

A	File No.	CUS/APR/BE/MISC/898/2024-Gr 1-O/o Pr Commr-Cus-Mundra
B	OIO No.	MCH/ADC/AK/23/2024-25
C	Passed by	Arun Kumar, Additional Commissioner (Import), Custom House Mundra.
D	Date of order	22.04.2024
E	Date of Issue	23.04.2024
F	SCN No. & Date	The importer has requested for waiver of SCN and PH
G	Noticee / Party / Importer	M/s Mamta Starch Products, 163/37C, Narasiman Chetty Road, Shevapet, Salem-636002, Tamilnadu
H	DIN	20240471MO000005680A

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:

M/s Mamta Starch Products (IEC No. 0809026066) situated at 163/37C, Narasiman Chetty Road, Shevapet, Salem-636002, Tamilnadu ('Importer' for the sake of brevity) have filed Bills of Entry No. (i) 7610906 dated 31.08.2023 (ii) 8015473 dated 26.09.2023 and (iii) 8308168 dated 14.10.2023 for import of Tapioca Starch- Food Grade (CTH-11081400) through Customs Broker-M/s Asia Shipping Services, Gandhidham (ADCPK3929MCH002) at Mundra Port. The importer has claimed benefit of FTA based duty exemption under DFTP-LDC Scheme on the basis of Certificate of Origin said to be issued by the Deputy Director General, Ministry of Commerce, Kingdom of Cambodia vide Notification No. 96 dated 13.08.2008.

2.1 During the scrutiny of COO Certificate bearing Ref. No. KHIN2306012805 submitted in relation to BE No. 7610906 dated 31.08.2023 by the officers of Turant Seva Kendra (TSK), Custom House, Mundra, the signature of the issuing authority appeared not in order and accordingly, the COO Certificate was forwarded for verification by the Import Assessment Group, Custom House, Mundra to the competent authority for verification under Rule 6 (1) (a) of CAROTAR, 2020. Meanwhile, it was noticed that importer have filed another Bills of Entry No. 8015473 dated 29.09.2023 and 8308168 dated 14.10.2023 for import of Tapioca Starch with claim of benefit of FTA based duty exemption under DFTP-LDC Scheme on the basis of Certificate of Origin said to be issued by the same authority, i.e. Deputy Director General, Ministry of Commerce, Kingdom of Cambodia. Therefore, the matter was referred to the SIIB, Custom House, Mundra for further investigation vide letter dated 31.10.2023 issued by the Assistant Commissioner (TSK), Custom House, Mundra.

2.2 On the basis of input received, the consignments covered under above three Bills of Entry No. (i) 7610906 dated 31.08.2023 (ii) 8015473 dated 26.09.2023 and (iii) 8308168 dated 14.10.2023 were kept on hold by the SIIB Section, CH, Mundra for further investigation.

3. INVESTIGATION CONDUCTED:

3.1 On the basis of input received from the TSK, CH, Mundra, Summons was issued to the Customs Broker, M/s Asia Shipping Services, Gandhidham (ADCPK3929MCH002) and a statement of Shri Shivdas Laldas Parihar, G-Card Holder (CHM-G/53/18) in CHA firm, M/s Asia Shipping Services has been recorded on 11.11.2023 under Section 108 of the Customs Act, 1962 wherein, he-inter-alia stated that

- *M/s Mamta Starch Products was their clients and they were filing Bills of Entry on their behalf from March, 2023 onwards*
- *Till date (till 11.11.2023) they had filed 5 Bills of Entry on behalf of M/s Mamta Starch Products for import of Tapioca Starch (Food Grade)- CTH-11081400 from Cambodia at Mundra Port including Bills of Entry No. (i) 7610906 dated 31.08.2023 (ii) 8015473 dated 26.09.2023 and (iii) 8308168 dated 14.10.2023.*
- *In case of Bill of Entry No. 7610906 dated 31.08.2023, the exporter is M/s Mongkul Land Realty Co. Ltd., No. 188, St. 285, Phum 14, Boeung kak II khan Touk, Phnom Penh-12152, Cambodia. They have claimed FTA benefit on the basis of Country of Origin Certificate bearing Ref. No. KHIN2306012801 dated 17.08.2023. This BE was RMS facilitated BE and at the time of defacing of the COO Certificate, some ambiguity was noticed by the officers and therefore, the COO Certificate was forwarded to the competent authority for verification.*
- *In case of Bill of Entry No. 8015473 dated 26.09.2023, the exporter is M/s M.H.K.Y Co. Ltd. Toul Sambo Village, U Dong District, Kampong Speu Province, Kingdom of Cambodia. They have claimed FTA benefit on the basis of Country of Origin Certificate bearing Ref. No. "KHIN2306012801 read as KHIN2306012811".*
- *In the case of BE No. Bill of Entry No. 8015473 dated 26.09.2023 COO ref no. was KHIN2306012801 but it was noticed that same ref. no. was quoted in earlier BE No. 7610906 dated 31.08.2023, which was informed to the importer. The importer forwarded them new COO Certificate bearing Ref. No. KHIN23060152801 read as KHIN2306012811 dated 10.09.2023 along with a clarification issued vide Certificate No. 3219 MOC D/E1 dated 09.10.2023 the COO issuing authority, i.e. Deputy Director General, Ministry of Commerce, Kingdom of Cambodia. Vide this clarification, it was communicated that COO Certificate issued for the invoice no. 189/ML-Mamta/2023 dated 29.08.2023 may be read as KHIN2306012811. The COO issuing authority himself certified the signature of the said COO vide certificate dated 09.10.2023. This BE was RMS facilitated BE and at the time of defacing of the COO Certificate, some ambiguity was noticed by the officers and therefore, the COO Certificate was forwarded to the competent authority for verification.*
- *In case of Bill of Entry No. 8308168 dated 14.10.2023, the exporter is M/s Mongkul Land Realty Co. Ltd., No. 188, St. 285, Phum 14, Boeung kak II khan Touk, Phnom Penh-12152, Cambodia. They have claimed FTA benefit on the basis of Country of Origin Certificate bearing Ref. No. KHIN2306012805 dated 19.09.2023.*
- *The cargo of above three BEs have been shifted to domestic containers after approval from the Docks Officers.*

3.2 Further, it was noticed that the COO issuing authority in case of above three BEs was same. Further, it was noticed that in case BE No. 8015473 dated 26.09.2023, the COO Certificate issued with the same reference number as in BE No. 7610906 dated 31.08.2023, i.e. Ref. No. KHIN2306012801 leading to its return and subsequent correction and communication by the issuing authority itself vide letter dated 09.10.2023. This raised concerns about the authenticity of the signatures on the COO certificates of the BE No. 8015473 dated 26.09.2023 and BE No. 8308168 dated 14.10.2023 also and accordingly, these two COO Certificates were also forwarded for verification to the competent authority, i.e. Director (International Customs Division), Central Board of Indirect Taxes & Customs in light of Rule 6 (1) (a) of CAROTAR, 2020.

3.3 Further, verification report of the COO Certificate bearing reference no. KHIN2306012801 dated 17.08.2023 pertaining to BE No. 7610906 dated 31.08.2023 has been received vide letter F.NO. DIC/FTA/51/2023-FTA CELL II-O/O PR COMMR-DIC-DELHI dated 28.11.2023 issued by OSD (Cell-2), FTA Cell, CBIC received in this office vide email dated 29.11.2023. As per the said verification report received from Issuing Authority in Cambodia, the COO bearing number KHIN2306012801 was found counterfeit based on the following irregularities found:

1. *The MONGKUL LAND REALTY CO., LTD. is not a registered exporter under any preferential scheme (GSPA4FN/FTA); and*
2. *The reference number of this COO, KHIN2306012801, is not recorded under the CO Automation system.”*

3.4 Furthermore, on applying the ratio of the above verification report received, the COO certificates bearing ref. no. KHIN236012805 dated 19.09.2023 i.r.t. BE No. 8308168 dated 14.10.2023 was also found as counterfeit in as much as the supplier in this case was same i.e. M/s Mongkul Land Realty Co. Ltd., No. 188, St. 285, Phum 14, Boeung Kak II khan Touk, Phnom Penh-12152, Cambodia, which as per above verification report, was not a registered exporter of Cambodia under any preferential scheme. Therefore, due to credential of the exporter, the said COO can also be considered as counterfeited.

3.5 Further, on applying the ratio of the above verification report received, the COO certificates bearing ref. no. “KHIN2306012801 read as KHIN2306012811” with respect to Bill of Entry No. 8015473 dated 26.09.2023 also falls under suspicion as originally this BE was accompanied with the COO Certificate issue

with the same reference number as in BE No. 7610906, i.e. Ref. No. KHIN2306012801 leading to its return and subsequent correction and communication by the issuing authority itself vide letter dated 09.10.2023. The purported clarification submitted by the importer for Bill of Entry No. 8015473 dated 26.09.2023 also falls under suspicion in light of above verification report in as much as COO reference number, i.e. KHIN2306012801 was not recorded under their CO automation system of Cambodia.

3.6 Therefore, the cargo covered under BE No. **(i) 7610906 dated 31.08.2023 (ii) 8015473 dated 26.09.2023 and (iii) 8308168 dated 14.10.2023** had been seized vide seizure memo dated 08.12.2023 under Section 110 of the Customs Act, 1962 on 08.12.2023 under Panchnama proceeding dated 08.12.2023 in the presence of G-Card holder of the CHA Firm, M/s Asia Shipping Services and handed over to the custodians of the respective CFSs for safe custody.

4. Further, the investigation was extended towards **previous imports** of M/s Mamta Starch Products covered under BE No. 6715684 dated 04.07.2023 and 7314347 dated 11.08.2023, wherein the importer had claimed the duty exemption benefit on the basis of COO Certificate shown to be issued by the same authority of Cambodia. The COO Certificates of these BEs have also been forwarded to the ICD, CBIC, New Delhi for verification. COO verification report from the issuing authority in these cases are also pending.

5. Further, a statement of Shri Shivdas Laldas Parihar, G-Card Holder (CHM-G/53/18) in CHA firm, M/s Asia Shipping Services has been recorded on 03.01.2024, wherein he, inter-alia on being shown and perusal of the verification report of COO Certificate No. KHIN2306012801, has shown his agreement that as per verification report received from Issuing Authority in Cambodia, the COO bearing number KHIN2306012801 is counterfeit; that they have submitted the documents to the Customs Department as such they received from the importer; that the above said COO Certificate was also provided to them by the importer M/s Mamta Starch Products, which they uploaded in E-Sanchit and also produced before the Customs Authority for defacing; they came to know about the COO Certificate being counterfeited only after verification from the concerned authority; that they have no mechanism to verify the COO Certificate at their end before submitting the same to the Customs department; that in past, they have also filed and cleared two BEs No. 6715684 dated 04.07.2023 & BE No. 7314347 dated 11.08.2023 for same importer after claiming FTA based duty exemption benefit on the basis of COO Certificate issued by the same authority as in the case of BE No. 7610906 dated 31.08.2023. Therefore, there was no reason of suspicion on the COO Certificate in the present matter; that as soon as they were informed about the COO Certificate being counterfeited, they have

communicated the same to the importer and also forwarded the Summons issued to the importer to them.

6. Further, Summons were issued to the importer, M/s Mamta Starch on 02.12.2023 & 27.12.2023. Shri Sandeep P. Madani, proprietor of M/s Mamta Starch Products appeared on 20.01.2024. A statement of Shri Sandeep P. Madani, proprietor of M/s Mamta Starch Products has been recorded on 20.01.2024 wherein he has stated that

- *he is the proprietor of M/s Mamta Starch Products since 2001 and they are engaged in trading of Tapioca Starch. He was looking after marketing and sales of the firm from Ahmedabad, Gujarat whereas purchase is being looked after from their Salem Office headed by Shri Motilal Ji Chaudhary, his brother-in-law;*
- *that they have imported total 5 consignments of tapioca starch in powdered form from Cambodia till date as under:*

Sr. No.	BE No.	Date	Qty (MT)	Value of the goods (Rs.)	Supplier
1	6715684	04.07.2023	190	8284237.5	M/s Free Xport Crop Co. Ltd. No. 685, St.99, Sangkat Russey Keo, Khan Russey Keo, Phnom Penh City, Cambodia
2	7314347	11.08.2023	76	3335640	M/s M.H.K.Y Co. Ltd. Toul Sambo Village, U Dong District, Kampong Speu Province, Kingdom of Cambodia
3	7610906	31.08.2023	76.304	3475138	M/s Mongkul Land Realty Co. Ltd., No. 188, St. 285, Phum 14, Boeung Kak II khan Touk, Phnom Penh-12152, Cambodia
4	8015473	26.09.2023	74.296	3389736	M/s M.H.K.Y Co. Ltd. Toul Sambo Village, U Dong District, Kampong Speu Province, Kingdom of Cambodia
5	8308168	14.10.2023	114.456	5228239	M/s Mongkul Land Realty Co. Ltd., No. 188, St. 285, Phum 14, Boeung Kak II khan Touk, Phnom Penh-12152, Cambodia
		Total	531.056	2,37,12,991	

- *On being shown the verification report of COO Certificate No. KHIN2306012801, in respect to BE No. 7610906 dated 31.08.2023 received vide letter F. No. DIC/FTA/51/2023-FTA Cell II-O/o Pr. Commr.-DIC-Delhi dated 28.11.2023 issued by the OSD (Cell-2), FTA Cell, CBIC, New Delhi along with letter Ref. No. 3790/MOC D/EI dated 14.11.2023 issued by the Ministry of Commerce, Kingdom of Cambodia, **he categorically admitted that as per verification report received from Issuing Authority in Cambodia, the CO bearing number KHIN2306012801 is counterfeit.***
- *On being asked about Certificate of Origin bearing Ref. No. KHIN2306012805 dated 19.09.2023 submitted for duty exemption claim in case of another BE No. 8308168 dated 14.10.2023, wherein the supplier is*

*M/s MONGKUL LAND REALTY CO., LTD, who is not a registered exporter under any preferential scheme (GSPA4FN/FTA), he has categorically admitted that on the basis of verification report received from the concerned authority as discussed above, Certificate of Origin bearing Ref. No. KHIN2306012805 dated 19.09.2023 submitted for duty exemption claim in case of BE No. 8308168 dated 14.10.2023 is also counterfeit and **he is ready to pay the applicable Customs duty along with applicable fine/penalty, if any in case of these two consignments covered under BE No. 7610906 dated 31.08.2023 and BE No. 8308168 dated 14.10.2023.***

- *On being asked to explain why have they claimed duty exemption benefit on the basis of forged/counterfeit COO Certificate, he stated that they submitted the documents to the Customs Department as such they received from the exporter. As per their Sales Contract, the exporter was supposed to provide e Certificate of Origin. The above said COO Certificate was also provided by the Exporter M/s MONGKUL LAND REALTY CO., LTD, which they used for claiming the duty exemption and uploaded in E-Sanchit and also produced before the Customs Authority for defacing. They came to know about the COO Certificate being counterfeited only after verification from the concerned authority.*
- *On being asked, he has stated that they have imported only 5 consignments of Tapioca Starch from Cambodia and in case of other three import consignments (one live and two previous consignments), the suppliers are different and as per their knowledge, these COO certificates are genuine. He assured that they will comply in accordance with the COO Certificate verification reports received from the concerned authority and will pay the applicable duty, if the COO certificates are found counterfeited in those cases also.*
- *He further stated that he does not want any Show Cause Notice or Personal hearing in this matter and requested to communicate the applicable duty of in case of **BE No. 7610906 dated 31.08.2023 and BE No. 8308168 dated 14.10.2023** so that he can pay the same along with applicable fine/penalty, if any. Further, in case of another live consignment of **BE No. 8015473 dated 26.09.2023**, since the exporter is different, he requested to release the consignment on provisional basis on submission of any bond or bank guarantee as the good is perishable in nature and being damaged day by day.*
- *He further submitted that he will comply in accordance with the verification report of the COO certificate for this consignment as well as previous two consignments covered under **BE No. 6715684 dated 04.07.2023 and 7314347 dated 11.08.2023.***

7. Further, the importer vide letter dated 02.02.2024 has reiterated the fact stated by him in his statement dated 20.01.2024 and submitted that they do not require any Show Cause Notice and personal hearing for the Bills of Entry No. **7610906 dated 31.08.2023 and BE No. 8308168 dated 14.10.2023 and requested for assessment of duty, fine and penalty.**

8. Further, for BE No. 8015473 dated 26.09.2023, the importer has reiterated the fact stated by him in his statement dated 20.01.2024 and

requested for provisional assessment and subsequent release of the goods. Since the goods are perishable in nature and investigation is pending for want of COO verification report from the competent authority, the request of the importer for provisional assessment of the goods covered under BE No. 8015473 dated 26.09.2023 on submission of appropriate Bond and Bank Guarantee has been forwarded to the Import Assessment group vide letter dated 23.02.2024.

9. Meanwhile, vide letter dated 28.02.2024 issued by the Assistant Commissioner (Cell-2) FTA, CBIC, New Delhi, verification reports of the Certificates of Origins i.r.t. BE No. 8015473 dated 26.09.2023 and BE No. 8308168 dated 14.10.2023 issued vide letter dated 15.02.2024 bearing Ref. No. 0519MOCD/EI from the COO issuing authority of Cambodia has also been received. As per the said verification report received, the COO bearing Ref. number KHIN2306012805 & KHIN2306012811 are also found counterfeit based on the following irregularities found:

“After checking the Ministry of Commerce’s CO Automation System, the Ministry of Commerce would like to conclude that the above COs are counterfeit based on the following irregularities:

1. The MONGKUL LAND REALTY CO., LTD. (CO, bearing ref. no. KHIN2306012811 & KHIN2306012801) and H.K.Y. Co. Ltd (CO bearing reference no. KHIN2306012805) had not been registered to export under any preferential scheme (GSPA4FN/FTA); and

2. The above COs reference number had not been recorded under the CO Automation system.”

10. From the above, the outcome of the CO verification conducted under the CAROTAR Rules, in respect to the BEs filed by the importer is as under:

Sr. No.	BE No. & date	COO Ref. No.	Supplier/exporter name	Outcome of the COO verification
1	BE No. 7610906 dated 31.08.2023	KHIN2306012801	M/s Mongkul Land Realty Co. Ltd., Cambodia	Found counterfeit
2	BE No. 8015473 dated 26.09.2023	In first instance COO ref. no. KHIN2306012801 was submitted but later, COO ref. no. KHIN2306012801 read as KHIN2306012811	M/s M.H.K.Y Co. Ltd. Kingdom of Cambodia	Found counterfeit
3	BE No. 8308168 dated	KHIN2306012805	M/s Mongkul Land Realty Co. Ltd., Cambodia	Found counterfeit

	14.10.2023			
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11. LEGAL PROVISIONAS:

11.1 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 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

Rule 6 (7): The proper officer may deny claim of preferential rate of duty without further verification where:

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

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

(c) The information and documents furnished by the Verification Authority and available on record provide sufficient evidence to prove that goods do not meet the origin criteria prescribed in the respective Rules of Origin.

Rule 7. Identical goods:

(i) Where it is determined that goods originating from an exporter or producer do not meet the origin criteria prescribed in the Rules of Origin, the Principal Commissioner of Customs or the Commissioner of Customs may, without further verification, reject other claims of preferential rate of duty, filed prior to or after such determination, for identical goods imported from the same exporter or producer.

(2) Where a claim on identical goods is rejected under sub-rule (1), the Principal Commissioner of Customs or the Commissioner of Customs shall,

(a) Inform the importer the reasons of rejection in writing including the detail of the cases wherein it was established that the identical goods from the same exporter or producer did not satisfy the origin criteria; and

(b) Restore preferential tariff treatment on identical goods with prospective effect, after it is demonstrated on the basis of information and documents received, that the manufacturing or other origin related conditions have been modified by the exporter or producer so as to fulfill the origin requirement of the Rules of Origin under the trade agreement.

Rule 8: Miscellaneous -

(1) ..

(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.

11.2. Further, as per para 7.2 of the **Circular No. 38/2020-Customs dated 21.08.2020** which prescribes the guidelines regarding implementation of the Section 28DA of the Customs Act, 1962 and CAROTAR, 2020:

7.2 Where the information requested in terms of rule 6 is received, the proper officer should within the prescribed timelines either restore preferential claim or issue notice for denying the claim in terms of section 28DA, read with section 28 of the Act where required, in order to conclude the verification.

7.3 Where a claim for preferential rate of duty is denied, the COO should be forwarded to the nodal point in the Board for record and onward communication to the exporting country, where required.

11.3. 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:

- (4) 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) Where the preferential rate of duty is suspended under sub-section (4), the proper officer may, on the request of the importer, release the goods subject to furnishing by the importer a security amount equal to the difference between the duty provisionally assessed under section 18 and the preferential duty claimed:*

Provided that the Principal Commissioner of Customs or the Commissioner of Customs may, instead of security, require the importer to deposit the differential duty amount in the ledger maintained under section 51A.

- (11) Where the verification under this section establishes non-compliance of the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical goods from the same producer or exporter, unless sufficient information is furnished to show that identical goods meet the country of origin criteria.***

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

SECTION 114AA. 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.]

12.1 In view of the above discussion, it appears that the importer has submitted counterfeited COOs Certificate to claim the FTA based duty exemption in case of BE No. (i) **7610906 dated 31.08.2023**, (ii) **8015473 dated 26.09.2023** & (iii) **8308168 dated 14.10.2023**. The COO certificate has been proved counterfeited on the basis of verification reports received from the issuing authority which has categorically stated that the *MONGKUL LAND REALTY CO., LTD. (CO, bearing ref. no. KHIN2306012811 & KHIN2306012801)* and *H.K.Y. Co. Ltd (CO bearing reference no. KHIN2306012805)* had not been registered to export under any preferential scheme (GSPA4FN/FTA) of Cambodia and the above COs reference number had not been recorded under the CO Automation system of Cambodia.

12.2 Thus, it appears that the importer had attempted to avail FTA based duty exemption benefit on the basis of counterfeited/forged documents and hence it appears that FTA based duty exemption is liable to be rejected in case of above said three BEs. The total revenue involved in the matter is as under:

Sr · N o.	BE No.	Value of the goods (Rs.)	As per Investigation without FTA benefit					Declared by the importer				Difference			
			BCD @ 50%	SWS	Value for IGST	IGST @ 12%	Total Duty	BC D	SW S	IGST	Total declar ed	BCD	SWS	IGST	Total
							A				B				C=A-B
1	7610906 dated 31.08.20 23	347513 8	17375 69	1737 57	538646 4	64637 6	25577 02	0	0	41701 7	41701 7	17375 69	1737 57	2293 59	21406 85
2	801547 3 dated 26.09.20 23	338973 6	16948 68	1694 87	525409 1	63049 1	24948 46	0	0	40676 8	40676 8	16948 68	1694 87	2237 23	20880 77
3	8308168 dated 14.10.20 23	522823 9	26141 20	2614 12	810377 0	97245 2	38479 84	0	0	62738 9	62738 9	26141 20	2614 12	3450 64	32205 95
	Total	120931 13	60465 57	6046 56	187443 25	22493 19	89005 31	0	0	14511 74	14511 74	60465 57	6046 56	7981 45	74493 58

13.1 From the above, it appears that the importer has claimed inadmissible benefit of FTA based exemption from the Customs Duty by using forged/counterfeited COO Certificates. Thus, the importer has contravened the provisions of Section 17 and Section 46 of the Customs Act, 1962 read with CAROTAR Rules, 2020. The inadmissible claim of FTA benefit is now required to be rejected in terms of section 28DA of the Customs Act, 1962 read with Circular No. 38/2020-Customs dated 21.08.2020 and CAROTAR Rules, 2020. These acts of omission and commission on the part of importer has made goods valuing at **Rs. 1,20,93,113/-** liable for confiscation under Section 111 (m) & (q) of the Act, ibid and has thus rendered themselves liable for penal action under Section 112 (a) (ii) of the Customs Act, 1962. Further, it also appears that the importer is also liable for penal action under Section 114AA for using counterfeited COO Certificates.

13.2 Furthermore, it appears that by claiming inadmissible benefit of FTA based duty exemption, the importer has also short levied the duty amounting to **Rs. 74,49,358/- (BCD+SWS+IGST)** in case of above three BEs, which is now required to be recovered along with interest by way of re-assessment of the BEs.

14. WAIVER OF NOTICE AND PERSONAL HEARING: -

The importer in his statement recorded on 20.01.2024 and vide letter dated 02.02.2024 has submitted that they do not require Show Cause Notice and personal hearing for the above said BEs. The importer has also submitted that the suppliers are not responding to the query of Certificate of Origin sent by them with the documents. Hence, they are placed in heavy financial losses, though there was no fault from their side and that cargo condition is being deteriorated being perishable in nature.

Further, in case of BE No. 8015473 dated 26.09.2023, the request of importer for provisional assessment of the goods on submission of applicable Bond and Bank Guarantee has been forwarded to the Import Assessment group vide letter dated 23.02.2024. However, meanwhile on receipt of COO verification report vide letter dated 28.02.2024, the said BE is also been incorporated in the instant Investigation report.

15. In view of the above, it appears that:-

- (i) The FTA based duty exemption under DFTP-LDC Scheme claimed by M/s Mamta Starch on the basis of Certificate of Origin said to be issued by the Deputy Director General, Ministry of Commerce, Kingdom of Cambodia is liable to be rejected in case of BE No. (i) **7610906 dated 31.08.2023**, (ii) **8015473 dated 26.09.2023** & (iii) **8308168 dated 14.10.2023** in terms of in terms of section 28DA of the Customs Act, 1962 read with Circular No. 38/2020-Customs dated 21.08.2020 and CAROTAR Rules, 2020.
- (ii) The goods having declared value, **Rs. 1,20,93,113/-** of the consignment covered under above said 3 BEs is liable to confiscation under Section 111 (m) & 111(q) of Customs Act, 1962.
- (iii) Differential duty of **Rs. 74,49,358/- (BCD+SWS+IGST)** in case of above said BEs is required be recovered from the importer along with applicable interest.
- (iv) Penalty under Section 112 (a) (ii) of Customs Act, 1962 is imposable upon the importer.
- (v) Penalty under Section 114 AA is impossible upon the importer for using counterfeited COO Certificates.

DISCUSSION AND FINDINGS

16. The importer in his statement recorded on 20.01.2024 and vide letter dated 02.02.2024 has submitted that they do not require Show Cause Notice and personal hearing for the above said Bes. Thus I note that Principles of natural Justice has been complied and I proceed to decide the matter hereafter.

17. I find that following issues are required to be decided-

- i. Whether FTA based duty exemption under DFTP-LDC Scheme claimed by M/s Mamta Starch on the basis of Certificate of Origin said to be issued by the Deputy Director General, Ministry of Commerce,

Kingdom of Cambodia is correct or otherwise in case of BE No. (i) **7610906 dated 31.08.2023**, (ii) **8015473 dated 26.09.2023** & (iii) **8308168 dated 14.10.2023** in terms of in terms of section 28DA of the Customs Act, 1962 read with Circular No. 38/2020-Customs dated 21.08.2020 and CAROTAR Rules, 2020.

ii. Whether goods having declared value, **Rs. 1,20,93,113/-** of the consignment covered under above said 3 BEs is liable to confiscation under Section 111 (m) & 111(q) of Customs Act, 1962 or otherwise.

iii. Whether differential duty of **Rs. 74,49,358/- (BCD+SWS+IGST)** in case of above said BEs is required be recovered from the importer along with applicable interest on re-assessment or otherwise.

iv. Whether Penalty under Section 112 (a) (ii) of Customs Act, 1962 is imposable upon the importer or otherwise.

v. Whether penalty under Section 114 AA of the Customs Act, 1962 is imposable upon the importer for using counterfeited COO Certificates or otherwise.

I proceed to decide the above issues hereunder.

18. M/s Mamta Starch Products have filed Bills of Entry No. (i) 7610906 dated 31.08.2023 (ii) 8015473 dated 26.09.2023 and (iii) 8308168 dated 14.10.2023 for import of Tapioca Starch- Food Grade (CTH-11081400). The importer has claimed benefit of FTA based duty exemption under DFTP-LDC Scheme on the basis of Certificate of Origin said to be issued by the Deputy Director General, Ministry of Commerce, Kingdom of Cambodia vide Notification No. 96 dated 13.08.2008. During the investigation conducted by the SIIB Section, CH Mundra, it is found that importer has claimed FTA based duty exemption in case of BE No. (i) **7610906 dated 31.08.2023**, (ii) **8015473 dated 26.09.2023** & (iii) **8308168 dated 14.10.2023** which were found counterfeit during the course of investigation. The COO certificate has been proved counterfeited on the basis of verification reports received from the issuing authority which has categorically stated that the *MONGKUL LAND REALTY CO., LTD. (CO, bearing ref. no. KHIN2306012811 & KHIN2306012801)* and *H.K.Y. Co. Ltd (CO bearing reference no. KHIN2306012805)* had not been registered to export under any preferential scheme (GSPA4FN/FTA) of Cambodia and the above COOs reference number had not been recorded under the CO Automation system of Cambodia.

19.1 Thus, it appears that the importer had attempted to avail FTA based duty exemption benefit on the basis of counterfeited/forged documents and hence it appears that FTA based duty exemption is liable to be rejected in case of above said three BEs. The total revenue involved in the matter is as under:

Sr No.	BE No.	Value of the goods (Rs.)	As per Investigation without FTA benefit					Declared by the importer				Difference			
			BCD @ 50%	SWS	Value for IGST	IGST @ 12%	Total Duty	BC D	SW S	IGST	Total declar ed	BCD	SWS	IGST	Total
							A				B				C

1	7610906 dated 31.08.20 23	347513 8	17375 69	1737 57	538646 4	64637 6	25577 02	0	0	41701 7	41701 7	17375 69	1737 57	2293 59	21406 85
2	801547 3 dated 26.09.20 23	338973 6	16948 68	1694 87	525409 1	63049 1	24948 46	0	0	40676 8	40676 8	16948 68	1694 87	2237 23	20880 77
3	8308168 dated 14.10.20 23	522823 9	26141 20	2614 12	810377 0	97245 2	38479 84	0	0	62738 9	62738 9	26141 20	2614 12	3450 64	32205 95
	Total	120931 13	60465 57	6046 56	187443 25	22493 19	89005 31	0	0	14511 74	14511 74	60465 57	6046 56	7981 45	74493 58

19.2 From the above, it appears that the importer has claimed inadmissible benefit of FTA based exemption from the Customs Duty by using forged/counterfeited COO Certificates. Thus, the importer has contravened the provisions of Section 17 and Section 46 of the Customs Act, 1962 read with CAROTAR Rules, 2020. The inadmissible claim of FTA benefit is now required to be rejected in terms of section 28DA of the Customs Act, 1962 read with Circular No. 38/2020-Customs dated 21.08.2020 and CAROTAR Rules, 2020. These acts of omission and commission on the part of importer has made goods valued at **Rs. 1,20,93,113/-** liable for confiscation under Section 111 (m) & (q) of the Act, ibid and has thus rendered themselves liable for penal action under Section 112 (a) (ii) of the Customs Act, 1962.

19.3. The importer has produced fake document i.e. COO Certificates before the authorities to avail undue benefit and to escape from payment of duty, therefore, importer is also liable for penal action under Section 114AA of the Customs Act, 1962 for using counterfeited COO Certificates.

19.4 Furthermore, it appears that by claiming inadmissible benefit of FTA based duty exemption, the importer has also short levied the duty amounting to **Rs. 74,49,358/- (BCD+SWS+IGST)** in case of above three BEs, which is now required to be recovered along with interest by way of re-assessment of the BEs.

19.5 Whereas, Section 125(1) of the Customs Act, 1962 provides that:

"Whenever confiscation of any goods is authorised by the Customs Act, 1962, the officer adjudging may, in the case of any goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such redemption fine as the said officer thinks fit".

19.6 I find that the said provision makes it mandatory to grant an option to the owner of confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. Further, in case of prohibited goods, it provides discretion to the officer adjudicating the case which has to be exercised in view of facts and circumstances of the case. Considering these facts, I find it appropriate to grant an option to pay fine in lieu of confiscation on the subject to clearance of goods for Home Consumption with condition to assessment of goods.

20. In view of the aforesaid discussions and findings, I pass the following order:

ORDER

- (i) I order to deny the FTA based duty exemption under DFTP-LDC Scheme claimed by the importer M/s. Mamta Starch Products on the basis of Certificate of Origin said to be issued by the Deputy Director General, Ministry of Commerce, Kingdom of in case of BE No. (i) **7610906 dated 31.08.2023**, (ii) **8015473 dated 26.09.2023** & (iii) **8308168 dated 14.10.2023** in terms of section 28DA of the Customs Act, 1962 read with Circular No. 38/2020-Customs dated 21.08.2020 and CAROTAR Rules, 2020. I order for recovery of differential duty of Rs. 74,49,358/- (BCD+SWS+IGST) in case of above said BEs to be recovered from the importer along with applicable interest by way of re-assessment.
- (ii) I order for confiscation of goods having declared value, Rs. 1,20,93,113/- of the consignment covered under above said 3 BEs under Section 111 (m) & 111 (q) of Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of Rs.35,00,000/- (Rupees Thirty Five Lakhs Only) under Section 125 of the Customs Act, 1962.
- (iii) I impose a Penalty of Rs. 7,00,000/- (Rupees Seven Lakhs) under Section 112 (a) (ii) of Customs Act, 1962 upon the importer.
- (iv) I also impose Penalty of Rs. 60,00,000/- (Rupees Sixty Lakhs Only) under Section 114AA of Customs Act, 1962 upon the importer for using counterfeited COO Certificates.
- (v) I allow the importer M/s. Mamta Starch Products claim the subject goods imported vide i) BE no. 7610906 dated 31.08.2023, (ii) BE no. 8015473 dated 26.09.2023 & (iii) BE no. 8308168 dated 14.10.2023 valued Rs. 1,20,93,113/-, with condition to pay all applicable duty, fine & penalty imposed herein. Further, as per section 125 of the Customs Act, 1962, if the importer does not pay the fine within a period of one hundred and twenty days from the date of the order, option to redeem the said goods shall become void, unless an appeal against the said order is pending and the said impugned goods would be liable for disposal as per instructions and guidelines in CBIC Disposal Manual, 2019. The cost of destruction shall be borne by the importer.

21. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person in terms of any provision of the Customs Act, 1962 and/or any other law for the time being in force.

Signed by

Arun Kumar

(Arun Kumar)

Date: 22-04-2024 18:44:08

Commissioner

Additional

Import Section, CH

Mundra

To,

M/s Mamta Starch Products,
163/37C, Narasiman Chetty Road,
Shevapet, Salem-636002,
Tamilnadu

Copy to:

1. The Deputy Commissioner of Customs (RRA), Custom House, Mundra.
2. The Deputy Commissioner of Customs (TRC), Custom House, Mundra.
3. The Deputy Commissioner of Customs (EDI), Custom House, Mundra.
4. The Concerned CFS, MP & SEZ, Mundra
5. Guard File.