BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22 / 09 /2025

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THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**
AND
THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

C.M.A.(MD)No.105 of 2019

The Commissioner of Customs,
Customs House,
New Harbour Estate,
Tuticorin - 628 004. ... Appellant

vs.

M/s.Olam Enterprses India Pvt. Ltd.,
Branch Sl.No.4,12/82, Thainvillai,
Padathalmoodu,
Vilavancode,
Kanyakumari - 629 194. ... Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 130 of the Customs Act, 1962, to set aside the impugned order of the CESTAT, South Zonal Bench, Chennai in Final Order No.40459/2018, dated 19.02.2018.

For Appellant : M/s.R.Nandakumar
Senior Counsel for Customs & CGST

For Respondent : Mr.Joseph Prabakar

JUDGMENT

P.VELMURUGAN, J.

This Civil Miscellaneous Appeal is filed to set aside the impugned order dated 19.02.2018 passed in Final Order No.40459/2018 by the Customs, Excise & Service Tax Appellate Tribunal (in short "CESTAT"), South Zonal Bench, Chennai.

2. This appeal arises from the import of teak round logs by the respondent on commercial invoices issued by M/s.Panasia International Limited, Dubai. At the time of assessment, the respondent did not claim any duty exemption and all three Bills of Entry were assessed on merit. The total duty assessed was Rs.2,25,04,169/-. Subsequently, the respondent filed three ex-bond Bills of Entry claiming exemption under Notification No.46/2011-Cus. and produced two AIFTA (ASEAN-India Free Trade Area) certificates certifying that the goods were consigned from Myanmar Timber Enterprises, Myanmar. The original authority rejected the claim for duty exemption on the ground that the AIFTA certificates submitted did not correspond to the subject consignments, as they showed exports from Myanma Timber Enterprise via Concorde Commodities, and did not mention the claimed supplier Panasia International Ltd., Dubai. Therefore, the imported goods were not entitled to preferential tariff treatment under AIFTA.

3. On appeal, the Commissioner (Appeals) upheld the order of the original authority and rejected the appeal.

4. Aggrieved by the same, the respondent filed a further appeal before the CESTAT. The CESTAT held that the AIFTA certificates covered the impugned goods imported by the respondent and set aside the order of the appellate authority. The CESTAT allowed the appeal with consequential benefits in the following manner:-

> *9. From the copy of the AIFTA Certificate No.YAI-0647/2014, dated 16.07.2014, the goods are shown to have been certified to have been consigned from "Myanmar Timber Enterprises, Yangon, Myanmar". The consignee has been certified as "Olam Agro India Ltd., Kanyakumari, India", viz., the appellants herein. It is also clarified that the certificate has been issued "RETROACTIVELY". Thus, it is clear that the impugned goods have been directly consigned from Myanmar to Kanyakumari, India through Tuticorin Port. The name of the vessel of transport has been indicated as MV SIOUX MAIDEN with departure date 31.03.2014. These facts match fully with the related bill of Lading dated 31.03.2014 and it is clearly indicated therein that the consignor is "Myanmar Timber Enterprises, Yangon, Myanmar" and consignee is "Olam Agro India Ltd., Kanyakumari, India". In the AIFTA certificate, Sl.No.13, the box, "Third Country Invoicing" has been ticked and in Col.7, the name of "Concorde Commodities Pte., Ltd.," has been indicated". The Invoice No.631/SHP/GT/I/2014-2015, dated 23.05.2014 is one of the invoices which has been certified in the said AIFTA certificate. We find that invoice in page 40 of the appeal book, one that has been issued by Myanmar Timber Enterprises, Myanmar to M/s.Concorde Commodities, Singapore. However, even in this commercial invoice, the destination has been shown as "Tuticorin" and the quantity as being of 43 pieces, 28.82 cubic ton and*

markings "OLAM RED I-193". On Page 41, we find invoice issued by Concorde Commodities, Singapore to M/s.Panasia International FZCO, UAE, Invoice No. 631/SHP/GT/I/2014-15, dated 23.05.2014. It is interesting to note that the same invoice number of the Myanmar Timber Enterprises invoice has also been followed by Concorde Commodities. The identical number of pieces, quantity in HT and paint marks Red x 193 have been indicated in this invoice also. The details of the very same ship MV Sloux Maiden has been indicated in this invoice as also the Port of Discharge as Tuticorin, India. From Page 48 of the appeal book, we find the Commercial Invoice No.0392/13-14 from Panasia International FZCO, UAE, dated 31.03.2014 to the appellant, which has been issued for a total 2536 pieces and total quantity 1,504.146 HT. In the attachment to the said commercial invoice, the Lot No. with Paint Mark RED X-193 consisting of 46 pieces of teak logs with quantity of 28.818 HT has been separately shown. The said commercial invoice of Panasia International FZCO also indicates the Port of shipment as Yangon and Port of Discharge as Tuticorin, India. The originating vessel "M.V.SIOUX MAIDEN" has also been indicated in this invoice.

10. From the above, we find that the appellants have adduced sufficient proof to establish that the impugned goods, though invoiced by Panasia International UAE, to the appellant, are of very same ones which have been originally invoiced by Myanmar Timber Enterprises, Myanmar to Concorde Commodities, Singapore and then to M/s.Panasia Agro India Limited. The appellants have been also able to sufficiently establish the seminal connection and linkage with the imported goods invoiced at M/s.Panasia International limited, Dubai and the AIFTA certificates submitted by them. This being so, we are of the considered opinion that the AIFTA certificates very much covers the impugned goods which have been imported by the appellant and in view of Article 22 of the Procedures, issue of invoice by party in third country namely M/s.Panasia International Limited, Dubai will not negate the benefit of the AIFTA certificate and the benefit of Notification No.46/2011-Cus. The impugned order, which holds a contrary view will therefore have to be set aside which we hereby do. The appeal is allowed with consequential benefits, if any as per law.

Challenging the order passed by the CESTAT, the appellant / Customs is before this Court.

5. The learned Senior Standing Counsel appearing for the appellant submitted that during the verification of the xerox copy of the AIFTA certificates at the time of filing of the ex-bond Bills of Entry, Box No.13 was not ticked, and this discrepancy was clearly discussed in the Assistant Director of Safeguard's (ADS) letter dated 21.07.2015 and the Order-in-Original. The name of the third-party supplier, M/s. Panasia International Ltd., Dubai, was not mentioned in Box No. 7 of the AIFTA certificate. Instead, the name Concorde Commodities PTE Ltd., Singapore was mentioned, which is not the actual third country supplier. Most of the invoices mentioned in the AIFTA certificates were issued after 31.03.2014 (the date of the Bill of Lading) and even after 21.05.2014 (the date of warehousing). This suggests that the invoices were backdated and do not correlate with the AIFTA certificates, thereby rendering the certificates invalid. The tribunal overlooked the fact that the identical invoice number and date were followed by both Myanmar Timber Enterprises and Concorde Commodities, which raises doubts about the authenticity of the documents. The respondent attempted to correlate the subject consignments with the AIFTA certificate solely on the ground that the quantity imported matched the quantity mentioned in the certificates.

However, this does not establish the validity of the certificates. The CESTAT erred in extending AIFTA benefits to the respondent despite the inconsistencies and contradictions in the documentation. Hence, the learned counsel prays to set aside the order of the CESTAT.

6. The learned counsel for the respondent submitted that the goods were consigned from Myanmar Timber Enterprises, Myanmar, and the AIFTA certificates were validly issued under the ASEAN-India Free Trade Agreement. The CESTAT correctly noted that the vessel details, bill of lading, and other shipping details matched the AIFTA certificates, thereby establishing a direct connection with the imported goods. The retroactive issuance of the AIFTA certificates is permitted under AIFTA rules, and the benefit of Notification No. 46/2011-Cus. cannot be denied due to minor administrative errors when the substantive requirements of the AIFTA rules have been satisfied. Hence, the learned counsel prays to dismiss this appeal.

7. This Civil Miscellaneous Appeal is admitted on the following substantial questions of law:-

> "*(i) Whether the CESTAT is correct in holding that the impugned AIFTA Certificates produced by the first respondent without incorporating the name of the third party viz.,*

M/s.Panasia International, was issued in accordance with the AIFTA Rules or Origin?

(ii) Whether the CESTAT is correct in holding that based on the impugned AIFTA Certificates produced by the first respondent, they are eligible for grant of exemption from the payment of import duty on the imported cargo under Notification No.46/2011-Cus., dated 01.06.2011?"

8. Under Notification No.46/2011-Cus., the benefit of exemption can be availed only when a valid and genuine certificate of origin is produced in conformity with the AIFTA Rules. It is settled law that the burden is upon the importer to establish eligibility for the exemption and unless the certificate strictly satisfies the conditions prescribed, the benefit cannot be granted. In the present case, the documents relied upon by the respondent cannot be said to constitute a valid certificate for more than one reason. At this juncture, it would be useful to refer to the order of the original authority, which rejected the claim for duty exemption on the ground that the AIFTA certificates submitted do not correspond to the subject consignments:-

12. For this their recent submission, it is clarified that the AIFTA certificates clearly shows that the consignment was exported by Myanma Timber Enterprise, Myanmar to Olam Agra India Limited, India through Concorde Commodities PTE Ltd. Absence of the supplier's name M/s.Panasia International Ltd., Dubai in the certificates cannot be taken as minor/clerical discrepancy. Now, as requested by the importer, vide letter dated

18.02.2016, this speaking order is issued under the Customs Act, 1962.

13. On verification of the import documents, AIFTA certificates produced and various written submissions made by the importer, it is clearly established that the AIFTA certificates submitted are not correlated with subject consignments. According to Custom Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Government of Member States of the Association of Southeast Asian Nationals (ASEAN) and the Republic of India) Rules 2009 any claim that a product shall be accepted as eligible for preferential tariff treatment shall be supported by an AIFTA Certificate. In this case, the subject consignment is not supported with any AIFTA certificate because the AIFTA certificates produced are no way connected with the subject consignment. Therefore, the imported goods are not entitled for preferential tariff treatment under AIFTA notification. Accordingly I pass the following orders:-

ORDER

I reject the claim of duty exemption under Notification No.46/2011 Customs dated 01.06.2011 in r/o Bills of Entry 7318577/10-11-2014, 8079800/23-01-2015 & 8079804/23-01-2015 since the AIFTA certificates produced do not in fact correspond to the subject consignment.

9. A perusal of the above order of the original authority shows that the AIFTA certificates submitted do not correspond to the subject consignments. Further, the Bill of Lading shows that the vessel carrying the goods, namely MV Sioux Maiden, departed from Myanmar on 31.03.2014. However, the invoices included in the certificate are dated 23.05.2014, nearly two months later. This is a clear mismatch. Once the goods had already been shipped in March 2014, it is wholly improbable and unacceptable that invoices relating to

the very same consignment were issued subsequently in May 2014. Such discrepancy casts serious doubt on the authenticity of the documents. An invoice issued after the shipment cannot establish the origin of goods already transported, and therefore the very foundation of the certificate becomes unreliable.

10. Further, regarding the AIFTA Rules on third-country details, the certificate fails to mention M/s. Panasia International Ltd., Dubai, and instead shows the name of Concorde Commodities PTE Ltd., Singapore, which does not represent the actual third-country details.

11. The Tribunal, however, overlooked these serious defects and proceeded on the footing that since the quantities mentioned in the certificate tallied with the goods imported, the exemption must follow. This reasoning is fundamentally flawed. Tallying of quantities or vessel particulars cannot substitute for compliance with the mandatory requirements of law. The main issue is not whether the goods correspond to the certificate, but whether the certificate itself is valid, genuine and issued in accordance with the AIFTA Rules. Once the certificate is defective on the face of the record, the claim of exemption necessarily fails.

12. Insofar as the first substantial question of law is concerned, the vessel MV Sioux Maiden departed from Myanmar on 31.03.2014 with the imported goods. However, the invoices included in the certificate are dated 23.05.2014, almost two months later. Once the shipment had already taken place in March 2014, an invoice dated in May 2014 cannot be relied upon to prove the origin of goods already transported. This clear mismatch between the shipment date and the invoice date casts serious doubt on the authenticity of the certificate. Further, the actual supplier to the respondent was M/s. Panasia International Ltd., Dubai, yet the certificate mentions Concorde Commodities, Singapore. Such omissions and discrepancies cannot be regarded as minor issues, since they fundamentally affect the authenticity and reliability of the certificate. The Tribunal, however, overlooked these lapses and treated the certificates as valid under the AIFTA Rules, which was not correct.

13. Insofar as the second substantial question of law is concerned, the law is settled that the burden lies on the importer to establish eligibility for exemption, and such benefit can be claimed only on the basis of a valid and genuine certificate of origin issued in conformity with the Rules. Here, the

respondent failed to discharge that burden. Nevertheless, the Tribunal granted exemption merely because the quantities and vessel particulars tallied with the goods imported. However, tallying of particulars cannot substitute for the mandatory requirement of producing a valid certificate. The Tribunal was not correct in adopting such reasoning, since without a valid certificate, no exemption under Notification No.46/2011-Cus. can be granted.

14. Accordingly, the first substantial question of law is answered in favour of the appellant/Customs by holding that the Tribunal was not correct in treating the defective certificates as valid under the AIFTA Rules. The second substantial question of law is also answered in favour of the appellant/Customs by holding that the Tribunal wrongly extended the benefit of exemption under Notification No.46/2011-Cus. without a valid certificate. Both questions are thus decided against the respondent. Consequently, the appeal filed by the appellant/Customs is allowed, the order of the CESTAT is set aside, and the orders of the original authority as well as the Commissioner (Appeals) are confirmed. No costs.

(P.V., J.) (K.K.R.K., J.)
22 / 09 /2025

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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To

1.The CESTAT, South Zonal Bench,
Chennai.

2.The Commissioner of Central Excise (Appeals-II),
No.1, Williams Road, Cantonment,
Trichirappalli - 620 001.

3.The Commissioner of Customs,
Customs House,
New Harbour Estate,
Tuticorin - 628 004.

P.VELMURUGAN, J.

and
K.K.RAMAKRISHNAN, J.

rns

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