

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 50105 of 2020

[Arising out of Order-in-Original No. 459/2018 dated 24.09.2019 passed by the Principal Commissioner of Customs (Import), New Delhi]

M/s. Vikas Ecotech Ltd.

...Appellant

Through its CEO-Shri Dinesh Bhardwaj,
Vikas Apartments,
34/1, East Punjabi Bagh,
New Delhi - 110026

VERSUS

**Principal Commissioner of Customs –
New Delhi (Import)**

...Respondent

Inland Container Depot,
Tughlakabad, New Delhi - 110020

APPEARANCE:

Shri Priyadarshi Manish, Advocate for the Appellant
Shri Kuldeep Rawat, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 21.08.2025
DATE OF DECISION: **06.11.2025**

FINAL ORDER NO. 51683/2025

DR. RACHNA GUPTA

Present appeal is filed to assail Order-in-Original No. 27/2019 dated 24.09.2019 which has confirmed the proposal of Show Cause Notice No. 459/2018 dated 16.10.2018 confirming the demand of differential duty amounting to Rs.12,22,802/- while denying the benefit of Notification No. 46/2011 dated 01.06.2011.

2. The facts in brief relevant for the adjudication are as follows:

2.1 M/s. Vikas Ecotech Limited, the appellant herein, is holding the Import Export Code issued by Directorate General of Foreign Trade. The appellant filed six Bills of Entry as detailed below:

S.No.	Bills of Entry No.	Dated	Assessable Value (in Rs.)
1.	2613501	27.07.2017	1,33,07,592/-
2.	2697771	02.08.2017	1,33,07,592/-
3.	3327231	21.09.2017	1,38,54,620/-
4.	3327266	21.09.2017	1,38,54,620/-
5.	2008619	08.06.2017	1,38,44,234/-
6.	2008504	08.06.2017	1,38,44,234/-

2.2 All these Bills of Entry were filed at ICD, Tughlakabad for clearance of goods declared as Tin Ingots. The appellant availed the benefit of Notification No. 46/2011 dated 01.06.2011 declaring Country of Origin (COO) as Malaysia. Department observed that the Country of Origin certificate based whereupon the concessional BCD (0%) was claimed by the appellant-importer was in fact issued to M/s. Malaysia Smelting Corporation (MSC). However, the appellant was to observe the Rules of Origin published vide Notification No. 189/2009 dated 31.12.2009, according to which the Certificate of Origin is required to be issued by the designated authority and in case of goods not wholly produced or obtained in Malaysia, the AIFTA (ASEAN-India Free Trade Area) Regional Value Content (RVC) should not be less than 35% of FOB value. It is alleged that the appellant has failed to satisfy the said condition of deemed originating goods and thus was not eligible for the concessional rate of customs duty by virtue of Notification No. 46/2011.

2.3 Department formed the opinion that the appellant has given the false declaration to the customs at the time of import knowing

fully that the items under import were not entitled for benefit of said exemption notification. The Certificates of Origin were issued by willful misstatement and suppression of facts. Hence the aforesaid show cause notice was served upon the appellant proposing the differential customs duty amounting to Rs.61,92,465/-. The impugned order has confirmed the differential duty amounting to Rs.49,69,662/-. The demand with respect to two Bills of Entry as were filed on 09.10.2013 was held to be hit by limitation, show cause notice being issued on 16.10.2018. Hence the demand of Rs.12,22,802/- was dropped. Still being aggrieved the appellant is before this tribunal.

3. I have heard Shri Priyadarshi Manish, learned Advocate for the appellant and Shri Kuldeep Rawat, learned Authorized Representative for the department.

4. Learned counsel for the appellant has submitted that the original copies of Certificate of Origin (COO) were duly verified and goods were allowed clearance by the assessing officers on the basis of Bills of Entry furnished by the appellant. There is no denial of the fact that M/s. Malaysia Smelting Corporation (MSC) has issued the said certificate of origin. Apparently M/s. MSC refused to share any document/information required for the verification of the COO. Hence, there is no evidence to the said allegation that the COOs are fake. The benefit of Exemption Notification No. 46/2011 dated 01.06.2011 has wrongly been denied.

4.1 Learned counsel further mentioned that no other requirement was required to be fulfilled to claim the said exemption even in terms of Notification No. 189/2009 dated 31.12.2009 about the

Rules of Origin. Rule 13 thereof is impressed upon by the learned counsel. The actual RVC is submitted to be much less than 35%. The appellant was therefore eligible for the exemption benefit of Notification No. 46/2011, the same has wrongly been denied. Order is accordingly prayed to be set aside and appeal is prayed to be allowed.

5. While rebutting these submissions, learned Departmental Representative has mentioned that during investigation, team of DRI carried out verification visit at the unit of M/s. Malaysia Smelting Corporation, Malaysia which revealed that it was the usual practice of MSC to use the same cost sheet of 2013 for obtaining country of origin certificates over a prolonged period of time. The said cost sheet does not accurately reflect the RVC. Ministry of International Trade and Industry had also confirmed the malpractice of using same cost sheet for issuance of Certificate of Origin over the prolonged period. It is submitted that department has got sufficient evidence to prove that Notification No.189/2009 has been violated by the appellant and as such the appellant was not eligible for exemption benefit of Notification No. 46/2011. There is sufficient evidence discussed by the original adjudicating authority about the suppression and mis-declaration on part of the appellant. In fact demand for two of the Bills of entry has been dropped on the grounds of imitation. Impressing upon that the adjudicating authority was meticulous and that there is no infirmity in the order under challenge, the appeal is prayed to be dismissed.

6. Having heard the rival contentions and perusing the records, I observe that the sole controversy to be adjudicated is about

Notification 189/2009 dated 31.12.2009 that is whether Rules of Origin have been violated by the appellant as alleged. Foremost, I have perused the said notification. It is about determination of origin of goods under preferential trade agreement between the government of ASEAN and Indian rules. Rules 3 thereof describes the origin criteria as follows:

"The products imported by a party which are consigned directly under rule 8, shall be deemed to be originating and eligible for preferential tariff treatment if they conform to the origin requirements under any one of the following:

(a) products which are wholly obtained or produced in the exporting party as specified in rule 4; or,

(b) products not wholly produced or obtained in the exporting party provided that the said products are eligible under rule 5 or 6".

7. Since it is an admitted fact that Tin Ingots as were exported by M/s. MSC to Indian importers including the appellant were exported after being manufactured by them using the three of free raw materials (Tin Ingots) of origin of Non-ASEAN countries, it becomes clear that the case of the appellant falls under sub-clause (b) of the said rule. Rule 5 of origin rules reads as follows:

Not wholly produced of obtained products.

(1) For the purpose of clause (b) of rule 3, a product shall be deemed to be originating, if –

(i) the AIFTA content is not less than 35 per cent of the FOB value; and

(ii) the non-originating materials have undergone at least a change in tariff sub-heading (CTSH) level i.e. at six digit of the Harmonized System:

Provided that the final process of manufacture is performed within the territory of the exporting party.

8. The above admission is the sufficient compliance of condition in sub-clause (ii) of this Rule. Sub-clause (i) is alleged to have been violated. I observe that Rule 5(ii) provides the formula for calculating 35% of AFTA content. I do not find anything on record about the calculation of AFTA on record.

9. Further it is observed that there is no evidence about Certificate of Origin to have been fake. Though the verification has revealed that MSC had procured the said certificate based on the wrong cost sheets but the admitted fact remains is that the goods have been imported from Malaysia after being partially manufactured in Malaysia. The Certificate of Origin is about Malaysia. Hence, there appears no reason for the COOs to be fake. Otherwise also, the department could not produce any evidence to disprove the certificate of origin.

10. It is also observed that the present proceedings were initiated based on the communication received from Ministry of International Trade and Industry vide letter of CBIC dated 12.07.2018, however in the said letter it was mentioned that there appears no reason to deny the preferential benefit.

11. It is also observed that Rule 13 of Rules of Origin talks about Certificate of Origin. It reads as follows:

"13. Certificate of Origin – Any claim that a product shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin as per the specimen in the Attachment to the Operational Certification Procedures issued by a Government authority designated by the exporting party Operational Certification Procedures as set out in Annexure III annexed to these rules."

12. Since the certificates have admittedly been produced by the appellant, no evidence is produced to rebut the genuineness of the said certificate which was issued by the government authority designated by the Malaysian country. It stands clear that there is no proof that the RVC content was less than 35% and that the Certificate of Origin was fake. Resultantly, both conditions of Notification No. 46/2011 are observed to have been fulfilled by the appellant. He is held eligible for the benefit of Exemption Notification No. 46/2011. The differential duty is held to have wrongly been demanded. Resultantly, the order under challenge is hereby set aside. Consequent thereto, the appeal is allowed.

[Order pronounced in the open court on **06.11.2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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