

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. III

Customs Appeal No. 41873 of 2016

(Arising out of Order-in-Appeal C.Cus. I No. 274 & 275/2016 dated 05.07.2016 passed by Commissioner of Customs (Appeals I), No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

M/s. Veekay Diamants

No. 4101, DC, Bharat Diamond Bourse,
Bandra Kurla Complex,
Bandra (East),
Mumbai – 400 051.

...Appellant

Versus

Commissioner of Customs

Chennai IV Commissionerate,
Air Cargo, New Custom House,
Meenambakkam,
Chennai – 600 027.

...Respondent

APPEARANCE:

For the Appellants : Mr. Ranjeet Singh, Consultant

For the Respondent : Ms. Rajini Menon, Authorised Representative

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 40671 / 2026

DATE OF HEARING : 19.01.2026

DATE OF DECISION : 02.06.2026

Per Mr. VASA SESHAGIRI RAO

The present appeal has been filed by M/s. Veekay Diamants, Mumbai (hereinafter referred to as "the Appellant") against Order-in-Appeal No. 274 & 275/2016 dated 05.07.2016, which upheld Order-in-Original No. 122/2016 dated 20.02.2016 passed by the Joint

Commissioner of Customs, Chennai (hereinafter referred to as "the Impugned Order").

1.2 The facts, as borne out from the records, reveal that the Appellant imported two consignments of gold jewellery studded with diamonds/ruby from Thailand under Bills of Entry dated 25.08.2010 and 22.10.2011 and claimed exemption under Notification No. 85/2004-Cus read with Notification No. 101/2004-Cus (N.T.) based on Certificates of Origin issued by the Government of Thailand. The goods were initially assessed and cleared after acceptance of the Certificates of Origin by the proper officer. Subsequently, investigation was initiated by SIIB in August 2015 alleging that the Local Value-Added Content (LVAC) declared in the Certificates of Origin at 22% was incorrect and that actual value addition was only about 6.5%, based on the Department's computation. A Show Cause Notice was issued proposing denial of exemption, recovery of differential duty of Rs. 5,68,802/-, confiscation, and penalties. The adjudicating authority confirmed the demand, denied exemption, and imposed penalties under Sections 114A and 114AA of the Customs Act, 1962. The Commissioner (Appeals) after due process of Law upheld the order-in-Original.

2. Aggrieved by the Impugned Order, the Appellant has filed the present Appeal before this Tribunal.

3. The Ld. Advocate Shri Ranjeet Singh appeared on behalf of the Appellant and advanced detailed arguments in support of the appeal. The Ld. Authorized Representative Ms. Rajini Menon appeared for the Department and reiterated the findings of the Impugned Order.

4. The Ld. Advocate Shri Ranjeet Singh, submitted that the exemption was correctly claimed on the strength of valid Certificates of Origin issued by the designated authority of the Government of Thailand under the Indo-Thailand Free Trade Agreement and the Interim Rules of Origin. He contended that the entire dispute revolves around the correctness of Local Value-Added Content (LVAC) and that the Department has erroneously substituted the statutory formula prescribed under Rule 6(d) of the Interim Rules of Origin with an artificial method based only on labour and handling charges. It was further argued that the prescribed formula requires computation based on the FOB value of the export product and the CIF value of non-originating materials, and not merely labour components, and therefore the approach adopted by the Department is contrary to the Rules. He also submitted that the Appellant had no access to

the cost structure of the foreign supplier and that verification of LVAC is the responsibility of the issuing authority of the exporting country under the Operational Certification Procedures. It was further contended that no suppression or misstatement can be alleged in the present case, as all documents including the Certificates of Origin were duly submitted at the time of import and accepted by the Customs authorities.

5. *Per contra*, the Ld. Authorized Representative for the Department contended that the Appellant failed to establish that the value addition requirement of 20% was satisfied as mandated under the Interim Rules of Origin. It was argued that the value addition declared at 22% in the Certificate of Origin was not supported by underlying documents and that, based on the available data, the actual value addition worked out to only about 6.5%. The Department further submitted that the importer is responsible for ensuring the correctness of exemption claims and cannot rely blindly on Certificates of Origin. It was also contended that the Appellant failed to verify the authenticity of the value addition and thereby wrongly availed the exemption, justifying invocation of the extended period as well as imposition of penalty.

6. We have carefully heard the submissions advanced by both sides, examined the appeal records in detail, and considered the statutory provisions and the case laws cited.

7. Upon consideration, the following questions arise for determination: -

- i. Whether the Department is justified in rejecting the Certificate of Origin and recomputing Local Value Added Content (LVAC) in exported goods and whether such verification burden lies on the importer, and,
- ii. Whether the demand of duty, invocation of extended period and penalties are sustainable in the facts and circumstances of the case.

8. We now proceed to examine the issues arising for determination, in the backdrop of the statutory framework, factual matrix, interim rules of Origin and judicial precedents cited by both the sides.

Issue (i): Whether the Department is justified in rejecting the Certificate of Origin and recomputing LVAC contrary to the Interim Rules of Origin and whether such verification burden lies on the importer

9.1 The principal issue for consideration in the present case arises from the rejection of the Certificate of

Origin issued by the designated authority of Thailand and the recomputation of Local Value-Added Content (LVAC) by the Department through an alternate methodology. The issue also necessarily involves determination of whether such verification of value addition lies upon the importer or within the domain of the issuing authority under the Interim Rules of Origin.

9.2 The Department's case proceeds on the premise that the declared LVAC of 22% is incorrect and that the actual value addition is only about 6.5%, based on a computation that considers only labour and handling charges as the components of value addition. The Appellant, on the other hand, contends that such an approach is contrary to Rule 6(d) of the Interim Rules of Origin, which prescribes a specific statutory formula.

9.3 We observe that a plain reading of Rule 6(d) makes it abundantly clear that LVAC is to be computed as the difference between the FOB value of the export product and the CIF value of non-originating materials, divided by the FOB value. The Rule does not restrict value addition to labour or handling charges. On the contrary, it contemplates a holistic economic value embedded in the FOB price, which includes manufacturing, processing, overheads and profit

components. We find that the Department, by reducing the concept of value addition solely to labour and handling charges, has effectively substituted the statutory formula with an artificial and truncated computation. Such substitution is impermissible in law. When a statute prescribes a specific formula, it must be applied as it stands and cannot be altered by administrative interpretation.

9.4 We find that the Appellant's contention that the Department has failed to determine the value of non-originating materials as required under Rule 6(e) is also well founded. The Department has not established the CIF value of such materials but has relied on partial data and assumptions. In the absence of correct application of Rule 6(e), the computation of LVAC itself becomes legally untenable. We also observe that the Certificates of Origin issued by the Government of Thailand categorically certify that the goods satisfy the origin criteria, including LVAC of 22%. These certificates are issued under the Operational Certification Procedures, which form part of the statutory scheme and are not mere procedural documents.

9.5 We find that the Appellant has rightly placed reliance on the decision of the Tribunal in *Romil Jewellery v. Commissioner of Customs*, 2023 (9) TMI 462 - CESTAT

MUMBAI wherein, in the context of denial of preferential benefit under the Indo–Thailand Free Trade Agreement, it was held that the Certificate of Origin issued by the designated authority constitutes the foundational document for determining eligibility and cannot be disregarded without invoking the verification mechanism prescribed under the Interim Rules of Origin. The Tribunal further held that unilateral recomputation of value addition by the Department, without determining the value of non-originating materials in terms of Rule 6(d), is not legally sustainable. The ratio of the said decision, being directly applicable to the facts of the present case, is relied upon.

9.6 We find that the Appellant has also rightly relied upon the decision of the Tribunal in *Keyur Shah & Ors. v. Commissioner of Customs, 2025 (6) TMI 546 - CESTAT MUMBAI* wherein it was held that Customs authorities cannot substitute the statutory formula prescribed under the Interim Rules of Origin by adopting alternate methodologies such as reliance on making charges alone, nor can they assume the role of the issuing authority in determining origin. It was further held that in the absence of invocation of the verification procedure under Rule 15, denial of exemption is unsustainable. The ratio of the said decision, being directly

applicable to the facts of the present case, is accordingly to be necessarily relied upon.

9.7 We find that the ratio decidendi of the aforesaid decisions clearly establishes that the Interim Rules of Origin constitute a complete and self-contained code governing the determination of origin, and that such determination must strictly adhere to the formula and procedure expressly prescribed therein. It is, therefore, not open to the Department to deviate from or substitute the statutory mechanism by adopting any alternate methodology, as such an approach would be contrary to the settled legal position.

9.8 *Per contra*, the Department has placed reliance on *Vasavi Gold and Bullion Pvt. Ltd. v. Commissioner of Customs 2026 (1) TMI 865 - CESTAT CHENNAI*. However, we find that the said decision is distinguishable. In that case, the Tribunal remanded the matter due to violation of principles of natural justice and incomplete verification of Certificates of Origin and specifically directed the Department to obtain verification from the designated authority. The Tribunal did not uphold denial of exemption nor approve unilateral recomputation of value addition. Therefore, the said decision does not support the Department's case.

9.9 We find that the Department has relied upon certain data and documents allegedly pertaining to the overseas supplier, M/s Tanya Collections, Bangkok, for recomputing the value addition. However, such reliance cannot be equated with the statutory verification contemplated under Rule 15 of the Interim Rules of Origin, which specifically provides for verification through the designated issuing authority of the exporting country by way of inter-governmental communication. It is an admitted position on record that no such verification has been undertaken by the Department, and if undertaken, the results of such an action have been placed before us. The unilateral rejection of the Certificate of Origin based on the Department's own computation of value addition is, therefore, contrary to the prescribed statutory mechanism and renders the denial of benefit legally unsustainable.

9.10 We observe that the importer is required only to produce the Certificate of Origin. The importer does not have access to the cost structure of the foreign supplier and cannot be expected to verify the internal composition of value addition. Such unilateral rejection, in the absence of prescribed verification, strikes at the very root of the statutory scheme.

9.11 In view of the above, we hold that the rejection of the Certificate of Origin and recomputation of LVAC by the Department is contrary to the Interim Rules of Origin and is legally unsustainable. Accordingly, issue (i) is answered in favour of the Appellant.

Issue (ii): Sustainability of demand, extended period and penalties

10.1 Once it is held that the denial of exemption is not sustainable, the consequential demand of duty also fails. Even otherwise, the invocation of extended period is not justified in the facts of the present case, as the Appellant had disclosed all relevant documents, including the Certificates of Origin, at the time of import, which were duly accepted by the Department. We find that the Hon'ble Supreme Court in *M/s. Uniworth Textiles Ltd. v. Commissioner of Central Excise Raipur 2013(288) ELT 161 (SC)* has categorically held that suppression must be wilful and with an intent to evade duty and that mere omission or failure does not constitute suppression.

10.2 Further, the Appellant has relied upon the judgment of the Hon'ble Supreme Court in *Aban Loyd Chiles Offshore Ltd. v. Commissioner of Customs 2006(200) ELT 370(SC)*, on the issue of invocation of extended period which reads as under: -

"The proviso to Section 28 can be invoked where the payment of duty has escaped by reason of collusion or any wilful mis-statement or suppression of facts. So far as 'mis-statement or suppression of facts' are concerned, they are qualified by the word 'wilful'. The word 'wilful' preceding the words 'mis-statement or suppression of facts' clearly spells out that there has to be an intention on the part of the assessee to evade the duty."

10.3 We find that the above ratio clearly lays down that for invocation of the extended period, the Department must establish intent to evade duty, and mere non-payment or difference in interpretation does not amount to suppression or misstatement. In the present case, it is an admitted position that the Appellant had produced the Certificates of Origin issued by the competent authority in Thailand at the time of import and the same were accepted by the Customs authorities after due verification. There is no allegation, much less any evidence, of forgery, manipulation, or misrepresentation on the part of the Appellant. We further find that even assuming, without admitting, that the Local Value-Added Content (LVAC) is less than the prescribed 20%, such a circumstance by itself does not lead to a conclusion of misdeclaration or suppression attributable to the Appellant, particularly when the Certificates of Origin have been issued by a designated authority and the Appellant has no access to or control over the internal cost structure of the foreign manufacturer. The materials on

record also do not indicate any collusion between the Appellant and the foreign supplier or the issuing authority and, therefore, the essential ingredients required for invoking the extended period, as laid down in *Aban Loyd Chiles (supra)*, are not satisfied.

10.4 Coming to the issue of penalties, we find that penalty under Section 114A of the Customs Act, 1962 is attracted only in cases involving collusion, wilful misstatement or suppression of facts with an intent to evade duty. In the present case, all documents, including the Certificates of Origin, were placed before the Customs authorities at the time of assessment and were accepted after due verification. Similarly, penalty under Section 114AA requires that a person must knowingly or intentionally make, sign or use a declaration or document which is false or incorrect in any material particular. There is no material on record to suggest that the Appellant had knowingly or intentionally furnished any incorrect information. The case on hand at the best is one of difference in interpretation or methodology adopted by the Department and does not involve any element of fraud, suppression or wilful misstatement. Accordingly, the penalties imposed under Sections 114A and 114AA are not sustainable in law.

10.5 In view of the above, the demand, invocation of extended period and penalties are not sustainable. Accordingly, issue (ii) is answered in favour of the Appellant.

11. Accordingly, the impugned Order-in-Appeal C.Cus. I No. 274 & 275/2016 dated 05.07.2016 is set aside and the appeal filed by the Appellant is allowed with consequential relief, if any, in accordance with the law.

(Order pronounced in open court on 02.06.2026)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

MK

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)