OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOMS HOUSE, MP & SEZ
MUNDRA, KUTCH-GUJARAT -370421
PHONE : 02838-271426/271428
FAX :02838-271425

सत्यमेव जयते

A	**File No.**	**CUS/APR/BE/MISC/2382/2024-Gr 1**
B	**OIO No.**	**MCH/ADC/ZDC/237/2025-26**
C	**Passed by**	**Dipak Zala** **Additional Commissioner, (Import Assessment),** **Custom House Mundra.**
D	**Date of order**	**05.09.2025**
E	**Date of Issue**	**05.09.2025**
F	**SCN No. & Date**	**CUS/APR/BE/MISC/2382/2024-Gr 1 o/O Pr Commr-Cus-Mundra dated 07.09.2024**
G	**Noticee / Party / Importer**	**M/s. S.K. Mine Chem (IEC-2412001723) situated at 8th Floor, Office No. B-804, Om Decora, Nana Mava Main Road, Rajkot, Gujarat - 360005**
H	**DIN**	**20250971MO000081338A**

1. The Order – in – Original is granted to concern free of charge.

2. Any person aggrieved by this Order – in – Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. 1.

   The Commissioner of Customs (Appeal), MUNDRA,
   Office at 7th floor, Mridul Tower, Behind Times of India,
   Ashram Road Ahmedabad-380009

3. Appeal shall be filed within Sixty days from the date of Communication of this Order.
4. Appeal should be accompanied by a Fee of Rs.5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) this copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs.5/- (Rupees Five Only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.
7. An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty or Penalty are in dispute, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE:-

M/s. S.K. Mine Chem (IEC-2412001723) situated at 8th Floor, Office No. B-804, Om Decora, Nana Mava Main Road, Rajkot, Gujarat - 360005 (hereinafter referred as the importer) had presented Bill of Entry No. 3937986 dated 11.06.2024 through their appointed Customs Broker M/s Kaushali International (ACQPC3956RCH001), 102, Honeycomb CFS Building, Opp. IOCL Link Road, Adani Port And SEZ Limited, Mundra, Kutch, Gujarat - 370421, for clearance of imported goods declared as “Rutile Sand - Exeld 92X”, classifying the same under Tariff item 26140090 of the First Schedule of the Customs Tariff Act, 1975. The details are as below :-

Sr. No.	BE No. & Date	Item	Assessable value (INR)	Duty paid (INR)	CoO No. & Date
1	3937986 dated 11.06.2024	Rutile Sand–Exeld 92X	7890480	394524	EC132485564 dated 05.06.2024

2. The importer had filed the Bill of Entry no. 3937986 dated 11.06.2024 under the claim for preferential tariff treatment under Notification No. 62/2022-Customs dated 26.12.2022. The said Bill of Entry was assessed “Provisionally” by the Faceless Assessment Group with Country of Origin (COO) benefit under Notification No. 62/2022-Customs dated 26.12.2022. Accordingly, the importer has submitted Bond & BG towards the provisional assessment and had requested for sending the COO certificate for verification. The Notification no. 62/2022-Customs dated 26.12.2022 provides that:

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts, -

(i) goods of the description as specified in column (3) of the TABLE I appended below and falling under the Tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in the corresponding entries in column (2) of the said TABLE, from so much of the duty of customs leviable thereon as is in excess of the amount calculated at the rate specified in the corresponding entries in column (4) of the said TABLE;

...

...

Explanation. - For the purposes of this condition, "applied rate of duty" means the sum of the standard rate of duty specified in the First Schedule to the Customs Tariff Act, 1975 and Agriculture Infrastructure and Development Cess leviable under section 124 of the Finance Act, 2021 (13 of 2021) in respect of the goods specified in the said TABLE, read with any other notification for the time being in force, issued in respect of such goods under sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962);

...

when imported into Republic of India from Australia:

Provided that the exemption shall be available only if importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of Australia, in terms of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 and rules as may be notified in this regard by the Central Government by publication in the official Gazette.

Table I

S. N.	**Tariff Item**	**Description**	**BCD Rate in % (unless otherwise specified)**
(1)	(2)	(3)	(4)
843	26140090	All goods	0.0

3. The request of the importer for sending the COO for verification as per Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR 2020) was taken up for consideration. However, it was noticed that the subject goods which are being imported by the importer were originally transported under Bill of Lading No. ILUNOR122301 dated 21.12.2023 from Geraldton Port, Australia to Port Klang, Malaysia and the goods were originally shipped by M/s. Iluka Resources Ltd., Australia and consigned to M/s. Sterling International Logistics SDN BHD, Selangor DE, Malaysia.

In this regard, the provisions of the Rules of Origin, as laid down under Chapter 4 of the India-Australia Economic Cooperation and Trade Agreement (IND-AUS ECTA) between the Government of the Republic of India and the Government of Australia provides that:

Article 4.14 Consignment

1. *A good shall retain its originating status as determined under Article 4.2 (Originating Goods) if either of the following conditions have been met:*

(a). the good has been transported directly from the exporting Party to the importing Party; or

(b). ***the good has been transported through one or more non-Parties provided that the good has not undergone any subsequent production or other operation outside the territories of the Parties other than unloading, reloading, storing, repacking, relabelling in accordance with the laws and regulations of the importing Party, splitting up of loads, consolidation of loads or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Party and the good has remained under customs control in the non- Parties.***

2. *Compliance with subparagraph 1(b) shall be evidenced by presenting the customs administration of the importing Party either with customs documents of the non-Parties, or with any other appropriate documentation on request of the customs administration of the importing Party.*

3. *Appropriate documentation referred to in paragraph 2 may include commercial shipping or freight documents such as airway bills, bills of lading, multimodal or combined transport documents, a copy of the original commercial invoice in respect of the good, financial records, a non-manipulation certificate, or other relevant supporting documents as may be requested by the customs administration of the importing Party.*

Article 4.16

Certification Procedures

1. *The Certificate of Origin shall be forwarded by the exporter or producer to the importer. The customs administration may require the original copy.*

2. *Neither erasures nor superimposition shall be allowed on the Certificate of Origin. Any alterations shall be made by striking out the erroneous material and making any addition(s) that may be required. Such alterations shall be approved by a person authorised to sign the Certificate of Origin and certified by the appropriate issuing body or authority. A new certificate may be issued to replace the erroneous one. Unused spaces shall be crossed out to prevent any subsequent addition(s).*

3. *The Certificate of Origin shall be issued prior to or within 5 working days of the date of exportation. However, under exceptional cases, where a Certificate of Origin has not been issued at the time of exportation or within 5 working days from the date of shipment due to involuntary errors or omissions, or any other valid reasons, the Certificate of Origin may be issued retrospectively, bearing the words "ISSUED RETROSPECTIVELY" in the Certificate of Origin, with the issuing body or authority also recording the reasons in writing on the exceptional circumstances due to which the certificate was issued retrospectively. The Certificate of Origin can be issued retrospectively no later than 12 months from the date of shipment.*

4. *In cases of theft, loss or accidental destruction of a Certificate of Origin, the exporter, producer or an authorised representative thereof may, within the term of validity of the original Certificate of Origin, make a written request to the issuing body or authority that issued the original certificate for a certified copy. The certified copy shall bear the words "CERTIFIED TRUE COPY". The certified copy shall have the same term of validity as the original Certificate of Origin.*

Article 4.20

Claims for Preferential Tariff Treatment

1. *Except as otherwise provided in Article 4.27 (Denial of Preferential Tariff Treatment), each Party shall grant preferential tariff treatment in accordance with this Chapter to an originating good on the basis of a Certificate of Origin.*
2. *Unless otherwise provided in this Chapter, for the purposes of claiming preferential tariff treatment, an importing Party shall provide that an importer:*

a. *make a declaration that the good qualifies as an originating good;*

b. *have a valid Certificate of Origin in its possession at the time the declaration referred to in subparagraph (a) is made;*

c. *provide a copy of the Certificate of Origin to the importing Party if required by the Party; and*

d. ***if required by an importing Party, demonstrate that the requirements in Article 4.14 (Consignment) have been satisfied.***

3. ***An importing Party may require that an importer who claims preferential tariff treatment shall provide documents and other information to support the claim.***

4. On going through the provisions as laid down under the Rules of Origin India-Australia Economic Cooperation and Trade Agreement (IND-AUS ECTA) between the Government of the Republic of India and the Government of Australia it appears that the following conditions/documents are required to be fulfilled for claiming the preferential tariff treatment:-

i. *When the good has been transported through one or more non-Parties, the good has not undergone any subsequent production or other operation outside the territories of the Parties other than unloading, reloading, storing, repacking, relabelling in accordance with the laws and regulations of the importing Party, splitting up of loads, consolidation of loads or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Party and the good has remained under customs control in the non-Parties.*

Compliance of above shall be evidenced by presenting the customs administration of the importing Party either with customs documents of the non-Parties, or with any other appropriate documentation on request of the customs administration of the importing Party.

The appropriate documentation may include commercial shipping or freight documents such as airway bills, bills of lading, multimodal or combined transport documents, a copy of the original commercial invoice in respect of the good, financial records, a non-manipulation certificate, or other relevant supporting documents as may be requested by the customs administration of the importing Party.

ii. *The Certificate of Origin shall be issued prior to or within 5 working days of the date of exportation. However, under exceptional cases, where a Certificate of Origin has not been issued at the time of exportation or within 5 working days from the date of shipment due to involuntary errors or omissions, or any other valid reasons, the Certificate of Origin may be issued retrospectively, bearing the words "ISSUED RETROSPECTIVELY" in the Certificate of Origin, with the issuing body or authority also recording the reasons in writing on the exceptional circumstances due to which the certificate was issued retrospectively. The Certificate of Origin can be issued retrospectively no later than 12 months from the date of shipment.*

iii. *The importer has not submitted the above referred documents in support of their claim for preferential tariff treatment. Further, as per Master Bill of Lading No. ILUNOR122301 dated 21.12.2023, the goods were consigned to M/s. Stirling International Logistic SDN BHD, Malaysia on 21.12.2023 and the COO certificate is submitted in favour of the importer. Also, the COO certificate is issued after a lapse of around 5 months whereas the Certification procedures specified above (Article 4.16 – Point 3) provides that the COO certificate can be issued prior to or within 5 working days of the date of exportation (since the subject COO certificate has not been issued retrospectively).*

5. Legal Provisions:

5.1. Notification No. 81/2020-Customs (N.T.) dated 21.08.2020 provides the method and manner of implementation of The Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020). The relevant portion of the CAROTAR Rules applicable in the present matter are as under:

Rule 3. Preferential tariff claim --

(1). To claim preferential rate of duty under a trade agreement, the importer or his agent shall, at the time of filing bill of entry, -

a. *make a declaration in the bill of entry that the goods qualify as originating goods for preferential rate of duty under that agreement;*

b. *indicate in the bill of entry the respective tariff notification against each item on which preferential rate of duty is claimed;*

c. *produce certificate of origin covering each item on which preferential rate of duty is claimed; and*

d. *enter details of certificate of origin in the bill of entry, namely:*

i. *certificate of origin reference number;*

ii. *date of issuance of certificate of origin;*

iii. *originating criteria;*

iv. *indicate if accumulation/cumulation is applied;*

v. *indicate if the certificate of origin is issued by a third country (back-to-back); and*

vi. *indicate if goods have been transported directly from country of origin.*

(2). *Notwithstanding anything contained in these rules, the claim of preferential rate of duty may be denied by the proper officer without verification if the certificate of origin-*

i. is incomplete and not in accordance with the format as prescribed by the Rules of Origin;

ii. has any alteration not authenticated by the Issuing Authority;

iii. is produced after its validity period has expired; or

iv. ***is issued for an item which is not eligible for preferential tariff treatment under the trade agreement;***

and in all such cases, the certificate shall be marked as "INAPPLICABLE".

Rule 5. Requisition of information from the importer.–

1. *Where, during the course of customs clearance or thereafter, the proper officer has reason to believe that origin criteria prescribed in the respective Rules of Origin have not been met, he may seek information and supporting documents, as may be deemed necessary, from the importer in terms of rule 4 to ascertain correctness of the claim.*
2. Where the importer is asked to furnish information or documents, he shall provide the same to the proper officer within ten working days from the date of such information or documents being sought.
3. Where, on the basis of information and documents received, the proper officer is satisfied that the origin criteria prescribed in the respective Rules of Origin have been met, he shall accept the claim and inform the importer in writing within fifteen working days from the date of receipt of said information and documents.
4. Where the importer fails to provide requisite information and documents by the prescribed due date or where the information and documents received from the importer are found to be insufficient to conclude that the origin criteria prescribed in the respective Rules of Origin have been met, the proper officer shall forward a verification proposal in terms of rule 6 to the nodal officer nominated for this purpose.
5. ***Notwithstanding anything contained in this rule, the Principal Commissioner of Customs or the Commissioner of Customs may, for the reasons to be recorded in writing, disallow the claim of preferential rate of duty without further verification, where:***

a. *the importer relinquishes the claim; or*

b. ***the information and documents furnished by the importer and available on record provide sufficient evidence to prove that goods do not meet the origin criteria prescribed in the respective Rules of Origin.***

Rule 8. Miscellaneous. –

1. *Where an importer fails to provide requisite information and documents by the due date prescribed under rule 5, or where it is established that he has failed to exercise reasonable care to ensure the accuracy and truthfulness of the information furnished under these rules, the proper officer shall, notwithstanding any other action required to be taken under these rules and the Act, verify assessment of all subsequent bills of entry filed with the claim of preferential rate of duty by the importer, in terms of sub-section (2) of section 17 of the Act, in order to prevent any possible misuse of a trade agreement. The system of compulsory verification of assessment shall be discontinued once the importer demonstrates that he is taking reasonable care, as required under section 28DA of the Act, through adequate record-based controls.*
2. ***Where it is established that an importer has suppressed the facts, made wilful mis-statement or colluded with the seller or any other person, with the intention to avail undue benefit of a trade agreement, his claim of preferential rate of duty shall be disallowed and he shall be liable to penal action under the Act or any other law for the time being in force.***
3. ***In the event of a conflict between a provision of these rules and a provision of the Rules of Origin, the provision of the Rules of Origin shall prevail to the extent of the conflict.***
4. *The Central Government may, by notification in the Official Gazette, relax such provisions of these rules for such class of persons as may be deemed necessary.*

5.2. Further, Section 28DA of the Customs Act, 1962 prescribes the procedure regarding claim of preferential rate of duty. Relevant portion of the section 28DA are reproduced herein under:

Where importer fails to provide the requisite information for any reason, the proper officer may,-

i. ***cause further verification consistent with the trade agreement in such manner as may be provided by rules***;

ii. pending verification, temporarily suspend the preferential tariff treatment to such goods:

Provided that on the basis of the information furnished by the importer or the information available with him or on the relinquishment of the claim for preferential rate of duty by the importer, the Principal Commissioner of Customs or the Commissioner of Customs may, for reasons to be recorded in writing, disallow the claim for preferential rate of duty, without further verification.

5.3. Section 111 of the Customs Act, 1962 prescribes the confiscation of improperly imported goods, which read as

(m) [any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 3 [in respect thereof, or in the case of

goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub- section (1) of section 54];

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper office.

5.4. SECTION 112. Penalty for improper importation of goods, etc.-

Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

i. in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 1 [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

ii. in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher : Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

5.5. Section 114AA of the Customs Act, 1962 prescribes the penal action for use of false and incorrect material, which read as under:

Penalty for use of false and incorrect material. – 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, shall be liable to a penalty not exceeding five times the value of goods.]

5.6. Section 28 (4) of the Customs Act, 1962 provides that:

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 willful 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 not 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.

5.7. Section 28 (AA) of Customs Act, 1962 provides interest on delayed payment of duty-

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

6. In view of the above discussion, it appears that the importer has wrongly claimed the preferential tariff treatment under Notification No. 62/2022- Customs dated 26.12.2022 as they have failed to observe the procedures laid down under the subject Rules of Origin and this non-compliance appears to make the claim for preferential rate of duty in respect of Bill of Entry no. 3937986 dated 11.06.2024 inadmissible.

6.1. Thus, it appears that the importer had attempted to avail duty exemption benefit under India-Australia Economic Cooperation and Trade Agreement (INDAUS ECTA) without meeting the origin criteria as well as without following due procedures as laid down under the Rules of Origin of the ECTA as well as the CAROTAR, 2020 and hence, it appears that ECTA based preferential tariff treatment is liable to be rejected in case of above said BE. The total revenue involved in the matter is as under:

BE No.	Value of the goods (INR)	Total Duty (BCD, SWS & IGST)	Duty paid by the importer (INR)	Difference (INR)
3937986	7890480	6,22,401	3,94,524	2,27,877/-

6.2. From the above, it appears that the importer has claimed inadmissible benefit of India-Australia Economic Cooperation and Trade Agreement (INDAUS ECTA) based exemption from the Customs Duty. Thus, the importer has contravened the provisions of Section 17 and Section 46 of the Customs Act, 1962 read with CAROTAR, 2020 and the Rules of Origin of the ECTA. The inadmissible claim of preferential tariff treatment under Notification No. 62/2022-Customs dated 26.12.2022 is now required to be rejected in terms of section 28DA of the Customs Act, 1962 read with CAROTAR, 2020 and the Rules of Origin of the said ECTA. These acts of omission and commission on the part of importer has made the goods liable for confiscation under Section 111(o) & Section 111(m) of the Customs Act, 1962 for non-observance of the conditions laid down for exemption from the applicable duty and the

importer has rendered themselves liable for penal action under Section 112(a) & 114AA for wrongly claiming the preferential tariff treatment under Notification No. 62/2022-Customs dated 26.12.2022 as the same appear to be not available for reasons mentioned in foregoing paras.

6.3. Furthermore, it appears that by claiming inadmissible benefit of ECTA based duty exemption, the importer has also short levied the duty amounting to Rs. 2,27,877/- (BCD+SWS+IGST) in case of subject BE, which is now required to be recovered along with interest by way of re-assessment of the BEs. In the light of the documentary evidences, as brought out above and the legal position, it appears that a well thought out conspiracy was hatched by the importer/noticee to defraud the exchequer by adopting the modus operandi of mis-declaring the origin of the imported goods.

7. Whereas, it is apparent that the importer/noticee was in complete knowledge of the fact that the conditions laid down under the Rules of Origin of the ECTA & CAROTAR, 2020 have not been met but nevertheless, the importer/noticee claimed undue notification benefit for the said goods in order to clear the goods by wrongly availing Customs duty exemption benefit under Notification No. 62/2022-Customs dated 26.12.2022.

7.1. The fact that the importer was in complete knowledge of the inadmissibility of COO benefit in the subject BE is clearly evident as the importer has himself paid entire duty (BCD+SWS+IGST) after removal of COO benefit in respect of goods imported under Bill of Entry Nos. 2508141 dated 10.03.2024, 3046189 dated 16.04.2024 & 3164911 dated 23.04.2024 wherein the goods (Ilmenite Exeld 49 – CTH 26140020) were imported from same supplier via same route i.e. Australia-Malaysia-India and the same modus operandi was adopted. However, on query during the assessment of the subject BsE, the importer agreed on the inadmissibility of the exemption benefit and cleared the goods after payment of applicable duties.

7.2. With the introduction of self-assessment under Section 17, more faith is bestowed on the importer, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment, the importer has been entrusted with the responsibility to correctly self-assess the duty. However, in the instance case, the importer has intentionally not paid correct customs duties on the imported goods. Therefore, it appears that the importer has willfully violated the provisions of Section 17(1) of the Act in as much as importer has failed to correctly self-assess the impugned goods and has also willfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act. Therefore, the goods having assessable value of Rs. 78,90,480/- as detailed in Para 1 of this notice, appears to liable for confiscation under Section 111(m) & 111(o) of the Customs Act, 1962.

8. Therefore, it appears that the importer has wilfully claimed undue notification benefit for the impugned goods resulting into short levy of duty. Such wrong claim of notification benefit on the part of the importer has resulted into short levy of duty of Rs. 2,27,877/- (Rupees Two Lakh Twenty-Seven Thousand Eight Hundred and Seventy-Seven Only) for Bill of Entry no. 3937986 dated 11.06.2024, which is recoverable from the importer under the provisions of Section 28(4) of the Customs Act, 1962 (hereinafter referred to as ‘the Act’) along with interest as applicable under Section 28AA of the Act. By the said deliberate wrong claim of notification benefit, the importer also appears to have rendered themselves liable to penalty under Section 112(a) & 114AA of the Customs Act, 1962.

WRITTEN SUBMISSION AND PERSONAL HEARING

9. The Noticee vide letter dated 10.01.2025 has submitted that:-

a. The Noticee purchased 52.000 tonnes of the goods bcaring description "Exeld 92X" classified under Customs Tariff Item No. 26140090 from M/s Iluka Resources Limited, Level 17, 240 St. George Terrace, Perth, Western Australia, 6000, Australia for US$ 93600 (equivalent to Rs.78,90,480) vide commercial invoice No. 90053061 dated 05.06.2024. M/s Iluka Resources Limited is an Australian resources company specializing in zircon and rutile mineral sands products. "Exeld 92X" thus purchased, according to the lab test certificate dated 5.06.2024, contained Titanium, as TiO2(dry basis) 93.43 percent.

b. These goods, were originally shipped from Geraldoton Port and Bunbury port in Western Australia under bill of lading No. ILUNOR122301 dated 21.12.2023 to Port Klang, Malaysia where they were received by Iluka's Malaysian partner M/s Stirling International Logistics Sdn Bhd who operate a bonded warehouse in the Port Klang Free Zone (PKFZ). According to sale contract aforementioned, the port of loading has been already declared and agreed upon to be Port Klang, Malaysia. There the goods remained under customs control, with no additional production. They were only stored, repacked, relabelled, and split for consignment transport purposes, while retaining their Australian originating status.

c. According to show cause notice, Article 4.14(1)(b) of IND-AUS-ECTA, the applicability of which is disputed by the Noticee, the goods are permitted to be transshipped through one or more non-parties. However, the goods should not have undergone any subsequent production or other operations except certain specified activities.

d. The SCN mistakenly invokes the CAROTAR Rules, despite the fact that the preferential tariff provisions and Rules of Origin under the India-Australia ECTA are governed by the Customs Tariff (Determination of Origin of Goods under the India-Australia Economic Cooperation and Trade Agreement) Rules, 2022, which were issucd under Notification No. 112/2022- Customs (N.T.) dated December 22, 2022. These specific rules, designed to regulate the implementation of the ECTA, supersede any application of the CAROTAR Rules in this context.

e. Moreover, the procedure for compliance and alleged violation has been incorrectly attributed to CAROTAR, which reflects a fundamental misunderstanding of the applicable legal provisions. Penal provisions under Rule 8(2) of CAROTAR have been erroneously invoked, even though the Show Cause Notice quotes Rule 8(3) in bold, which specifically states that, in case of a conflict between the CAROTAR Rules and the Rules of Origin applicable under any specific trade agreement, the provisions of the Rules of Origin shall prevail.

f. Further, the appropriate documentation for the purpose of sub-rule had been identified under subrule (3) according to which a non-manipulation certificate is sufficient for the purpose of sub-rule (2), which is already available. The Noticee respectfully submits that all

requisite documents, including the Bill of Entry and those pertaining to the claim for preferential treatment, were duly submitted at the time of clearance of the goods.

g. In the present case, no such information was sought from the importer in accordance with the Customs Tariff (Determination of Origin of Goods under the India-Australia Economic Cooperation and Trade Agreement) Rules, 2022 or any other applicable provision. As a result, neither the Assistant Commissioner nor the Deputy Commissioner had the authority to suspend the preferential duty benefit or to issuc a show cause notice for its denial.

h. According to Rule 5(e) read with Rule 3 of the Customs Tariff (Determination of Origin of Goods under the India-Australia Economic Cooperation and Trade Agreement) Rules, 2022, the goods imported are minerals and are to be treated as wholly obtained or produced goods in Australia. Copy of the test S. report is Annexed hereto and marked as Annexure 3.

i. Rule 5 (e) is reproduced below for case of reference: "5. For the purposes of clause (a) of rule 3, the following goods shall be considered to be wholly obtained or produced in the territory of one or both of the Parties, namely: XXXX minerals and other naturally occurring substances, not included in clauses (a) to (d), extracted or taken from the soil or waters, seabed or subsoil beneath the seabed there:"

j. In this case, the goods were transhipped to India through the Malaysian partner of the original supplier. They were originally shipped from Geraldton Port and Bunbury Port in Western Australia under Bill of Lading No. ILUNOR122301 dated 21.12.2023 to Port Klang, Malaysia, where they were received by Iluka's Malaysian partner, M/s Stirling International Logistics Sdn Bhd, who operates a bonded warchouse in the Port Klang Free Zone (PKFZ). The supplier also provided a test report and a certificate dated 05.03.2024, in compliance with the proviso of Rule 15 quoted above.

k. The goods were shipped to Port Mundra, India. The sole reason for shipment via Malaysia was the logistical necessity transshipment through the seller's warehouse situated in Malaysia.

DISCUSSIONS AND FINDINGS:

10. I have carefully gone through the case records. The importer M/s. S K Mine Chem International vide Letter dated 10.01.2025 has submitted their written submission in the matter and attended personal hearing in virtual mode on 04.07.2025. Thus, I find that principles of natural justice as provided in Section 122A of the Customs Act 1962 has been complied with and therefore, I proceed to decide the case on the basis of the documentary evidence available on records. I find that the following main issues are involved in the subject case, which is required to be decided:

a. Whether the preferential tariff treatment based duty exemption (India-Australia Economic Cooperation and Trade Agreement - INDAUS ECTA)

claimed under Notification No. 62/2022-Customs dated 26.12.2022 by M/s. S.K. Mine Chem on the basis of CoO Certificate in respect of Bill of Entry no. 3937986 dated 11.06.2024 for the imported goods "Rutile Sand-Exeld 92X" be rejected in terms of Section 28DA of the Customs Act, 1962 read with CAROTAR, 2020 and Rules of Origin of the said ECTA

b. Whether the Bill of Entry No. 3937986 dated 11.06.2024 be re-assessed without duty benefit as per section 17 of the Customs Act, 1962 for recovering the applicable duties from the importer under Section 28 (4) of the Customs Act, 1962 along with the interest thereon as per Section 28AA of the Customs Act, 1962, as applicable;

c. Whether the goods valued at Rs. 78,90,480/-(Rupees Seventy-Eight lakhs Ninety thousand, Four hundred & Eighty only) be confiscated under Section 111(m) & 111(o) of the Customs Act,1962 for non-observance of the conditions laid down for exemption from duty;

d. Whether the penalty be imposed upon them under Section 112(a) & 114AA

of the Customs Act, 1962.

11. I have gone through the facts of the case on record and submissions of importer. I find that the importer had filed the Bill of Entry no. 3937986 dated 11.06.2024 under the claim for preferential tariff treatment under Notification No. 62/2022-Customs dated 26.12.2022. The said Bill of Entry was assessed "Provisionally" by the Faceless Assessment Group with Country of Origin (CoO) benefit under Notification No. 62/2022-Customs dated 26.12.2022. Accordingly, the importer has submitted Bond & BG towards the provisional assessment and had requested for sending the COO certificate for verification.

11.1 I find that the request of the importer for sending the CoO for verification as per Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR 2020) was taken up for consideration. However, it was noticed that the subject goods which are being imported by the importer were originally transported under Bill of Lading No. ILUNOR122301 dated 21.12.2023 from Geraldton Port, Australia to Port Klang, Malaysia and the goods were originally shipped by M/s. Iluka Resources Ltd., Australia and consigned to M/s. Sterling International Logistics SDN BHD, Selangor DE, Malaysia.

12. On going through the Show Cause Notice and Submission of the importer, I find that the main issue that need to be decided is whether the importer is eligible to claim the COO benefit on the impugned goods "Rutile Sand - Exeld 92X", classified under CTI 26140090 wherein the Certificate of Origin was issued under preferential tariff treatment (India-Australia Economic Cooperation and Trade Agreement - INDAUS ECTA) claimed vide Notification No. 62/2022-Customs dated 26.12.2022 in a scenario when the impugned goods were shipped from Australia to Malaysia and then from Malaysia to India. Now, I proceed to examine the same in detail in forthcoming paras.

12.1 I find that the Rules of Origin under "India-Australia Economic Cooperation and Trade Agreement" (IND-AUS ECTA) has clearly laid down the rules/methodology to deal with such issues as in instant case.

13. Regarding the movement of impugned goods from Exporting Country to non-party country and then from their to Importing Country, the above said Agreement specifically mentioned the requirement that need to be fulfilled by the importer while claiming Preferential rate of Duty. Concerned Article 4.14 is produced below

Article 4.14 Consignment

i. *A good shall retain its originating status as determined under Article 4.2 (Originating Goods) if either of the following conditions have been met:*

a. the good has been transported directly from the exporting Party to the importing Party; or (b) the good has been transported through one or more non-Parties provided that the ***good has not undergone*** *any subsequent production or other operation outside the territories of the Parties* ***other than unloading, reloading, storing, repacking, relabelling*** *in accordance with the laws and regulations of the importing Party, splitting up of loads, consolidation of loads or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Party and the* ***good has remained under customs control in the non Parties****.*

2. ***Compliance with subparagraph 1(b) shall be evidenced by presenting the customs administration of the importing Party either with customs documents of the non-Parties****, or with any other appropriate documentation on request of the customs administration of the importing Party.*

3. Appropriate documentation referred to in paragraph 2 may include commercial shipping or freight documents such as airway bills, bills of lading, multimodal or combined transport documents, a copy of the original commercial invoice in respect of the good, financial records, a non-manipulation certificate, or other relevant supporting documents as may be requested by the customs administration of the importing Party.

13.1 From above, it is clear that when good has been transported through one or more non-Parties provided that the **good has not undergone** any subsequent production or other operation outside the territories of the Parties **other than unloading, reloading, storing, repacking, relabelling,** the goods need to be remained under customs control in the non-Party Country and the importer need to provide Customs document/supporting documents to proof the compliance of above and that too by their own. Customs Authority at the importing country can ask for additional documents when the said documents provided by the importer are not sufficient to justify the compliance. In the instant case, no such documents were submitted by the importer to prove the authenticity as above.

14. Further, regarding the issuance time lines for Country of Origin, the said “India-Australia Economic Cooperation and Trade Agreement” clearly mentioned such timelines under Article 4.16 as below:

Article 4.16 Certification Procedures

1. The Certificate of Origin shall be forwarded by the exporter or producer to the importer. The customs administration may require the original copy.

2. Neither erasures nor superimposition shall be allowed on the Certificate of Origin. Any alterations shall be made by striking out the erroneous material and making any addition(s) that may be required. Such alterations shall be approved by a person authorised to sign the Certificate of Origin and certified by the appropriate issuing body or authority. A new certificate may be issued to replace the erroneous one. Unused spaces shall be crossed out to prevent any subsequent addition(s).

3. The ***Certificate of Origin shall be issued prior to or within 5 working days*** *of the date of exportation. However, under exceptional cases, where a Certificate of Origin has not been issued at the time of exportation or within 5 working days from the date of shipment due to involuntary errors or omissions, or any other valid reasons, the Certificate of Origin may be issued retrospectively, bearing the words* ***"ISSUED RETROSPECTIVELY"*** *in the Certificate of Origin, with the issuing body or authority also recording the reasons in writing on the exceptional circumstances due to which the certificate was issued retrospectively. The Certificate of Origin can be issued retrospectively no later than 12 months from the date of shipment.*

4. In cases of theft, loss or accidental destruction of a Certificate of Origin, the exporter, producer or an authorised representative thereof may, within the term of validity of the original Certificate of Origin, make a written request to the issuing body or authority that issued the original certificate for a certified copy. The certified copy shall bear the words "CERTIFIED TRUE COPY". The certified copy shall have the same term of validity as the original Certificate of Origin.

From above, it is clear that COO shall be issued prior to or within 5 working days of the date of exportation and in exceptional cases, beyond that but in such cases COO must bear the words "ISSUED RETROSPECTIVELY" along with reason of delay recorded in writing. However, in instant case, as evident from para 4(iii) of the SCN, the impugned goods were exported from Australia to Malaysia vide Master Bill of Lading No. ILUNOR122301 dated 21.12.2023, but the COO certificate was issued after a lapse of around 5 months and that too without bearing the words "ISSUED RETROSPECTIVELY" that is clearly mandated vide above mentioned Article 4.16. This very COO being issued after 5 months of exportation without bearing must have words in such scenario i.e "ISSUED RETROSPECTIVELY" is a clear violation of guidelines prescribed in said India-Australia Trade Agreement.

14.1 Further, as per Rule 3(2)(c) of the CAROTAR rules, 2020, the proper officer may deny the claim of preferential rate of duty if Certificate of Origin is produced after its validity period is expired. The same is produced below:

Rule 3 *.* ***Preferential tariff claim . -***

(1) To claim preferential rate of duty under a trade agreement, the importer or his agent shall, at the time of filing bill of entry,-

(a) make declaration in the bill of entry that the goods qualify as originating goods for preferential rate of duty under that agreement;

(b) indicate in the bill of entry the respective tariff notification against each item on which preferential rate of duty is claimed;

(c) produce certificate of origin covering each item on which preferential rate of duty is claimed; and

(d) enter details of certificate of origin in the bill of entry, namely:

(i) certificate of origin reference number;

(ii) date of issuance of certificate of origin;

(iii) originating criteria;

(iv) indicate if accumulation/cumulation is applied;

(v) indicate if the certificate of origin is issued by a third country (back-to-back); and

(vi) indicate if goods have been transported directly from country of origin.

(2) Notwithstanding anything contained in these rules, the claim of preferential rate of duty may be denied by the proper officer without verification if the certificate of origin-

(a) is incomplete and not in accordance with the format as prescribed by the Rules of Origin;

(b) has any alteration not authenticated by the Issuing Authority;

***(c) is produced after its validity period has expired**; or*

(d) is issued for an item which is not eligible for preferential tariff treatment under the trade agreement; and in all such cases, the certificate shall be marked as "INAPPLICABLE".

In the instant case, the COO was issued without bearing the words “ISSUED RETROSPECTIVELY”, it means as per Article 4.16 (3) mentioned above, the validity of said COO was 5 days from date of exportation (BL date 21.12.2023) i.e the same is valid till 26.12.2023 but the said COO was produced to customs on 11.06.2024 vide BE no. 3937986 dated 11.06.2024. Therefore, as per Rule 3(2)(c) of the CAROTAR rules, 2020, the said COO is liable to be rejected without verification.

15. In view of the above discussion, I find that the importer has wrongly claimed the preferential tariff treatment under Notification No. 62/2022-Customs dated 26.12.2022 as they have failed to follow the procedures laid down under the subject Rules of Origin and this non-compliance make the claim for preferential rate of duty in respect of Bill of Entry no. 3937986 dated 11.06.2024 inadmissible. The importer had attempted to avail duty exemption benefit under India-Australia Economic Cooperation and Trade Agreement (INDAUS ECTA) without meeting the origin criteria as well as without following due procedures as laid down under the Rules of Origin of the ECTA as well as the CAROTAR, 2020.

15.1 From the above, I find that the importer has claimed inadmissible benefit of India-Australia Economic Cooperation and Trade Agreement (INDAUS ECTA) based exemption from the Customs Duty and by this act, he has contravened the provisions of Section 17 and Section 46 of the Customs Act, 1962 read with CAROTAR, 2020 and the Rules of Origin of the ECTA. The inadmissible claim of preferential tariff treatment under Notification No. 62/2022-Customs dated 26.12.2022 is also required to be rejected in terms of section 28DA of the Customs Act, 1962 read with CAROTAR, 2020 and the Rules of Origin of the said ECTA.

16. With the introduction of self-assessment under Section 17, more faith is bestowed on the importer, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment, the importer has been entrusted with the responsibility to correctly self-assess the duty. However, in the instance case, the importer has intentionally not paid correct customs duties on the imported goods. Therefore, it appears that the importer has willfully violated the provisions of Section 17(1) of the Act in as much as importer has failed to correctly self-assess the impugned goods and has also willfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act.

16.1 I find that the importer was in complete knowledge of the inadmissibility of CoO benefit in the subject BE is clearly evident as the importer has himself paid entire duty (BCD+SWS+IGST) after removal of CoO benefit in respect of goods imported under Bill of Entry Nos. 2508141 dated 10.03.2024, 3046189 dated 16.04.2024 & 3164911 dated 23.04.2024 wherein the goods (Ilmenite Exeld 49 – CTH 26140020) were imported from same supplier via same route i.e. Australia-Malaysia-India and the same modus operandi was adopted. However, on query during the assessment of the subject BsE, the importer agreed on the inadmissibility of the exemption benefit and cleared the goods after payment of applicable duties. I find that a well thought out conspiracy was hatched by the importer/noticee to defraud the exchequer by adopting the modus operandi of mis-declaring the origin of the imported goods. Therefore, these acts of omission and commission on the part of importer has made the impugned goods having assessable value of Rs. 78,90,480/- as detailed in Para 1 of this notice, liable for confiscation under Section 111(m) & 111(o) of the Customs Act, 1962 and importer is liable to pay the redemption fine in lieu of confiscation.

16.2 From above, once the goods held liable for confiscation, the same therefore become liable for imposition of redemption fine for the goods already been cleared for Home Consumption. In this regard, I place reliance on the order of **Hon’ble Madras High Court in the case of Visteon Automotive Systems India Limited Vs CESTAT, Chennai**, wherein it has been held that the availability of goods is not necessary for imposing redemption fine. Vide the said order it was inter alia held that

“…. opening words of Section 125, “Whenever confiscation of any goods is authorized by this Act ….”, brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act.”

I, further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same has not been challenged by any of the parties concerned. Hence, I find that any goods improperly imported as provided in any sub-section of

the Section 111 of the Customs Act, 1962 are liable to confiscation and merely because the Importer was not caught at the time of clearance of the imported goods, can't be given differential treatment. In view of the above, I find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A.120(SC), is squarely applicable in the present case. Accordingly, I conclude that in the present case the redemption fine in lieu of confiscation of the goods under Section 125 of the Customs Act, 1962 is required to be imposed.

In view of the above, I find that the impugned goods are liable for confiscation and redemption fine is liable to be imposed on the noticee under Section 125 of the Customs Act, 1962.

17. Furthermore, I find that the importer was in complete knowledge of the inadmissibility of CoO benefit in the subject BE is clearly evident as the importer has himself paid entire duty (BCD+SWS+IGST) after removal of CoO benefit in respect of goods imported under previous Bs/E, as mentioned above, wherein the same modus operandi was adopted. Furthermore, I find that the importer/noticee has engaged in a deliberate and premeditated scheme to defraud the public exchequer by mis-declaring the country of origin of the imported goods. Through this mala fide act, the importer has caused a short levy of customs duty amounting to Rs. Rs. 2,27,877/- (BCD+SWS+IGST) in case of subject BE, which is now required to be recovered under the provisions of Section 28(4) of the Customs Act, 1962 along with interest by way of re-assessment of the BEs. By the said deliberate/wilful wrong claim of Preferential rate of duty, the importer also rendered themselves liable to penalty under Section 112(a)(ii) & 114AA of the Customs Act, 1962.

18. In view of above discussions and findings supra, I pass the following order:

Order

i. I hold the preferential tariff treatment based duty exemption (India-Australia Economic Cooperation and Trade Agreement - INDAUS ECTA) claimed under Notification No. 62/2022-Customs dated 26.12.2022 by M/s. S.K. Mine Chem on the basis of COO Certificate in respect of Bill of Entry no. 3937986 dated 11.06.2024 for the imported goods “Rutile Sand-Exeld 92X” be rejected in terms of Section 28DA of the Customs Act, 1962 read with CAROTAR, 2020 and Rules of Origin of the said ECTA;

ii. I confirm the Bill of Entry No. 3937986 dated 11.06.2024 be re-assessed without duty benefit as per section 17 of the Customs Act, 1962 for recovering the applicable duty of **Rs. 2,27,877/-** (Rupees Two Lakh Twenty Seven Thousand Eight Hundred and Seventy Seven only) from the importer under Section 28 (4) of the Customs Act, 1962 along with the interest thereon as per Section 28AA of the Customs Act, 1962, as applicable;

iii. I hold the goods valued at Rs. 78,90,480/-(Rupees Seventy Eight lakhs Ninety thousand Four hundred & Eighty only) are liable for confiscation under Section 111(m) & 111(o) of the Customs Act,1962 for non-observance of the conditions laid down for exemption from duty. I impose **Rs.7,00,000/-** (Rupees Seven lakh only) as redemption fine in lieu of confiscation.

iv. I impose penalty of **Rs. 20,000/-** (Rupees Twenty Thousand only) upon them under Section 112(a)(ii) of the Customs Act, 1962.

v. I impose penalty of **Rs. 2,00,000/-** (Rupees Two Lakh only) upon them under Section 114AA of the Customs Act, 1962.

19. This order is issued without prejudice to any other action which may be required to be taken against any person as per the provision of the Customs Act, 1962 or any other law for the time being in force.

Digitally signed by Dipakbhai Zala
Date: 05-09-2025 16:40:51

(#ApprovedByName#)

#ApprovedByDesignation#

Import Assessment

Customs House, Mundra

F. No. CUS/APR/BE/MISC/2382/2024-Gr 1-O/o Pr Commr-Cus-Mundra

To,

M/s. S.K. Mine Chem (IEC-2412001723),

8th Floor, Office No. B-804, Om Decora,

Nana Mava Main Road,

Rajkot, Gujarat - 360005

Copy to,

i. CB M/s Kaushali International (ACQPC3956RCH001), 102, Honeycomb CFS Building, Opp. IOCL Link Road, Adani Port and SEZ Limited, Mundra, Kutch, Gujarat – 370421.

ii. The Deputy/Assistant Commissioner (TRC), Custom House, Mundra.

iii. The Deputy/Assistant Commissioner (RRA), Custom House, Mundra.

iv. The Deputy/Assistant Commissioner (EDI), Custom House, Mundra.

v. Guard File.