

(2025) 01 CESTAT CK 0018

Customs, Excise And Service Tax Appellate, New Delhi

Case No: Customs Appeal No. 51433 of 2022

S. S. Overseas

APPELLANT

Vs

The Principal Commissioner of
Customs

RESPONDENT

Date of Decision: Jan. 14, 2025

Acts Referred:

- Customs Act, 1962 - Section 17(1), 28(4), 46, 46(4), 46(4A), 111(m), 112(a)(ii), 114A, 114AA, 139
- Customs (Administration of Rules of Origin) Rules 2020 - Rule 5, 6

Hon'ble Judges: Dilip Gupta, President (J); P. V. Subba Rao, Member (T)

Bench: Division Bench

Advocate: Tarun Gulati, Prem Ranjan Kumar, Shruti, Rajesh Singh

Final Decision: Allowed

Judgement

Dilip Gupta, J

The order dated 10.09.2021 passed by the Principal Commissioner of Customs ICD (Import) TKD, New Delhi, the Principal Commissioner holding

that the item imported by S. S. Overseas, the appellant would fall under Customs Tariff Item, CTI 9806 00 00 instead of CTI 08404 10 30 and

confirming the demand under section 28(4) of the Customs Act, 1962, the Customs Act has been challenged in this appeal. The Principal

Commissioner has also imposed penalty under sections 114A and 114AA of the Customs Act.

2. The appellant claims that its representative negotiated with M/s. GVO Global FTZ, UAE for import of dry dates of UAE origin. Accordingly, a

sales contract dated 02.07.2019 was entered into for supply of 55 MT of dry dates at the rate of USD 630/KG. The appellant filed a Bill of Entry

dated 09.08.2019 and submitted commercial invoice, packing list, fumigation certificate issued by Universal Pesticides Trading Co. (LLC), Certificate

of Origin dated 16.07.2019 issued by Ajman Chamber of Commerce, UAE, and phytosanitary certificate issued by Plant Protection Organization,

UAE. According to the appellant, all these documents declare that the dry dates that were being imported were of UAE Origin.

3. The appellant claims that the containers were examined by the proper officer and after due verification and on being satisfied that the declaration

made by the appellant was true and correct, the goods were assessed to duty and the goods were given out of charge on payment of duty. The

appellant, thereafter, sold the said consignment to buyers.

4. However, a show cause notice dated 04.12.2020 was issued to the appellant alleging that dry dates imported by the appellant were of Pakistan

origin based on the Export Declaration and the container tracking report submitted by the freight forwarder. The relevant portion of the show cause

notice is reproduced below:

¶6.2 Whereas, Container Tracking details submitted by M/s Sarang Maritime Logistics Private Limited, Freight Forwarder of the importer

indicates that the said containers moved from KARACHI, PAKISTAN to MUNDRA, INDIA via JEBEL ALI. Further, Export Declaration no.

DEC No. 303-04693320-19 dated 22.07.2019 clearly indicates that the goods laden in container no. CRXU9978083 and GESU5284244

originated in Islamic Republic of Pakistan and the same were transited through UAE to India. Hence, it appears that the actual origin of

goods imported i.e. Dry Dates vide Bill of Entry 4434741 dated 09.08.2019 is Islamic Republic of Pakistan and importer has willfully

suppressed the fact with an intention of evasion of Customs Duty.

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9. Whereas, it appears from perusal of the Export Declaration given before Federal Customs Authorities, Dubai that the goods i.e. Dry

Dates (Cbbubara) have originated in Islamic Republic of Pakistani. Therefore, the goods covered under the said bill of entry, irrespective of

their description, merit classification under tariff item 9806 00 00. Hence, the self-assessment done by the importer under section 17(1) of

the Customs Act, 1962 appears incorrect. Accordingly, the differential duty liability is worked out as under:

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10. From scrutiny of the evidences discovered in this case, it appears that the country of origin of the imported goods does not match with

the declaration made in the impugned bill of entry. Therefore, it appears that imported goods do not correspond with declarations made in

the impugned bill of entry and thus appear liable for confiscation under section 111(m) of the Act, *ibid*.

10.1 The importer while filing impugned bills of entry has subscribed to a declaration regarding correctness of the contents of the bill entry

under Section 46(4) of the Act, *ibid*. Further, Section 46(4A) of the Act, *ibid* casts an obligation on the importer to ensure accuracy of the

declaration and authenticity of the documents supporting such declaration. In the instant case, the importer failed to discharge the statutory

obligation cast upon him and made wrong declaration about the country of origin of the imported goods. Thus, it appears that the importer

for his act of omission and commission, which rendered the impugned goods liable for confiscation, has rendered himself liable for penalty

under section 112(a)(ii)/114A of the Act, *ibid*.

10.2 From the perusal of the records and evidence gathered in the case, it appears that the importer colluded with his supplier and obtained

country of origin certificate no. 472646/7/19/123007 dated 18.07.2019 [RUD-8] issued by Ajman Chamber of Commerce on strength of

false documents. Therefore, it appears that the importer, despite being aware of the correct country of origin of the goods, submitted

incorrect documents regarding country of origin of the imported goods. Therefore, it appears that the importer had mis-declared the country

origin of the imported goods with intent to mislead the customs authorities and evade payment of correct customs duty. Thus, the importer

appears to have rendered himself liable to penalty under Section 114 AA of the Act, *ibid*.â€

(emphasis supplied)

5. The appellant was, therefore, called upon to show cause as to why:-

â€œ11. xxxxxxxxxxxx

(i) the subject goods should not be held to have been originated from Islamic Republic of Pakistan and the declared classification of the

goods mentioned in Bill of Entry no. 4434741 dt. 09.08.2019 under tariff item 0804 10 30 should not be rejected and why the goods should

not be held classifiable under tariff item 98060000.

(ii) The total differential duty amounting to Rs. 56,67,728/-(Rupees Fifty Six Lakhs Sixty Seven Thousand Seven Hundred and Twenty Eight

only), as detailed in Table-A, shall not be demanded from the importer u/s of the Act, ibid.

(iii) goods should not be held liable to confiscation u/s 111(m) of the Act ibid and penalty should not be imposed on the importer under

section 112(a)(ii)/114A of the Act, ibid for having rendered the goods liable to confiscation.

(iv) penalty should not be imposed on the importer under section 114AA of the Act, ibid for having submitted incorrect documents regarding

country of origin of the imported goods.â€

6. The appellant filed a reply to the show cause notice and denied the allegations made therein. The appellant, inter alia, contended that the

genuineness of the certificate of origin issued by the Ajman Chamber of Commerce, UAE which was submitted by the appellant before the Customs

was not controverted in the show cause notice. The appellant also contended that the allegation made in the show cause notice that the importer

colluded with his supplier and obtained the county of origin certificate on the strength of false documents was incorrect. The appellant also pointed out

that no reliance could be placed on the Export Declaration and the container tracking report submitted by the freight forwarder.

7. The Principal Commissioner did not accept the pleas taken by the appellant and held that the imported goods originated from Pakistan. The relevant

findings are reproduced below:

15.2 I find that the case emanates from an investigation by officers of SIIB which revealed that the consignment of Dry dates had originated in Islamic Republic of Pakistan and the same were transited through UAE to India with intention to suppress the actual origin of the goods so as to evade Customs duty.

15.3 With reference to the allegation of department that the origin of the goods can be traced to Islamic Republic of Pakistan, it is clearly evident that the goods are bearing the Bill of Lading No. CCLDXBMUN18226 dated 28.07.2019. The said document also had "Transit goods", marked on it, thereby confirming that the goods laden in the impugned container no. CRXU9978083 and GESU5284244 had not originated in UAE. I further find that the Export declaration DEC No. 303-04693320-19 dated 22.07.2019 issued by Federal Customs Authorities of Dubai shows that the impugned goods bore the Country of origin name as "PK", which is a code for Islamic Republic of Pakistan. In addition to the above, the quantity of goods mentioned in the said Export Declaration was 56100 Kgs., which is exactly the same as the quantity of the impugned goods mentioned in Bill of Lading No. CCLDXBMUN18226 dated 28.07.2019, thereby validating the fact that the goods have originated in Pakistan.

15.4 I further find that the container tracking details submitted by M/s Sarang Maritime Logistics Private Limited, Freight Forwarded of the importer and container tracking details submitted by the CONCOR on 03.12.2020 indicates that the said container moved from KARACHI, PAKISTAN to MUNDRA, INDIA via JEBEL ALI. Further, Export Declaration no. DEC No. 303-04693320-19 dated 22.07.2019 indicates that the goods laden in container no. CRXU9978083 and GESU5284244 originated in Islamic Republic of Pakistan and the same were transited through UAE to India. Hence, I find that the actual origin of goods imported i.e. Dry Dates vide Bill of Entry 4434741 dated 09.08.2019 is Islamic Republic of Pakistan. (emphasis supplied)

8. The contention of the appellant that the certificate of origin certificate issued by the Ajman Chamber of Commerce, UAE was not accepted for the

following reasons:

¶15.5 xxxxxxxxxxxx. This argument does not help the importer as the relied document i.e. Export Declaration No. DEC No. 303-

04693320-19 dated 22.07.2019 was duly issued by the Federal Customs Authorities of Dubai and the same had revealed that goods laden

in container no. CRXU9978083 and GESU5284244 described as ~Dry Dates~ did not actually originate in UAE and the Country of

Origin of the goods mentioned in the said Export Declaration was ~PK~ which is a code for Islamic Republic of Pakistan .I further

find that that the quantity of the goods mentioned in the said Export Declaration is 56100 Kgs which exactly matched with the quantity of

the goods mentioned in Bill of Lading No. CCLDXBMUN18226 dated 28.07.2019 pertaining to impugned bill of entry.

16. From the facts and evidences discussed above, I find that the goods have been found to be of Pakistan Origin and imported to India via

Dubai, U.A.E. and the importer misdeclared the origin of the goods to be of UAE origin as against the Islamic Republic of Pakistan to evade

Customs duty. Therefore, I hold that goods originated from Islamic Republic of Pakistan.~

(emphasis supplied)

9. The Principal Commissioner, thereafter, examined the classification of the goods and observed as follows:

¶17. xxxxxxxxxxxx. I further find that the CBIC, vide notification no. 05/2019-Customs dated 16.02.2019, amended the first schedule of

Customs Tariff Act, 1975 to the effect that all the goods originating in and exported from Islamic Republic of Pakistan are classifiable

under Chapter Heading 9806 00 00 and attract basic customs duty @200%.~

(emphasis supplied)

10. Regarding the invocation of the extended period of limitation contemplated under section 28(4) of the Customs Act, the Principal Commissioner

observed as follows:

¶18. xxxxxxxxxxxx. I find that the importer, despite being aware of the correct country of origin of the goods, submitted incorrect

documents regarding country of origin of the imported goods. I further find that the importer had mis-declared the country origin of the imported goods with intent to mislead the customs authorities and evade payment of correct customs duty. I find that the importer violated provisions of Section 17(1) and Section 46 of the Customs Act, 1962 not filling truthful declarations in bill of entry and proper self-assessment under section 46(4). Therefore, I find that for the aforesaid acts of suppression of facts and submission of incorrect documents committed by the importer, the extended period of five years for demand of Customs duty under section (4) of Section 28 of the Customs Act, 1962 is invokable in this case. Therefore, I hold that the importer is liable to pay the differential Customs duty of Rs. 56,67,728/- by invoking extended period of 5 years under Section 28(4) of the Customs Act, 1962.â€ (emphasis supplied)

11. It is this order dated 10.09.2021 that has been assailed in this appeal.

12. Shri Tarun Gulati, learned senior counsel appearing for the appellant assisted by Shri Prem Ranjan Kumar and Ms. Shruti made the following submissions:

(i) No reliance can be placed on the alleged Export Declaration submitted by the freight forwarder for the reason that the Export Declaration has neither been obtained nor attested by the UAE Customs Authorities. There cannot be a presumption under section 139 of the Customs Act, 1962 for such documents;

(ii) The Bill of Entry was assessed to duty after examining the goods and verifying the documents, like commercial invoice, packing list, certificate of origin, phytosanitary certificate and fumigation certificate at the time of clearance of goods. Nothing was suppressed from the department nor was any mis-declaration made by the appellant. The documents and the goods imported were also duly examined by the Customs Officer;

(iii) As per the certificate of origin issued by competent authority of Ajman Chamber of Commerce, UAE, the evidence produced satisfied that the said goods originated from the country shown in the certificate. It, therefore, proves that the certificate of origin was issued after proper verification

regarding origin of goods;

(iv) The authenticity of the certificate of origin or the phytosanitary certificate issued by the competent authority and fumigation certificate have not

been rejected after due enquiry by the competent authority of the country of export;

(v) The details mentioned in the export declaration are inconsistent with the documents on record;

(vi) There are glaring discrepancies in the container tracking report which make them unreliable;

(vii) The extended period of limitation under section 28(4) of the Customs Act could not have been invoked in the facts and circumstances of the

case; and

(viii) The Principal Commissioner committed an error in imposing penalties under sections 114 A and 114 AA of the Customs Act.

13. Shri Rajesh Singh, learned authorized representative appearing for the department, however, supported the impugned order and made the following submissions:

(i) The Export Declaration dated 22.07.2019 provided by the freight forwarder and the container tracking details provided by the freight forwarder

confirm that the container containing the goods originated from Karachi Port and, therefore, the actual origin of the imported goods is from Pakistan

and not UAE;

(ii) The Principal Commissioner had carefully examined the entire evidence on record to arrive at a finding that the imported goods originated from

Pakistan;

(iii) The certificate of origin was rightly discarded by the Principal Commissioner;

(iv) The extended period of limitation was correctly invoked; and

(v) Penalties under sections 114 A and 114 AA of the Customs Act have been correctly levied.

14. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have

been considered.

15. The issue that arises for consideration in this appeal is as to whether the dry dates imported by the appellant through invoice dated 15.07.2019 and

Bill of Entry dated 19.08.2019 originated from UAE or from Pakistan. To support its claim that the goods originated from UAE, the appellant had

submitted commercial invoice, packing list, fumigation certificate issued by Universal Pesticides Trading Company, the certificate of origin dated

16.07.2019 issued by Ajman Chamber of Commerce, UAE and the phytosanitary certificate issued by Plant Protection Organization, UAE.

16. The department, however, placed reliance upon two documents namely the Export Declaration provided by the freight forwarder and the container

tracking report also provided by the freight forwarder.

17. The documents that were submitted by the appellant were examined by the Customs Officer and on being satisfied, out of charge order was

issued and the goods were cleared on payment of duty. The authenticity of the certificate of origin has not been doubted by the competent UAE

authority, nor it has been cancelled.

18. Rule 6 of the Customs (Administration of Rules of Origin) Rules 2020, the 2020 Rules provides a procedure for verification of the certificate of

origin and it is reproduced below:

“Rule 6. Verification request.-

(1) The proper officer may, during the course of customs clearance or thereafter, request for verification of certificate of origin from

Verification Authority where:

(a) there is a doubt regarding genuineness or authenticity of the certificate of origin for reasons such as mismatch of signatures or seal when

compared with specimens of seals and signatures received from the exporting country in terms of the trade agreement;

(b) there is reason to believe that the country of origin criterion stated in the certificate of origin has not been met or the claim of preferential rate of

duty made by importer is invalid; or

(c) verification is being undertaken on random basis, as a measure of due diligence to verify whether the goods meet the origin criteria as claimed:

Provided that a verification request in terms of clause (b) may be made only where the importer fails to provide the requisite information sought

under rule 5 by the prescribed due date or the information provided by importer is found to be insufficient. Such a request shall seek specific

information from the Verification Authority as may be necessary to determine the origin of goods.

(2) xxxxxxxxxxxx

(3) When a verification request is made in terms of this rule, the following timeline for furnishing the response shall be brought to the notice of the

Verification Authority while sending the request:

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(5) All requests for verification under this rule shall be made through a nodal office as designated by the Board.

(6) Where the information requested in this rule is received within the prescribed timeline, the proper officer shall conclude the verification within forty

five days of receipt of the information, or within such extended period as the Principal Commissioner of Customs or the Commissioner of Customs

may allow:

Provided that where a timeline to finalize verification is prescribed in the respective Rules of Origin, the proper officer shall finalize the verification

within such timeline.

(7) The proper officer may deny claim of preferential rate of duty without further verification where:

(a) The verification Authority fails to respond to verification request within prescribed timelines;

(b) The verification Authority does not provide the requested information in the manner as provided in this rule read with the Rules of Origin; or

(c) The information and documents furnished by the Verification Authority and available on record provide sufficient evidence to prove that goods do

not meet the origin criteria prescribed in the respective Rules of Origin.â€

(emphasis supplied)

19. There is nothing on the record to suggest that such verification as contemplated under the 2020 Rules was carried out with the concerned UAE

Authorities to verify the genuineness and correctness of the certificate of origin.

20. This issue was examined by a Division Bench of the Tribunal in M/s. Omega Packwell Pvt. Ltd. vs. Pr. Commissioner of Customs, Noida,

Customs Appeal No. 70441 of 2022 decided on 07.06.2024 and it would be useful to reproduce the following observations made by the Division

Bench:

“17. On the issue of country of origin, we find that in all documents viz., invoice, country of origin certificate, phytosanitary certificate

etc. country of origin of dry dates in present case was shown UAE. Slips tagged with bags of dry dates were showing country of origin of

the goods UAE. No enquiry was conducted by the Department to prove that country of origin certificate duly issued by the Competent

Authority of the exporting country was fake. As per the country of origin certificate, the same was issued by Ajman Chamber of commerce

after verification of goods. At Sl.No.12 of the certificate, it has been certified by the Competent Authority of Ajman Chamber of Commerce,

UAE that evidences produced before them satisfy that the said goods originate in the country shown in the certificate which is UAE in the

present case. It shows that the said certificate was issued after proper verification of origin of goods. Authenticity of the said certificate was

never challenged by way of any enquiry from the exporting country. We further notice that phytosanitary certificate which was issued by

National Plant Protection Organization of exporting country also indicates country of origin UAE. No evidence was brought out to infer

that country of origin shown in the said phytosanitary certificate was incorrect. Bags of dry dates were found, during physical verification,

carrying slips on which country of origin was mentioned as UAE. Mere suspicion is not enough to discard aforesaid documents.”

(emphasis supplied)

21. After reproducing rule 6 of the 2020 Valuation Rules, the Tribunal observed that since the procedure contemplated under the said rule had not

been followed to verify the correctness of the certificate of origin, it would have to be held that the goods were of UAE origin. The relevant

observations are as follows:

“Nothing has been placed on record by which it can be said any verification request has been made by the custom authorities with

concerned authorities in UAE to verify the genuineness and correctness of the Certificate of Origin issued by them. In view of the above

concrete proofs regarding country of origin, we hold that said goods were of UAE origin. We find that in the case of Challissari Kirana

Merchant (supra), the Hon’ble Kerala High Court has held that for determination of country of origin due weightage should be given on

the country of origin certificate in case of any suspicion. In the case of Yellamma Da Sappa vs. Commissioner of Customs, Bangalore [2000

(120) E.L.T. 67 (Kar.)], the Hon’ble Karnataka High Court has observed as follows:-

“9. A valid certificate has been issued and the said certificate, even as on date, has not been withdrawn or cancelled for any alleged

violation of the condition by the appellant. Unless the said certificate is cancelled, the Customs Authorities cannot impose customs duty. The

seizure of the equipment is only a consequential act that would follow the cancellation of the certificate issued in favour of the Appellant. So

long as the certificate is not cancelled, the respondents could not, in our opinion, have initiated seizure proceedings in the case on hand.

Petitioner-appellant was sent only a questionnaire and the said questionnaire has been answered by the appellant herein. No further action

has been taken by the respondents. The Director General of Health Services has also not issued any cancellation of certificate as on date.

In these circumstances, we are clearly of the view that without withdrawing or cancelling the certificate already issued, the present seizure

cannot stand. Therefore we hold that the seizure effected by the respondents is not in accordance with law. The impugned order of the

learned Single Judge, in these circumstances, requires to be set aside and accordingly the same is set aside.”

The Tribunal in the case of Alfakrina Exports vide Final Order No.11759/2023 dated 23.08.2023(Tri “ Ahmd) on the issue of non-

acceptability of Country of Origin Certificate for deciding origin of goods held that the Certificate of country of origin cannot be discarded

without checking its authenticity and benefit if any cannot be denied.

In view of the above settled legal position, we hold that goods, in question, were of UAE origin and confiscation of goods on the ground of mis-declaration of country of origin is not sustainable.â€

(emphasis supplied)

22. The Principal Commissioner has placed much reliance on the Export Declaration submitted by the freight forwarder. This aspect was also examined by the Tribunal in Omega Packwell and it was held that though the said document was filed by the exporter before the customs authorities, but still it was not obtained from the customs authorities but from the shipping line. Further, there were many anomalies in the document. Thus, no reliance could be placed on the said document to conclude that the goods did not originate from UAE. The relevant observations of the Tribunal are as follows:

â€œ22. The Original Authority placed heavy reliance on the Export Declaration which was received from the shipping line which was engaged in sea transportation of said dry dates from Dubai to India. In the said Export Declaration country of origin was shown â€œPK" which is short form of Pakistan as per the Department. Export Declaration is filed by the exporter with customs of exporting country. The said document was not procured from the customs Dubai but obtained from shipping line. How the said document is maintained by the shipping line depends upon the shipping line as it was their internal document. It is further observed that in the said document C & F value was declared to USD 44247/- while in the invoice it was USD64827/-. Consignee and consignor names were also mentioned incorrectly. It was an unsigned photocopy of document. The Export Declaration submitted in this case, reflects figures which do not match with other documents and also does not reflect name of shipping line. Hence this document which is full of errors cannot be considered to be an evidence to prove country of origin. In the case of Commissioner of Customs (Imports), Mumbai vs. Ganpati Overseas [2023 (386) E.L.T. 802 (S.C.)], the Apex Court has held that unattested photocopy would not have any evidentiary value. We also find support from the

decision of the Honâ€™ble Supreme Court in the case of East Punjab Traders [1997 (89) E.L.T. 11 (S.C.)] where it has been held that in

case documents are not obtained from the respective customs formation, reliance cannot be placed on such documents. In view of the above,

we find reliance on the said document to prove country of origin by the Original Authority is not proper.

23. We further find that Adjudicating Authority has referred expression "FZ Transit Out" mentioned in the Export Declaration

received from shipping line to prove that the goods were imported from third country to Dubai for export to India. In para-15.1.2.3 of

Customer Guide of Dubai customs which is relied upon document in this case, procedure for export of goods stored in Free Zone of Dubai

is provided. Free Zone companies would file "FZ Transit Out" declaration for export of goods stored in their company. It is not provided

that only goods which are imported from third country can be exported by declaring "FZ Transit Out". All goods irrespective procured

by way of import or by way of local procurement are exported on terms "FZ Transit Out" if such goods are stored in Free Zone .It is

provided that Free Zone companies can procure goods from local market and can store them at Free Zone for export. Such locally

procured goods stored in Free Zone would also be exported declaring "FZ Transit Out" declaration in Export Declaration. In the

present case, dry dates were procured from local market of Dubai by M/s GVO Global FZC UAE, a Free Zone company, and stored at Free

Zone for export to Indian buyers as is evident from country of origin certificate. We, therefore of the view that on the basis of the said

declaration, it cannot be inferred that said goods were originated in third country." (emphasis supplied)

23. It would be seen from the aforesaid decision of the Tribunal in Omega Packwell that dry dates were imported and the country of origin was

shown as UAE. The documents that were submitted for this purpose were invoice, country of origin certificate, phytosanitary certificate and

fumigation certificate. The department, however, believed that the dry dates originated from Pakistan. The Tribunal found that no enquiry was

conducted by the department to prove that the country of origin certificate issued by the competent authority of UAE was fake. The Tribunal also found that the other certificates that were submitted by the appellant indicated that the country of origin was UAE. The Tribunal also held that the procedure contemplated under rule 6 of the 2020 Valuation Rules for verifying whether the country of origin certificate was genuine had not been resorted to. The Tribunal also held that since the Export Declaration was received from the shipping line and not from the customs authority and the fact that it was an unsigned photostat copy it could not be considered as an evidence to prove the country of origin.

24. The facts of the present case are similar to the facts of Omega Packwell decided by the Tribunal. In the present case, the Principal

Commissioner has not recorded a finding that the country of origin certificate produced by the appellant was forged and all that has been stated is that

it was obtained by the appellant in collusion with the exporter by submitting incorrect documents. This finding is based purely on conjectures and

surmises. As noticed above, a detailed procedure has been provided in the 2020 Rules for examining the genuineness of the country of origin

certificate and if the customs authorities had any doubts, the same could have been cleared only by the UAE Authority that issued the country of

origin certificate. Whether it was based on authentic documents or not certainly could not have been examined by the customs authorities as they had

no documents before them. The appellant had also submitted fumigation certificate issued by Universal Pesticides Trading Co. (LLC) and the

phytosanitary certificate issued by Plant Protection Organization, UAE. These two certificates also showed that the country of origin was UAE. On

the other hand, the Principal Commissioner proceeded to place emphasis on an unsigned photostat copy of the Export Declaration submitted by the

freight forwarder. This is a document which is submitted by the exporter before the customs authorities. If any reliance was to be placed on this

document, it should have been obtained from the UAE customs authorities, but the Principal Commissioner proceeded to place reliance on a photostat

copy of the document produced by the shipping line, as against the country of origin certificate issued by the proper UAE authority. This Export

Declaration was not even signed or attested by a proper authority. What is also seen from the said Export Declaration is that there are inconsistencies

namely: (i) the consignee exporter column mentions the consignee as SEA Prince Logistics LSS (Branch) (F-JC 227, whereas the exporter in the

present case is M/s. GVO Global FZC; and (ii) the CIF value mentions as USD 23760.00, whereas the Invoice issued by the supplier is for USD

34650. Even the container tracking report had numerous discrepancies. The Principal Commissioner, however, placed reliance on these two

documents to arrive at a conclusion that the dry dates originated from Pakistan and not UAE. The Principal Commissioner was not justified in ignoring

the certificate of origin issued by the competent authority in UAE. In the absence of a finding by the competent authority that this is a fake certificate,

this certificate would conclusively prove that the imported goods originated from UAE.

25. It has, therefore, to be held that the goods imported by the appellant originated from UAE and not from Pakistan.

26. It would, therefore, not be necessary to examine the contention raised by learned senior counsel for the appellant that the extended period of

limitation could not have been invoked in the facts and circumstances of the case.

27. The next issue that arises for consideration is whether the Principal Commissioner was justified in imposing penalties upon the appellant under

sections 114 A and 114 AA of the Customs Act.

28. Penalty under section 114 A of the Customs Act can be imposed when there is short payment of duty by reason of collusion or any willful mis-

statement or suppression of facts.

29. In the instant case, it cannot be said that the appellant had willfully mis-stated facts or suppressed facts. These are necessary ingredients for

applicability of the provisions of section 114 A of the Customs Act. The statement was made by the appellant in the Bill of Entry on the basis of

documents, and these documents had been examined by the proper officer and, thereafter, the goods were cleared on payment of duty. The imposition

of penalty under section 114A of the Customs Act on the appellant is unjustified and is liable to be set aside.

30. The penalty under section 114 AA of the Customs Act could also not have been imposed upon the appellant. Section 114 AA of the Customs Act provides that if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, then he shall be liable to a penalty not exceeding five times the value of goods.

31. There is no evidence on the record from which it can be deduced that the appellant had intentionally made a false declaration. The declaration had been made by the appellant on the basis of documents. Nothing has been brought on record to show that the appellant was aware that the goods that were imported by the appellant were of Pakistan origin and not of UAE origin. The imposition of penalty under section 114 AA of the Customs Act is, therefore, also liable to be set aside.

32. Thus, for the reasons stated above, the order dated 10.09.2021 passed by the Principal Commissioner is set aside and the appeal is allowed with consequential benefit(s), if any.

(Order pronounced on 14.01.2025)