IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 76563 of 2024

(Arising out of Order-in-Appeal No. Kol/Cus(Port)/KS/475/2023 dated 15.06.2023 passed by the Commissioner of Custom(Appeals) 3rd Floor Custom House, 15/1, Strand Road, Kolkata-700001)

M/s. MRK Impex Private Limited, **: Appellant**
155, Industrial Area, Chopanki,
Rajasthan-301019

VERSUS

Commissioner of Customs (Port) **: Respondent**
3rd Floor Custom House,
15/1, Strand Road, Kolkata-700001

APPEARANCE:

Shri H. K. Pandey, Advocate for the Appellant
Shri S. Debnath, Authorized Representative
Shri S. Chitkara, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.76013/ 2026

DATE OF HEARING: 21.07.2026
DATE OF PRONOUNCEMENT: 05.08.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed assailing the Order-in-Appeal No. Kol/Cus(Port)/KS/475/2023 dated 15.06.2023 passed by the Commissioner of Custom(Appeals) 3rd Floor Custom House, 15/1, Strand Road, Kolkata,

2. The facts of the case are that M/s. MRK Impex Private Limited (herein after referred as the Appellant), are engaged in manufacture of various

Iron and Steel products. Old and used Iron & Steel Shafts obtained from Ship Breaking are used as raw material for manufacture of such goods which were procured by import.

2.1. In course of normal business, the appellant placed order for supply of the said items, classified under CTH 73269080 of the Customs Tariff, with M/S J. F. Trading of Chittgong, Bangladesh. On arrival of the cargo, the appellant filed Bill of Entry No.8912899 dated 31.05.2022 along with the Seller's Invoice No. JFT/IMP/030/2022 Dated 28.04.2022 and SAFTA Certificate having Ref No. EPB(C) 32918 Dated 31.05.2022, issued by the competent authority in Bangladesh. The Bill of Entry filed by them was processed by the Customs Authorities and following query was raised-

> "Declared value appears to be low as per LME/DGOV valuation guidelines/contemporary Imports, why should not value enhance as per contemporaneous data, give consent to assess the BE as per contemporary Import/LME/DGOV prices of the goods and also give your comments/view on applicability of ADD/CVD/BIS if applicable. Please upload the copy of relevant required documents viz BIS, Contract, Form9 & 6, SPCB and Annual report, PSIC, SIMS/NFMIMS, consent letter, etc."

2.2. The query was replied by the CHA as under:

"Respected Sir, We are regular importer of same commodity from same country and we have actual user of said commodity for manufacturing the hydraulic cylinder, piston, forging plant, hydraulic press etc. Bill of Entry, TT copy/PI and SIMS copy uploaded vide IRN for justify the value ADD/CVD/BIS is not required for subject material. Kindly assess the BOE.

2.3. After meeting the said query, the Department through its series of internal communications, started raising further queries, before assessing the B/E. One of the query raised raised further by PAG (INCCU1) was as under:

> "The relevant rule of origin for Notfn No.99/2011 under which preferential rate of duty has been claimed, is Notfn No.75(NT)/2006 dtd 30.06.2006,as amended. Rule 5 of this notfn is for wholly produced or obtained goods. It is found that the imported item does not fall under any of the categories mentioned under Rule 5, to qualify as wholly obtained, as mentioned in COO CETF. Thus it seems, the item is not eligible for duty benefit under Notfn. No. 99/2011. Pl explain."

2.4. In reply to the query, the Appellant stated as under:

"Sir, the goods are Bangladesh Origin, wholly produced/obtained in Bangladesh in accordance with Rules of the SAFTA as certified by the competent Authority in Bangladesh the exporting country. Kindly assess the Bill of Entry."

2.5. The appellant states that already the consignment was under detention of customs for about one month and heavy demurrage was being charged by the custodian; he personally visited Custom House and called on Officers about the matter; he was told verbally to write that the benefit under 99/2011 was withdrawn and re-assess the B/E and also that he did not want any SCN, PH in this regard; left with no option, he wrote the letter dated

04.07.2022, that they were unconditionally willing to pay full duty without COO (SAFTA) benefit.

2.6. Thereafter, the Commissioner (Port) had given approval for disallowance of the claim of preferential rate of duty without further verification under Rule 5(5)(a) of the CAROTAT, 2020 read with Section 28 DA of the Customs Act, 1962.

2.7. In the above background, the impugned order was passed on 28.7.2022 whereby benefit of exemption under Notification 99/2011 was disallowed and the duty was reassessed under Section 17 (4) of the Customs Act, 1962. The recovery of differential duty of Rs.7,14,428/-with interest in term of Section 12 & 17(4) of the Act has arisen mainly due to denial of SAFTA benefit. Further confiscation of the goods under Section 111(o) and 111 (m) of the Customs Act, 1962 was also ordered with an option to redeem the goods on payment of Redemption Fine of Rs. 6,00,000/-. A penalty of Rs.72,000/- was also imposed under Section 112(a) (ii) of the Customs Act,1962 upon the importer-Appellant. As the goods were urgently required for manufacturing purpose in their plant, the Appellant paid the said amount of duty, Fine and penalty on 29.7.22 and thereafter the goods were cleared for home consumption by customs authorities.

2.8. Even though the Appellant has written the letter dated 04.07.2022, foregoing the SAFTA benefit unconditionally and willing to pay full duty without COO (SAFTA) benefit, they filed appeal before Commissioner (Appeals). The Ld. Appellate Authority passed impugned order, wherein he has upheld the denial of SAFTA benefits.

2.9. Aggrieved against the impugned order upholding the denial of SAFTA benefits, the Appellant has filed this appeal.

3. The grounds raised by the Appellant in their appeal are summarized as under:

(i) The Bill of Entry submitted by them was subjected to assessment/re-assessment by the proper Officer of Customs. On physical examination, the goods were found to be same as declared and duly covered by the Import Licence issued by DGFT. The impugned order is seemingly influenced by the SIB office note as mentioned at Para 7 of the impugned order that the goods obtained from ship cutting do not apparently meet the criteria of "wholly obtained" and thus may render duty exemption under FTA liable to be disallowed as per Section 28DA of the customs Act, 1962 read with Rule 5(5) of CAROTAR Rules, 2020 and is liable to confiscation under section 111 (q) of the Act. The impugned order, thus, having been passed under extraneous consideration is liable to be quashed.

(ii) The Appellant cited Sub-section 4 of Section 28 DA of the Customs Act, 1962 which reads as under:

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

(i) Cause further verification consistent with the trade agreement in the manner as may be provided in the rules;

(ii) Pending verification, temporarily suspend the preferential tariff treatment to such goods;

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

(iii) The Appellant submits that no reason to disallow the claim for preferential duty is recorded by the Ld. Principal Commissioner of Customs or the Commissioner of Customs. The benefit of duty exemption is denied without putting them to any notice. The assessment was put on hold without subjecting the goods to seizure or detention as envisaged in the Customs Act, 1962, raising new queries to justify prolonged detention and ultimately coercing importer to submit to their willingness to forego the exemption which was otherwise available to him.

(iv) The denial of the benefit is in violation of the Country of Origin Rules. The said goods were imported from Bangladesh and were accompanied with a Certificate of Origin issued by the designated authority in Bangladesh in terms of Article 1 of Annex- B of the Determination of Origin of Goods under the Agreement on South East Asia Free Trade Area (SAFTA). The Appellant submits that the department has not initiated any action as prescribed in Determination of Origin of Goods under the Agreement on South East Asia Free Trade Area, before denying the benefit of duty exemption to the Appellant importer which was outright available to him by virtue of a Certificate of Origin issued by the designated authority of the exporting State.

(v) The genuineness of the COO certificate is not in dispute. The only allegation is that the importer failed to produce sufficient proof to show that the goods fulfilled the origin criteria. That the goods are obtained from ship breaking in Bangladesh is an admitted fact. The competent Authority has certified it under category "A" which denotes products wholly produced or obtained in that country. The origin of the ship is not verifiable. The appellant rely on the judgment passed by the CESTAT in BDB Exports Pvt. Ltd. [2017 (347)E.L.T. 662 (Tri- Kolkata)] wherein it has been held, inter-alia, that the Certificate of origin submitted by the Appellant to get the benefit of exemption cannot be scuttled by department by conducting local investigation to deny the said exemption.

(vi) There was no mismatch of the quality/classification and valuation as found during physical examination, and the consignment was not put under seizure, it goes to show that the proper officer had no reason to believe that goods are liable to confiscation throughout the prolong detention. Further, no inquiry was caused to verify genuineness of the SAFTA Certificate and the importer was made to withdraw the claim which is said to be accepted by the Principal Commissioner of Customs- a precondition for denial of benefit - for which the importer was otherwise entitled, do not invite confiscation under Section 111(o) and 111 (q) of the Customs Act, 1962. Order of confiscation and redemption thereof on payment of fine u/s 125 of the Customs Act, 1962 is illegal, out of jurisdiction and deserves to be quashed. Also, penalty u/s 112 (a) (ii) of the Act is not imposable as it is consequential to the order of confiscation.

(vii) Thus, the Appellant prayed for allowing the SAFTA benefit and set aside the impugned order.

4. The Ld. A.R. submits that the Appellant has written the letter dated 04.07.2022, foregoing the SAFTA benefit unconditionally and willing to pay full duty without COO (SAFTA) benefit. Having foregone the benefit in writing, they cannot retract and claim the benefit now. The Ld. A.R. submits that as per Sub-section 4 of Section 28 DA of the Customs Act, 1962, on the relinquishment of the claim for preferential rate of duty by the importer, the Principal Commissioner of Customs or the Commissioner of Customs may, disallow the claim for preferential rate of duty, without further verification. Thus, the Ld. Principal Commissioner has followed the procedure prescribed in this Rule to deny the benefit. Thus, he justified the denial SAFTA benefit in the impugned order.

5. Heard both sides and perused the appeal documents.

6. We find that the goods imported by the Appellant are obtained from ship breaking in Bangladesh. It is an admitted fact and not in dispute. The competent Authority from Bangladesh has certified it under category "A" which denotes that the

products were wholly produced or obtained in that country. The origin of the ship is not verifiable.

6.1. We find that the SAFTA benefit has been denied to the Appellant on the ground that they have written the letter dated 04.07.2022, foregoing the SAFTA benefit unconditionally and willing to pay full duty without COO (SAFTA) benefit. Having foregone the benefit in writing, they cannot retract and claim the benefit now. In this regard, we would like to examine the circumstances which forced the Appellant to write such a letter foregoing the SAFTA benefit. For ready reference, the said letter is extracted below:

PAN No.:AAFCM4555L GSTIN:08AAFCM4555L1Z2

MRK IMPEX PVT.LTD.

Specialist in:

ALL TYPES OF CRANK SHAFTS, ROLLS & HYDRAULIC CYLINDER

HEAD OFFICE: 8/35, SOUTH PATEL NAGAR

FACTORY: E-155, INDUSTRIAL AREA CHOPANKI (RAJASTHAN)

Date – 01.07.2022

To
The Joint Commissioner
Group 4
Custom House
Kolkata Port
Kolkata – 700001

Sub: Import of Iron and Shaft (Obtained from Ship) from M/s. J. F. TRADING, Bangladesh.

REF: Bill of Entry No – 8912899, Dated – 31.05.2022

Dear Sir,

We hereby relinquish the claim for CO (SAFTA) benefits for the above-mentioned Bill of Entry.

Further we are unconditionally willing to pay the full duty without CO (SAFTA) benefit and conclude the proceeding under section 28(5) of the Customs Act 1962.

We request you to kindly accept the above and process the assessment of BE on an urgent basis and releas the goods. For this we will ever be grateful.

Thanking you,

Yours Faithfully,

M.R.K. IMPEX PVT. LTD.

Director

6.2. From the Letter, it is evident that the Appellant has not written the letter on his own. They were always claiming that they were eligible for the exemption and claimed the benefit in the Bills of entry filed. This is evident from the rely given by them to the query raised by the Assessing Officer. The reply given by the Appellant to the query, the Appellant is reproduced as under

"Sir, the goods are Bangladesh Origin, wholly produced/obtained in Bangladesh in accordance with Rules of the SAFTA as certified by the competent Authority in Bangladesh the exporting country. Kindly assess the Bill of Entry."

6.3. We find that the consignment imported by the appellant was already under detention by the customs authorities for more than one month and heavy demurrage was being charged by the custodian. The submission of the Appellant is that he personally visited Custom House many times and called on Officers about the matter. However, he was told verbally to write that they are willing to withdraw the benefit under 99/2011 and re-assess the B/E and also that he did not want any SCN, PH in this regard. It is on record that the goods were imported in March 2022 and have still been lying in the Custody of the Customs authority with demurrage and other charges mounting up. The quality of the goods imported also start deteriorating. Thus, we find that the Appellant was left with no option, but to write the letter dated 04.07.2022, that he was unconditionally willing to pay full duty without COO (SAFTA) benefit.

6.4. We observe that even though the Appellant has written the letter dated 04.07.2022, foregoing the SAFTA benefit unconditionally and willing to pay full duty without COO (SAFTA) benefit, they filed appeal before Commissioner (Appeals). The appeal has been filed by the Appellant against the Assessment order immediately, without any delay. This itself shows that the Appellant was not willing to forego the benefit and they want to contest the Assessment order denying the SAFTA benefit. Thus, we are of the view that the evidence available on record categorically indicate that the letter dated 04.07.2022 was not written by the Appellant voluntarily. The circumstances of prolonged detention has forced them to write the letter so that they can clear the goods which were urgently required for their manufacturing and it will reduce the demurrage also. Thus, we observe that such letter written under forced circumstances cannot be envisaged as the circumstances mentioned under subsection 4 of Section 28DA. Accordingly, we hold that the Appellant has not lost their right to file appeal against the Assessment order. Once it is held that the Appellant is legally entitled to file the Appeal against the Assessment order, the eligibility of the Appellant to avail the SAFTA benefit is to be examined on merit, on the basis of the documents submitted by the Appellant.

6.5. We find that the goods imported from Bangladesh were accompanied with a Certificate of Origin issued by the designated authority in Bangladesh in terms of Article 1 of Annexure-B of the Determination of Origin of Goods under the Agreement on South East Asia Free Trade Area (SAFTA). Thus, we find that prima facie, the documents submitted by the Appellant supports the claim of the Appellant that they are eligible for the concessional rate of duty available as per SAFTA.

6.6. It is pertinent to mention that Article 14 thereof says that the discovery of minor discrepancies between the statements made in the Certificate of Origin and those made in the documents submitted in the office of the Customs Authority of the importing Contracting state for the purpose of carrying out the formalities for importing the product shall not *ipso facto* invalidate the Certificate of Origin correspond to the said products.

6.7. Article 15 (a) says, the importing Contracting State may request to the issuing authority of the exporting Contracting State for retrospective check at random and/or when it has reasonable doubt as to the authenticity of documents or as to the accuracy of the information regarding the true origin of the products in question or of certain parts thereof. Denial of duty exemption available to the appellant without showing any valid reason is not sustainable under law.

6.8. In the present case, we find that no such step as prescribed to Determination of Origin of Goods under the Agreement on SAFTA has been followed by the investigation before denying the benefit of duty exemption to the Appellant importer, which was otherwise available to them by virtue of the Certificate of Origin issued by the designated authority of the exporting State. The Rules of Determination of Origin of Goods under the Agreement on SAFTA are self-contained rules. Rule 14 envisages Procedures for issuance and Verification of certificate of origin and the Appellant and there is nothing in record to indicate the authenticity of the said certificate in as much as it has ever been disputed. We find that the Customs (Administration of Rules of Origin under Trade

Agreement) Rules, 2020 is made in exercise of the power conferred under section 28DA of the Customs Act, 1962 which incorporate "Rules of Origin" as notified for a trade agreement. SAFTA is a Trade Agreement and for this the Rules of Origin as notified under notification no.75/2006-Customs (NT) dated 30.06.2006 and the Rules of Origin have duly been complied with by production of SAFTA certificate issued by the Competent Authority of the Contacting state. It is a matter of record that the SAFTA certificate is complete and in accordance with the format as prescribed by the Rules of Origin has got no alteration not authenticated by the issuing authority. The Certificate is produced within its validity period. By virtue of the Certificate of Origin submitted by the Appellant, which was genuinely issued by the designated authority of the exporting State, we hold that the Appellant is eligible to get the benefit of duty exemption as provided under Notification 99/2011.

6.9. Thus, we hold that the Appellant has produced a valid Certificate of Origin and hence they are eligible for the concessional rate of duty under SAFTA as provided under Notification No. 99/2011. Accordingly, we hold that the differential duty of Rs.7,14,428/- along with interest confirmed in the impugned order, due to denial of SAFTA benefit, is not sustainable and hence we set aside the same.

6.10. Further, we find that there was no mismatch of the quality/classification and valuation found during physical examination. We also find that the consignment was not put under seizure, even though it was put under prolonged detention. It goes on to show that the proper officer had no reason to believe that goods were liable to confiscation. Further, in view of the findings in the preceding paras, the Appellant is rightfully eligible for the SAFTA benefit and there was no misdeclaration or fraud established on the part of the Appellant warranting confiscation of the goods under Section 111(o) and 111 (m) of the Customs Act, 1962. Accordingly, we hold that the confiscation ordered in the impugned order is not sustainable. Consequently, Redemption Fine of Rs. 6,00,000/- imposed for redeeming the goods is also not sustainable and hence we set aside the same. We also find that a penalty of Rs.72,000/- was also imposed under Section 112(a) (ii) of the Customs Act,1962 upon the importer-Appellant. As the allegations of misdeclaration against the Appellant-company is not sustained, we hold that no penalty imposable on the Appellant-company and hence we set aside the same.

7. In the result, the appeal stands allowed, with consequential relief, if any, as per law.

(Order Pronounced in Open court on 05.08.2026)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP