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

REGIONAL BENCH-COURT NO. 1

Customs Appeal No. 10114 of 2024-DB

(Arising out of Order-in-Original No. AHM-CUSTM-000-PR-COM-025-2023-24 dated 21/12/2023passed by the Principal Commissioner of Customs- Ahmedabad)

VRUNDA INTERNATIONAL ....**Appellant**
Ground Floor, Shop No. 6,
Sahajanand, Park B, SRV,
No. 892/1/1, Kivani Road Amli,
Silvassa, Dadar and Nagar Haveli- 396230

VERSUS

Commissioner of Customs –Ahmedabad ......**Respondent**
Principal Commissioner of Customs,
Customs House, Near All India Radio,
Navrangpura, Ahmedabad- 380009

APPEARANCE:
Shri Devashish K Trivedi, Advocate appeared for the Appellant
Shri Girish Nair, Assistant Commissioner (AR) appeared for the Respondent

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

Final Order No. 10542/2026

DATE OF HEARING: 05.08.2026
DATE OF DECISION:17.08.2026

SOMESH ARORA

M/s. Vrunda International (Appellant)have imported "Cold rolled Stainless-Steel Coils of Grade-J3" (CRSS Coils) falling under Chapter72 of the Customs Tariff Act from M/s. Megha Maju Entreprises (MMME), Malaysia and availed benefit of notification No. 46/2011-CUS dated 01.06. 2011 on the basis of Certificate of Origin (CoO).

1.1 On the basis of intelligence developed by DRI, Delhi Zonal Unit, New Delhi (DRI) that certain importers engaged in the import of SS Coils from Malaysia from M/s. MMME were wrongly availing the benefit of Notification No. 46/2011-Cus dated 01.06.2011, the subject goods imported vide Bill of Entry No. 8431106 dated 10.08.2000 by the appellant at ICD, Tumb were put on hold and examined under panchnama dated 20.08.2020. As further investigations revealed to the department that subject goods were not of Malyasian origin, the same were placed under seizure vide Seizure Memo dated 05.02.2021 and subsequently provisionally released with Bank Guarantee of Rs.24,98,572/- and Bond for Rs.51,22,851/-.

1.2 Shri Anand Menon, Proprietor of the appellant firm initially in his statement dated 25.01.2021 informed that he had started the subject firm in January 2020 and M/s. MMME, through their Sales Executive Shri Asif who had given him a proposal of 30 days credit on the imported goods i.e. the whole payment for the imported goods was to be made 30 days after receipt of the goods in India; there was no written Sales Contract and the Purchase Orders were made on "Wickr Mobile App" wherein, the data was automatically removed after 7 days. He further stated that he was unaware about the origin of the subject imported goods. He was further shown a copy of statement dated 03.07.2020 of Shri Achin Goel, Proprietor of M/s. R. R. International, New Delhi wherein Shri Achin Goel had stated that due to imposition of CVD on Chinese origingoods, M/s. Leo Metal, China had arranged documents in the name of M/s. MMME, Malaysia and had submitted the said documents in the name of M/s. MMME, Malaysia to Indian Customs to pay less Customs Duty. Shri Anand Menon admitted that all the steel products imported by his firm (appellant) were intentionally routed through Malaysia to bypass the imposition of CVD on the goods of Chinese origin and to wrongly avail the FTA benefit available on the imports from Malaysia. He further accepted his mistake and stated that he would discharge the applicable Customs Duty liability on the imports done by the appellant i.e. M/s. Vrunda International.

1.3 During the course of further investigations by the department, it was found from the website of MMME that their main activity was dealing in aluminum goods. Further, nowhere on the website was it mentioned that MMME was manufacturing/processing or otherwise dealing in Cold Rolled Stainless Steel Coils. It was further observed by the department that in respect of all three consignments, the Proforma Invoices mentioned "100% advance by TT against Proforma Invoice" and the corresponding Commercial Invoices were issued on the same day. However, though the subject goods were imported in the months of June and July 2020, the first payment was made to MMME by the appellant only on 02.09.2020, i.e. only after initiation of investigation by DRI on 20.08.2020.

1.4 A Country of Origin (COO) Ref. No. KL-2020-AI-21-089737 purported to be issued by Ministry of International Trade & Industry (MITI) in respect of the goods exported by MMME from Malaysia to India, was forwarded to MITI for verification. The Principal Assistant Director, Trade and Industry Cooperation Section, Trade and Industry Support Division, MITI vide email dated 12.04.20121, informed that "*MITI has never received a COO application from MH Megah Maju Enterprise. MITI has also checked with our ePCO system service provider, which confirms that the company is not registered as a user of our ePCO system"*. Therefore, the SCN was issued to the appellant for duty and penalty.

2. The learned Advocate for the party submits that the appellant had imported Cold rolled Stainless-Steel Coils of Grade-J3 from M/s MH Megah Maju Enterprises (MMME), Malaysia who also provided Certificate of Origin (CoO) to the appellant on the basis of which they had availed benefit of notification No. 46/2011-CUS dated 01.06.2011. They filed appeal against impugned Order-in-Original dated 21.12.2023 whereby, the learned Commissioner denied benefit, of Notification No. 46/2011- CUS dated 01.06.2011 as amended to them and confirmed the differential customs duty

along with interest; held the imported goods liable for confiscation and gave option to redeem the goods on payment of fine; imposed penalty on the appellant under section 114A as well as 114AA of the Customs Act, 1962.

2.1 It is claimed by the department that an investigation was conducted with regard to some other CoO. A list of 87 suspected non-authentic CoO was provided by the Principal Assistant Director, Trade and Industry Cooperation Section, Trade and Industry Support Division, MITI, vide email dated 12.04.2021. Therefore, it was assumed that even the CoO pertaining to the goods imported by the appellant are non-authentic. The department also claimed that in reference to another CoO No. KL-2020-AI-21-089737 in relation to a third party, which was in respect to goods exported by MMME from Malaysia to India, it was investigated and found that the same was not genuine. On that basis, department has alleged that even the CoO pertaining to the goods imported by the appellant are not verified, only because they were supplied by the same Foreign Party MMME.

2.2 No investigation with regard to the CoOs pertaining to the goods imported by the appellant viz.: KL-2020-A1-21-053249 dated 29.06.2020, KL-2020-A1-21-056224 dated 08.07.2020 andKL-2020-A1-21-068326 dated 04.08.2020 was carried out, as per the appellant from the authorities of the exporting country, which are in present case Malaysian Ministry of International Trade and Industry (MITI), in accordance with Article 16 of the Operational Certification Procedures for the Rules of Origin under the ASEAN-India FTA (AIFTA), as set out in Appendix D, which states as follows:

"Article 16:

(a) The importing Party may request a retroactive check at random and/or when there is reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the good in question or of certain parts thereof. The Issuing Authority shall conduct a retroactive check on a producer/exporter's cost statement based on the current cost and prices within

a six-month timeframe prior to the date of exportation, subject to the following procedures:

(i) the request for a retroactive check shall be accompanied by the AIFTA Certificate of Origin concerned and specify the reasons and any additional information suggesting that the particulars given in the said AIFTA Certificate of Origin may be inaccurate, unless the retroactive check is requested on a random basis;

(ii) The Issuing Authority shall respond to the request promptly and reply within three (3) months after receipt of the request for retroactive check;

(iii) In case of reasonable doubt as to the authenticity or accuracy of the document, the Customs Authority of the importing Party may suspend provision of preferential tariff treatment while awaiting the result of verification. However, it may release the goods to the importer subject to any administrative measures deemed necessary, provided that they are not subject to import prohibition or restriction and there is no suspicion of fraud; and

(iv) the retroactive check process, including the actual process and the determination of whether the subject good is originating or not, should be completed and the result communicated to the Issuing Authority within six (6) months. While the process of the retroactive check is being undertaken, subparagraph (iii) shall be applied."

2.3 This process is also outlined in Section 28DA of the Customs Act, 1962, and the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020. CBIC Circular No. 38/2020-Customs dated 21.08.2020 further elaborates the procedures for sending verification requests and guidelines for implementation.

2.4 Appellant's submissions from a combined reading of the above provisions, is that in case of doubt about genuineness of the CoO provided by the supplier exporter, the investigating officer's primary duty was to verify the CoO from the issuing authority of the supplier exporter country. They rely on the decision in the case of Ratnamani Metals and Tubes Ltd. V. Commissioner of Customs, Mundra,(2024) 18 Centax 31 (Tri.-Ahmd) wherein in an identical case of import of Cold Rolled Stainless Steel products from Malaysia by Ratnamani Metals and Tubes Ltd., the importer claimed concessional duty exemption under Notification Nos. 46/2011-Cus., 53/2011-Cus., and 189/2009-Cus. (N.T.). In this case also, the Department doubted authenticity of the Certificate of Origin and denied duty exemption. The Hon'ble Tribunal held that the Department must verify the authenticity of the CoO from the issuing authorities in Malaysia and the burden of proof to verify the CoO lies upon the Department. Likewise, they also rely on Tribunal's decision in the case of Commissioner of Customs, Hyderabad V. Riddi Siddhi Bullions Ltd. 2017 (355) E.L.T. 585 (Tri.-Hyd.) wherein it was held that when importers provide all required documents, including valid CoO certified by government authorities, the customs authorities cannot deny exemption benefits based on assumptions about the capacity of the exporting country or the supplier. Any doubt regarding the authenticity of the CoO must be resolved through the prescribed verification process, as outlined in the relevant notifications and rules, rather than through unsubstantiated assumptions.

2.5 They submit that it is a settled law that in case the department has any doubt about authenticity of the CoO, it was mandatory for them to conduct a retroactive check in regard to the said CoO with the authorities at Malaysia. Without conducting inquiry with the issuing authority at Malaysia, neither certificate could be discarded nor benefit of Notification No. 46/2011-CUS dated 01.06.2011 could be denied to the appellant. He relied on the decision in the case of: (a) Uni Colloids Impex Pvt. Ltd. Vs.CC(2024) 20 Centax 344 (Tri.-Ahd.) and (b) Shirazee Traders Vs.CC, Mundra(2024) 20 Centax 569 (Tri.-Ahmd).

2.6 In the present case, there was a CoO issued by the manufacturer exporter stationed in Malaysia, hence, the appellant cannot be assumed to have knowledge that the foreign supplier based in Malaysia has not issued an authentic certificate as alleged by the department and that the goods are originating from China. The department, if had a doubt in regard to the authenticity of the CoO, was required to inquire with the authorities at Malaysia and issue Show-cause Notice to the appellant within a normal period of limitation. Against B/Es filed in July & August 2020, the Show-cause Notice is issued on 07.02.2023 which is after lapse of normal period of limitation of two (02) years. Therefore, even in this view, the SCN is time barred and cannot sustain. They rely on the decision in the case of Global Exim Vs. CC, Mundra2024 (390) ELT 455 (Tri. Ahmd.). As the department failed to follow the prescribed procedure before making allegations of fraudulent CoO, denial of duty exemption and the subsequent allegations lack a solid foundation and is not sustainable in light of the principles laid down in the aforementioned case.

2.7 The impugned Show Cause Notice as well as O-I-O places reliance on the statement dated 25.01.2021 of Mr. Anand Menon, proprietor of the appellant but there is a big contradiction in the same. Initially he is said to have stated that he was unaware about the Origin of the goods imported from MMME, Malaysia but in the latter part of the said statement, he is said to have been shown a statement dated 03.07.2020 of some other importer Mr. Achin Goel (Proprietor of RR International who had also availed similar benefit and had imported goods from MMME, Malaysia) wherein he had stated that the certificate was not authentic and that the goods imported by him originated in China. Although, said importer had no concern with the present case, Mr. Menon is said to have accepted the statement of said third party in regard to a totally different transaction and on that basis, Mr. Menon is said to have admitted that the goods imported by the appellant are also of Chinese Origin. This clearly shows that the statement is not a genuine statement and it could not have been relied upon.

2.8 A copy of the said statement of the proprietor of the appellant was provided only with the Show Cause Notice. Therefore, the said statement was retracted by the appellant by way of an affidavit the Show Cause Notice before the Adjudicating Authority. Vide the impugned order, the learned Commissioner discusses the affidavit of the appellant but does not consider it on the ground that it was submitted along with the reply to the Show Cause Notice. They rely on the decision of this Tribunal in the case of Tejwal Dyestuff Industries Vs. CCE., Ahmedabad reported in 2007 (216) ELT 310 (TRI-AHMD), whereas it was observed that simply because a retraction affidavit is submitted along with a reply to a show cause notice, it cannot be discarded. It has to be considered. The Appeal filed by the department against aforesaid judgment of this Hon'ble Tribunal was dismissed by Hon’ble Gujarat High Court reported at 2009 (234) ELT 242 (Guj.).

3. The department relied upon various evidences analysed by the learned Adjudicating Authority as well as various testing lab evidences. The AR further submitted as follows:-

3.1 With regard to the appellant's contention that SCN was arbitrary in nature and issued only on the basis of third-party documents, including the email dated 12.04.2021 (sic should read as 14.04.2021), the Adjudicating Authority, relying on the judgement of Hon'ble CESTAT, Delhi in the case of Best & co reported at 2009 (239) E.L.T. 294 (Tri. Del.) found that MITI had never received COO application from MMME and MITI had checked with their ePCO service provider which confirmed that MMME was not registered as a user of their ePCO system which proved that the COO submitted by the importer was fake and forged document. The appellant's plea that the COO submitted by them was not included in the list of 87 fake certificates provided by MITI is not acceptable as MMME was never registered with ePCO System for issuance of COO by MITI. Therefore, COO claimed to be supplied by MMME was not acceptable. In support that learned Advocate produced following documents and submissions as directed by this Court:-

Annexure A COLLY

https://email.gov.in/h/printmessage?id=20861&tz=Asia/Kolkata...

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Sent: Wednesday, 14 April, 2021 11:08 AM
To: com.kl@mea.gov.in
Cc: Jamilah Haji Hassan <jamilah.hassan@miti.gov.my>; fscom.kl@mea.gov.in; ftaroo-cbic@gov.in; Muhammad Arif Wahab Udin <arif.wahab@miti.gov.my>; Mohd Hatta Bin Yousof <hatta@miti.gov.my>
Subject: Fw: Re: FW: Verification of Country of Origin Certificates said to be issued in Malaysia for the export of Stainless steel Cold Rolled Coils and Circles (HS Code 7219 & 7220) under AIFTA-Reg

Dear Mr. Kipgen,

Greetings from the Ministry of International Trade and Industry Malaysia (MITI).

Your previous email below **dated** 31 December **2020** is referred to.

With reference to your verification request pertaining to the authenticity of 143 copies of Preferential Certificates of Origin (COO) as can be viewed from the following link, we wish to inform you that a retroactive check has been conducted on part of the COOs submitted to MITI.

https://drive.google.com/file/d/1Od6f4UHHUgypIHLztY2LSdsmBI90Fqpy/view?usp=sharing

Based on our assessment, **87** out of 143 copies of the COO are **not authentic** and they were **not issued by** the **Ministry of International Trade and Industry of Malaysia (MITI)**. For your information, **MITI has never received any COO applications from the respective companies via our system.** Please find the list of 87 COOs attached to this email.

On a separate note, MITI would like to request for an extension of time from the Government of India in confirming whether the balance of 53 COOs and 3 Non-Preferential COOs are authentic as we have to provide the additional documents/ information as requested in the previous email. We wish to provide our response on the balance of 53 COOs and 3 Non-Preferential COOs latest by 14 May 2021

Your attention and consideration with regard to above matter are greatly appreciated.

Thank you

Warm regards

Zurina Abd Rahim (Ms)| Principal Assistant Director
Trade and Industry Cooperation Section
Trade and Industry Support Division
Ministry of International Trade and Industry
Tel: +603.6208.4751|Fax: +603.6206.3074
Email: zurina@miti.gov.my

----- Forwarded Message -----

2 of 4 7/12/2021, 5:24 PM

Email

https://email.gov.in/h/printmessage?id=20861&tz=Asia-Kolkata

(23)

From: Zurina (ninarahim48@gmail.com)
Date: 04/14/21 09:26
To: zurina (zurina@miti.gov.my)
Subject: **Re: FW: Verification of Country of Origin Certificates said to be issued in Malaysia for the export of Stainless steel Cold Rolled Coils and Circles (HS Code 7219 & 7220) under AIFTA-Reg**

On Thu, Dec 31, 2020 at 11:35 AM k.kipgen <com.kl@mea.gov.in> wrote:

Dear Ms Zurina,

Greetings from the High Commission of India, Kuala Lumpur!

Kindly find attached herewith 143 copies of Certificate of Origin (COO) said be issued in Malaysia for export of Cold Rolled Stainless Steel Coils & Circles (HS Code 72209090 & 72199090) from Malaysia to India under AIFTA.

It is requested to cause a retroactive check in respect of the genuineness and authenticity of the said certificate as per Article 16 (a) (ii) of Operational Certification Procedures for the Rules of Origin under AIFTA. MITI may kindly inform whether the regional value content has been arrived at in terms of the **Direct Method** or the **Indirect Method** along with details of the originating contents and break-up of the production cost, other costs and Regional Value Content (RVC). It may also be seen that the COO has been issued under Third Country Invoice, as such, a copy of the original invoice based on which the subject COO has been issued may kindly be provided. The Issuing Authority is also requested to provide a report on the manufacturing process undertaken by the exporter/manufacturer of the finished goods along with details of the source of originating material used, if any, in the production of the subject commodity. In addition, a copy of the application submitted by the exporter/manufacturer along with appropriate supporting documents may kindly be provided.

Best Regards,

--

K. Kipgen,
Attache' (Commerce),
High Commission of India,
Kuala Lumpur,
Malaysia.
Tel: +60340252323

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LIST OF UNAUTHENTIC CERTIFICATES OF ORZGIN WHICH WERE NOT ISSUED BY THE MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY MALAYSIA (MITI)

NO.	REFERENCE NO.	COMPANY NAME	APPROVED DATE
1	KL-2019-AI-21-085278	MH MEGAH MAJU ENTERPRISE	30.09.2019
2	KL-2019-AI-21-072695	MZH MAJU INDUSTRY	01.08.2019
3	KL-2019-AI-21-077386	MH MEGAH MAJU ENTERPRISE	19.08.2019
4	KL-2019-AI-21-085859	MH MEGAH MAJU ENTERPRISE	01.10.2019
5	KL-2019-AI-21-086871	MH MEGAH MAJU ENTERPRISE	09.10.2019
6	KL-2019-AI-21-088746	MH MEGAH MAJU ENTERPRISE	25.10.2019
7	KL-2019-AI-21-091327	MH MEGAH MAJU ENTERPRISE	12.11.2019
8	KL-2019-AI-21-091319	MH MEGAH MAJU ENTERPRISE	12.11.2019
9	KL-2019-AI-21-095563	MH MEGAH MAJU ENTERPRISE	26.11.2019
10	KL-2019-AI-21-095873	MH MEGAH MAJU ENTERPRISE	27.11.2019
11	KL-2019-AI-21-075801	MH MEGAH MAJU ENTERPRISE	15.08.2019
12	KL-2019-AI-21-077378	MH MEGAH MAJU ENTERPRISE	19.08.2019
13	KL-2019-AI-21-077411	MH MEGAH MAJU ENTERPRISE	19.08.2019
14	KL-2019-AI-21-080137	MH MEGAH MAJU ENTERPRISE	28.08.2019
15	KL-2019-AI-21-080172	MH MEGAH MAJU ENTERPRISE	28.08.2019
16	KL-2019-AI-21-085898	MH MEGAH MAJU ENTERPRISE	02.10.2019
17	KL-2019-AI-21-086855	MH MEGAH MAJU ENTERPRISE	09.10.2019
18	KL-2019-AI-21-086834	MH MEGAH MAJU ENTERPRISE	09.10.2019
19	KL-2019-AI-21-086829	MH MEGAH MAJU ENTERPRISE	09.10.2019
20	KL-2019-AI-21-06958	SETICA INDUSTRIES (M) SDN BHD	22.01.2019
21	KL-2019-AI-21-06591	SETICA INDUSTRIES (M) SDN BHD	07.02.2019
22	KL-2018-AI-21-139316	JENTAYU INDUSTRY	28.12.2018
23	KL-2019-AI-21-03293	SETICA INDUSTRIES (M) SDN BHD	18.02.2019
24	KL-2019-AI-21-05483	SETICA INDUSTRIES (M) SDN BHD	18.02.2019
25	KL-2019-AI-21-07132	SETICA INDUSTRIES (M) SDN BHD	15.02.2019
26	KL-2019-AI-21-099652	MH MEGAH MAJU ENTERPRISE	31.12.2019
27	KL-2020-AI-21-001958	MH MEGAH MAJU ENTERPRISE	22.01.2020
28	KL-2019-AI-21-02866	SETICA INDUSTRIES (M) SDN BHD	25.01.2019
29	KL-2020-AI-21-003235	MH MEGAH MAJU ENTERPRISE	04.02.2020
30	KL-2019-AI-21-091247	MH MEGAH MAJU ENTERPRISE	12.11.2019
31	KL-2020-AI-21-005078	CEKAP PRIMA SDN BHD	29.01.2020
32	KL-2019-AI-21-010992	ARTFRANSI INTERNATIONAL SDN BHD	24.09.2019
33	KL-2019-AI-21-010967	ARTFRANSI INTERNATIONAL SDN BHD	11.10.2019
34	KL-2019-AI-21-010979	ARTFRANSI INTERNATIONAL SDN BHD	31.10.2019
35	KL-2019-AI-21-010989	ARTFRANSI INTERNATIONAL SDN BHD	19.11.2019
36	KL-2019-AI-21-088361	MH MEGAH MAJU ENTERPRISE	21.10.2019
37	KL-2020-AI-21-000862	MH MEGAH MAJU ENTERPRISE	20.01.2020
38	KL-2019-AI-21-018819	HARD METAL TRADE SDN BHD	16.12.2019
39	KL-2019-AI-21-014873	SETICA INDUSTRIES (M) SDN BHD	09.04.2019
40	KL-2019-AI-21-015487	SETICA INDUSTRIES (M) SDN BHD	12.04.2019
41	KL-2019-AI-21-039871	MH MEGAH MAJU ENTERPRISE	23.04.2019
42	KL-2019-AI-21-043235	CEKAP PRIMA SDN BHD	12.12.2019
43	KL-2019-AI-21-038903	SETICA INDUSTRIES (M) SDN BHD	N/A
44	KL-2019-AI-21-072613	MZH MAJU INDUSTRY	01.08.2019

LIST OF UNAUTHENTIC CERTIFICATES OF ORIGIN WHICH WERE NOT ISSUED BY THE MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY MALAYSIA (MITI)

NO.	REFERENCE NO.	COMPANY NAME	APPROVED DATE
45	KL-2019-AI-21-093214	EZY METAL ENTERPRISE	15.11.2019
46	KL-2019-AI-21-095525	MH MEGAH MAJU ENTERPRISE	26.11.2019
47	KL-2019-AI-21-095473	MH MEGAH MAJU ENTERPRISE	26.11.2019
48	KL-2019-AI-21-027975	MALY METAL INDUSTRY SDN BHD	30.09.2019
49	KL-2019-AI-21-033688	MALY METAL INDUSTRY SDN BHD	13.11.2019
50	KL-2019-AI-21-039022	MALY METAL INDUSTRY SDN BHD	25.11.2019
51	KL-2019-AI-21-043662	MALY METAL INDUSTRY SDN BHD	16.12.2019
52	KL-2019-AI-21-088477	MH MEGAH MAJU ENTERPRISE	22.10.2019
53	KL-2019-AI-21-088408	CEKAP PRIMA SDN BHD	12.11.2019
54	KL-2019-AI-21-033027	MH MEGAH MAJU ENTERPRISE	22.10.2019
55	KL-2019-AI-21-038395	CEKAP PRIMA SDN BHD	27.11.2019
56	KL-2019-AI-21-0101023	ARTFRANSI INTERNATIONAL SDN BHD	02.12.2019
57	KL-2019-AI-21-043670	MALY METAL INDUSTRY SDN BHD	16.12.2019
58	KL-2019-AI-21-099382	EZY METAL ENTERPRISE	27.12.2019
59	KL-2019-AI-21-044172	MALY METAL INDUSTRY SDN BHD	31.12.2019
60	KL-2019-AI-21-091339	JENTAYU INDUSTRY	30.11.2019
61	KL-2019-AI-21-090139	JENTAYU INDUSTRY	11.11.2019
62	KL-2019-AI-21-093873	JENTAYU INDUSTRY	29.11.2019
63	KL-2019-AI-21-085293	MH MEGAH MAJU ENTERPRISE	30.09.2019
64	KL-2019-AI-21-086925	MH MEGAH MAJU ENTERPRISE	09.10.2019
65	KL-2019-AI-21-017946	PIONEER ULT ENTERPRISE	24.10.2019
66	KL-2019-AI-21-017945	PIONEER ULT ENTERPRISE	24.10.2019
67	KL-2019-AI-21-017896	PIONEER ULT ENTERPRISE	04.11.2019
68	KL-2019-AI-21-017895	PIONEER ULT ENTERPRISE	04.11.2019
69	KL-2019-AI-21-017912	PIONEER ULT ENTERPRISE	15.11.2019
70	KL-2019-AI-21-018082	PIONEER ULT ENTERPRISE	20.11.2019
71	KL-2019-AI-21-018251	PIONEER ULT ENTERPRISE	29.11.2019
72	KL-2019-AI-21-018250	PIONEER ULT ENTERPRISE	29.11.2019
73	KL-2019-AI-21-018252	PIONEER ULT ENTERPRISE	29.11.2019
74	KL-2019-AI-21-018796	PIONEER ULT ENTERPRISE	16.12.2019
75	KL-2019-AI-21-018809	PIONEER ULT ENTERPRISE	16.12.2019
76	KL-2019-AI-21-018800	PIONEER ULT ENTERPRISE	16.12.2019
77	KL-2019-AI-21-018848	PIONEER ULT ENTERPRISE	24.12.2019
78	KL-2019-AI-21-018845	PIONEER ULT ENTERPRISE	24.12.2019
79	KL-2019-AI-21-018843	PIONEER ULT ENTERPRISE	24.12.2019
80	KL-2019-AI-21-018898	PIONEER ULT ENTERPRISE	31.12.2019
81	KL-2020-AI-21-019358	PIONEER ULT ENTERPRISE	15.01.2020
82	KL-2020-AI-21-019428	PIONEER ULT ENTERPRISE	28.01.2020
83	KL-2020-AI-21-019484	PIONEER ULT ENTERPRISE	28.01.2020
84	KL-2020-AI-21-019482	PIONEER ULT ENTERPRISE	28.01.2020
85	KL-2020-AI-21-019480	PIONEER ULT ENTERPRISE	28.01.2020
86	KL-2020-AI-21-019511	PIONEER ULT ENTERPRISE	04.02.2020
87	KL-2019-AI-21-01095	SETICA INDUSTRIES (M) SDN BHD	07.01.2019

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3.2 In the impugned 0rder-in-Original, learned Commissioner has in para 14.1.3, placed reliance on email received from MITI which communicated that retroactive check was conducted of random 143 CoOs out of which 87 are not authentic, which they enclosed with the mail. Based on this finding, it is concluded that CoOs in the case of the appellant are also not authentic. During the course of argument before this Hon'ble Tribunal, the appellant submitted that the aforesaid three CoOs in question are not included in the above list of 87 CoOs claimed to be non-authentic as per email of MITI and therefore required to be considered as authentic.

3.3 The Adjudicating Authority further found that Shri Anand Menon, Proprietor of the Appellant firm in his statement dated 25.01.2021 had admitted that all steel products imported by them were of Chinese origin and were intentionally routed through Malaysia to bypass imposition of CVD on the goods of Chinese origin and to wrongfully avail the FTA benefit available on imports from Malaysia and relied on the judgement of Hon'ble Supreme Court in the case of Commissioner of C.Ex. Madras Vs System & Components Pvt Ltd. reported at 2004 (165) E.L.T. 136 (S.C.).

3.4 With regard to the affidavit dated 24.03.2023 submitted by Shri Anand Menon retracting his statements dated 25.01.2021, Adjudicating Authority observed that the retraction was submitted to the Adjudicating authority on 21.11.2023 along with reply to SCN and the SCN was not based merely on the admission of Shri Anand Menon and Shri Achin Goel, but was corroborated with the email dated 12.04.2021 received from The Principal Assistant Director, Trade and Industry Cooperation Section, Trade and Industry Support Division, MITI informing that MITI had never received a COO application from MMME and it was also confirmed that the company was not registered as an user in the ePCO System. Thus, claim that the statements were recorded under duress was an afterthought. He found that-

i) Mr. Menon had not immediately retracted his statement which was recorded on 25.01.2021 whereas it was retracted on 24.03.2023 and submitted to the Adjudicating Authority on 21.11.2023 [Reliance placed on Hon'ble CESTAT, New Delhi's judgement in the case of Ureka Polymers Ltd vs Commissioner reported at 2001 (127) E.L.T. 618 (Tribunal).

ii) Retraction has not been made before the Investigating Authority as it was made before the Adjudicating Authority. Such belated retractions cannot take away the evidentiary value of their original statements as held by Mumbai Tribunal in the case of P.B. Nair C &F Pvt Ltd vs Commissioner reported at 2015 (318) E.L.T. 437 (Tri. - Mumbai).

iii) The appellant has not adduced any evidence that his statements was recorded under duress [Reliance placed on judgement of Hon'ble Madras High Court in the case of Asstt. Collector vs Govndasamy Ragupathy reported at 1998 (98) E.L.T. 50 (Mad.).

(iv) Relying on the judgement of Hon'ble Supreme Court in the case of K.l. Pavunny reported at 1997 (90) E.L.T. 241 (S.C.), he held that the voluntary statement of Shri Anand Menon is admissible evidence. Voluntary statements of Shri Anand Menon, Proprietor of the Importer firm corroborates with the email dated 12.04.2021, received from The Principal Assistant Director, Trade and Industry Cooperation Section, Trade and Industry Support Division, MITI which specifically communicates that MITI has never received a COO application from MMME. MITI had also checked with their ePCO System Service Provider which confirms that MMME is not registered as a user of their EPCO system. Adjudicating Authority also found that during investigation, website of MMME was verified by DRI officers wherein MMME had declared their main activity as dealing in aluminum goods and it nowhere mentioned that MMME was manufacturing/processing or otherwise dealing in Cold Rolled Stainless Steel Coils. Thus, retraction affidavit was found to be nothing but an afterthought and therefore not acceptable.

(v) Relying on the judgement of Hon'ble Supreme Court in the case of Visen Industries vs Commissioner reported at 2018 (360) E.L.T. A184 (S.C.) and judgement of this Tribunal in the case of Jessons Industries Ltd vs Commissioner of Customs, Kandia reported at 2014 (314) E.L.T. 433 (Tri.-Ahmd.), the Adjudicating Authority found that the importer was not eligible for benefit of Not. No. 46/2011-Cus dated 01.06.2011 as amended.

3.5. The Adjudicating Authority had further found that the importer had submitted fake Certificates of Origin and declared incorrect and wrong facts to the Customs to fraudulently avail the benefits of Not. No. 46/2011-Cus dated 01.06.2011. In view of admission by Shri Anand Menon, Proprietor of the appellant firm, in his statements dated 25.01.2021 regarding origin of imported goods to be of China and routed to India through Malaysia, he held that the importer had intentionally and knowingly adopted the modus operandi of collusion, wilfull mis-statement and suppression of facts to fraudulently avail the benefits of Not. No. 46/2011-Cus dated 01.06.2011. These acts of the importer provide sufficient ground to invoke extended period under Section 28(4) of the Customs Act, 1962.Relying on the judgement of Hon'ble CESTAT Bangalore in the case of Surya Light Vs Commissioner of Customs, Bangalore 2008 (226) E.L.T. 74 (Tri. Bangalore), he held that the impugned goods do not qualify to be originating goods of

Malaysia and therefore, the benefit of Notification No. 46/2011-Cus dated 01.06.2011 as amended was not available and consequently, the duty amount of Rs.58,80,088/- was recoverable from them.

3.6 The Adjudicating Authority relied upon the judgement of Hon'ble High Court, Madras in the case of Visteon Automotive Systems India Ltd reported at 2018 (009) G.S.T.L. 0142 (Mad) and judgement of Hon'ble High Court, Gujarat in the case of Synergy Fertichem Ltd vs Union of India reported at 2020 (33) G.S.T.L. 513 (Guj.) to hold that redemption fine was imposable even in the case of goods not available for confiscation. He further relied upon the judgement of Hon'ble Supreme Court in the case of Weston Components Ltd Vs Commissioner of Customs to hold thatredemption fine was imposable where goods were available for confiscation but the same were released provisionally on execution of Bond and Bank Guarantee.He also found that the ingredient of willful mis-statement and suppression of facts by the importer were clearly established and so this was a fit case for imposition of penalty under Section 114A.

3.7 The Adjudicating Authority further found that the importer had contravened the provisions of Section 46(4) of the Customs Act, 1962 as they intentionally availed /took a wrong Customs Duty exemption benefit by way of suppressing material facts and producing fake Country of Origin Certificate. The proprietor Shri Anand Menon had admitted in his statements dated 25.01.2021 that their subject imports were of Chinese origin and the said goods were intentionally routed through Malaysia to bypass imposition of CVD on Chinese origin goods. MITI Malaysia had also confirmed that they had never received an application from MMME and further, MMME was not registered as a user in their ePCO system. Thus, there was substantial evidence on record to establish that importer had knowingly and intentionally produced fake COO and therefore, liable to penalty under Section 114AA.

4. The department made further submissions vide letter dtd.03.11.2025 as follows:-

4.2 The point-wise relevant details of the case with regard to limitation are as under:

4.2.1. Shri Anand Menon, Proprietor of the appellant firm in his statement dated 25.01.2021 informed that he had started the subject firm in January 2020 and M/s. MMME, through their Sales Executive Shri Asif, had given him a proposal of 30 days credit on the imported goods i.e. the whole payment for the imported goods was to be made 30 days after receipt of the goods in India.; there was no written Sales Contract and the Purchase Orders were made on Wickr Mobile App wherein, the data was automatically removed after 7 days. This in itself would appear strange, unconvincing and not a normal transaction in as much as a person starts a firm in January 2020, happens to meet the Sales Executive of M/s. MMME Shri Asif who arranges a deal wherein a person without any prior relation or reference is given a 30 days credit for the whole payment i.e. not even a token advance amount. Further, there is no Written Contract and Purchase Orders were placed on Wickr Mobile App, which as per Shri Anand Menon himself, the data was automatically removed after 7 days. So, plainly speaking, in the absence of a Written Agreement, even the 30 days credit is just an oral understanding. The Proforma Invoices of M/s. MMME issued to the appellant in all the three consignments (Proforma Invoice is treated as contract between the buyer and seller) mentioned the payment terms as '100% Advance by TT against Proforma Invoice'. The commercial invoices were found to have been issued on the same day. Now, even if the Proforma Invoice was treated as a condition of contract or agreement, the payment against the goods imported in all the three consignments should have been made 100% Advance or even as per his statement, within 30 days. However, verification of the SWIFT Advices of the appellant revealed that the first payment to M/s. MMME was made on 02.09.2020 for the three consignments which were imported in the months of June and July 2020 i.e. after investigations were initiated by DRI and a live consignment of the appellant was examined under panchnama. So, in the very first dealings with M/s. MMME and also their first imports from any supplier, the appellant, who is new in the international market and so with no credibility to rely upon, is supplied goods without even an Advance Payment Token (though the Proforma Invoices mention 100% Advance), no Written Agreements and not even a Letter of Credit through bank. This clearly indicates that the transactions of the appellant with M/s. MMME are not at all normal and convincing in nature.

4.2.2 During the course of investigations, it was noticed from the website of M/s. MMME that the firm was a global aluminium company involved in production, sales and trading activities from casting to the production of primary aluminium rolled products as well as recycling as also from production of the thinnest aluminium foils to the most advanced aluminium building system. They have described themselves that everything they do is about aluminium. There is no mention whatsoever anywhere in the website that M/s. MMME is involved in manufacturing/ processing or otherwise dealing in Cold Rolled Stainless Steel Coils (impugned imports). This clearly indicates that dealing in any manner with Cold Rolled Stainless Steel Coils is not a part of the regular activity of the supplier.

4.2.3 He further stated that he was unaware about the origin of the subject imported goods. He was further shown a copy of statement dated 03.07.2020 of Shri Achin Goel, Proprietor of M/s. R. R. International, New Delhi wherein Shri Achin Goel had stated that due to imposition of CVD on Chinese origin goods, M/s. Leo Metal, China had arranged documents in the name of M/s. MMME, Malaysia and had submitted the said documents in the name of M/s. MMME, Malaysia to Indian Customs to pay less Customs Duty. Shri Anand Menon admitted that all the steel products imported by his firm (appellant) were intentionally routed through Malaysia to bypass the imposition of CVD on the goods of Chinese origin and to wrongly avail the FTA benefit available on the imports from Malaysia. He further accepted his mistake and stated that he would discharge the applicable Customs Duty liability on the imports done by the appellant i.e. M/s. Vrunda International.

4.3 A Country of Origin (COO) Ref. No. KL-2020-AI-21-089737 purported to be issued by Ministry of International Trade & Industry (MITI) in respect of the goods exported by MMME from Malaysia to India, was forwarded to MITI for verification. The Principal Assistant Director, Trade and Industry Cooperation Section, Trade and Industry Support Division, MITI vide email dated 12.04.2021, informed that "MITI has never received a COO application from MH Megah Maju Enterprise, . MITI has also checked with our ePCO system service provider, which confirms that the company is not registered as a user of our ePCO system". (Para 6.1 of OIO).

4.3.1 So, when MITI, Malaysia, the authority which was supposed to issue the Country of Origin Certificate itself states on record that the company (Malaysian Supplier) is not registered as a user on their ePCO system, issuing them a Country of Origin naturally becomes out of question.

4.3.2 In this regard, reliance is placed on the print-out from website of Gujarat Chamber of Commerce & Industry (GCCI) as per which Gujarat Chamber of Commerce & Industry is officially authorized by the Ministry of Commerce, Government of India to issue Certificate of Origin (Non-Preferential) in respect of goods exported from India. Here, the main pre-condition is that "the facilities of attestation / pre-authorisation / issuance of certificates are available only to GCCI Members. Similarly, it appears that in the case of MITI, Malaysia, the company had to be registered as a user of their ePCO system which was not the case.

4.4 The Adjudicating Authority further found that Shri Anand Menon, Proprietor of M/s. Vrunda International (appellant) in his statement dated 25.01.2021 had admitted that all steel products imported by them were of Chinese origin and were intentionally routed through Malaysia to bypass the imposition of CVD on the goods of Chinese origin and to wrongfully avail the FTA benefit available on imports from Malaysia and relied on the judgement of Hon'ble Supreme Court in the case of Commissioner of C.Ex. Madras vs System & Components Pvt LTd reported at 2004 (165) E.L.T. 136 (S.C.) (Para 14.1.6 of OIO).

4.4.1 Further, with regard to the affidavit dated 24.03.2023 retracting his statement dated 25.01.2021, which was submitted to the Adjudicating Authority on 21.11.2023, the Adjudicating Authority observed that the SCN was not based merely on the admission of Shri Anand Menon and Shri Achin Goel, but was corroborated with the email dated 12.04.2021 received from The Principal Assistant Director, Trade and Industry Cooperation Section, Trade and Industry Support Division, MITI informing that MITI had never received a COO application from MMME and it was also confirmed that the company was not registered as an user in the ePCO System. Thus, the claim that the statement was recorded under duress was an afterthought. In this regard, the Adjudicating Authority found:

i) The statement was recorded on 25.01.2021 whereas the same was retracted on 24.03.2023 and submitted to the Adjudicating Authority on 21.11.2023 and so the appellant had not immediately retracted his statement. [Reliance placed on Hon'ble CESTAT, New Delhi's judgement in the case of Ureka Polymers Ltd vs Commissioner reported at 2001 (127) E.L.T. 618 (Tribunal). (Para 14.1.8 of OIO).

ii) Importer had not made retraction before the Investigating Authority but the same was made before the Adjudicating Authority and such belated retractions cannot take away the evidentiary value of their original statements [Reliance placed on Hon'ble CESTAT Mumbai in the case of P.B. Nair C &F Pvt Ltd vs Commisionerreportedat 2015 (318) E.L.T. 437 (Tri. – Mumbai). (Para 14.1.9 of OIO).

iii) The appellant has not adduced any evidence that his statement was recorded under duress [Reliance placed on judgement of Hon'ble Madras High Court in the case of Asstt. Collector vs Govndasamy Ragupathy reported at 1998 (98) E.L.T. 50 (Mad.) (Para 14.1.10 of OIO).

(iv) Further, relying on the judgement of Hon'ble Supreme Court in the case of K.I. Pavunny reported at 1997 (90) E.L.T. 241 (S.C.) (Para 14.1.11 of OIO), the Adjudicating Authority found that the voluntary statement of Shri Anand Menon, Proprietor of the Importer firm corroborates with the email dated 12.04.2021, received from The Principal Assistant Director, Trade and Industry Cooperation Section, Trade and Industry Support Division, MITI wherein it specifically stated that MITI has never received a COO application from MMME. MITI had also checked with their ePCO System Service Provider which confirms that MMME is not registered as a user of their ePCO system. Further, the Adjudicating Authority found that during the investigation carried out by DRI, the website of MMME was verified wherein MMME had declared their main activity as dealing in aluminum goods but nowhere in the website was it mentioned that MMME was manufacturing / processing or otherwise dealing in Cold Rolled Stainless Steel Coils. Thus, the retraction affidavit was found tobe nothing but an afterthought and therefore not acceptable.

(v) Further, reliance is placed on the judgement of High Court of Kerala in the case of R. Shreekumar vs CESTAT, Bangalore reported at 2014 (306) E.L.T. 531 (Ker.) wherein the late retraction of statement was rejected.

4.5 The Adjudicating Authority thus found that the importer had submitted fake Certificates of Origin and declared incorrect and wrong facts to Customs to fraudulently avail the benefits of Not. No. 46/2011-Cus dated 01.06.2011. Shri Anand Menon, Proprietor of M/s. Vrunda International, in his statement dated 25.01.2021 had admitted that the impugned goods were of Chinese origin and routed to India through Malaysia. Thus the importer had intentionally and knowingly adopted the modus operandi of collusion, wilfull mis-statement and suppression of facts to fraudulently avail the benefits of Not.No. 46/2011-Cus dated 01.06.2011. These acts of omission on the part of the importer tantamount to willful mis-statement and suppression of facts on their part and provides sufficient ground to invoke the provisions of Section 28(4) for extended period upto five years. The Adjudicating Authority thus, further relying on the judgement of Hon'ble CESTAT Bangalore in the case of Surya Light vs Commissioner of Customs, Bangalore 2008 (226) E.L.T. 74 (Tri. Bangalore) found that the impugned goods do not qualify to be originating goods of Malaysia and therefore,the benefit of Notification No. 46/2011-Cus dated 01.06.2011 as amended was not available and consequently, the duty amount of Rs.58,80,088/- was recoverable under Section 28(4) of Customs Act, 1962.

4.6. The Adjudicating Authority found that the ingredient of willful mis-statement and suppression of facts by the importer were clearly established and so this was a fit case for imposition of penalty in terms of Section 114A.

4.7. The Adjudicating Authority further found that the importer had contravened the provisions of Section 46(4) of the Customs Act, 1962 as they intentionally availed / took a wrong Customs Duty exemption benefit by way of suppressing the material facts and producing fake Country of Origin Certificate. The proprietor Shri Anand Menon had admitted in his statement dated 25.01.2021 that their subject imports were of Chinese origin and the said goods were intentionally routed through Malaysia to bypass the imposition of CVD on the goods of Chinese origin. MITI Malaysia had also confirmed that they had never received an application from MMME and further, MMME was not registered as a user in their ePCO system. Thus, there was substantial evidence on record that the importer had knowingly and intentionally produced the fake COO. Hence, penalty under Section 114AA is sustainable.

Findings:-

5. We have gone through the rival submissions. We find that the main allegation of the department is based on the fact that M/s. MH Megha Maju Enterprises (MMME), Malaysia which was supposed to be the supplier of the impugned goods i.e. "Cold rolled Stainless-Steel Coils of Grade-J3" (SS Coils) had not supplied goods originating in Malaysia. As per the department it was not in the business of the nature of Cold rolled Stainless-Steel Coils but was

in the business of Aluminium goods as per their website. Though, the department does not challenge that the first payment was made to MMME on 02.09.2020 in respect of the goods imported. The department is of the view the same was done after initiation of investigation by DRI on 28.08.2020. It is also found out that certificate bearing No. COO-KL-2020-AI-21-089737 which was in relation to third party but emanated from same MMME was got verified by Ministry of International Trade and Industry and that certificate MITI had vide email dated 12.04.2021(sic. read 14.04.2021) informed that "*MITI has never received a COO application from MH Megah Maju Enterprise and MMME was not registered with them.*" Generally applying this email to even in the case of appellants, the show cause notice was issued to them for breach of Notification 46/2011-Cus dated 01.06.2011 which implemented Indo-Asian FTA and had allowed the benefit of the Cold rolled Stainless-Steel Coils as well.

5.1 The department viewing that the goods have not originated from Malaysia has issued the present show cause notice. In fact, 87 certificates of origin were rejected by Ministry of International Trade and Industry of Malaysia not emanating from Malaysia out of 143 which were sought to be verified by the Government of India. Appellants submission by way of chart is that though their certificate of origin was not figuring in the list of 87 rejected by MITI still on verification of others they have been subjected in the show cause notice which stands confirmed and they have also been subjected to redemption fine as well as imposition of penalty and duty. The appellants have stated that they had submitted certificate No. KL-2020-AI-21-053249 dated 29.06.2020, KL-2020-AI-21-056224 dated 08.07.2020 and KL-2020-AI-21-064326b dated 04.08.2020 which was not in the list of 87 non-authentic certificates rejected by MITI on verification of 143 certificates sent by the Government of India. The email dated 12.04.2021 which has been sought to be made basis in the show cause notice was pertaining to third party and was barring country-of-origin certificate No. KN-2020-AI-21-089737 dated 12.04.2021 (sic read as 14.04.2021). It is thus clear that the certificate in this case is not of the same party which has been referred and relied upon in the purported email. Further, when out of 143 certificates referred for verification only 87 were found fake as detailed in para 5.1(table 1 of show cause notice) as per the verification report of the MITI, it can thus be stated that department's case is based on assumptions and presumptions that the certificate produced by the appellant had failed to meet verification process. If there were some doubts persisting, department should have caused more detailed verification, with its reasons of doubt as is the statutory requirement. No such verification for appellant has been brought on record.

5.2 With regard to the other evidences relied by the department, which is statement of the Shri Anand Menon, Proprietor of M/s Vrunda International in his statement dated 25.01.2021 that he admitted that all the steel products imported by the appellants were of Chinese origin and were rouged through Malaysia to circumvent CVD, we find that though the same has been rebutted in reply to show cause notice vide statement dated 24.11.2023 but party has justified rebuttal relying on case law of Tejwal Dyestuff Industries (cited supra), which was later confirmed by Hon'ble Gujarat High Court. Also statement is contradictory as initially, in the opening part he states that on being asked, "I am completely unaware about the origin of the goods imported by my firm M/s. Vrunda International from M/s. MH Megha Maju Enterprises (MMME), Malaysia" further, I have been shown statement dated 03.07.2020 of Shri Archin Goel, Proprietor of the M/s RR International A-78/5, Wazirpur Industrial Area, New Delhi, Shri Archin

Goel in which he had stated that due to imposition of CVD on Chinese origin goods of M/s Leo Metal China same were related in the name of M/s. MH Megha Maju Enterprises (MMME), Malaysia and they produced document in the name of M/s. MH Megha Maju Enterprises (MMME), Malaysia before Indian customs. And further he went on to say that the goods were of Chines origin. It is thus clear that Shri Anand Menon also based his statement of admission on the basis of statement of Shri Archin Goel, who informed initially that he was completely unaware about the origin of goods imported. We find thus that there is inherent contradiction in this statement as he in the later part of the same statement indicates that goods originated in China. Further, till the time department has not demolished the requisite documents of certificate of origin produced by the appellant then as per established law documentary evidence has to get precedence over the testimonial evidence or any website evidence about the gamut of activities carried out by any appellant. What is goods for doubt by investigators for investigation may not be goods enough for the touch stone of evidence.

5.3 The department in this case primarily intends to rely on two evidences. Firstly, the statement of confession of Shri Achin Goel (a third party) which was endorsed by Shri Menon of the appellant unit. However, Shri Achin Goel, in his statement itself, has made contradictory assertions. In the initial part of his statement, he claims that he does not know anything about the origin of the goods, whereas subsequently he states that the goods were of Chinese origin, but were channelized through Malaysia to evade the CVD applicable on imports from China. Furthermore, although Shri Menon initially endorsed the said statement, at the stage of adjudication he filed an affidavit asserting that the goods were indeed of Malaysian origin, as duly documented, and that the statement relied upon by the department was not voluntary. Another shadow of doubt is cast upon the version about imported goods as put forth by the department, as on 2nd September, 2020, M/s. Vrunda International actually made part payment to M/s. Megha Maju Enterprises (MMME), Malaysia and same was in the knowledge of the investigators. Secondly, there is an e-mail dated 12.04.2021 from the Principal Assistant Director, Trade and Industry Co-operation Section, MITI informing that in their ePCO system which is operated by their Principal Assistant Director, Trade and Industry Cooperation Section indicated as per their record, MMME was not registered with them. The date of such check has not been mentioned. Irrespective of this general e-mail, it is found that the Rules framed under AIFTA in national domain require retroactive checks to be done time bound manner. The issuing authority is required to convey the outcome of any such verification within six months. We find that import in this case was done in June and July, 2020, therefore, the verification process by conveying reasons of doubt should have been obtained by revenue officials from Malaysia by December, 2020 in respect of specific certificates involved in this transaction. There is nothing on record that the authority concerned acted with due diligence to carry out such exercise specifically, which has been provided in the Rules. Thus, this lack of verification comes in the way of the department and we find that till date specific certificates have not been got verified as per the Rules between the two countries. Further, we find that during course of recording of statements of Shri Achin Goel as well as Mr. Menon it was pointed out the "Wickr Mobile App" was used to work out various arrangements between them and MMME, no such messages have been attempted to be deciphered by the department. Therefore, the case of the department can not be taken to be proved since not even the statements with all attending evidences and affidavits was scrutinized by the Adjudicating Authority to check in examination-in-chief, if the same were admissible or not. Coming to various case law indicated by the party on various arguments taken by them, we find arguments are well supported by authorities of this Tribunal as well as Higher Courts, as indicated in the factual narrative. In this regard documentary evidence is to be preferred over testimonial evidence is well founded proposition supported by following case laws:

- 2021 (378) ELT 155 (Tri-Ahmedabad) in the matter of AGARWAL METALS & ALLOYS vs. COMMISSIONER OF CUSTOMS, KANDLA,
- 2020 (374) E.L.T. A42 (Tri. - Ahd.) in the matter of Dharmendra N. Rathor v. Commissioner,
- 2020 (372) E.L.T. 121 (Tri. - Ahmd.) in the matter of SHRI KRISHNA INDUSTRIES vs. COMMISSIONER OF C. EX. & S.T., VADODARA-II.

5.4 For the proposition that the statement to be relied upon by the department, cross examination must be provided by offering is well supported by J & K CIGARETTES LTD. vs. COLLECTOR OF CENTRAL EXCISE2009 (242) ELT 189 (Del.). Further we find that the statement has not been attempted to be corroborated by the department through "Wickr Mobile App" or by the certificate being referred for specific verification to the concerned Malaysian authorities. A check done in respect of others cannot justify any assumption and presumption in relation to the present appellants. Further, we also find that non verification of the specific certificate of origin, is found fatal if the verification has not been carried out as in (2024) 18 Centax 31, Tribunal- Ahmedabad in the matter of Ratnamani Metals and Tubes Ltd vs. Commissioner of Customs, Mundra. At this stage, when verification is already beyond prescribed period same cannot be brought on record by the department. In 2017 (355) E.L.T. 585 (Tri. - Hyd.) in the matter of COMMISSIONER OF CUSTOMS, HYDERABAD vs. RIDDI SIDDHI BULLIONS LTD, this Tribunal had held that if documents as required under the impugned notification are issued by the Government Authorities, then assessing officer cannot go beyond provision of notification and come to conclusion based upon assumptions and presumptions including quantum of gold mined by exporting country etc. The verification of the concerned CoO is the only process prescribed to reject the certificate. It is not understood as to why department failed to get verification done for the appellant, which doing the same in respect of 147 CoOs from the Malaysian authorities. The absence of verification of CoO is a failure to comply with the requirements of the Rules framed under the treaty, this is supported by judgments below:-

- (2024) 20 Centax 344 (Tri-Ahmd) in the matter of Uni Colloids Impex Pvt. Ltd. Vs. Commissioner of Customs,
- (2024) 20 Centax 569 (Tri-Ahmd) in the matter of Shirazee Traders vs. Commissioner of Customs, Mundra.

In both the above cases, no verification process was conducted in relation to the specific certificate of origin. In the matter of Shirazee Traders (cited supra), the lack of reports specifically in relation to the CoO produced was held to be fatal to the departmental case, in view of the provisions of various Treaty agreement as well as Rule 14 of the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Government of India and Malaysia) Rules, 2011. The decision also considered that when the documentary evidence is produced then onus cannot further be put on the party. In fact, the retroactive check requires to be done also requires the reasons to be stated by the importing countries, as to why it thinks that the certificates could be considered fake. No such exercise has apparently been done in the instant case. Further the decision of Global Exim vs. Commissioner of Customs, Mundra reported in 2024 (390) ELT 455 (Tri-Ahm.) dealt with the issue of limitation when documentary evidence like CoO were produced and importer relied upon it as authentic. The decision which went against the revenue decided that the party was not required to go through the circumstances under which certificate was issued and same without verification cannot be rejected. It is to be seen that neither the e-mail nor the reference made by the department was specifically in relation to impugned certificates i.e. COOs in this particular case. 87 COOs which were rejected by MITI as is clear from the e-mail dated 12.04.2021 (sic should be read as 14.04.2021) from the reproduction in the factual matrix never pertains to the particular COOs in this case and also same was issued with reference to 87 non-authentic certificates, in which inter-alia one of the companies in 87 certificates was MMME. The expression used in the e-mail (as reproduced supra) is "MITI has never received any COOs application from the respective companies via or system", this expression has been used in relation to 87 COOs rejected by MITI. It also does not mention as to up to what date such statement holds good. However, by introducing an assumption with the 87 included the impugned three COOs also, the same has been taken in the OIO as "MITI has never received COO application from MH Megah Maju Enterprises,MITI has also checked that ePCO system service provider which confirms that the company is not registered as user or for ePCO system. However, it is found from the reproduction above in the RUDs to the show cause notice that in the email no such reference exists and the same was only in relation to 87 rejected COOs which did not include the impugned certificates. The email pertains to checks done on which date is also not indicated.

5.5 On the other hand, the decision relied upon by learned A.R. of Ureka Polymers Ltd vs. Commissioner reported at 2001 (127) ELT 618 (Tribunal) is of old vintage and of-late the proposition regarding reliance and relevance of any statement has been redeveloped with various judicial authorities pointing that the same should not be relied upon by the Adjudicating Authority, even without considering all the attending circumstances and examination in chief and thereafter, cross examination should be afforded to the appellant. No such exercise has been done in the present case. Similar is the case with the decision of P.B. NAIR C&F PVT. LTD vs. COMMISSIONER OF CUSTOMS (GENERAL), MUMBAI reported in 2015 (318) E.L.T. 437 (Tri. - Mumbai) as well as Hon'ble Madras High Court relating to the case of Asst. Collector vs. Govndasamy Ragupathy reported at 1998 (98) ELT 50 (Mad.) and K.I. Pavunny reported in 1997 (90) ELT 241 (SC) which are all on the point of retraction and not on examination-in-chief to be done. In view of the specific treaty provisions and case laws as cited above the decision relating to capacity of the country of origin etc., have also become irrelevant. The fact remains that the department did not conduct statutory verification in the time bound manner which was statutorily required in respect of the present importer. Rest of evidences will fall within the domain of presumptions and assumptions and therefore, they are not sustainable. On the point of examination in chief to be done first by Adjudicating Authority before relying upon any statement following decisions are noteworthy:-

- 2022 (380) E.L.T. 264 (Bom.) in the matter of PRAKASH RAGHUNATH AUTADE vs. UNION OF INDIA.
- A person whose statement has been relied upon has to be offered for cross examined as has been held in 2019 (366) E.L.T. 280 (Cal.) in the matter of SAMPAD NARAYAN MUKHERJEE vs. Union of India. Point of emphasis here is on offering for cross examination.
- In the same context is the decision of AMBIKA INTERNATIONAL vs. Union of India reported in 2018 (361) E.L.T. 90 (P & H).
- Same in relation to requirement of examination in chief has been reiterated by Hon'ble Punjab and Haryana High Court in 2016 (340)

E.L.T. 67 (P & H) in the matter of JINDAL DRUGS PVT. LTD vs. Union of India.

- Even the Hon'ble Supreme Court in ANDAMAN TIMBER INDUSTRIES vs. COMMISSIONER OF C. EX., KOLKATA-II reported in 2015 (324) E.L.T. 641 (S.C.) has held that ground of"non retraction" and "no useful purpose" cannot be taken to refuse cross examination.

5.6 During the course of oral arguments, the decision of Hon'ble Gujarat High Court in the matter of Trafigura India Pvt Ltd Vs. Union of India-(2023) 13 Centax 9 (Gujarat) was also brought in discussion wherein the Hon'ble Gujarat High Court had held that the provisions of AIFTA treaty not incorporated into 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 which was no incorporated could not be taken advantage of either party as the non incorporated provisions of a treaty cannot be taken to have become part of Municipal law. The discussion was particularly delivered in relation to Article 24 of AIFTA and same was highlighted by the defending side. In this regard, we find that in Trafigura, 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. 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. 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. 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. 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. 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. 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.

5.7 We also find that the proposition made by the AR that "what is admitted need not be proved, is not an absolute proposition. Laid down in the context of knowledge and admission by a party about contents of a product dealt with and to be classified in C.C.E-Mundra Vs. Systems and

Components (P) Ltd in 2004 (165) E.L.T 136 (S.C), same was also distinguished by Hon'ble Gujarat High Court in 2011 (266) E.L.T 45 (Guj.) as not covering every admission by a director in every circumstances. Also in this case, we have already analysed above in Para 5.3 and Para 5.4, the purported statement and its corroboration as not free from various doubts. We also find relying on decisions of 2026 (2) T.M.I 344-CESTAT Kolkata in Vikash Kumar Vs. C.C (Prev.)

19. We also take note of the appellant's submission that the said statement/s relied upon against him in this case were allegedly recorded under duress and coercion and retracted later and thus such retracted statements have no evidentiary value in the absence of any corroborative evidence. Since the statement of Shri Jyoti Biswas has been retracted, we agree with the contention of the appellant that the same cannot be relied upon as evidence for implicating the appellant in the alleged offence, in the absence of any corroborative evidence. Reliance in this regard is placed on the decision of Jeen Bhawani International (supra), wherein it has been observed as under: -

> *"14. We find that revenue heavily relies on the statements of Shri Mahesh Chandra Sharma, though retracted later. The adjudicating authority has held that no documents are available in the case records to show that the statements, recorded between November, 2016 and June, 2019, were retracted by the appellant. Further, he also held that belated retraction has no evidentiary value and the evidences available on record in the form of statements cannot be ignored. On perusal of the appeal records, we find that by letter dated 5-92019, addressed to the adjudicating authority, the appellant had retracted all the statements, assigning the reason that the appellant had never stated regarding mis-declaration of value, quantity or description of goods and accordingly, deny the whole statements recorded under section 108 ibid. It has further been stated that the statements were obtained by threat, duress etc.*
>
> *14.1 We find that the statements were recorded by the department from Shri Mahesh Chandra Sharma on different dates in a span of 3 years. However, the copies of same were not furnished to the appellant immediately on completion of the summon proceedings. Upon receipt of the SCN together with the RUD's, the appellant came to know about the content in the statements, though made by him and thus, had sent the retraction letter within the reasonable time. Thus, it cannot be said that there is inordinate delay in filing the retraction letter. Further, the letter of retraction cannot be discarded on such ground, without examining the genuineness of the transactions and for that purpose, to verify the authenticity of available documents and those retrieved during the course of investigation, which admittedly has not been done by the department. In this context, the law is well settled that merely because an assessee has, under the stress of investigation, signed a statement admitting tax liability and having also made a few payments as per the statement, it cannot lead to self-assessment or self-ascertainment. In the case of Vinod Solanki [2009 (223) E.L.T. 157 (S.C.)], the Hon'ble Supreme Court has ruled that the initial burden to prove that the confession was voluntary is upon the department and that evidence brought by confession if retracted, must be corroborated by other independent and cogent evidence. Madras High Court in the case of Shri Nandi Dhall Mills India Private Limited 2022 (60) G.S.T.L. 227 (Mad.)] held that merely because an assessee has, under the stress of investigation, signed a statement admitting tax liability and has also made a few payments as per the statement, cannot lead to self-assessment or self-ascertainment. Though the judgment was pronounced in respect of GST, it goes to indicate that acceptance by the appellant during the course of recording the statement is not just enough and the same has to be confirmed by adducing independently corroborative evidence. The whole case cannot rest simply on the basis of a retracted statement though belatedly.*
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> *14.2 We find that the appellants have shown enough cause for delayed retraction. Learned Commissioner has simply brushed the same aside. He should have examined the appellant during the adjudication proceedings in terms of Section 138(B) of the Customs Act, 1962, to confirm the veracity. Learned adjudicating authority could have examined the officers too. Section 138B (1) ibid deals with the*

aspect of relevance of statements under certain circumstances. It has been provided that a statement made and signed by a person during any enquiry or proceeding shall be relevant, for the purpose of proving an offence, when the person, who made the statement, is examined as a witness in the case before the court. In this case, having acknowledged that the retraction has been made by the appellant in the course of the adjudication proceedings, more specifically, during the period between issuance of SCN and passing of the impugned order, it was incumbent upon the learned adjudicating authority to examine the person, who made the statement. However, the adjudicating authority chose to rely on the statement alone as evidence, which is beyond the scope and ambit of the statutory provisions. Thus, contents of the retracted statement cannot simply be brushed aside, to conclude that the appellant has indulged into the activity of undervaluation of goods."

Which in fact relies on Jeen Bhavani International and Mahesh Chandra Sharma Karta Versus Commissioner of Customs- Nhava Sheva-III as reported in 2022 (8) T.M.I 237, that when statements in summon proceedings are not provided and are given as part of show cause notice only, then retraction within reasonable time of communication can be held valid.

6. In view of the foregoing, we find that on the overall appreciation of evidence as well as existing case law, the case of the department cannot be allowed to be upheld. Accordingly, the appeal is being allowed with consequential relief.

(*Order Pronounced in the open court on 17.08.2026)*

(SOMESH ARORA)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

Prachi