सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS),अहमदाबाद AHMEDABAD,

चौथी मंज़िल 4th Floor, हडकोभवनHUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN - **20260271MN000000DB65**

क	फ़ाइलसंख्या FILE NO.	S/49-346/CUS/JMN/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	JMN-CUSTM-000-APP-437-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	26.02.2026
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	B/E No 9591589 and 9591591 dated 08.05.2024
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	26.02.2026
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s SHV Energy Private Limited, Post Box No. 50, Jawahar Village, Porbandar, Gujarat - 360575.

1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन) ,वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग,नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहै.

	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखितसम्बन्धितआदेश/Order relating to :
(क)	बैगेज़केरूपमेंआयातितकोईमाल.
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्य स्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसे कमीहो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्टफीएक्ट,1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां,जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्धदस्तावेज़ोंकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद,फीस,दण्ड,जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/-(रूपएएकहज़ारमात्र),जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां. यदिशुल्क,मांगागयाब्याज,लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बंधमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क,केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केंद्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण,पश्चिमीक्षेत्रीयपीठ / **Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**

	दूसरीमंज़िल,बहुमालीभवन,निकटगिरधरनगरपुल,असारवा,अहमदाबाद-380016	2nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-**	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररुपए.**	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पांचहज़ाररुपए**	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;दसहज़ाररुपए.**	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं,यादंडके 10%अदाकरनेपर,जहांकेवलदंडविवादमेंहै,अपीलरखाजाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	**उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.**	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

M/s SHV Energy Private Limited, Post Box No. 50, Jawahar Village, Porbandar, Gujarat - 360575 (hereinafter referred to as "the appellant") has filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Bills of Entry No 9591589 and 9591591 dated 08.05.2024 (hereinafter referred to as "the impugned Order") finally assessed by the Superintendent of Customs, Custom House, Porbandar, (hereinafter referred to as "the assessing officer").

2. Facts of the case, in brief, as stated in the appeal memorandum are that the Appellant is engaged in the business of importing and distributing Propane, Butane and Liquified Petroleum Gas ("LPG"). The Appellant have imported the products Butane (HSN 27111300) as well as Propane (HSN 27111200) (collectively referred to hereinafter as 'imported goods) from UAE. The imported goods have been exported by ADNOC Global Trading Limited ('UAE Exporter'), UAE and then sold to Trafigura PTE Limited ("Trafigura'), Singapore. Trafigura further sold the said goods to M/s. SHV Gas Supply & Risk Management, Singapore ('SRM') who ultimately sold the same to the Appellant.

2.1 Under the CEPA signed between India and the UAE as notified vide Notification No. 22/2022-Customs dated 30.04.2022 ('CEPA Notification'), the imported goods are eligible for duty exemption. These imported goods are listed in Table I of the CEPA Notification, providing exemption when imported into India from UAE, from the whole of Basic Customs Duty ('BCD'). As per Notification No. 39/2022-Customs (N.T.) dated 30.04.2022 the rules under CEPA i.e., Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between India and the United Arab Emirates) Rules, 2022 ("CEPA Rules") have been notified.

2.2 One of the condition specified in the CEPA Rules for claiming the preferential duty benefit is the possession of Certificate of Origin ('COO') by the importer. At the time of importation, the Appellant was unable to present the COO due to unavoidable circumstances. Considering the absence of the COO, the Appellant has preferred the provisional assessment under Section 18 of the Customs Act, 1962. Following this, the subject Bills of Entry were provisionally assessed, and the Out of Charge (OOC) copies were issued with payment of merit rate of duty applicable on these imported goods. Subsequent to obtaining the COO from the UAE Exporter, the Appellant filed an application with the Assessing Authority, Customs House, Porabandar for final assessment under Section 18 of the

Customs Act, 1962 allowing preferential duty treatment provided under CEPA Notification.

2.3 However, the Assessing officer reviewed the application and issued a letter vide DIN No.20240571MM0000318084/85 dated May 20, 2024, denying the claim for the duty benefit ('Denial Letter'). The denial was based on the fact that the original COO was not submitted at the time of the application. The only ground mentioned for denial of the duty benefit was non submission of the original COO at the time of the application, despite the Appellant's compliance with all other necessary customs procedures and the subsequent submission of the COO. Subsequently the Assessing officer has proceeded with the final assessment of the aforesaid BOE's without the preferential duty benefit.

3. Being aggrieved with the denial of the duty benefit for non-submission of the original COO at the time of importation the appellant filed the present appeal by treating the final assessed BOE as assessment order in line with the Supreme Court's ruling in ITC Limited v. Commissioner 2019 (368) E.L.T. 216 (S.C.) and mainly contended that;

- The Assessing Authority has not complied with the procedural requirements stipulated in the Customs Act, 1962 read with the Customs (Finalization of Provisional Assessment) Regulations, 2018, regarding the finalization of provisional assessments. The Appellant contends that the department has not followed the mandated procedures outlined in the Customs Act, 1962 for the proper finalization of provisional assessment. The Appellant wishes to highlight that the Assessing Authority did not seek any additional documentation or information necessary for the final assessment. This is a specific requirement set forth in Section 18(1A) of the Customs Act, 1962, which must be read alongside Regulation 4(2) of the Customs (Finalization of Provisional Assessment) Regulations, 2018. The relevant extracts is as under:

Section 18(1A) of the Customs Act, 1962

"(1A) Where, pursuant to the provisional assessment under sub-section (1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, and the proper officer shall finalize the provisional assessment within such time and in such manner, as may be prescribed"

Regulation 4(2) of the Customs (Finalization of Provisional Assessment) Regulations, 2018

"The proper officer shall within fifteen days from the date of such order of provisional assessment, inform the importer or the exporter, in writing, the specific details of the information to be furnished or the documents to be produced"

- The Assessing officer has not adhered to the required procedural norms as there was no written communication from the Assessing officer requesting any additional documents or information. The absence of such intimation indicates a failure to follow the statutory process outlined in the Customs Act, 1962. Consequently, the final assessment, conducted without the necessary adherence to these regulations, is rendered to be void and unenforceable under the law.
- The Appellant further contends that the final assessment carried out by the Assessing Authority contravenes the requirements set forth in the Customs (Finalization of Provisional Assessment) Regulations, 2018. These regulations stipulate that when a provisional assessment is confirmed by the proper officer, the officer must complete the final assessment only after obtaining confirmation of acceptance from the importer or exporter on record. Additionally, the officer is required to inform the importer or exporter in writing of the date when the finalization has occurred. The relevant regulation is detailed as follows:

  Regulation 6(4) of the Customs (Finalization of Provisional Assessment) Regulations, 2018 states;

  "Where the final assessment confirms the provisional assessment, the proper officer shall finalize the same after ascertaining the acceptance of such finalization from the importer or the exporter on record and inform the importer or exporter in writing of the date of such finalization."

- In the present case, the Assessing Authority has failed to seek and confirm the acceptance of finalization from the Appellant, which is a clear breach of the aforementioned regulation. This oversight indicates that the final assessment was conducted in disregard of the procedural requirements mandated by the regulations, rendering the assessment contrary to the prescribed legal framework. Consequently, the Appellant humbly requests that the final assessment should be deemed invalid due to this non-compliance with essential procedures.
- Original documents are not necessary for the final assessment of BOEs and the benefit of preferential duty treatment does not require the submission of the original COO. The Appellant wishes to emphasize that the Assessing Authorities denial letter states that the duty benefit cannot be granted due to the non-submission of the original COO. The Appellant

has submitted an electronic copy of the COO, provided by the UAE exporter, to comply with CEPA Rules for the duty exemption. However, the Assessing Authority has cited the lack of the original COO as the reason for denying the duty exemption. The Appellant in this regard submit that there is no requirement of furnishing the original documents for the purpose of final assessment of BOEs considering the provisions of Section 18(1A) of the Customs Act, 1962;

"Where, pursuant to the provisional assessment under sub-section (1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, and the proper officer shall finalize the provisional assessment within such time and in such manner, as may be prescribed".

- Preferential duty benefit can be availed even if the COO is in electronic form. The Appellant further submits that the preferential duty benefit can be availed even if the COO submitted is in electronic form. The same can be substantiated from Rule-14(1) of CEPA Rules which states that COO can also be in electronic form and the same can be submitted as proof of origin. Extract of the said rule is produced below:

"(1) For products originating in a Party and fulfilling the requirements of these rules, the proof of origin of an exported product shall be provided through any of the following means, namely: -

(a) a paper Certificate of Origin in electronic or hard copy format issued by a competent authority referred to in rule 15:

(b) a fully digitized Certificate of Origin issued by a competent authority and exchanged by a mutually developed electronic system under rule 33:

(c) an origin declaration made out by an approved exporter referred to in rule 34."

- The appellant further submitted that the Central Board of Indirect Taxes & Customs (CBIC") vide Instruction No. 28/2022 dated 27 October 2022 clarified vide para 2 that an 'e-CoO issued electronically by the issuing Authority of UAE is a valid document for the purpose of claiming preferential benefit under India-UAE CEPA'. Para 2 of the aforesaid instruction is produced below for your reference;

'In this regard, it is hereby clarified that an e-CoO issued electronically by the issuing Authority of UAE, is a valid document for the purpose of claiming preferential benefit under India-UAE CEPA provided that the e-CoO has been issued in the prescribed format, bears electronically printed seal and signature of the authorized signatory of the Issuing

Authority, and fulfills all other requirements stated in Notification No. 39/2022-Customs (N.T.) dated 30 April 2022'.

Hence, the Appellant submits the requirement to furnishing original COO copies is not mandated by the Act and also the instruction provided by the CBIC especially clarifies the preferential duty treatment benefit can be provided basis the e-COO copies. It is further submitted herewith that the COO is issued by UAE authorities online only. Even the UAE exporter is required to download the COO from a web portal and there is no hard copy COO issued as such by the UAE authorities. Hence, the question of submitting "original" COO does not arise. The copy of electronic COO, as submitted by the Appellant is a valid document. Furthermore, there is a QR code present on COO which can be scanned, and the authenticity of the COO can be verified through that. The Assessing Authority has proceeded with issuance of finally assessed BOEs without carrying any such verification. Therefore, the denial of preferential duty treatment arising out of the CEPA Notification read with the CEPA Rules is unwarranted, unreasonable and arbitrary.

- The Authenticity of the COO can also be verified by the department by reaching the designated verification authority. Further the Appellant submits that in case of any queries/questions with respect of the authenticity of the COO, the Assessing Authority should have sought verification from the designated verification authority located at the exporting country, as stipulated under Rule 6(1) of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020. Relevant extract is provided below

  "6(1) The proper officer may, during the course of customs clearance or thereafter, request for verification of certificate of origin from Verification Authority where:

  (a) there is a doubt regarding genuineness or authenticity of the certificate of origin for reasons such as mismatch of signatures or seal when compared with specimens of seals and signatures received from the exporting country in terms of the trade agreement;

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

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

- Further Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between India and the United Arab Emirates) Rules, 2022 (CEPA Rules) also provide for similar

provision wherein customs department may conduct verification for determining the authenticity and the correctness of the COO, Below is the relevant extract of said rule;

*"**22. Verification of Certificates of Origin.***

(1) For the purpose of determining the authenticity and the correctness of the information given in the Certificate of Origin, the importing Party may conduct verification by means of,-

(a) requests for information from the importer;

(b) requests for assistance from the competent authority of the exporting Party as provided for in sub-rule (2);

(c) written questionnaires to an exporter or a producer in the territory of the other Party through the competent authority of the exporting Party;

(d) visits to the premises of an exporter or a producer in the territory of the other Party; or

(e) such other procedures as the Parties may agree.

(2) For the purposes of clause (b) of sub-rule (1), the competent authority of the importing Party,-

(a) may request the competent authority of the exporting Party to assist it in verifying:

(i) the authenticity of a certificate of origin: and/or

(ii) the accuracy of any information contained in the certificate of origin; and/or

(iii) the authenticity and accuracy of the information and documents, including breakup of costs relating to material, labour, other overheads and any other relevant elements such as profits and related components which are relevant to the origin determination of the product under rule 3;

(b) shall provide the competent authority of the other Party with, -

(i) the reasons why such assistance is sought;

(ii) the Certificate of Origin, or a copy thereof; and

(iii) any information and documents as may be necessary for the purpose of providing such assistance."

However, without raising any doubts and without undertaking any such verification, the Assessing Authority concluded the assessment and passed the impugned OIO which is against the provisions of such rules and is unlawful. Hence, the impugned OIO should be set aside to such extent on this ground alone

- Preferential duty benefit is allowable as all the conditions outlined under CEPA rules are satisfied. The Appellant contends that imported goods in

the subject appeal qualifies for the preferential treatment as it meets the origin criteria outlined in the CEPA Rules.

Rule 3(1) of the CEPA Rules- Origin Criteria

"The product shall be deemed to be originating in a Party and shall be eligible for preferential treatment provided it:

(i) is wholly obtained or produced in the territory of the Party as per rule 4:

or

(ii) has undergone sufficient working or production as per the Product Specific Rules in Annexure-B.

***Rule 4 of CEPA Rules**: "Wholly obtained or produced product*

The following products shall be considered as being wholly obtained or produced in the territory of a Party, namely:

"(a) plant and plant product grown and harvested there:

(b) live animals born and raised there;

(c) products obtained from live animals there,

(d) mineral product and natural resources extracted or taken from that Party's soil, waters, seabed or beneath the seabed:

(e) product obtained from hunting, trapping, fishing or aquaculture conducted there:

(f)product of sea fishing and other marine products taken from outside its territorial waters by a vessel and/or produced by a factory ship registered, recorded or licensed with a Party and flying its flag;

(g) product, other than products of sea fishing and other marine products, taken or extracted from the seabed or the subsoil of the continental shelf or the exclusive economic zone of any of the Parties;

(h) waste or scrap resulting from consumption or manufacturing operations conducted in the territory of that Party, fit only for disposal or recovery of raw materials; and

(i) product produced in the territory of that Party exclusively from product referred to in clauses (a) to (h)."

- The Appellant contends that the imported goods qualify as wholly obtained products because they are directly extracted from the soil of the UAE. Consequently, they fulfill the necessary criteria for preferential treatment under the CEPA, thereby confirming their eligibility according to the specified origin rules. Further the Appellant submits that it is in possession of the copy of COO also as required under Rule-21 (1) of the CEPA Rules for claiming the preferential treatment.
- In summary, the Appellant submits that all the necessary requirements have been fulfilled by the Appellant for claiming the preferential duty benefit

- The Appellant meets the origin criteria specified in the CEPA Rules as such imported goods are extracted from the soils of the UAE &
- The Appellant possesses a valid copy of COO.
- Preferential treatment can be provided even if there delay in submission of COO copies. The Appellant further submits that the preferential duty benefit can be availed even if the COO is submitted subsequent to actual import. This position is supported by the rules outlined under the CEPA Rules, which accommodate a period of up to 12 months for the submission of COO copies. Relevant extract of the said rule is specified below;

Rule 15 (11) of the CEPA Rules

"The Certificate of Origin shall be issued prior to, at or within a period of five 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 five 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 box 9 of the Certificate of Origin, with the issuing 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 but no longer than twelve months from the date of shipment."

The CEPA Rules explicitly state that even if there is a delay in issuing the COO, the preferential duty benefit can still be claimed within a 12-month period from the date of shipment. This stipulation implies that the benefit is designed to be accessible within this timeframe, regardless of minor delays in document submission. In light of this provision, the Appellant submits that the application of the preferential duty benefit should remain valid and enforceable as long as the COO copies are provided within the stipulated 12-month period. This interpretation aligns with the intended flexibility of the CEPA Rules, which aim to facilitate trade and ensure that minor administrative delays do not result in a forfeiture of the benefits granted under the agreement. In the present case, the original BOEs were issued on January 09, 2024 and the COO was submitted to the department by the Appellant on April 24, 2024, which is well within the time limit of 12 months as discussed above. Further, the COO also mentions that it has been issued retrospectively. Reliance in this regard is placed on the judgment of the Hon'ble Allahabad High Court in the case of Principal Commissioner, Noida vs. Samsung India Electronics Pvt. Ltd. 2018 (361) E.L.T. 505 (All.). In this case, the High

Court rejected the appeal filed by the Revenue laying down that certificate of origin issued subsequently with retrospective effect would cover the shipment of the goods imported prior to the issuance of the certificate.

- Additionally, Rule 21(3) of the CEPA Rules specifies that if excess duties are paid due to a product not initially receiving preferential treatment, a refund can be claimed for those excess duties. This rule indirectly suggests that the preferential duty benefit can still be accessed by claiming a refund for any overpaid duties, even if the benefit was not granted at the time of import. Therefore, this provision supports the argument that the duty benefit remains available and can be adjusted later through such refund mechanisms. The relevant excerpt from Rule 21(3) is provided below:

  "Each Party shall, in accordance with its laws, provide that where a product would have qualified as an originating product when it was imported into the territory of that Purty, the importer of the product may, within a period specified by the laws of the importing Party, apply for a refund of any excess duties paid as a result of the product not having been accorded preferential treatment"

  Hence, it is submitted that the imported goods are rightly eligible for the preferential duty treatment and the Appellant's application for assessment considering the duty benefit should be allowed.

- Benefit of customs duty exemption cannot be denied on the ground that it was not claimed at the time of importation. The Appellant submit that the preferential benefit under CEPA Notification is a substantive right of the Appellant, and it cannot be denied merely on the ground that the COO was not submitted at the time of import. It is further contended that the Assessing Authority has not accurately recognized that the benefit of a Notification can be claimed at any time, even if it was not initially claimed at the time of importation. It is incumbent upon the Customs department to extend the benefit of the Notification if it is otherwise applicable, regardless of whether it was claimed initially or not. The government is not permitted to retain any amounts that are not due according to the law. The Appellant submits that as mentioned above, the imported goods are eligible for duty exemption as such goods are covered in the CEPA Notification and all the necessary requirements are fulfilled. In the present case, the Assessing Authority have not disputed the eligibility of the imported goods for duty exemption. Consequently, the exemption benefit must be granted if it is legally available, regardless of whether it was claimed at the time of import or subsequently.

- The Appellant places reliance on the decision reported in 2007 (209) ELT 321 (S.C) in the matter of Share Medical Care V/s. UOI, held that exemption can be claimed even at a later stage.
- The Mumbai bench of CESTAT in the case of Commissioner of Customs (ACC & IMPORT), Mumbai vs. Global Vectra Helicorp reported as [2013 (297) ELT 250] has held that the benefit of exemption which are available to the assessee on the date of import, cannot be denied on the ground that the said benefit was not claimed at the appropriate time.
- Further reliance also placed in the case of Unichem Laboratories Ltd. Versus Collector of Central Excise, Bombay 2002 (145) E.L.T. 502 (S.C) wherein it was observed that

  "denial of benefit of the Notification to the appellant was unfair. There can be no doubt that the authorities functioning under this Act must, as are in duty bound, protect the interest of the Revenue by levying and collecting the duty in accordance with the law-no less and also no more. It is no part of their duty to deprive an assessee of the benefit available to him in law with a view to augment the quantum of duty for the benefit of the Revenue. They must act reasonably and fairly."

  Therefore, the Appellant submit that the denial of exemption on the imported goods is unjust and bad in law. Hence, the impugned OIO should be set aside.
- The final assessment is in violation of the principles of natural justice. The Appellant contends that the Assessing Authority have violated the principles of natural justice by finalizing the assessment without issuing a proper speaking order that outlines the reasons for denying the preferential duty benefit. In support of the argument, the Appellant cites the judgment of the of the Bombay High Court in the case of ZUARI AGRO CHEMICALS LIMITED VERSUS UNION OF INDIA AND OTHERS held that principles of natural justice to be followed in cases where provisionally assessed Bills of entry are being finally assessed differently from that claimed by the importer. Further also held that a speaking order is necessary wherever the Bills of entry are finally assessed differently from that claimed by the importer. The appellant relied upon:
- In 'HDFC Bank Limited V. Union of India' - 2008 (7) TMI 602-KERALA HIGH COURT the court held that where an assessee objects to the assessment being made contrary to his claim, the Assessing Officer is obliged to issue a speaking order in terms of Section 17(5) of the Customs Act. It is only on passing of the speaking order that the period for filing appeal under Section 128 of the Act commences.

- The Supreme Court, in 'Asst. Commissioner, Commercial Tax Department V. Shukla & Brothers, Bombay' 2010 (4) TMI 139-SUPREME COURT OF INDIA has observed that reasons are the soul of orders. Non recording of reasons could lead to duel infirmities, firstly it may cause prejudice to the affected party and secondly more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements.
- In conclusion, the Appellant submits that the Assessing Authorities failure to provide a speaking order during the final assessment constitutes a breach of natural justice. The Appellant emphasizes that a proper articulation of reasons is crucial for transparent and fair decision-making.
- Without such a speaking order, the Appellant has been denied a fair opportunity to contest the assessment, undermining both their rights and the integrity of the administrative process. Therefore, the Appellant respectfully requests that the decision be reviewed and that the proper procedures be followed to ensure compliance with the principles of natural justice.
- Substantive right cannot be denied due to procedural lapses. It is well-established principle in law that substantial benefits should not be denied due to procedural errors. The Appellant contends that, even if the failure to submit the original COO is regarded as a procedural lapse, the substantial benefits specified in the CEPA Notification should still be awarded., the substantial benefits outlined in the CEPA Notification should still be granted. Reliance in this regard is placed in the cases of M/s Mangalore Chemicals & Fertilizers Ltd Vs. Deputy Commissioner [1991 (8) TMI 83-SUPREME COURTI as well as Formica India Division Vs. Collector of Central Excise (2002-TIOL-599-SC-CXI, the Hon'ble Supreme Court of India has expressly laid down that procedural lapses or issues cannot be made a ground to deprive an assessee of substantive rights or remedies that the assessee is entitled to. Therefore, it is argued that the right to final assessment of the BOE's with preferential duty benefit is a substantive right of the Appellant, which cannot be negated due to procedural errors.

4. Shri Ashwani Pahwa, Authorised Representative, appeared for personal hearing in virtual mode on 29.01.2026 on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He during personal hearing further submitted that the sole ground cited by the adjudicating authority for denial of the concessional rate available

under CEPA is the alleged non-submission of original copies of the Certificate of Origin (COO). In this regard, he submitted that the adjudicating authority has not complied with the procedural requirements prescribed under the Customs Act, 1962, read with the Customs (Finalization of Provisional Assessment) Regulations, 2018, governing the finalization of provisional assessments. He further draws attention to CBIC Instruction No. 28/2022 dated 27 October 2022, wherein it has been categorically clarified at paragraph 2 that an 'e-Certificate of Origin (e-CoO) issued electronically by the issuing authority of UAE is a valid document for the purpose of claiming preferential benefit under the India-UAE CEPA. Despite this clear clarification, the assessing officer failed to examine or accord due consideration to the e-Coo submitted on record.

5. I have carefully examined the records of the case, the grounds of appeal, and the submissions made by the appellant during the course of personal hearing.

5.1 It is observed that the appellant imported Butane (CTH 27111300) and Propane (CTH 27111200) (hereinafter referred to as the "imported goods") from the UAE. The goods were exported by ADNOC Global Trading Limited, UAE, sold to Trafigura PTE Limited, Singapore, thereafter to M/s. SHV Gas Supply & Risk Management, Singapore, and ultimately supplied to the appellant. The appellant claimed eligibility for exemption from Basic Customs Duty under the India–UAE CEPA, as notified vide Notification No. 22/2022-Customs dated 30.04.2022. The goods are covered under Table I of the said notification, granting exemption from BCD when imported into India from the UAE. The Rules of Origin under CEPA have been notified vide Notification No. 39/2022-Customs (N.T.) dated 30.04.2022, which, inter alia, prescribe possession of a valid Certificate of Origin (COO) as a condition for availing preferential duty benefit. At the time of import, the appellant was unable to produce the COO due to unavoidable circumstances and therefore sought provisional assessment under Section 18 of the Customs Act, 1962. The Bills of Entry were accordingly provisionally assessed and the goods were cleared on payment of applicable merit rate of duty.

5.3 Subsequently, upon receipt of the Certificate of Origin from the UAE exporter, the appellant sought finalization of the provisional assessments with extension of the preferential duty benefit under CEPA. However, the Assessing Officer, vide letter dated 20.05.2024, rejected the claim solely on the ground that the original COO had not been submitted along with the application, and thereafter finalized the provisional assessments without

granting the preferential duty benefit. It is observed that no speaking order was passed while denying the preferential duty benefit. In the absence of a reasoned order, the complete factual matrix and the basis for rejection are not discernible from the records. Further, it is evident that no opportunity of personal hearing was afforded to the appellant prior to finalization of the impugned Bills of Entry. The appellant has also specifically contended that no such opportunity was granted. In my considered view, denial of substantive benefit without issuance of a speaking order and without affording a reasonable opportunity of being heard amounts to violation of the principles of natural justice. Consequently, the contentions and case laws relied upon by the appellant were not examined by the Assessing Officer at the time of finalization of the subject Bills of Entry, and have been raised for the first time before this appellate authority. In these circumstances, remand of the matter for fresh adjudication, after granting due opportunity of personal hearing and by passing a reasoned and speaking order, becomes imperative to meet the ends of justice. Accordingly, in exercise of powers under Section 128A(3) of the Customs Act, 1962, the matter is remanded to the proper officer for de novo consideration in accordance with law and the principles of natural justice. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs - 2004(173) ELT 117 (Guj.), judgment of Bombay Hon'ble High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of Prem Steels P. Ltd. – [*2012-TIOL-1317-CESTAT-DEL]* and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677(Tri. – Del)] holding that Commissioner(Appeals) has power to remand the case under Section-35A(3) of the Central Excise Act, 1944 and Section-128A(3) of the Customs Act, 1962.

6. In view of the foregoing discussion, the appeal is allowed by way of remand to the proper officer for passing a reasoned and speaking order after affording the appellant a reasonable opportunity of personal hearing. The proper officer shall examine all relevant facts, documents, and submissions available on record, including those raised during the appellate proceedings, and thereafter pass a fresh order expeditiously, in strict compliance with the principles of natural justice and the applicable statutory provisions. It is clarified that no opinion is expressed on the merits of the case or on the contentions advanced by the appellant. All issues are left open to be independently examined and decided by the proper officer in accordance with law

7. In view of above, the appeal filed by the appellant is allowed by way of remand.

सत्यापित/ATTESTED
अधीक्षक/SUPRERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

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3. The Deputy/Assistant Commissioner of Customs, Customs House, Porbandar.
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