IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Customs Appeal Nos.76148 of 2024

(Arising out of Order-in-Appeal No.Kol/Cus/Port/KS/386/2024 dated 14.06.2024 passed by Commissioner (Appeals) of Customs, Kolkata)

M/s Instamod Air Pipe Pvt. Ltd.
(709, Shahpuri Tower, C-58, Janakpuri, New Delhi-110058)

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata
(15/1, Strand Road, Kolkata)

Respondent

Appearance:
Shri Umang Srivastava & Ms.Gunjan Tanwar, both Advocates for the Appellant
Shri A.K.Choudhary, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.76557/2026

DATE OF HEARING : 27 OCTOBER 2026

DATE OF PRONOUNCEMENT : **29 OCTOBER 2026**

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein duty of Rs.12,59,301/- along with interest has been confirmed and an equivalent amount of penalty has also been imposed on the appellant under Section 114A of the Customs Act, 1962.

2. The facts of the case are that the appellant filed a home consumption Bill of Entry No.5138749 dated 09.02.2018 through CHA-M/s. Sarr Freights Limited for clearance of imported goods being various miscellaneous articles of Iron & Steel (72 Items) as mentioned at Table_A of the impugned order. The invoice was raised by the supplier

M/s. Megah Maju Enterprise, 25-2, Lorong Batu Nilam 5 Bukit Tin GGI, Selangor, Malaysia vide Invoice No. IAP29 dated 15.01.2018 was having a value of USD 125970.15(FOB) and declared Assessable Value of Rs.98,41,496/-. The importer had claimed duty exemption benefit under Indo-Malaysia comprehensive Economic Cooperation Agreement (IMCECA) under Notification No.53/2011-Cus dated 01.07.2011.

2.1 The Bill of Entry was assessed under Second check appraisement and duty amount was paid by the importer vide challan no.2021500001 dated 13.02.2018. Goods were examined and Out of charge was given on 13.02.2018. The benefit under Notification No.53/2011 Provides tariff concession to specified goods imported from Malaysia under India-Malaysia CECA.

2.2 CBIC vide D.O.F No.466/11/2021-FTA Cell2 dated 02.12.2021 has issued notice letter pertaining to DRI Alert Circular F. No. dated 10.09.2021 DRI/HQ/CI/B Cell/50 D/Enq01/202/2919 regarding "Non-authentic certificate of Country of Origin (COO) said to be issued in Malaysia and Thailand under ASEAN-India Free Trade Agreement (AIFTA) India- Malaysia CECA.

2.3 In the said Alert, it was stated that during the course of verification of Certificate of Origins (COOs) with Malaysia and Thailand, the FTA Cell of CBIC detected 151 non-authentic COOs as informed by the issuing authorities of these countries. Out of those, 148 COOs shown to be issued from Malaysia pertained to Steel Products whereas the remaining 03 COOs pertained to Antimony trioxide and re-melted Zinc Ingots from Thailand. It was also stated that 14 exporters from Malaysia and 02 from Thailand were involved in these cases. The

Ministry of International Trade & Industry (MITI), Malaysia further informed that apart from EVG Metal Industries SDN BHD, they never received any COO application from the companies mentioned in the subject COOs.

2.4 In view of above, it appears to the Department that the Country of Origin Certificate produced by M/s Instamod Air Pipe Pvt. Ltd. to get the duty exemption benefit on willful material suppression of facts as a result of which the exemption from Basic Customs duty given on the basis of the said COO Certificate was not admissible to the import consignments and the amount of Rs.12,59,301/- is recoverable under Section 28(4) of the Customs Act, 1962 along with the applicable interest under Section 28AA of the Act ibid. Accordingly, the appellant was show caused under Section 124 read with Section 28(4) & 28AAA of the Customs Act, 1962, proposing:-

(i) Disallowance of Exemption benefit vide Notification No. 053/2011-Customs dated 01.07.2011.

(ii) Recovery of differential duty of Rs. 12,59,301/- along with the applicable interest under Section 28(4) of the Customs Act, 1962.

(iii) Confiscation of consignments covered under the Bill of Entry No.5138749 dated 09.02.2018 having total declared Assessable value of Rs.98,41,496/-under Section 111(m) and 111(o) of the Customs Act, 1962 for the material suppression of facts as per Product Specific Rule (PSR) in accordance with the extant Rules of India-Malaysia CECA.

(iv) Imposition of penalty under Section 112(b)(ii)/114A for willful material suppression of facts.

2.5 Subsequently, the adjudicating authority after going through the reply of Show Cause Notice and submission made by the appellant, passed the following order:-

(i) Disallowed the exemption benefit vide Notification No. 053/2011-Customs dated 01.07.2011 in respect of the imports made under Bill of Entry No. 5138749 dtd.09.02.2018.

(ii) Confirmed the demand and ordered for the recovery of the differential duty amounting to Rs.12,59,301/- under Section 28(4) of the Customs Act, 1962 along with the applicable interest under Section 28AA of the Act, ibid from M/s Instamod Air Pipe Pvt. Ltd. as the Product Specific Rule (PSR) is not in accordance with the extant Rules of India-Malaysia Comprehensive Economic Partnership Agreement (CECA).

(iii) Hold that the consignment covered under the Bill of Entry No.5138749 dated 09.02.2018 having a total declared Assessable value of Rs.98,41,496/- liable for confiscation under Section 111(m) and Section 111(0) of the Customs Act, 1962 for the material suppression of facts as per Product Specific Rule (PSR) in accordance with the extant Rules of India-Malaysia CECA. However, he imposed redemption fine of Rs.9,80,000/-(Rupees Nine lakh eighty thousand only) under Section 125 of the Customs Act, 1962 in lieu of confiscation of goods covered under Bill of entry No.5138749 dated 09.02.2018.

(iv) Imposed a penalty of Rs. 12,59,301/- (Rupees: Twelve Lakh Fifty Nine Thousand Three Hundred and One only) under Section 114A of the Customs Act, 1962.

2.6 Being aggrieved with the order passed by the adjudicating authority, the appellant preferred an appeal before the ld.Commissioner (Appeals) of Customs, who rejected the appeal of the appellant.

2.7 Hence the present appeal.

3. The ld.Counsel for the appellant submits that the rejection of Country of Origin (COO) and the confirmation of demand is bad in law.

3.1 He submits that the consignment in question was dispatched from Port Klang, Malaysia under direct Bill of Lading for delivery at Kolkata. There is no allegation much less any evidence that the goods are not of Malaysian Origin.

3.2 He further submits that none of the documents relied for discrediting COO viz. CBIC Letter dated 02.12.2021 and DRI Alert Circular dated 10.09.2021 referred in para 4 of SCN; and email dated 19.06.2021 from CBIC and email dated 18.05.2021 from MITI or email dated 22.07.2021 also from MITI referred in para 24 of 0-1-0 purportedly perused by Adjudicating Authority have not been supplied to Appellant and hence, reliance thereupon, is ex-facie perverse besides being unlawful.

3.3 He further submits that without prejudice to the contention that the documents are inadmissible, the documents referred in para 4 of SCN are not relatable to the consignment in question, which majorly comprised Aluminium pipes and fittings and partly Steel/Brass Valves and Brackets; whereas in Department's own admission, DRI's Alert Circular fcr Malaysian COOs was in respect of Steel Products.

3.4 It is further submitted that the reliance on the documents pressed into service including purported emails from MITI is arbitrary and perverse as the same are not in conformity with the provisions relating to origin verification prescribed in Clause 9 of Annexure-III of Customs Tariff (Determination of Origin of Goods under Preferential Trade Agreement between the Government of Republic of India and Malaysia) Rules, 2011 of Origin prescribed in Notification No.43/2011-Cus (NT) dated 01.07.2011, insofar as no notice whatsoever as prescribed in Clause 10(1) and Clause 10(2) was ever served on Appellant.

3.5 Further, he submits that moreover, all the aforesaid documents are dated May 2021 or beyond whereas COO was presented before Customs Authority by Appellant on 09.02.2018 and hence, the exercise of verification not having been completed within the period of six months as prescribed in Clause 9(4) of Annexure-III, the Rules of Origin ibid.

3.5 As per allegations in the SCN at Para 5, there is an allegation that 151 COOs pertaining to Malaysia were non-authentic but there is no allegation in SCN or finding in the impugned Orders that the contextual COO was one amongst the 151 non-authentic COOs. He submits that there is no allegation or finding that the signature appended in COO was fabricated, forged or not of the Competent Authority, or COO was not issued by MITI.

3.6 Further he submits that though, there is a finding in para 26.2 of 0-In-0 and at para 11 of O-In-A that as per MITI's email, it did not receive any COO application from M/s Megha Maju Enterprises, Malaysia, supplier in the present case, however, this observation

besides being extraneous is patently misconceived as MITI has not stated in its email that contextual COO was fabricated or non-genuine or signature appearing thereon was not that of MITI's Officer.

3.7 Further, he submitted that the demand is time barred in terms of Section 28(1) of the Customs Act, 1962 and invocation of provisions of Section 28(4) of the Act ibid, in the facts of the case, is bad in law. He submits that the demand in the instant case has been confirmed invoking extended period of limitation under Section 28(4) of the Customs Act, 1962 on the basis of unsubstantiated allegations and inadmissible evidences.

3.8 It is his contention that the consignment in question was assessed to duty after due verification of COO by Proper Officer in terms of provisions of Clause 1(2) of Annexure-III of Rules of Origin referred supra.

3.9 Further, it is submitted that there is no allegation much less any evidence that Appellant was aware of the alleged nature of COO or had connived with Overseas Supplier. There is no evidence of any positive act on Appellant's part which may be construed as collusion, wilful mis-statement or suppression of fact to invite the wrath of Section 28(4).

3.10 He further submitted that without prejudice to appellant's contention that there is no evidence to suspect the authenticity of contextual COO, Appellant had no knowledge of alleged misdemeanor on the supplier's part.

3.10 Further, it is submitted that the consignment in question was cleared on 13.02.2018 and no investigation whatsoever was initiated by the Department till May 2021 as is evident from the purported email

referred by Adjudicating Authority in para 24; whereas in terms of Clause 9(4) of Annexure-III of Rules of Origin (supra); and all the documents pressed into service being inadmissible, invocation of extended period, confirmation of demand is ex-facie illegal.

3.11 He further submitted that no investigation was ever carried out by Department from Appellant and no inculpatory statement is available on record indicating any mis-declaration/mis-statement/collusion/suppression on the part of Appellant invocation of extended period is bad in law.

3.12 Further, he submitted that no evidence have been provided by the Malaysian Authorities, as required under Clause 16 of Annexure-III of Rules ibid for taking action against the person who had allegedly prepared/obtained purported incorrect COO. Hence, invocation of extended period of limitation is ex-facie perverse. To support his contention, he relies on the following decisions :

(i) Uniworth Textiles Ltd. Vs. Commissioner of Central Excise, Raipur-2013 (288) ELT 161 (SC).

(ii) Pushpam Pharmaceuticals Company Vs. Collector of C. Ex., Bombay - 1995 (75) ELT 401 (SC).

(iii) T. S. Motors India Pvt. Ltd. Vs. Commissioner of CGST & Central Excise, Lucknow-2024 (23) Centax 156 (Tri. - All.).

(iv) Commissioner of Customs (Export-I), Mumbai Vs. Morde Foods Pvt. Ltd. 2022 1 Centax 317 (Tri. Bom.).

(v) SS Corporation Vs. CC (Export) CESTAT's Final Order No. 51767/2025 dated 07.11.2025.

(vi) Thermax Pvt. Ltd. Vs. Collector of Customs 1992 (61) ELT 352 (SC).

(vii) Mahanagar Telephone Nigam Ltd. Vs. Union of India and others - 2023 (73) G.S.T.L 310 (Del.)

(viii) Imperial Fibers Pvt. Ltd. & Anr. Vs. C.C.- Mundra & Anr. Final Order No. 10594-10595/2026 dated 31.08.2026

3.13 He, therefore, submits that as the duty is not sustainable, the penalty is not imposable in the facts and circumstances of the case.

3.14 Again, he submitted that the imposition of Redemption Fine is also bad in law. It is his contention that the goods in question were cleared under proper B/E after payment of duty and were sold in due course under proper GST Invoices and hence, not being physically available confiscation thereof and the imposition of redemption fine cannot be sustainable. To support his contention, he relies on the following decisions :

(i) Commissioner of Customs (Import), Mumbai Vs. Finesse Creation INC.-2009 (248) ELT 122 (Bombay) as affirmed by Hon'ble Supreme Court in Commissioner Vs. Finesse Creation INC. 2010 (255) ELT A120 (SC) ;

(ii) Shiv Kripa Ispat Pvt. Ltd. Vs. Commissioner of C. Ex. & Customs, Nashik 2009 (235) ELT 623 (Tri. LB.) as affirmed by Hon'ble Bombay High Court in Commissioner Vs. Rishi Ship Breakers - 2015 (318) ELT A259 Bombay (HC) ;

(iii) Mahindra & Mahindra Ltd. Vs. Commissioner of Custorns (Import), Mumbai 2014 (312) ELT 545 (Tri. - Mum.) ;

(iv) Atul Kaushik Vs. Commissioner of Customs (Export), New Delhi - 2015 (330) ELT 417 (Tri. - Del.) ;

(v) Rakesh Mehta Vs. Commissioner of Customs, Kolkata 2004 (175) ELT 880 (Tri. - Kol.) ;

(vi) Commissioner of Customs (Export) Vs. Sudarshan Cargo Pvt. Ltd.-2010 (258) ELT 197 (Tri.Bom.)

4. The ld.A.R. for the Revenue has justified the impugned order.

5. Heard both the parties and considered the submissions.

6. After hearing both the parties, following issues emerge :

(i) whether the extended period of limitation can be invoked in the facts and circumstances of the case or not ?

(ii) whether the Certificate issued by Malaysia Agency, can be discarded in the facts and circumstances of the case or not ?

Issue (i)

whether the extended period of limitation can be invoked in the facts and circumstances of the case or not ?

7. We find that at the time of filing of the Bills off Entry, the goods were examined and allowed to be cleared and the benefit of Notification No.43/2011-Cus (NT) dated 01.07.2011 was allowed to the appellant. As per Rules of Origin, the verification of COO is to be conducted within six months as prescribed in Clause 9(4) of Annexure III, which has not been exercised within six months.

8. Further, we find that there is no allegation against the appellant was aware of the alleged nature of COO or had connived with the overseas suppliers and there is no evidence of any collusion, willful mis-statement and suppression of facts on behalf of the appellant and the

Certificate of Country of Origin is not in question as per DRI Alert Circular. Moreover, the consignment was cleared on 13.02.2018 and the investigation was started in May, 2021 and the show-cause notice has been issued to the appellant on 06.02.2023.

9. In view of the above observations, we hold that the show-cause notice issued to the appellant is highly time-barred and the extended period of limitation is not invokable in the facts and circumstances of the case.

Issue (ii)

whether the Certificate issued by Malaysia Agency, can be discarded in the facts and circumstances of the case or not ?

10. We further take note of the fact that the DRI Alert in 2021, was in respect of Steel Products i.e. Antimony Trioxide and Re-melted Zinc Ingots, whereas the items imported are Aluminium Pipes and fittings and partly Steel/Brass Valves and Brackets. Therefore, the said Alert is not applicable to the facts of this case.

11. Moreover, in the adjudication order, the adjudicating authority has relied on the e-mail dated 19.06.2021 from CBIC and email dated 18.05.2021 from MITI or email dated 22.07.2021. This email was not the subject matter of the show-cause notice, neither this email was provided to the appellant for explanation.

12. In that circumstances, without providing these emails to the appellant, the allegation is not sustainable against the appellant.

13. We further take note of the fact that MITI has not discarded the issuance of the said Certificate of COO especially in this case. To that effect, no evidence has been brought on record by the Revenue.

14. In that circumstances, we hold that the Certificate in question cannot be discarded.

15. We further take note of the fact that in this case the redemption fine of Rs.9,80,000/- has been imposed on the appellant. Admittedly, in this case, the goods are not available. In that circumstances, the redemption fine is not sustainable as held by the Larger Bench of this Tribunal in the case of Shiv Kripa Ispat Pvt. Ltd. Vs. Commissioner of C. Ex. & Customs, Nashik 2009 (235) ELT 623 (Tri. - LB.), which has been affirmed by the Hon'ble Bombay High Court in the case of Commissioner Vs. Rishi Ship Breakers - 2015 (318) ELT A259 Bombay (HC).

16. In view of this, we hold that the impugned proceedings are not sustainable against the appellant and the confirmation of demand of duty and penalty are not sustainable and the goods cannot be held liable for confiscation. Consequently, no redemption fine is imposable.

17. In view of the above observations, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Pronounced in the open court on **29.10.2026**)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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