note that the enclosure contains a proforma invoice dated 15-4-2003 issued by M/s. Huron Valley Europe NV on M/s. Ni-Met, New York and the document is in Dutch. It is a document of a sales transaction of a European Company selling goods to an American Company in which Appellant is not involved. The same goods has been sold to the Appellant by Ni-Met under a separate independent business transaction, hence the aforesaid report cannot be applied to present import. In any we observe that supplier i.e. M/s. Ni-met had subsequently issued a specific letter stating that the goods have been sold to the Appellant at a much lower price than the price that it was purchased and the contents of the said letter have not been disputed in the order. Hence, the aforesaid report cannot be relied upon.
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> 29. It was held in Chandra Impex P Ltd Vs Commissioner of Customs New Delhi 2008 (224) ELT 583 (Tri-Del) that
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>> 23. Before us there was a contention that the documents recorded by the Revenue had not been authenticated as per the procedure laid down under Section 3(2) of Diplomatic and Consular Officers (Oaths and Fees) Act, 1948. We have examined the

> provisions under this Act as appearing in the judgment of Vimal Chand (supra). It is obvious that Section 3 of this Act confers powers on Indian Diplomatic and Consular officers in foreign countries to administer any oath and do notarial act. As regards the objective of the said Act, it aims at providing "the administration of oath by diplomatic and consular officers and to prescribe the fees leviable in respect of certain officials of their duties". In our view, the said Act is just a mechanism available so that notarial act, as available through notary public in India, could also be available abroad. The availability of such mechanism cannot be made into a mandate under the Customs law. If co-relatable documents were obtained independently from foreign countries from reliable sources (such as Customs) under their covering letter duly authenticated and signed by the said authorities, we do not find anything wrong in relying upon them. Further, the provisions under the Act of 1948 especially Section 3(2) does not require every document to be attested. From the perusal of the record and the statements made during the Investigation, It appears to us that the fax messages cannot be brushed aside lightly mainly since their exchange was never contested by the appellants. The argument that the fax messages cannot be relied upon as they do not bear any signature does not, in our opinion, hold water.

30. It was held in Deepak Enterprises Vs Commissioner of Customs Kolkata 2003 (159) ELT 851 that photocopies of documents which are unsigned and unauthenticated cannot be relied upon as evidence and no charge of under-valuation can be sustained on the basis of such evidence. The ratio of the following decisions binds us to conclude that no material exists to accept the values as proposed in the notice. Hon'ble High Court of Punjab and Haryana held in the case of Commissioner of Customs Vs Kalsi Machinery Co P Ltd. 2015 (325) ELT 572 (P & H) that

> The Commissioner of Customs has filed the instant appeal against the view taken by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (for brevity 'the Tribunal') In its order dated 22-9-2010 [2011 (264) E.L.T. 318 (T)] (A.4) upholding the view of the Commissioner (Appeals). A perusal of the order would show that the importerrespondent had claimed that they paid only 10,000 Euros and there was no advance payment of any amount in Euros currency as mentioned in the invoice produced and relied by the Customs Department. It has been found that there was no investigation regarding the actual payment in respect of the transaction. The Tribunal has also pointed out glaring discrepancy in the document relied upon by the department. The Commissioner (Appeals) in his order has specifically mentioned that the invoice relied upon by the appellant to show the price as 19,000 Euros was not a signed invoice and could not have been relied upon. On that basis, the Commissioner (Appeals) had set aside the order-in-original passed by the adjudicating authority. In fact there was no evidence sustainable in law to Initiate proceedings against the importer-respondent. The view taken by the Commissioner (Appeals) has been accepted by the Tribunal and we find no ground to interfere in the same as these are pure findings of fact. It is thus patent that no question of law much less a substantive question of law would arise for adjudication of this Court. Accordingly, the appeal falls and the same is dismissed.

31. It was held in CC Vs South India Television (P) Ltd. 2001 (136) ELT 243 (Tri-Del) that

> 7. After considering the submissions made from both the sides, we find that the only basis for enhancing the assessable value of the imported goods is the export declaration furnished by the importers/suppliers at Hong Kong. The appellants have strongly contended that it is the photocopies of the said declaration and the signature bearing on them do not reflect upon the authority of the persons signing them and as such the same cannot be made the basis for rejecting the transaction value. As against this, the Commissioner has observed that the said export declarations have been obtained through Hong Kong Customs and as such he has rejected the appellants' contention that this export declaration being only xerox copies cannot be considered as authenticated documents. We agree with the submissions of the appellants that these xerox copies of the said documents, even though procured by the Hong Kong Customs and forwarded to the Commission for India in Hong Kong which in turn has forwarded them to India; will not make them genuine documents. This was so held by the Tribunal in the case of Indian Optics Pvt. Ltd. v. Commissioner of Customs, New Delhi reported in 2000 (123) E.L.T. 1022 (Tri.) = 2000 (39) RLT 381 (CEGAT)

32. It was held in Truwoods P Ltd 2005 (186) ELT 135 (Tri-Del) that

> 9. The Tribunal in South India Television case has also found force in the Appellants' submission that there is a possibility of the export declaration price being on the higher in order to claim higher export incentive and in such circumstances, the transaction value has to be accepted. Shri Sanjeev Agarwal, Chief Executive of the appellant Company, has clearly deposed in his statement dated 16-5-2001 that there might be a possibility of some kind of export/Import benefits or adjustment in taxation in those countries. The Revenue also does not seem to have checked up the genuineness of the manufacturers' Invoice from the Customs/Revenue Authorities of the respective countries or from the manufacturers themselves. No basis has been mentioned in the Report received from USA for reporting that the invoice submitted

by the Appellants was tampered with. The Supreme Court in the case of East Punjab Traders, supra, besides the fact of source of obtaining the document, has held that the presumption under Section 139(II) of the Customs Act cannot be raised because the document did not bear any signature. The Court has held as under:

"In order to raise the Presumption under the said Provision; the basic facts had to be laid. Even though they bear a serial number and stamp of Japan Customs, the fact remains that they are copies of copies and indisputably bear no signatures of the exporter, the forwarding agent, the stevedore or the Customs Officer, no signature at all or any of them." In the present matters also, the documents are unsigned. The Revenue, after finding in Order-in-Original No. 19/2003 that the contemporaneous evidences are equally tilted on both the sides, cannot disregard the transaction value. In the case of Ramkhazana Electronic relied upon by the learned Senior Departmental Representative, the judgment of the Apex Court in East Punjab Traders regarding unsigned nature of the document was not cited before the Tribunal. In Diary Den case, the photocopies of the documents had been attested by the customs officer who signed the report of the Italian Customs whereas in the present matters the export declarations are unsigned and unattested one. In CC, Jaipur v. Indian Watch Parts Mfg., relied upon by the learned Senior Departmental Representative, the transaction value was not accepted as the manufacturer's Invoice or other documents to support value shown in import invoices were not produced and comparable import price was found to be closer to export declaration than price declared in import invoices. Similarly, in R.J.S. Studio case, the Appellants misdeclared the origin of goods and no agreement or any document was produced by them to prima facie show that the price declared by them was the one which was agreed upon on negotiation before importing the goods. In Craft Studio case, the Investigation was conducted by the Hong Kong Authorities which had clearly brought out the modus operandi adopted by the Appellant therein and its supplier and the payment of undeclared portion of the value of the goods on telegraphic transfer brought out the deliberate nature of the offence. Thus, the decisions relied upon by the learned Senior Departmental Representative are not applicable to the facts of the present matters. We, therefore, set aside all the impugned orders and allow all the appeals with consequential relief, if any.

32.1. Apex Court affirmed the above decision Truwoods Pvt Ltd 2016 (331) ELT 15 (S.C.)

4. It would be pertinent to observe that in support of its case, the Revenue had produced certain documents purported to have been issued by Italian customs authorities as per which the price of these very goods was shown higher by the manufacturer of these goods through whom the goods were purchased by M/s. Pargan Singapore for sale to the assessee. The assessee had challenged the admissibility of these documents in evidence on the ground that they are not authenticated. This argument has been accepted by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'CESTAT'). CESTAT has found that the documents procured by the Revenue do not bear any signatures and are photocopies which are not even attested and accordingly, the assessable value could not be enhanced on the basis of such documents. In arriving at this conclusion, while doubting the genuineness of those documents, the CESTAT has kept in mind the provisions of Section 139 of the Customs Act and has relied upon various judgments of the Tribunal on this issue.

33. Further, we find that Tribunal has been consistently holding that in the absence of verification from the country of declared origin, the allegation of misdeclaration of country of origin does not survive. We find that Allahabad Bench of the tribunal, had an occasion to go into a case, having similar facts involving import of dry dates allegedly from Pakistan and mis declaring the country of origin and the issue of Phytosanitary Certificates. The Bench held in the case of M/s Shakti Traders, vide final order No. 70548-70553/2024 dated 30-8-2024, that

4.5 Before we further take up the matter for discussion, we are constrained on plain reading of the impugned order that the same has been passed with a pre conceived mind, without application of judicial mind to the facts and law in the matter. Impugned order records in respect of an affidavit filed by the revenue in case of M/s Raghunath Laxminarayan Agarwal, in writ petition No 11283 M/B of 20202 challenging the seizure made (still pending in High Court) stating as follows:

“5. Further enquiry regarding genuineness of the Certificate of Origin submitted by the petitioner at ICD Kanpur for clearance of is underway.”

Without waiting for the outcome of enquiry which was being made by the revenue same authority proceeds to adjudicate the case. Further no explanation has been given in respect of such enquiry. Even the show cause notices are dated 28.09.2020 and the in-counter affidavit filed on28.01.2021 certain enquiries being made in respect of “Certificate of Origin” has been mentioned. In our view either revenue was itself not sure of sufficiency of evidences or was misleading the Hon’ble High Court by way of this submission. The enquiry that we can contemplate could have been made only with the certificate of origin issuing authority UAE as per Rule 6 of the Customs

> (Administration of Rules of Origin under Trade Agreements) Rules, 2020. However, if any such enquiry was being made the outcome of the said enquiry should have been part of the impugned order, for the reason that the only case is in respect of the said Certificate of Country of origin.

34. We find that though in this case, there is no mention of any pending verification, regarding the country-of-origin certificate, the ratio is applicable to the facts of the present case as there is no mention of any verification regarding the country of origin and the certificates submitted by the appellant were rejected without causing any overseas verification or enquiry regarding the country of origin and phytosanitary certificates. Allahabad Bench held in the above case that

> The Adjudicating authorities straightway rejected the Country of Origin without even taking note of the evidences in available on the record in form of Phyto Sanitary Certificate and Fumigation Certificate. If the certificate was to be rejected the same should have been done in consultation with the Certificate issuing authority. Thus, the Custom Authorities under Custom Act, 1962, have no jurisdiction to challenge the documents issued by the Government Authorities of the other Country as has been held in the following cases:
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> - Pradip Polyfils Pvt. Ltd. [2001(173) E.L.T. 3 (BOM.)]
> - Khanna Paper Mills Ltd. [2011(273) E.L.T 149 (Trib.-Del.)]
> - S. Chandra Sekhran [2011 (132) E.L.T 751 (Trib Chennai)]
> - Titan Medical Systems Pvt. Ltd. [2003 (151) E.L.T 254 (S.C)]
> - Symphony International [Final Order No A/10194/2024 dated 23.01.2024}

35. We further find that Allahabad Bench, relying on the need to follow the procedure under Rule 6 of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020, also held in the case of in case of Omega Pack well [Final Order No 70331- 70336/2024 dated 07.06.2024] that

> "17. On the issue of country of origin, we find that in all documents viz., invoice, country of origin certificate, phytosanitary certificate etc. country of origin of dry dates in present case was shown UAE. Slips tagged with bags of dry dates were showing country of origin of the goods UAE. No enquiry was conducted by the Department to prove that country of origin certificate duly issued by the Competent Authority of the exporting country was fake. As per the country-oforigin certificate, the same was issued by Ajman Chamber of commerce after verification of goods. At Sl.No.12 of the certificate, it has been certified by the Competent Authority of Ajman Chamber of Commerce, UAE that evidences produced before them satisfy that the said goods originate in the country shown in the certificate which is UAE in the present case. It shows that the said certificate was issued after proper verification of origin of goods. Authenticity of the said certificate was never challenged by way of any enquiry from the exporting country. We further notice that phytosanitary certificate which was issued by National Plant Protection Organization of exporting country also indicates country of origin UAE. No evidence was brought out to infer that country of origin shown in the said phytosanitary certificate was incorrect. Bags of dry dates were found, during physical verification, carrying slips on which country of origin was mentioned as UAE. Mere suspicion is not enough to discard aforesaid documents.
>
> 36. We find that principal Bench of the Tribunal followed the ratio of the above case in the case of S.S. Overseas 2025 (1) TMI 688 - CESTAT NEW DELHI. We find that the evidence produced therein is identical to the evidence produced in the impugned case. Principal Bench,
>
> 21. After reproducing rule 6 of the 2020 Valuation Rules, the Tribunal observed that since the procedure contemplated under the said rule had not been followed to verify the correctness of the certificate of origin, it would have to be held that the goods were of UAE origin. The relevant observations are as follows
>
> "Nothing has been placed on record by which it can be said any verification request has been made by the custom authorities with concerned authorities in UAE to verify the genuineness and correctness of the Certificate of Origin issued by them. In view of the above concrete proofs regarding country of origin, we hold that said goods were of UAE origin. We find that in the case of Challissari Kirana Merchant (supra), the Hon'ble Kerala High Court has held that for determination of country-of-origin due weightage should be given on the country-of-origin certificate in case of any suspicion. In the case of Yellamma Da Sappa vs. Commissioner of Customs, Bangalore [2000 (120) E.L.T. 67 (Kar.)], the Hon'ble Karnataka High Court has observed as follows:
>
> "9. A valid certificate has been issued and the said certificate, even as on date, has not been withdrawn or cancelled for any alleged violation of the condition by the appellant. Unless the said certificate is cancelled, the Customs Authorities cannot impose customs duty. The seizure of the equipment is only a consequential act that would follow the cancellation of the certificate issued in favour of the Appellant. So long as the certificate is not cancelled, the respondents could not, in our opinion, have initiated seizure proceedings in the case on hand. Petitioner-appellant was sent only a questionnaire and the said questionnaire has been answered by the appellant herein.

No further action has been taken by the respondents. The Director General of Health Services has also not issued any cancellation of certificate as on date. In these circumstances, we are clearly of the view that without withdrawing or cancelling the certificate already issued, the present seizure cannot stand. Therefore, we hold that the seizure effected by the respondents is not in accordance with law. The impugned order of the learned Single Judge, in these circumstances, requires to be set aside and accordingly the same is set aside."

The Tribunal in the case of Alfakrina Exports vide Final Order No.11759/2023 dated 23.08.2023(Tri-Ahmd) on the issue of nonacceptability of Country-of-Origin Certificate for deciding origin of goods held that the Certificate of country of origin cannot be discarded without checking its authenticity and benefit if any cannot be denied.

In view of the above settled legal position, we hold that goods, in question, were of UAE origin and confiscation of goods on the ground of mis- declaration of country of origin is not sustainable."

37. In all the cases cited above, particularly with reference to the import of dry dates tribunal has been consistently holding that a conclusion on the country of origin cannot be arrived at without causing an enquiry on the authenticity or otherwise of the certificate issued. In the instant case, the genuineness of the certificate was not enquired from the issuing country. Therefore, the allegation that the country of origin of the impugned goods is Pakistan is not established conclusively. The reports obtained from the customs officer posted in Dubai, may have at best raised a suspicion as to the veracity of the declarations submitted. However, the same cannot be concluded without a verification of country of origin in an authentic manner. Further, as per the discussion as above, when doubts have been raised on the authenticity of the documents, as the documents are neither authenticated by the overseas customs authority nor do they bear stamps and seals of such authorities, the evidentiary value of such documents is lost. We also take note of the fact that the manner of obtaining/procuring such documents is also not explained satisfactorily.

38. In view of the above, we find that whether COIN /foreign intelligence reports can be used as reliable evidence depends entirely on the strength of their facts and how well they are corroborated. Courts and tribunals follow the principle that raw, unverified intelligence or unauthenticated photocopies are not enough to reject a declared transaction value. Without solid supporting evidence, these reports are treated merely as a starting point for an investigation, not as final proof of a violation. However, when foreign authorities provide a specific, verified investigative report, backed by strong, independent facts and completely corroborated, the evidence becomes reliable and admissible. Further, we find that that other than a print out from the website of dpwdt.dubaitrade.ae/ Export, discussed above, revenue could not produce any evidence. There too as discussed above, the authenticity, manner of procurement transmission etc. are not established. What is being passed off as strong evidence is nothing but a printout from the website of dpwdt.dubaitrade.ae/ Export which is not stamped or signed. Even the copy of letter by which the customs officer posted abroad is claimed to have sent the report was also not provided to the appellants. The financial trail to prove that the sale proceeds were sent to the Pakistani exporters or supplier, is not established. In the instant case, we find that the documents are not authenticated. We are not able to appreciate that the photo copies forwarded by the officer posted in Dubai can be treated as evidence to establish the allegation against the appellants.

39. Coming to the issue of seizure/confiscation of goods imported by the appellants, we find that the goods imported and not cleared by the appellants were seized. Also, the goods already cleared by the Customs were proposed to be confiscated. The proposal for seizure and confiscation was on two counts, one, the alleged misdeclaration of country of origin and the absence of phytosanitary certificates in respect of the imported consignments. In view of the facts of the case and the decision of tribunal in identical cases, we are of the considered opinion that seizure/confiscation on account of misdeclaration of country of origin cannot be upheld.

40. We find that confiscation was also proposed for goods seized and goods which were imported and already cleared. We find that the impugned orders also proposed to confiscate goods imported and cleared for home consumption. The appellants submit that such goods cannot be confiscated. Understandably, the goods were cleared after due examination by the officers. In some cases, the goods were cleared after due investigation by the SIIB of the Customs House. Learned Authorised Representative submits that the contention of the appellants that SIIB clearance exonerates the Appellant is equally unsustainable.; SIIB inquiry was undertaken on the basis of documents then furnished, which were themselves part of the manipulated documentary trail; the deeper investigation by DRI, coupled with the overseas inquiry, revealed the true position; fraud vitiates all acts and all proceedings founded thereon.

41. The contention of the department could be true, at least for the sake of argument, in respect of the issue of Country of Origin is considered. However, the allegation of misdeclaration was not established by credible, authentic evidence, as discussed above. However, the logic cannot be extended to the issue of Phytosanitary certificates. Having cleared the goods after due examination and after satisfying themselves as to whether the conditions which are required to be met for clearance of such goods, it is not open for the

> revenue to propose the confiscation of goods which have been imported and cleared by the authorities for home consumption. Moreover, such goods seize to be imported goods as per section 2(f) of the Customs Act, 1962.
> 42. However, it is not the same case with reference to goods which were seized for contravention of Plant & Quarantine (regulation of Import into India) Order 2003. As the phytosanitary certificates were not produced, the goods cannot be released to the appellantimporters. We are of the considered opinion that such goods are liable to be confiscated. The impugned orders require to be upheld to the extent of confiscation of seized goods. However, the redemption fine/penalty on this count needs to be imposed looking into the facts of the case, the profit margin and the detention and demurrage charges that may have to be borne by the appellants. We find that in the appeals filed by M/s Findoc Impex and M/s TRB International, penalty under Section 112 was not proposed against the appellants. Learned Commissioner, however, has imposed penalties under Section 112 which is beyond the purview of the show cause notices. To our considered opinion, the same is not permissible."

5.8 We find that the evidence adduced by the department fails to establish that there was any fraud committed. At the most it arouses suspicion for investigation. Again, there has not been any culpatory statement indicating mis-declaration by the appellant, the extended period u/s 28(4), therefore, in any case, cannot be invoked nor can benefit of a beneficial exemption denied on the basis of such delayed and lacking in credence verification of goods, which were cleared by the proper officer. The extended period is not invokable in view of the decided case law and the position of the statements. There has been undue delay in conducting verification and that too has been done belatedly, only in respect of 15 out of 29 certificates of origin, even the process adopted and the report is not as per the process of seeking information from any foreign agency of foreign customs/ establishment as is laid down in various case law as indicated above. Further, Rule 23 process of taking action by the Malaysian Authorities against person, who allegedly made fraud papers is not on record, nor is any request by Indian Authorities. The person giving report as also its contents alongwith details of persons to whom 'actual certificates' were issued are not on record. While we do not agree with the appellants that case of Munjal Showa (Cited supra) should not be taken cognizance of by us as it ignores some earlier decisions of Hon'ble Supreme Court "*Judiciis posterioribus fides est* *adhibenda*" applies, therefore, those following precedents are required to give faith to the later decisions. However, we also find that unlike as in that case where "fraud" was admitted and established, here in this case the process of establishing "fraud" is far from complete and the report simply stating "not verified. Issued to others", by a foreign authority needs to be tested against the vigors (as per various rulings above), of proper attestations, alternate documents to whom certificates were supplied, opinion of handwriting experts and more importantly to examination/ cross examination of all correspondence/ underlying documents duly attested. Documents when acquired from extra-territorial jurisdiction must afford greater authenticity as well as right to proper defense. In the absence of above, "fraud" is far from established. More so, when remaining COO's have not been verified till date by the department.

5.9 In view of foregoing, we find that both cause of delay in conducting verification, alleged fraud not having been established as well as on invocation of extended period, in the face of lack of knowledge of the importer coming repeatedly on record during investigation, the appeal deserves to be allowed on ground of limitation and non-application of Section 28(4), which has been invoked by the department. The demand, interest and penalties or extended period are therefore, not invokable. Appeals are allowed with consequential benefit to the litigating parties.

(Pronounced in the open court on 31.08.2026)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

Neha