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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 17.08.2026***
Judgment pronounced on: 02.09.2026
Judgment uploaded on: 02.09.2026

\# **CNR No. DLHC010394992019**

\+ W.P.(C) 10535/2019 and CM APPL. 6825/2020

M.M. CERAMICS & FERRO ALLOYS .....Petitioner

Through: Mr. Prithwiraj Choudhuri, Ms. Kausarjahan Sayed and Mr. Sujoy Chatterjee, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Ms. Anushree Narain, SSC with Mr. Apurv Yadav, Adv.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE SHAIL JAIN

<u>J U D G M E N T</u>

<u>ANIL KSHETARPAL, J.:</u>

1. At the outset, we deem it pertinent to note that the present Petition, as it stood filed originally, challenged the proceedings arising out of Impugned Show Cause Notices (SCNs) dated 07.12.2018 issued by ICD, Tughlakabad, and 11.12.2018 issued by ICD Patparganj. The said SCNs came to be issued against the Petitioners for availing the concessional rate of Basic Customs Duty (BCD) at 0% under Notification No.46/2011-Cus. Dated 01.06.2011 [hereinafter referred to as ‘subject Notification’], in connection with import of Tin Ingots from a Malaysian entity, namely, M/s Malaysia Smelting Corporation (MSC).

2. However, during the pendency of the present Petition, this Court was apprised that, pursuant to the aforesaid SCNs, the Office of the Principal Commissioner of Customs had proceeded to pass adjudication Orders, namely, the Order-in-Original (OIO) dated 27.09.2019 in respect of SCN dated 07.12.2018, and OIO dated 05.07.2019 in respect of SCN dated 11.12.2018. Consequently, the *lis*, in the present proceedings, stands crystallised around the aforesaid OIOs, which now constitute the subject matter of challenge.

BRIEF BACKGROUND:

3. The controversy in the present proceedings arises out of the availment of preferential customs duty on High Grade Tin Ingots manufactured in Malaysia by MSC. The dispute, at its core, concerns the validity and correctness of the Certificates of Origin (COO) issued by the Ministry of International Trade and Industry, Malaysia [hereinafter referred to as 'MITI'], the methodology adopted for computation of the Regional Value Content (RVC) of the goods, and, consequently, the Petitioner's entitlement to the preferential tariff benefit extended under the ASEAN-India Free Trade Area framework [hereinafter referred to as 'AIFTA'].

4. The relevant facts, which have ultimately brought the parties before this Court, may be noticed hereunder.

Statutory and Regulatory Framework

5. The Central Government, in exercise of powers conferred under Section 5(1) of the Customs Tariff Act, 1975, notified the Customs

Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Government of Member States of the ASEAN and the Republic of India] Rules, 2009 [hereinafter referred to as 'Rules of Origin 2009/ RoO 2009'] *vide* Notification No.189/2009-Cus. (N.T.) dated 31.12.2009. The said Rules prescribe the criteria and conditions governing the determination of the origin of goods for the purposes of extending preferential tariff treatment to eligible imports in India.

6. Under the aforesaid regime, a COO issued by the Designated Authority (DA) of the exporting country constitutes the documentary basis for claiming preferential treatment. The purpose of the COO is to certify that the goods in question satisfy the applicable RoO, thereby enabling the exporter to avail the preferential rate of duty prescribed under the subject Notification.

7. However, the benefit of such preferential rate of duty is conditional upon the imported goods fulfilling the origin criteria prescribed under RoO, 2009. In respect of goods that are not wholly obtained or produced in the exporting country, the Rules prescribed, *inter alia*, a minimum Regional Value Content (RVC) of 35% of the FOB value, in addition to the prescribed change in tariff classification in respect of non-originating materials.

8. Additionally, the RoO, 2009 also contains a structured mechanism for verification of the correctness and authenticity of a COO. Article 16 of Annexure-III thereto, provides for a retroactive check of the origin documents through the competent authority of the

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exporting country. Where, in exceptional circumstances and subject to the conditions prescribed therein, the importing country remains dissatisfied with the outcome of such verification, Article 17 provides for a verification visit to the exporting country. It was within the framework of these provisions that the subsequent investigation into the Petitioner's claim for preferential treatment came to be undertaken.

Petitioner's Import and initial claim

9. Against the aforesaid statutory and regulatory backdrop, the Petitioner, being engaged, *inter alia*, in the import and trade of Tin Ingots, imported High Grade Tin Ingots manufactured by MSC in Malaysia, on the basis of COO issued by the DA, namely, MITI. It is on the basis of the said COO that the Petitioner claimed the benefit under subject Notification and cleared the imported Tin Ingots by availing BCD at the rate of NIL.

Investigation

10. Subsequently, the Directorate of Revenue Intelligence (DRI), Mumbai, initiated an investigation into the availment of preferential benefit by the Petitioner. Since the validity of origin claims reflected in the COOs had come under scrutiny, the DRI, *vide* its letter dated 06.04.2018, requested Central Board of Indirect Taxes and Customs (CBIC) to undertake a retroactive check of the COO, in terms of Article 16 of Annexure III to RoO, 2009, by forwarding the same to the competent authorities in Malaysia for verification.

11. However, since no response was received from Malaysian authorities to the aforesaid request, the matter moved to next stage of verification. A team of officers from DRI, Mumbai, under Article 17 of Annexure-III of the RoO, 2009, undertook a verification visit to the premises of MSC. The purpose of the visit was to examine the manufacturing process, ascertain the extent of value addition undertaken in Malaysia, scrutinise the underlying costing methodology, and determine whether the imported Tin Ingots satisfied the prescribed originating criteria.

12. During the course of verification, MSC produced a cost sheet reflecting costs incurred in production/manufacture of Tin Ingots, over a period of three (03) months, i.e., July 2013 to September 2013. This cost sheet was relied upon for calculation/determination of the FOB value and RVC of the Tin Ingots. However, during verification, it was noticed that MSC had continued to rely upon the said cost sheets for obtaining successive COOs over a considerably extended period.

13. On the basis of the said cost sheet, the RVC declared in relevant Form A1 was claimed to be in excess of 70%, as against the prescribed minimum threshold of 35%. The investigating authorities found the claimed RVC to be exceptionally high and proceeded to examine whether the declared percentage truly represented the value addition attributable to the manufacturing activity undertaken by MSC in Malaysia.

14. It was further revealed that MSC was undertaking the manufacture of Tin Ingots on a job-work basis for various

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traders/suppliers. Under this arrangement, the concerned traders/suppliers would supply tin ore, originating from non-ASEAN countries, to MSC free of charge. Whereupon MSC would undertake the conversion of such tin ore into Tin Ingots against payment of job charges. Thus, the principal raw material, namely, tin ore, was not procured by MSC for consideration but was supplied by the traders/suppliers free of cost, with MSC merely undertaking the process of conversion into Tin Ingots on a job-work basis.

15. In these circumstances, it was found that the smelting charges paid by the traders/suppliers to MSC for such conversion actually represented the regional value addition undertaken in Malaysia. Accordingly, it was observed that, when the value addition was assessed with reference to the actual economic activity undertaken by MSC, the regional value addition, in percentage terms, did not fulfil the prescribed criteria of origin under the RoO, 2009.

16. Consequently, the investigating authorities proceeded on the basis that the Tin Ingots so manufactured did not satisfy the prescribed originating criteria and were, therefore, not eligible for the preferential rate of customs duty claimed on the strength of the COO. Accordingly, the Impugned SCNs came to be issued against the Petitioner, demanding differential custom duty under Section 28(4) of the Customs Act, 1962 [hereinafter referred to as 'Act of 1962'], along with penalty under Sections 112(a)/114A and 114AA as well as directing confiscation of imported goods under Sections 111(m) and 111(o) thereof.

17. Aggrieved by the issuance of the Impugned SCNs, the Petitioner approached this Court by way of the present Petition. Notably, no reply was filed to the SCNs and, despite being granted various opportunities of personal hearing, the Petitioner failed to avail same.

18. During the pendency of the present Petition, the parties, by way of CM Appl. 6825/2020 and Short Affidavit filed to the unamended Petition, apprised this Court that the proceedings initiated pursuant to the Impugned SCNs had, in the interregnum, culminated in Impugned OIOs passed by the Commissioner of Customs.

19. Insofar as SCN dated 11.12.2018 is concerned, the same came to be upheld by way of the OIO dated 05.07.2019. By this OIO, the benefit of concessional duty under subject Notification was denied in respect of the imports covered under five Bills of Entry (BoEs), confirming the differential customs duty amounting to Rs. 99,84,190/- along with applicable interest under Section 28AA thereof. The Adjudicating Authority further ordered confiscation of the imported goods, valued at Rs.16,77,69,937/-, apart from imposing a penalty of Rs.99,84,190/- upon the Petitioner under Section 114AA of the Act of 1962.

20. With respect to SCN dated 07.12.2018, an OIO dated 27.09.2019 came to be passed, confirming payment of differential duty amounting to Rs. 39,69,936/- under Section 28(4) of the Act of 1962, covering short payment made by two (02) BoEs, alongwith the applicable interest under Section 28AA thereof. However, the

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proposed confiscation, along with imposition of penalties under Section 112(a), 114A and 114AA of the Act of 1962 were dropped.

<u>Prior litigation arising out of similar *lis*</u>

21. Notably, the present controversy is not an isolated one and had arisen before other Courts prior to the initiation of the present Petition. Undisputedly, similar proceedings, concerning MCS manufacture Tin Ingots, MITI issued COOs and a similar verification exercise, had earlier arisen before the High Court of Judicature at Bombay, in W.P. No.2831/2018 captioned ***Purple Products Pvt. Ltd. v. Union of India & Ors.*** along with two connected matters.

22. The aforesaid Petitions had been instituted against Show Cause-cum-Demand Notices seeking benefit of subject Notification for import of Tin Ingots from Malaysia. The Court *vide* its Order dated 09.07.2019, dismissed the said Petitions, relegating the Petitioners therein to the alternative statutory remedy before the Adjudicating Authority. Aggrieved thereby, one of the Petitioners approached the Supreme Court by way of SLP(C) No. 20792/2019 captioned ***Kothari Metals Limited v Union of India & Ors.***, wherein the Court, *vide* its Order dated 25.11.2019, set aside the Order dated 09.07.2019 and restored the Writ Petitions to their original numbers for decision on merits.

23. Following the Order of the Supreme Court, the Bombay High Court, restored the Petitions to their original numbers and, upon deciding them on merits, dismissed the same by way of its judgment dated 13.06.2025.

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24. In doing so, the Bombay High Court relied upon a detailed judgment passed by the High Court of Gujarat in ***Trafigura India Pvt. Ltd. v. Union of India***[1]. The aforesaid judgment also arose out of import of Tin Ingots allegedly manufactured by MSC, which were declared in the BoE as being of Malaysian Origin and in respect of which a COO was produced, leading to availment of concessional rate of NIL-BCD under subject Notification. Adjudicating upon the aforesaid factual matrix and upon hearing the parties therein, the Division Bench of the Court dismissed the Petition therein, upholding the OIO.

25. The High Court of Gujarat answered the following questions:

> *"(i) whether it was necessary to go for dispute resolution under the Article 24 of AIFTA.*
>
> *(ii) Whether the customs authorities were not entitled to exercise their powers under the Customs Act, without the importing party/country first taking recourse to AIFTA Article 24 mechanism; Whether on that count the proceedings under the Customs Act, 1962, were rendered without jurisdiction or bad in law.*
>
> *(iii) whether the customs authorities in India had the jurisdiction to proceed against the petitioners in wake of provisions of AIFTA provisions and the Rules of Origin transformed as 2009 Rules;*
>
> *(iv) whether the respondents were justified in denying the benefit of exemption in duty to the petitioners availed under the Notification No. 46/2011 dated 1-6-2011;*
>
> *(v) Whether the respondent authorities could properly proceed under section 28(4) of the Customs Act, 1962 and whether the invocation of extended period under sub-section (4) of section 28 of the Act was proper;*
>
> *(vi) Whether the alleged breach of time limit of procedural part of Operational Certification Procedures rendered the action under the Customs Act, 1962, to be bad in law;*

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(vii) Whether or not the substantive provisions of Customs Act, 1962, have dominion effect over procedural aspect of Rules of Origin."

26. In answering the above questions, the High Court of Gujarat held that, under Section 28 of the Act of 1962, the Customs Authorities possessed jurisdiction not only to invoke extended period under sub-section (4) of Section 28, but also to proceed against the Petitioners therein, notwithstanding the provisions of the international agreement, namely, AIFTA.

SUBMISSIONS ON BEHALF OF THE PARTIES:

27. Learned counsel representing the Petitioner admits that the Petitioner has an alternative remedy of filing an Appeal against the Impugned OIOs under Section 128 of the Act of 1962. However, he insisted on the Petition being decided on merits, relying upon the Order dated 25.11.2019 passed in ***Kothari Metals Limited*** *(Supra)*, whereby the Bombay High Court's Order relegating the Petitioners therein to the alternative remedy was set aside and the writ petitions ultimately came to be restored for decision on merits. Learned counsel has primarily made two broad submissions supporting the case of the Petitioner, which are as follows:

i. the Tin ingots were imported on the basis of COO, issued by the MITI, and in view of Article 24 of AIFTA the proceedings initiated under the Act of 1962 are without jurisdiction.

ii. prior to the amendment brought into force by the Finance Act, 2020 with effect from 27.03.2020, whereby Chapter V-AA, including Section 28DA, was introduced, the Customs

Authorities lacked the requisite statutory power to initiate proceedings in respect of the preferential tariff claims in question.

28. *Per contra,* learned counsel representing the Respondents placed reliance upon the judgment passed in ***Trafigura India Pvt. Ltd.*** *(Supra)* and submitted that the Customs Authorities were, even prior to the 2020 amendment, vested with the requisite statutory powers under Section 28 of the Act of 1962. It was contended that the subsequent amendment was merely clarificatory and introduced by way of abundant caution and did not confer any new or substantive power upon the Customs Authorities.

<u>ANALYSIS AND FINDINGS</u>:

29. The submissions advanced on behalf of the Petitioner arise in the backdrop of the decision of the Gujarat High Court in ***Trafigura India Pvt. Ltd.*** *(Supra),* which came to be followed by the Bombay High Court in ***Purple Products Pvt. Ltd.*** *(Supra),* on facts that are, in all material particulars, indistinguishable from those obtaining in the present case. The aforesaid decisions, also concerned Tin Ingots manufactured by MSC in Malaysia, cleared on the strength of a COO issued by MITI, and the subsequent proceedings under Section 28 of the Customs Act, 1962. While the first ground raised herein, came to be considered by the Gujarat High Court, answering Question (ii) noted in the preceding paragraph of this judgment. The second ground urged in the present case came to be considered by the Bombay High Court, while also relying upon the scope of Section 28 of the Act of

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1962 answered by the Gujarat High Court under Question (iv) in ***Trafigura India Pvt. Ltd.*** *(Supra)*.

30. Accordingly, we propose to deal with each submission advanced by the Petitioners in the light of the reasoning and findings given in ***Trafigura India Pvt. Ltd.*** *(Supra)* and ***Purple Products Pvt. Ltd.*** *(Supra)*.

Re: Submission (i)- Article 24 of AIFTA

31. The first submission made by learned counsel representing the Petitioner was considered in ***Trafigura India Pvt Ltd.*** *(Supra)*, in light of the well-settled position that an international treaty, until transformed into domestic law by legislation, does not by itself confer rights or obligations enforceable in a municipal court, and does not operate to curtail or condition powers otherwise validly conferred on a domestic authority by a domestic statute. Answering this very submission, the High Court held as under:

> *"15.9 When AIFTA Article 24 is not part of State law and Indian law making body has not recognised it for its implementation by excluding it from statutory law and rules, the proceedings taken out against the petitioner under the substantive provision of Customs Act, cannot become bad or stand illegal on their count."*

32. Put summarily, it was held that Article 24 of AIFTA, has not been incorporated into Indian municipal law by any statute or subordinate legislation, including the RoO, 2009, which gives partial effect to AIFTA only for the limited purpose of prescribing origin criteria, without incorporating the dispute-resolution mechanism provided thereunder.

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33. Further, it was also held that an unincorporated treaty obligation, being binding only as between the Contracting States, cannot be directly enforced by a private party before a domestic court so as to displace the jurisdiction conferred by a domestic statute. Consequently, the exercise of power under Section 28 of the Act of 1962, could not be said to be without jurisdiction, void or otherwise vitiated merely because Article 24 consultation mechanism had not been separately invoked.

34. This Court concurs with the view taken by the Gujarat High Court and see no reason to take a different view therefrom, which has, in the interregnum, also been followed by the Bombay High Court in ***Purple Products Pvt. Ltd.*** *(Supra)* on materially identical facts. Applying the foregoing reasoning, Article 24 of AIFTA, not having been transformed into or incorporated as part of domestic law, cannot operate to oust the jurisdiction of the Customs Authorities to proceed against the Petitioner under the substantive provisions of the Act of 1963. Accordingly, the first submission made on behalf of the Petitioner, does not merit acceptance and is rejected.

Re: Submission (ii)-Absence of enabling power prior to Section 28DA of the Act of 1962

35. As regards the argument based specifically on the insertion of Chapter V-AA, it may be noted that Section 28 read with Section 46, of the unamended Customs Act, 1962 already conferred sufficient power to recover duties that were short-lived or short-paid by reason of suppression of facts, independent of any COO specific verification

mechanism. The relevant portion of Sections 28 and 46 of the Act of 1962, as they stood at the relevant time, are extracted below:

> *"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. —*
>
> *(1) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reason of collusion or any wilful mis-statement or suppression of facts —*
>
> *(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice...*
>
> *(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of —*
>
> *(a) collusion; or*
>
> *(b) any wilful mis-statement; or*
>
> *(c) suppression of facts,*
>
> *by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice."*
>
> *"46. Entry of goods on importation. —*
>
> *(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed...*
>
> *(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed."*

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36. A perusal of the above extracted provisions makes it evident that the power to recover duty short-levied or short-paid by reason of suppression of facts, and to invoke the extended period of five years for that purpose, was very much a part of the unamended Section 28, read with the declaration obligation under Section 46(4), and was not, either expressly or by necessary implication, dependent upon a COO-specific verification mechanism.

37. The insertion of Chapter V-AA and Section 28DA was, as rightly submitted by learned counsel for the Respondents, in the nature of an additional and more elaborate procedural mechanism specifically calibrated to preferential-tariff/COO-verification disputes; it did not create a power that was, until then, altogether absent, nor did it curtail or impliedly repeal the pre-existing general power under Section 28 of the Act of 1962.

38. The submission pertaining to insertion of Chapter V-AA and Section 28DA to the Act of 1962, was also answered by the Bombay High Court in ***Purple Products Pvt. Ltd.*** *(Supra)*. Dealing with the aforesaid submission the following finding was recorded, which reads as under:

> "*58.* ***The argument based on the introduction of Chapter VAA in the Customs Act, effective from 27 March 2020, cannot be accepted. Based on the provisions of Section 28DA, we cannot infer that the pre-amended provisions of the Customs Act, 1962, prevented the Customs Authorities from exercising powers under Section 28 of the Customs Act and investigating cases of misrepresentation, suppression, or fraud. Certain additional powers have now been conferred upon the Customs authorities. But an inference that the earlier powers were insufficient to deal with cases of fraud, suppression or misrepresentation is untenable.*** *This was not even a contention raised initially in the petitions, but is now put forth in an*

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attempt to persuade us not to follow the reasoning of the Gujarat Judgment.

59. Section 28 of the Customs Act is quite exhaustive, it provides that where any duty has not been levied or paid etc. on account of collusion, willful mis-statement, suppression of facts by importer or exporter etc., the competent officer may act within five years from the relevant date and serve a notice on the person chargeable with duty or interest, which has not been paid, the Gujarat High Court has interpreted the provisions of Section 28 and concluded that suppression of facts implicatory can be a ground for invocation of the said provision."

(Emphasis Supplied)

39. It was held by the Bombay High Court that the introduction of Chapter V-AA, does not warrant an inference that the Customs authorities, prior thereto, lacked the power to investigate cases involving fraud, suppression or misrepresentation. The amendment may have conferred additional powers upon the authorities, but it cannot be construed as implying that the powers available under the unamended Section 28 were inadequate to deal with such cases.

40. Adding force to the interpretation provided by the Gujarat High Court in ***Trafigura India Pvt Ltd.*** *(Supra)*, the Court highlighted that the interpretation provided thereunder with respect to the comprehensive structure of enabling power provided under Section 28 of the Act of 1962, cannot be detracted from merely due to the subsequent introduction of Chapter V-AA.

41. In this regard, a further reference is also made to the discussion of Gujarat High Court, with respect to the statutory scheme of Sections 28 and 46 of the Act of 1962, which came to be answered, while examining Question (v) reproduced under paragraph no.25 of this judgment. In the course of discussion on the scope of enabling

power under Section 28 of the Act of 1962, the following findings were rendered, which reads as under:

> *"16.4 Thus, sub-section (4) of section 28 provides that where any duty has not been levied or not paid, etc., on account of the reasons of (a) collusion (b) any willful misstatement or (c) suppression of facts by the importer or exporter or agent or employee of the importer or exporter, the competent officer may act within five years from the relevant date and serve notice on the person chargeable with duty or interest, which has not been paid. In other words, the provisions of sub-section(4) contemplates extended period of limitation for taking duty proceeding for non-payment or short-levy of customs duty.*
>
> *16.5 Section 28 of the Customs Act is pari materia with Section 11A of the Central Excise Act. In the context Section 28 of the Customs Act as it existed prior to amendment by Act 8 of 2011, the Supreme Court, in Aban Loyd Chiles Offshore Limited v. Commissioner of Customs, Maharashtra [2006 (200) ELT 370 SC/2006 taxmann.com 1790 (SC)), observed that there was material difference between the provisions in the Customs Act and that of in Central Excise Act. It was observed that the word 'fraud' and words 'with intent to evade payment of duty' occurring in Proviso 2 Section 11A of the Central Excise Act missing in Section 28(1) of the Customs Act and the Proviso in particular. It was further observed by the Apex Court that Proviso of Section 28 can be invoked where the payment of duty has escaped by reason of collusion or any willful misstatement or suppression of facts, the Supreme Court stated that, 'sofaras misstatement or suppression of facts are concerned, they are qualified by the words 'willful. The 'willful preceding the words 'misstatement or suppression of facts' clearly spells out that there has to be an intention on part of the assessee to evade the duty.*
>
> *16.6 The newly substituted Section 28 of the Customs Act by Act 8 of 11, when closely read brings out different situation. In Sub section (1) of Section 28 it is provided that recovery of duty would be in respect of duties not levied or not paid etc. for any reason other than the reasons of collusion or any willful misstatement of suppression of facts. Therefore the action of recovery under section 28 will be in respect of duties not levied or not paid or short levied or short paid or erroneously refunded. The consideration of (a) collusion or (b) any willful misstatement or (c) suppression of facts, are mentioned in Sub section (4) to be the grounds where the notice for recovery is issued invoking the extended period of limitation. What is noticeable is that collusion can be the ground to resort to Sub section (4). furthermore, and*

importantly the word 'willful' does not precede the reason of 'suppression of facts' mentioned in Sub clause (c). In order to invoke Sub section (4) on the ground of suppression of facts, element of willfulness can be said to have been done away with. Suppression of facts simplicitor can be a ground here.

16.7 The suppression of fact is clearly attributed to the petitioners inasmuch as what was required to be disclosed and proof of contents of the Bills of Entry was to be subscribed in form of declaration under section 46 of the Act. The petitioners had been in regular course of business of import and acted in such course. They were aware about RVC details which was wrongful and suppressive. The importer of any goods thereunder is required to present to the proper officer Bill of Entry for home consumption or warehousing in the manner prescribed in sub-section (2). The Bill of Entry shall include all the goods mentioned in the Bill of Lading or other receipt given by the carrier to the consignee. Under sub-section (4), the importer while presenting a Bill of Entry has to subscribe and make a declaration regarding the truth of the contents of the Bill of Entry. In the present case, the Origin Certificate containing the RVC value details was part and parcel of the documents for which truthfulness was declared.

16.8 Sub-section (4) of section 46 reads as under,

"(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed."

16.9 The documents relating to the calculation of RVC remained part of the documents including the Bill of Entry submitted to claim exemption from Customs duty under the Notification No. 46/2011. The petitioners who were engaged in the import in their normal course of business could not have been disclaimed the knowledge that on factual calculation and the criteria adopted, the RVC was wrongly stated. The petitioners were importers engaged in similar Import business, were well aware and conversant with the affairs. When the RVC content was calculated on the basis of few months of 2013 cost-sheet, the calculation was evidently erroneous and misapplied, to which the petitioners could not have disclaimed the knowledge. The petitioners were well aware about the nature of details given in relation to RVC, which were wrong. Still however, they suppressed the fact and claimed the benefit of preferential duty treatment under the Exemption Notification. It could be said that while presenting the documents including the RVC content in the Origin Certificate, there was suppression of facts."

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42. At the outset we must highlight that, while arriving to the conclusion of the enabling power granted under the Act of 1962, the Court was examining the amended Section 28 as substituted by Act 8 of 2011. Although, the said amendment is not the subject matter of submissions made by the Petitioner, nevertheless, the reasoning with regard to the statutory scheme of Sections 28 and 46 cannot be disregarded. The Court held that, under Section 28(4), the requirement of wilfulness qualifies 'misstatement' and not 'suppression of facts', and consequently, suppression simpliciter is sufficient to invoke the extended period. Thus, where the case rests on suppression, a separate intention to evade duty was not treated as an independent statutory requirement.

43. Equally significant is the Court's reliance upon Section 46(4), which casts a statutory obligation upon an importer, while presenting a BoE, to declare the truth of its contents and furnish the documents, in support thereof. Accordingly, the Court stated that particulars furnished in support of a preferential claim, including RVC particulars reflected in the COO, fall within this statutory declaration.

44. Thus, it was held that where an importer, particularly one experienced in the business of import, furnishes particulars which it knew, or could not reasonably have been unaware, were incorrect, and nevertheless claims the benefit of preferential duty, such non-disclosure or incorrect disclosure may constitute suppression of facts for the purposes of Section 28(4) of the Act of 1962. The significance of this reasoning lies in the fact that the statutory obligation to make a truthful declaration under Section 46(4), and the corresponding power

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to recover duty under Section 28, existed independently of the subsequent introduction of the COO-specific verification mechanism under Chapter V-AA and Section 28DA.

45. In so far as the present controversy is concerned, the analysis of Gujarat High Court, while dealing with the interplay between Sections 28 of 46 of the Act of 1962, assumes considerable significance. The Court treated Section 46(4) as imposing a substantive obligation upon the importer to truthfully disclose the particulars forming the basis of its claim for preferential treatment, and Section 28 as supplying the corresponding statutory machinery for recovery where duty had escaped levy or payment by reason of suppression.

46. Therefore, the later insertion of Chapter V-AA and Section 28DA, cannot by itself be construed as having created, for the first time, the power of the Customs Authorities to act upon an incorrect or suppressed declaration made in a BoE. At the same time, the finding of the Gujarat High Court that suppression simpliciter suffices under the Section 28(4) must necessarily be understood in the context of the statutory language applicable to that provision and cannot, without further examination, be mechanically transposed to the post-amended provision as argued by the Petitioner. Accordingly, the second submission made on behalf of the Petitioner, does not merit acceptance and is rejected.

47. Before parting, it is apposite to note that learned counsel representing the Petitioner has neither urged that the factual matrix considered in ***Trafigura India Pvt. Ltd.*** *(Supra)* and ***Purple Products***

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Pvt. Ltd. *(Supra)* is materially distinguishable from that arising in the present case, nor demonstrated any distinguishing feature or infirmity in the reasoning adopted therein. No such distinction having been brought to our notice, and upon consideration, we find no material difference, either on facts or in law, warranting a departure from the view taken in the aforesaid decisions. We accordingly see no reason to take a different view in the present case.

48. It is also not disputed that the Petitioner has an efficacious alternative remedy of statutory appeal against the Impugned OIOs. Having rejected the sole jurisdictional objections raised on behalf of the Petitioner, which formed the entire basis on which the present Petition was pressed on merits, this Court finds no ground to further examine, in exercise of writ jurisdiction, the correctness of the quantification of duty, the confiscation of goods, or the imposition of penalty under the Impugned OIOs. Such factual and valuation-related contentions are more appropriately examined by the Appellate Authority under Section 128 of the Act of 1962.

CONCLUSION:

49. For the foregoing reasons, we find no merit in the challenge to the Impugned SCNs and the Impugned OIOs on the ground of want of jurisdiction. Both submissions urged on behalf of the Petitioner stand answered against it by the reasoning in ***Trafigura India Pvt. Ltd.*** *(Supra)*, affirmed in ***Purple Products Pvt. Ltd.*** *(Supra)*, with which we concur.

50. Accordingly, the present Petition, along with pending

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application, is dismissed, with liberty to the Petitioner to avail the statutory remedy of appeal against the Orders-in-Original dated 05.07.2019 and 27.09.2019. In the event such appeal is filed within four (04) weeks from today, the Appellate Authority shall not dismiss the same on the ground of limitation, provided it is otherwise maintainable, and shall decide it on merits, in accordance with law.

51. We clarify that we have not expressed any opinion on the merits of the quantification of duty, confiscation, or penalty under the Impugned OIOs, and all rights and contentions of the parties in that regard are left open to be urged before the Appellate Authority.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

SEPTEMBER 02, 2026
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