CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 20254 of 2024

(Arising out of Order-in-Original No. COC-CUSTOM-000-12/2023-24 dated 15.12.2023 passed by the Commissioner of Customs, Cochin.)

Smt. M. Poovizhi
Managing Partner M/s. Gounder & Co.,
16/1/290A Dharmapuri Main Road
Indira Nagar, Chamrajpet, Mecheri Mettur taluk Salem,
Tamil Nadu - 636451. ....**Appellant**

VERSUS

Commissioner of Customs, Cochin
C R Building, I S Press Road,
Kochi, Ernakulam, Kerala – 682018. …....**Respondent**

WITH

i. **Customs Appeal No. 20359 of 2024 (Shri P Ayyappan Vs. CC, Cochin)**
ii. **Customs Appeal No. 20360 of 2024 (M/s. Gounder & Co. Vs. CC, Cochin)**
iii. **Customs Appeal No. 20361 of 2024 (Shri R Mohammed Muzammil Vs. CC, Cochin)**

(Arising out of Order-in-Original No. COC-CUSTOM-000-12/2023-24 dated 15.12.2023 passed by the Commissioner of Customs, Cochin.)

APPEARANCE:

Mr. Durairaj, Advocate for the Appellant.
Mr. M. Sreekanth, Authorized Representative (AR) for the Respondent.

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

<u>Final Order Nos. 20774-20777 /2026</u>

Date of Hearing: 25.02.2026
Date of Decision: 24.06.2026

PER: P.A. AUGUSTIAN

The issues in the present appeal are:

a. whether the appellant is eligible for the benefit of Exemption Notification No. 46/2011 dated 01.06.2011;
b. whether demand of differential duty is sustainable; and
c. whether penalty imposed on the Appellant and co-Appellant were sustainable.

2. The Appellant had imported Mulberry Rose Silk from Vietnam by availing the benefit of Notification No. 46/2011 dated 01.06.2011 and produced the Country of Origin (COO) Certificate as per the Notification No. 189/2009-Cus (NT) dated 31.12.2009. Goods were imported under 2(two) Bill of Entries, and it was assessed and allowed to clear on allowing the exemption. Thereafter, DRI initiated investigation, alleging that the impugned goods originated from China and routed through Vietnam to avail the exemption wrongly. As part of the investigation, summons was issued and statements were recorded from various persons. Thereafter Show Cause Notice (SCN) dated 25.02.2023 was issued alleging that the Appellant is not eligible for exemption and for availing ineligible exemption, liable to be imposed with penalty. Thereafter, Adjudication authority as per the impugned order dated 15.12.2023, confirmed the demand along with interest and imposed penalty. Aggrieved by said order, present appeals are filed.

Sl. No.	Appeal No. and Appellant	Liabilities (in Rs)	
		Duty	Penalty
1.	C/20360/2024 M/s Gounder & Co. (Main Appellant)	Rs. 29,70,272/-	Rs. 29,70,272/- under section 114A of Customs Act, 1962
2.	C/20254/2024 Smt M. Poovizhi.	--	Rs. 14,85,136/- under section 114A of Customs Act, 1962 [114AA] Rs.1,48,514/-& [112(a)(b)(ii)]

3	C/20359/2024 P. Ayyappan	--	Rs. 29,70,272/- [114AA] & Rs.2,97,207/- under Sec 112(a)(b)(ii).
4	C/20361/2024 R. Mohammed Muzammil, Proprietor, M/s Green Silk Impex.	--	Rs. 14,85,136/- [114AA] & Rs.1,48,514/- [112(a)(b)(ii)]

3. When the appeal came up for hearing, Learned Counsel for the Appellant submits that the Country of Origin certificate produced by the Appellant is rejected without following the procedure as per clause 16 and 17 of Annexure-III [Rule 13] of Notification No. 189/2009-Cus (NT) dated 31.12.2009 read with Article-24 of Annexure-D of Operational Certification Procedures for the Rules of Origin for the ASEAN-INDIA Free Trade Area (AIFTA]. Learned Counsel further submits that the Section 108 statements and the e-mail printouts of third-party data ought not to have been relied without satisfying the conditions stipulated in Sections 138B, 138C (Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence). The conditions of Section 139 of Customs Act, 1962 are not satisfied in as much as those documents are not received from authentic sources and an opportunity to rebut was not given to the author of those documents though the Section 108 statements were retracted.

4. Learned Counsel for the Appellant submits that when there is reasonable doubt as to the authenticity of the county-of-origin certificate, the importing party can request the issuing authority to conduct retroactive check in terms of clauses 16(a) and 17 of Annexure-III [Rule 13] of Notification No. 189/2009-Cus (NT) dated 31.12.2009 read with Article-24 of Annexure-D of Operational Certification Procedures for the Rules of Origin for the ASEAN-INDIA Free Trade Area (AIFTA). The verification procedure was further explained in Circular 31/2016-Customs dated 12.9.2016. For the imports after 01.09.2020, Section 28DA [Procedure regarding claim of preferential rate of duty], Notification No. 81/2020-Customs (NT) dated 21.8.2020 (Customs [Administration of Rules of Origin]) and Circular 38/2020-Customs dated 21.08.2020 were

introduced prescribing the procedure, which are the same in Notification No. 189/2009-Cus (NT) dated 31.12.2009, to be followed before denying the exemption. In the present case, it is an admitted fact that the prescribed statutory procedures were not followed before denying the exemption. Further, there is no allegation in the show causes notice (SCN) for violation of the above provisions. The DRI has followed its own method and rejected the country-of-origin certificate based on inadmissible evidences, while issuing the SCN. The Adjudicating Authority has also relied on such inadmissible evidences to confirm the demands. Law is settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. If the law requires that something be done in a particular manner, it must be done in that manner, and if not done in that manner has no existence in the eye of the law at all. Learned Counsel relied on the following decisions of Hon'ble Supreme Court;

i. **Babu Verghese & Others Vs. Bar Council of Kerala – 1999 (3) SCC 422**
ii. **Chandra Kishore Jha Vs. Mahavir Prasad & Others – (1999) 8 SCC 266.**
iii. **Cherukuri Mani Vs. Chief Secretary, Government of Andhra Pradesh & Others (2015) 13 SCC 722.**
iv. **Tata Chemicals Limited Vs. Commissioner of Customs (Preventive), Jamnagar (2015) 11 SCC 628**
v. **Municipal Corporation of Greater Mumbai Vs. Abhilash Lal & Others (2020) 13 SCC 234.**
vi. **Opto Circuit India Limited Vs. Axis Bank & Others – (2021) 6 SCC 707.**

5. Learned Counsel for the Appellant further submits that the Adjudication Authority failed to comply with statutory procedure in clause 16 and 17 of Annexure-III of Rule 13. In this regard, Learned Counsel draws our attention to the decision of the Hon'ble Supreme Court in the case of **State of Punjab Vs. Davinder Pal Singh Bhullar (2011) 14 SCC 770**, were it is held that it is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the

root of the order. In such a situation, the legal maxim "sublato fundamento cadit opus" meaning thereby that foundation being removed, structure /work falls, comes into play. This legal maxim is applicable for the present case also.

6. Learned Counsel for the Appellant further submits that the Adjudicating Authority has proceeded to confirm the demand solely based on Section 108 statements. In reply to the show cause notice, the depositions and allegations were denied. To defend further, by relying on Section 138B of the Customs Act, 1962, it was submitted that no reliance can be made on such statements without examining and cross-examining such persons, who signed the statements. The Adjudicating Authority without complying with the provisions of Section 138B has passed the impugned order. It is the mandatory obligation to examine the persons, whoever it may be, who signed the statements before admitting the statements as evidence in terms of Section 138(1)(b) and subsequently an opportunity must be given to the other party to cross-examine those persons. The Adjudicating Authority has not fulfilled the obligation under Section 138(1)(b).

7. Learned Counsel for the Appellant further submits that in SCN, there is an attempt to adduce evidence in the form e-mail print outs. It was only shown to the deponents during the recording of statements in Jan and May 2022. There is no record of proceedings to justify that this was retrieved from the electronic devices. The source of this document is not known. In the reply to the SCN, the authenticity of this document was questioned, and the allegations/depositions were denied and retracted. Therefore, the conditions stipulated in Section 138C(4) were not fulfilled. As regarding Section 138B and 138C(4). Learned Counsel relied on the following decisions;

i. **Sino Import & Export Pvt Ltd, and S Amarish Vs. Commissioner of Customs, Chennai II Imports - 2025 (12) TMI 835.**

ii. **Sachin Soni, Aditya Gupta, Rajiv Shewaramani, Hemendra Rai Vs. Principal Commissioner of Customs (Import), New Delhi - 2026 (1) TMI 1176.**

8. Learned Counsel for the Appellant further submits that the documents relied on are third party's documents, who are in China. Documents are not lucid. The conditions of Section 139 of Customs Act, 1962 are not satisfied in as much as those documents are not received from authentic sources and an opportunity to rebut was not given to the author of those documents. Reliance is placed on the decision of Hon'ble Supreme Court of India in the case of **Collector of Customs Vs East Punjab Traders – 1997 (89) ELT 11 (SC).**

9. As regarding invoking the extended period under Section 28(4) of Customs Act, 1962. Learned Counsel for the Appellant submits that no positive legal evidence is adduced. Therefore, the entire demand is hit by limitation. Penalty under Section 114AA can be imposed only for exports as clarified in objects and reasons, while introducing Section 114AA. Therefore, penalty under Section 114AA cannot be imposed. Redemption fine is infructuous as the goods are not available for confiscation. The entire demand is not tenable. Consequently, the interest and penalties are also not sustainable.

10. Learned Authorized Representative (AR) for the Revenue reiterated the finding in the impugned order and submits that as per the evidence on record, fraudulent document was submitted. As regarding penalty, Learned AR submits that M/s. Gounder & Co. for their act of omission and commission is liable to a penalty under Section 114A of the Customs Act, 1962. As provided by the 5th Proviso of Section 114A "that where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114". Thus, invocation of Section 112 against M/s. Gounder & Co. is improper. As regarding the other appellant Shri. P. Ayyappan, Learned AR submits that he is an Executive Director of M/s. Gounder & Co and has been clearly found to be the mastermind from the evidence brought on record and as the person actually in touch with the foreign suppliers and related persons to fraudulently show the

origin of the imported goods as Vietnam to avail ineligible Customs duty exemption. Therefore, he deserves to be penalized with the penalties as imposed by Adjudication Authority.

11. As regards penalty on appellant Shri. Mohammed Muzammil, Partner in M/s. Gounder & Co and Shri. M. Poovizhi, proprietor of M/s. Green Silk Impex, Learned AR submits that for act of omission and commission as held in the impugned order, they are liable to be imposed with penalty.

12. Heard both sides and perused the records.

13. We find that the law is well settled that when a specific act has to followed in a specific manner and if authority fails to act accordingly, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In the present case, we find that Country of Origin Certificate produced by the Appellant is rejected without following the procedure as per clause 16 and 17 of Annexure-III [Rule 13] of Notification No. 189/2009-Cus (NT) dated 31.12.2009 read with Article-24 of Annexure-D of Operational Certification Procedures for the Rules of Origin for the ASEAN-INDIA Free Trade Area (AIFTA). The confession statements recorded during the investigation cannot override the statutory requirement of the following procedure as per Notification No. 189/2009-Cus (NT) dated 31.12.2009. In view of the above discussion, we find that the impugned order is unsustainable and liable to be set aside.

14. Accordingly, the impugned order is set aside, and the appeals are allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 24.06.2026.)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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