सत्यमेव जयते

सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
चौथी मंज़िल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009.
दूरभाष क्रमांक Tel. No. 079-26589281
DIN-20250571MN0000015590

क	फ़ाइल संख्या FILE NO.	S/49-257/CUS/AHD/2024-25
ख	अपीलआदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-30-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	15.05.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	O.I.O. No. 41/AC/NS/CH-SURAT/2024-25 dated 31.10.2024 passed by Assistant Commissioner of Customs, Custom House, Surat.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	15.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. GAIL (India) Ltd., GAIL Bhawan, 16, Bhikaji Cama Place, New Delhi - 110066.

1.	**यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.**
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	**सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.**
	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.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :

आयुक्त (अपील), सीमा शुल्क ★ कार्यालय ★ अहमदाबाद

(क)	बैगेज़ के रूप में आयातित कोई माल.	
(a)	any goods imported on baggage.	
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.	
(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)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.	
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.	
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :	
	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)	कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.	
(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)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो	
(b)	4 copies of the Order - In - Original, in addition to relevant documents, if any	
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां	
(c)	4 copies of the Application for Revision.	
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जोअन्य रसीद,फीस,दण्ड,जब्तीऔर विविध मदों के शीर्षके अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/-(रूपए एक हज़ार मात्र),जैसा भी मामला हो,से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां. यदि शुल्क,मांगा गया ब्याज,लगाया गया दंड की राशिऔर रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.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.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	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, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलियअधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल,बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	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)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.**
(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)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए**
(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)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.**
(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)	इस आदेश के विरुद्ध अधिकरण के सामने,मांगे गए शुल्क के 10 % अदा करने पर,जहां शुल्क या शुल्क एवं दंड विवाद में हैं,या दंड के10 % अदा करने पर,जहां केवल दंड विवाद में है,अपील रखा जाएगा।
(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.	**उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.**
	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.

ORDER-IN-APPEAL

1. M/s. GAIL (India) Ltd., GAIL Bhawan, 16, Bhikaji Cama Place, New Delhi - 110066 (hereinafter referred to as the 'appellant') has filed the present appeal under Section 128 of the Customs Act, 1962, against the O.I.O. No. 41/AC/NS/CH-SURAT/2024-25 dated 31.10.2024 (hereinafter referred to as the 'impugned order') passed by the Assistant Commissioner of Customs, Custom House, Surat (hereinafter referred to as the 'adjudicating authority').

2. Facts involved in the appeal, in brief, are that the appellant was engaged in import of Liquefied Natural Gas ('LNG') falling under Customs Tariff Item No. 27111100 from United Arab Emirates ('UAE') through Magdalla Port (Shell Jetty), for which they have filed four Bills of Entry during the period of May, 2022 to September, 2022. There was a practice to assess such Bills of Entry provisionally mainly due to non-availability of original documents, test report, final discharge quantity of LNG etc. So, the following four Bills of Entry filed by the appellant were initially assessed provisionally and subsequently assessed finally:

Table-1

Sr. No.	BoE No.	BoE date	Vessel name
1	8628439	11.05.2022	LNG/C Shahamah
2	9977319	12.08.2022	LNG/C Ghasha
3	2242533	31.08.2022	LNG/C Amur River
4	2484419	17.09.2022	LNG/C Al Hamra

3. With effect from 01.05.2022, the Govt. of India and the Govt. of UAE entered into a Comprehensive Economic Partnership Agreement ('CEPA'). Accordingly, a Notification No. 22/2022-Cus dated 30.04.2022, effective from 01.05.2022, has been issued containing a list of goods imported from UAE being exempted from Customs duty. The LNG falling under CTI 27111100 was made fully exempt from Basic Customs Duty, as per Sr. No. 1666 of the said Notification. As per the Proviso of the said Notification, the exemption shall be available only if the importer proves to the satisfaction of Deputy/Assistant Commissioner of Customs that the goods are of the origin of the UAE in terms of Rules as may be notified in this regard.

4. Vide Notification No. 39/2022-Cus (NT) dated 30.04.2022, effective from 01.05.2022, the Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between India and UAE) Rules, 2022, have been notified. Rule 14 of the said Rules provides for submission of Certificate of Origin in electronic mode or hard copy format. Rule 15(11) of the said Rules provides that 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, the Certificate of Origin may be issued retrospectively, bearing the words "ISSUED RETROSPECTIVELY" in Box 9 of the Certificate of Origin ('CoO' for short).

5. Vide Para 5 of the CBIC's Instruction No. 28/2022-Cus dated 27.10.2022, it has been clarified that for defacement of CoO during 'Out of Charge', a printed copy of e-CoO shall be presented to the Customs Officer, who shall cross-check the unique reference number and other particulars entered in the Bill of Entry with the printed copy of e-CoO; that this would be in lieu of defacing the original hard copy of a Certificate of Origin. Further, it has been mentioned that a check has already been introduced in the System to disallow use of same CoO reference number in more than one Bill of Entry.

6. Vide letters dated 25.11.2022, the appellant has informed the Deputy Commissioner of Customs, Surat, stating, *inter alia*, that due to non-acceptance of Electronic Certificate of Origin ('e-CoO') by his office, and in order to get the LNG discharged/unloaded on arrival, GAIL was obliged to pay Customs duty on the LNG sourced from UAE during the intervening period i.e. date from which Notification No. 22/2022 was made effective i.e. 01.05.2022 till the date of Instruction No. 28/2022-Customs, dated 27.10.2022. The appellant has further mentioned that Customs duty has been paid by GAIL on LNG sourced from UAE vide impugned Bills of Entry, which otherwise was not required to be paid under India-UAE CEPA. In view of the above, the appellant requested the Assistant Commissioner to accept electronically issued e-CoOs for provisionally assessed Bills of Entry, allow the benefit of concessional duty and requested for re-assessment of provisionally assessed Bills of Entry. The appellant has also submitted various letters and documents to Customs authorities requesting to finalize the provisional assessment.

7. The Assistant Commissioner, Custom House, Surat, has issued a Show Cause Notice ('SCN') dated 11.06.2024 to the appellant and proposed to finalize assessment of the impugned 4 Bills of Entry (assessed provisionally) by denying the benefit of Nil rate of duty under India-UAE Comprehensive Economic Partnership Agreement, as per Notification No. 39/2022-Customs (NT) dated 30.04.2022 read with Section 18(2) of the Customs Act, 1962. Later, he has passed the impugned Order dated 30.10.2024 towards final assessment of the four Bills of Entry without allowing benefit of Nil rate of duty under Notification No. 39/2022-Customs (NT) dated 30.04.2022 read with Section 18(2) of the Customs Act, 1962.

8. Being aggrieved, the appellant has filed present appeal

Discussion regarding time-limit for filing appeal and pre-deposit

The appellant has filed the present appeal on 06.01.2025. In the Form C.A.-1, the date of communication of the Order-In-Original dated 30.10.2024 has been shown as 12.11.2024. The appellant has also submitted a copy of their Acknowledgement dated 12.11.2024 towards receipt of the said O.I.O. on 12.11.2024. Thus, the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. As the present appeal has been filed against final assessment order and no duty has been demanded in that order, there is no requirement of pre-deposit of duty under the provisions of Section 129E of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit, it has been admitted and being taken up for disposal on merits.

Gist of grounds of appeal:

9. The appellant has filed the appeal mainly on the following grounds:

9.1 The rules for determining origin of goods under CEPA agreement between India and UAE were notified by the Govt. of India, vide Notification No. 39/2022-Cus (NT), dated 30.04.2022. These Rules came into force from 01.05.2022. Rule 14 provided for issuance of either paper certificate of origin or fully digitized certificate of origin issued by the competent authority of UAE and exchanged by a mutually developed electronic system between the two countries. The competent authority of UAE decided to issue CoO in electronic form, not in paper form under the CEPA Rules. Since it was a new change in the system by way of issuing e-CoO, it took some time for both the Govt. to switchover to the new electronic system and consequently e-CoO could be issued by the Ministry of Economy of UAE from July,2022 onward. However, all such certificates were issued by the competent authority with retrospective effect. Since the assessments were made by the Customs on provisional basis, the appellant were advised to submit the e-CoO later before the assessments are finalized. Accordingly, the goods were cleared from the port on payment of duty at merit rate without claiming the benefit of duty exemption under CEPA notification.

9.2 That the adjudicating authority failed to appreciate that in the initial 6 months from May, 2022, even the Customs officers were reluctant to accept e-CoO and were insisting for hard copies of original Certificate of Origin in paper form for defacement before issuing out of charge orders. The system of defacing the documents including CoO had been in practice since long time and therefore the Customs officers at the port have clearly refused to accept e-CoO on the ground that such e-CoO could not be defaced in the system. Even the printout of e-CoO was not acceptable to the Customs, as the printout is only a copy and not the original CoO.

9.3 As regards defacement of CoO during out of charge, the Board vide Instruction No. 28/2022-Customs instructed that a printout of e-CoO may be presented to the Customs officer, who will cross check the unique reference number and other particulars contained the e-CoO from the related B/E. This procedure is in lieu of defacing original hard copy of the CoO. The Board issued the instructions only on 27.10.2022. Thus, from May, 2022 to Oct./Nov., 2022, the things were not clear to the trade as well as the Customs field formation. Pending clarification from the Board, the appellant had no choice but to clear the goods on payment of applicable Customs duty under provisional assessments.

9.4 The adjudicating authority erred in rejecting e-CoO on the ground that the appellant had not claimed the benefit of CEPA notification / CoO based Nil duty benefit on import of LNG from UAE, despite the fact that the appellant filed the e-CoOs in the office of jurisdictional Assistant Commissioner, Surat, before final assessments. He denied the substantial benefit otherwise available to the appellant merely because of procedural delay in obtaining e-CoO from the competent authority of UAE.

9.5 The appellant relied upon the case of **Zuari Agro Chemicals Ltd. Vs. Collector of Customs, Bombay**, Final Order dated 18.07.1995, reported in 1997 (89) ELT 707 (Tri-Del). The Hon'ble Tribunal in the said case noted a fine distinction between "removal" and "clearance". The goods can be removed for home consumption or otherwise after provisional assessment under Bond, but they can be said to be cleared for home consumption only after final assessment and orders of the proper officer in respect of such clearance. The Hon'ble Supreme Court dismissed the appeals filed by the Department as devoid of merit and thus confirmed the order of the Tribunal on 07.05.1996, as reported in 1996 (86) ELT A78 (SC).

9.6 That the adjudicating authority erred in holding that Bills of Entry filed by the appellant were self-assessed and duty was paid through Challans without claiming benefit of exemption of duties under India-UAE CEPA Notification at the time of filing B/Es or subsequently till the issuance of OOC Order. The adjudicating authority failed to respect the settled legal position that **where an assessment is provisional for any purpose, it is provisional for all purposes**. In this regard, following cases have been relied upon:

- Collector of Central Excise Vs. PMT Machine Tools - 1991 (55) ELT 592 (Tri-LB).
- CCE, Madras Vs. India Tyre & Rubber Co. Ltd. - 1997 (94) ELT 495 (Mad)
- Rajiv Mardia Vs. CCE, Indore - 2000 (118) ELT 627 (Tri-LB)
- Whirlpool of India Ltd. Vs. Commissioner of Customs, Nhava Sheva - 2001 (127) ELT 239

- Denso Haryana P. Ltd. Vs. Commr of Customs, New Delhi - 2004 (176) ELT 548 (Tri-Del)
- Adani Wilmar Ltd. Vs. Commissioner of Customs, Kandla – 2012 (10) TMI 630 (Tri-Ahd)
- Commissioner of Customs (Port) Kolkata Vs. Aanchal Cement Ltd. - 2020 (2) TMI 612 (Tri-Kol)

The appellant has submitted copies of the above-mentioned case law vide further written submissions given during personal hearing held on 13.05.2025.

9.7 The adjudicating authority failed to appreciate that the format of the Certificate of Origin is prescribed as Annexure-E forming part of CEPA Rules, 2022 between India and UAE. Box No.9 of Annexure-E format carries the remarks "ISSUED RETROSPECTIVELY", <u>but there is no room for giving the reasons to be given by the issuing authority while ticking the Box to denote the remarks "ISSUED RETROSPECTIVELY"</u>. The issuing authority has issued the CoO strictly as per columns contained in the format for issue of Certificate of Origin. Therefore, merely because the reasons are not given by the issuing authority, the CoO cannot be rejected as invalid CoO.

10. The CBIC, through Instruction No. 21/2024-Customs dated 16.10.2024 has clarified that minor discrepancies shall not render e-CoO invalid provided the certificate corresponds to the product under import and such minor errors do not affect the authenticity of e-CoO or accuracy of the information contained in the e-CoO. Further, such minor discrepancies concerning rules of origin should not be relied upon to disallow the substantive benefit under the trade agreement unless such discrepancies cast a doubt on the originating status of the products. The SCN nowhere alleged that e-CoO certificates were not valid for the reason that the issuing authority has not given reasons behind issuance of e-CoOs retrospectively. It is settled law that the adjudicating authority needs to pass the order within four walls of the SCN.

11. As the grounds on which the adjudicating authority has denied the preferential duty benefit, have been clarified by CBIC vide Instruction No. 21/2024-Customs dated 16.10.2024, the appellant has requested for an early hearing in this matter.

<u>Personal Hearing:</u>

12. Personal Hearing in the case was held on 10.03.2025, which was attended by Shri. S. C. Kamra, Advocate and Shri. Ajay Kumar Gupta, Chief Manager (F&A). They reiterated the submissions made at the time of filing of appeal.

13. Due to transfer of my predecessor, another Personal Hearing in this case was held before me on 13.05.2025, which was attended by Shri S. C. Kamra, Advocate; Shri Ajay Kumar Gupta, Chief Manager (F&A) and Ms. Ujwala Gurav, Dy. General Manager (F&A). They reiterated the submissions made at the time of filing of appeal. They have also submitted further written submissions dated 13.05.2025 and a compilation of case law in support of their contention that the provisional assessment for any reason, are provisional for all purposes and reasons.

<u>Findings</u>:

14. I have carefully gone through the facts of the case and written as well as oral submissions made by or on behalf of the appellant. The issue to be decided in the present

appeal is whether the finalization of provisional assessments of LNG, without extending the benefit of preferential / Nil rate of duty under Sr. No. 1666 of Notification No. 22/2022-Cus dated 30.04.2022 read with Notification No. 39/2022-Cus(NT) dated 30.04.2022, is legal and proper or otherwise.

15. I find that most of the issues, due to which the benefit of preferential rate / Nil rate has been denied to the appellant, are covered under the **Instruction No. 21/2024-Customs, dated 16.10.2024**, issued by the CBIC, which is reproduced below:

"Subject: Retrospective issuance of certificates of origin under India-UAE CEPA - reg.

Board is in receipt of trade representations citing implementation challenges being faced under the India-UAE CEPA. The issue primarily pertains to non-acceptance of retrospectively issued certificates of origin during finalisation of provisional assessment and, consequent denial of preferential benefit under the CEPA. While procedural discrepancies such as non-marking of 'ISSUED RETROSPECTIVELY' column by the issuing authority and non-uploading of certificate of origin on e-Sanchit are cited as ground for rejection of claim, a substantive issue that section 149 of the Customs Act do not allow amendment in bill of entry after out-of-charge has also been raised.

2. The matter has been examined vis-à-vis the extant legal provisions, including the rules of origin issued under India-UAE CEPA vide Notification 39/2022-Cus (N.T.) dated 30.04.2022. The said rules inter alia govern the procedure of issuing Certificates of Origin (COOs) by the concerned authorities of India and UAE.

2.1 Rule 15(11) of the said rules explicitly permits the retrospective issuance of COO, under exceptional situations:

> *(11) The Certificate of Origin shall be issued prior to, at or within a period of five working days of the date of exportation. However, <u>under exceptional cases</u>, 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 <u>twelve months from the date of shipment</u>.*

2.2 Further, rule 21(3) provides for claiming of refund of excess duties paid in cases where a product would have qualified as an originating product when it was imported into the territory but preferential treatment was not extended at the time of import:

(3) 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 Party, 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.

2.3 These provisions indicate that <u>where preferential treatment was not claimed or extended at the time of import, the importer does not lose the right to claim the benefit upon subsequent submission of a valid COO within stipulated time frame, provided that authenticity of COO and product origin are not disputed</u>. The requirement of uploading COO on e-Sanchit while filing bill of entry would not apply in this case, as the COO has been issued after the date of importation. A harmonious reading of the provisions is required so that the legal entitlement under the trade agreement is not nullified.

3. Further, rule 15 (13) of the said rules provides that minor discrepancies, including typing or formatting errors, shall not render a COO invalid, provided the certificate corresponds to the products under import and such minor errors do not affect the authenticity of the COO or the accuracy of the information contained therein. In nutshell, minor procedural discrepancies concerning rules of origin should not be seen as countering the intent of extending substantive benefit under trade agreement, unless such discrepancies cast a doubt on the originating status of the product."

16. Rule 15(13) of the of the India-UAE CEPA Rules, 2022, as notified vide Notification No. 39/2022-Cus (N.T.) dated 30.04.2022, is as under:

"(13) Minor discrepancies between the Certificate of Origin and the documents submitted to the Customs Administration at the port of importation for the purpose of carrying out the formalities for importing the products shall not ipso facto invalidate the Certificate of Origin, if such Certificate of Origin corresponds to the products under importation. Minor discrepancies include typing errors or formatting errors, subject to the condition that these minor errors do not affect the authenticity of the Certificate of Origin or the accuracy of the information included in the Certificate of Origin. Discrepancies in the specimen signatures or seals of the issuing authority shall not be regarded as minor discrepancies."

17. I observe that the benefit of Nil rate of duty under India-UAE CEPA has been denied by the adjudicating authority on the **first ground** that in none of the self-assessed Bills of Entry, the appellant has claimed the exemption/Nil rate based upon Certificates of Origin under India-UAE CEPA Notification.

18. In this regard, I find that this reason for denying the benefit under India and UAE CEPA Rules, 2022, remains no longer valid after issuance of the CBIC **Instruction No. 21/2024-Customs dated 16.10.2024**. In Para 2.3 of the said Instruction, it has been clarified that ***these provisions indicate that where preferential treatment was not claimed or extended at the time of import, the importer does not lose the right to claim the benefit upon***

subsequent submission of a valid COO within stipulated time frame, provided that authenticity of COO and product origin are not disputed. In the present case, no doubt about authenticity of the Certificates of Origins have been expressed in the impugned order. So, in view of the above-mentioned Instruction issued by the CBIC as well as case law cited hereinabove, I am of the view that the adjudicating authority should have considered the benefit of preferential rate based upon CoO while finalizing the provisional assessments, even though the said benefit was not claimed while filing of impugned Bills of Entry.

19. I further observe that the denial of benefit of Nil rate of duty under India-UAE CEPA has been denied by the adjudicating authority on the **second ground** is that the Certificates of Origin mention that they have been "ISSUED RETROSPECTIVELY", but the issuing authority of the e-CoO has not recorded the reasons anywhere in the Certificates, in writing, due to which the certificates have been issued retrospectively, as prescribed under Rule 15(11) of the CEPA Rules, 2022.

20. In this regard, I am of the view that merely non-recording of the reason in the CoO Certificate about the exceptional circumstances due to which it was issued retrospectively, should be treated as procedural irregularity particularly, when there is no dispute about authenticity and retrospective issuance of the said CoO Certificate within the prescribed time of twelve months from the date of shipment, as prescribed under Rule 15(11) of the India-UAE CEPA Rules, 2022. Therefore, as mentioned in Rule 15(13) of the India-UAE CEPA Rules, 2022 read with Para 3 of the CBIC Instruction No. 21/2024-Customs dated 16.10.2024, such *minor discrepancies, including typing or formatting errors, shall not render a COO invalid, provided the certificate corresponds to the products under import and such minor errors do not affect the authenticity of the COO or the accuracy of the information contained therein.* I find that there is no allegation against the appellant GAIL, which is one of the Maharatna Public Sector Undertakings of Government of India, to the effect that the CoO Certificates produced by them are not authentic. Therefore, the impugned Order to the extent it denies the benefit of preferential rate on the ground of non-mention of reasons regarding issuance of retrospective CoO, is not legal and proper and liable to be set aside.

21. I find the appellant has already submitted a copy of the Instruction No. 21/2024-Customs dated 16.10.2024 to the Assistant Commissioner of Customs, Custom House, Surat, vide a letter Ref No. GAIL/HZR/F&A/2024-25/Customs/FA-3 dated 17.10.2024, which has been received in Custom House, Surat, on 17.10.2024. A scanned copy of the said letter has been reproduced on the next page.

- On next page -

गेल (इंडिया) लिमिटेड
GAIL (India) Limited
(A Government of India Undertaking - A Maharatna Company)

HAZIRA COMPRESSOR STATION
ICCHAPORE MAGDALLA ROAD
PO ONGC
DIST SURAT 394 518
PHONE (0261) 2917494/...
FAX (0261) 2618594I

Ref: GAIL/HZR/F&A/2024-25/Customs/FA-3

Date:17.10.2024

To,

Assistant Commissioner of Customs,
Customs House,
4th Floor @ 9292 Building,
Vesu VIP Road, Althan
Surat- 395107 (Guj)

Sub: Submission of Instruction No. 21/2024- Customs F. No. CBIC-15020/4/2021-ICD-CBEC Dated 16th October 2024 in respect to final assessment of BoEs under CEPA cases

Sir,

Referring SCN F. No. CH/135/2022-23 Dated 11.06.2024 and Personal Hearing F. No. CH/135/2022-23 Dated 04.10.2024 **(Enclosed as Annexure-1)**, we are submitting Instruction No. 21/2024- Customs F. No. CBIC-15020/4/2021-ICD-CBEC Dated 16th October 2024 **(Enclosed as Annexure-2)** issued by Customs Department, International Customs division in respect of Retrospective issuance of certificates of origin under India-UAE CEPA.

In this regard we earnestly request to kindly consider the same Instruction before any decision passes in respect of Personal Hearing held on 10.10.2024 and final assessment of BoEs in respect of our CEPA cases as tabulate below:

Sr. No.	BoE No.	BoE Date	Vessel Name	COO No.	COO Date	Total Duty Paid (Rs. Crore)
1	8628439	11.05.2022	SHAMAHA	2945484	14.11.2022	20.27
2	9977319	12.08.2022	GHASHA	2903932	23.09.2022	10.12
3	2242533	31.08.2022	AMUR RIVER	2885801	31.08.2022	12.44
4	2484419	17.09.2022	AL HAMRA	2992989	12.01.2023	10.51
			Total			53.35

Thanking You,
Yours sincerely,

For GAIL (India) Limited

17.10.24

(Authorized Signatory)

गेल (इंडिया) लिमिटेड हजीरा/HAZIRA GAIL (INDIA) LIMITED

RECEIVED
CUSTOM HOUSE, SURAT.
No.: 1
Date: 17/10/2024
Sign:

Encl: As above

भवन, 16, भीकाजी कामा प्लेस,
के.पुरम, नईदिल्ली – 110066 (इंडिया)
OFFICE:
BHAWAN 16 BHIKAJI CAMA PLACE

सीआईएन / CI
L40200DL1984GOI01897
www.gailonline.co

आयुक्त (अपील), सीमा शुल्क कार्यालय अहमदाबाद

22. As mentioned in the above letter dated 17.10.2024, the appellant has requested the adjudicating authority to consider the said Instruction No. 21/2024-Customs before passing any decision towards finalization of provisional assessment in respect of the impugned four Bills of Entry. However, the adjudicating authority has ignored the said letter and the Instruction No. 21/2024-Customs dated 16.10.2024 and not taken cognizance about applicability of the

said Instruction in the impugned order dated 31.10.2024, even though the impugned order has been passed after issuance of the said Instruction dated 16.10.2024 and submission of the appellant's letter on 17.10.2024. This approach of the adjudicating authority is not proper.

23. In view of the above discussion, I am of the considered view that the assessing officer/ adjudicating authority was required to consider the claim of the appellant for granting benefit of preferential rate of duty under the India-UAE CEPA at the time of finalization of provisional assessments.

24. Further, I find that my predecessor Commissioner (Appeals), Customs, Ahmedabad, in a similar matter of the same appellant, has passed an Order-In-Appeal No. AHD-CUSTM-000-APP-292 to 293-24-25 dated 31.01.2025, in respect of Bills of Entry filed with Custom House, Dahej. Vide the said Order-In-Appeal, the Order-In-Original No. 01/AC/Dahej/2024-25 dated 27.04.2025 passed by the Assistant Commissioner of Customs, Dahej, has been set aside and the matter has been remanded to the adjudicating authority with a direction to finalize the provisional assessment after considering the directions given under the Instruction No. 21/2024-Customs, dated 16.10.2024, issued by CBIC, as well as views expressed in the said Order. I find no reason, to not follow the same view in the present case covering similar situation of the same appellant.

Order:

25. In view of the above discussion, I set aside the impugned O.I.O. No. 41/AC/NS/CH-SURAT/2024-25 dated 31.10.2024 passed by the Assistant Commissioner of Customs, Custom House, Surat, towards final assessment of the four Bills of Entry and remand the matter to the adjudicating authority with a direction to finalize the provisional assessment after considering the directions given under Instruction No. 21/2024-Customs, dated 16.10.2024, issued by CBIC, as well as views expressed in this Order.

(AMIT GUPTA)
Commissioner (Appeals)
Customs, Ahmedabad

F.No. S/49-257/CUS/AHD/2024-25 Date: 15.05.2025

By e-mail [As per Section 153(1)(c) of the Customs Act, 1962]

To
M/s. GAIL (India) Ltd.,
GAIL Bhawan, 16, Bhikaji Cama Place,
New Delhi - 110066.
(email: info@gail.co.in , ajay_gupta@gail.co.in)

Shri. S. C. Kamra, Advocate,
B-2/210 (Basement), Safdarjung Enclave,
New Delhi - 110029.
(email: sckamra@kamraandco.com , adv.shivamkamra@gmail.com)

Copy to:

1. The Chief Commissioner of Customs, Ahmedabad Zone, Customs House, Ahmedabad.
   (email: ccoahm-guj@nic.in)

2. The Pr. Commissioner of Customs, Ahmedabad.
   (email: cus-ahmd-guj@nic.in ; rra-customsahd@gov.in)

3. The Deputy/Assistant Commissioner of Customs, Custom House, Surat.
   (email: customhousesurat@gmail.com)

4. Guard File.

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद.

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