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

% **Order reserved on: September 06, 2024**
Order pronounced on: September 13, 2024

\+ W.P.(C) 10943/2024 & CM APPL. 45063/2024 (for stay)

M/S AUSIL CORPORATION PVT. LTD .....Petitioner

Through: Mr. Kishore Kunal, Ms. Runjhun Pare, Mr. Mahesh Singh, Advs.

versus

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

Through: Mr. Asheesh Jain, CGSC with Mr. Amit Acharya, G.P. for UOI
Mr. Aditya Singla, SSC with Mr. Ritwik, Mr. Sahil P., Mr. Vaibhav, Ms. Medha Navami, Advs. for CBIC
Mr. Asheesh Jain, CGSC with Mr. Gaurav Kumar, Ms. Pooja Bhardwaj, Advs. with Mr. Amit Acharya, G.P.

\+ W.P.(C) 10944/2024 & CM APPL. 45068/2024 (for stay)

M/S M.D. OVERSEAS PRIVATE LIMITED .....Petitioner

Through: Mr. Tarun Gulati, Sr. Adv. with Mr. Kishore Kunal, Ms. Runjhun Pare, Mr. Mahesh Singh, Advs.

versus

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

Through: Mr. Nishant Gautam, CGSC with Ms. Sanjana Mehrotra, Mr. Vinay Kaushik, Advs.
Mr. Aditya Singla, SSC with Mr. Ritwik, Mr. Sahil P., Mr. Vaibhav, Ms. Medha Navami, Advs. for CBIC

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

YASHWANT VARMA, J.

1. The two writ petitioners are aggrieved by the detention of a consignment of goods comprising of platinum alloy sheets and the release thereof being made subject to the submission of a PD Bond equivalent to 100% of the assessable value along with a Bank Guarantee of differential duty @ 10.712% thereof pending verification of the **Country-Of-Origin**[1] certificate accompanying those goods.

2. The petitioners contend that the action of the respondents is wholly arbitrary since no reasons have been assigned in the impugned orders which may be viewed as being even suggestive of the formation of a reasonable belief or opinion that the COO certificate or the imported articles were non-compliant with the statutory prescriptions which apply. The petitioners refer to the detailed statutory mechanism prescribed by Section 28DA of the **Customs Act, 1962**[2] read along with the **Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between India and the United Arab Emirates) Rules, 2022**[3] together with the **Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020**[4] and which compendiously create a minimum threshold which may warrant the detention of goods covered by a Trade Agreement pending verification or enquiry. It is their

[1] COO
[2] Act
[3] CEPA Rules
[4] CAROTAR

contention that the impugned action when tested on those parameters, is rendered wholly illegal and unjust thus warranting the intervention of this Court. For the purposes of examining the challenge which stands raised, we deem it apposite to take note of the following essential facts.

3. The petitioner in W.P.(C) 10943/2024 had imported platinum alloy sheets classifiable under **Customs Tariff Heading**[5] 7110 1900, under 4 Bill of Entries generated between 13 to 16 July 2024. The aforesaid import was sought to be effected on payment of a preferential rate of duty of 5%. A similar importation was made by the petitioner in W.P.(C) 10944/2024 under 10 Bill of Entries submitted between 14 to 19 July 2024 for identical consignments of platinum alloy sheets. The respondents are stated to have raised various queries between 15 to 19 July 2024 and which were duly responded to by the writ petitioners.

4. However, both the writ petitioners were ultimately served the impugned orders dated 31 July 2024 with respect to each Bill of Entry and which reads as under: -

> "THE SIIB HAS CONCLUDED THEIR INVESTIGATION AND HAS ADVISED TO ASSESS THE BILL OF ENTRY UNDER PD BOND OF 100% OF THE ASSESSABLE VALUE ALONG WITH BANK GURANTEE OF THE DIFFERENTIAL DUTY (WHICH COMES TO 10.712% OF THE ASSESSABLE VALUE) PENDING VERIFICATION OF THE COO CERTIFICATE (CEPA FTA) REGARDING ORIGIN AND VALUE ADDITION, APART FROM TEST BOND FOR VERIFICATION OF PERCENTAGE OF PLATINUM IN THE IMPORTED PLATINIUM ALLOY-IN TERMS OF NOTE 5(A) OF CHAPTER-71. YOU ARE REQUESTED TO GIVE CONSENT. Query Raised By : 10XXXXXX Group: 3A"

5. As would be apparent from a reading of the aforesaid orders, the respondents hold that consequent to the conclusion of the investigation

[5] CTH

by the **Special Investigation and Intelligence Branch**[6], the competent authority had been advised to assess the Bill of Entries subject to the submission of a PD Bond of 100% of the assessable value along with a Bank Guarantee of differential duty pending verification of the COO certificate regarding origin and value addition as also verification of the percentage of platinum in the imported platinum alloy sheets. For the purposes of examining the challenge which stands raised, we deem it apposite to take note of the following additional background facts.

6. By virtue of Finance Act, 2020, Section 28DA came to be inserted in the Act providing for a detailed procedure in respect of imports made under Trade Agreements and the claims of importers for a preferential rate of duty being applied. It is pursuant to the aforesaid provision coming to be inserted in the statute that CAROTAR came to be framed.

7. Section 28DA reads as follows: -

> "**SECTION 28DA. Procedure regarding claim of preferential rate of duty.** — (1) An importer making claim for preferential rate of duty, in terms of any trade agreement, shall, -
>
> (i) make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;
>
> (ii) possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;
>
> (iii) furnish such information in such manner as may be provided by rules;
>
> (iv) exercise reasonable care as to the accuracy and truthfulness of the information furnished.
>
> (2) <u>The fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care</u>.

[6] SIIB

(3) Where the proper officer has reasons to believe that country of origin criteria has not been met, he may require the importer to furnish further information, consistent with the trade agreement, in such manner as may be provided by rules.

(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.

(6) Upon temporary suspension of preferential tariff treatment, the proper officer shall inform the Issuing Authority of reasons for suspension of preferential tariff treatment, and seek specific information as may be necessary to determine the origin of goods within such time and in such manner as may be provided by rules.

(7) Where, subsequently, the Issuing Authority or exporter or producer, as the case may be, furnishes the specific information within the specified time, the proper officer may, on being satisfied with the information furnished, restore the preferential tariff treatment.

(8) Where the Issuing Authority or exporter or producer, as the case may be, does not furnish information within the specified time or the information furnished by him is not found satisfactory, the proper officer shall disallow the preferential tariff treatment for reasons to be recorded in writing :

Provided that in case of receipt of incomplete or non-specific

information, the proper officer may send another request to the Issuing Authority stating specifically the shortcoming in the information furnished by such authority, in such circumstances and in such manner as may be provided by rules.

(9) Unless otherwise specified in the trade agreement, any request for verification shall be sent within a period of five years from the date of claim of preferential rate of duty by an importer.

(10) Notwithstanding anything contained in this section, the preferential tariff treatment may be refused without verification in the following circumstances, namely :-

(i) the tariff item is not eligible for preferential tariff treatment;

(ii) complete description of goods is not contained in the certificate of origin;

(iii) any alteration in the certificate of origin is not authenticated by the Issuing Authority;

(iv) the certificate of origin is produced after the period of its expiry, and in all such cases, the certificate of origin shall be marked as "INAPPLICABLE".

(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.

Explanation. — For the purposes of this Chapter, -

(a) "certificate of origin" means a certificate issued in accordance with a trade agreement certifying that the goods fulfil the country of origin criteria and other requirements specified in the said agreement;

(b) "identical goods" means goods that are same in all respects with reference to the country of origin criteria under the trade agreement;

(c) "Issuing Authority" means any authority designated for the purposes of issuing certificate of origin under a trade agreement;

(d) "trade agreement" means an agreement for trade in goods between the Government of India and the Government of a foreign country or territory or economic union.]"

8. As per Section 28DA of the Act, an importer claiming a preferential rate of duty in terms of a Trade Agreement to which India is a party, is obliged to make a declaration that the goods qualify as

originating goods under such an agreement as also to show that the import complies with the COO criteria as well as the regional value content and product specific criteria as may be specified. In terms of sub-section (3) thereof, where the proper officer has reasons to believe that the COO criteria has not been met, it may require the importer to furnish further information consistent with the Trade Agreement. In terms of Section 28DA(4), where an importer fails to provide the requisite information, the proper officer stands enabled to initiate a further verification consistent with the Trade Agreement and pending such verification, to temporarily suspend the preferential tariff treatment for such goods. As per sub-section (5) thereof, in case of temporary suspension, the importer may seek release of the imported goods subject to submission of security equal to the difference between the duty provisionally assessed under section 18 and the preferential duty claimed. In terms of Section 28DA, the suspension may, as a result of due enquiry or a failure to furnish information, culminate in the preferential rate of duty being disallowed.

9. The process of verification as contemplated under Section 28DA thereafter stands amplified and spelt out in greater detail under the CAROTAR. Rule 3 of the CAROTAR while dealing with preferential tariff claims makes the following provisions:-

> "**RULE 3. Preferential tariff claim.** - (1) To claim preferential rate of duty under a trade agreement, the importer or his agent shall, at the time of filing bill of entry, -
>
> (a) make a declaration in the bill of entry that the goods qualify as originating goods for preferential rate of duty under that agreement;
>
> (b) indicate in the bill of entry the respective tariff notification against each item on which preferential rate of duty is claimed;

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

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

(i) certificate of origin reference number;

(ii) date of issuance of certificate of origin;

(iii) originating criteria;

(iv) indicate if accumulation/cumulation is applied;

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

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

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

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

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

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

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

Explanation. — Clause (d) of sub-rule (2) includes the cases where goods are not covered in the respective tariff notification or the product specific rule mentioned in the certificate of origin is not applicable to the goods."

10. As is evident from the aforesaid, in order to claim preferential rate of duty under a Trade Agreement, at the time of submission of a Bill of Entry, the importer is not only required to furnish a declaration that the goods qualify as originating goods under that agreement, it must also indicate in the Bill of Entry the respective tariff notification under which a preferential rate of duty is claimed, produce a COO certificate and furnish further details with respect to the aforesaid.

11. In terms of Rule 3(2), the claim of preferential rate of duty may

be denied without verification if the proper officer finds that the COO certificate is either incomplete or not in accordance with the format as prescribed, has been altered, those alterations having not been authenticated by the Issuing Authority as well as in the contingency where the validity period of the COO certificate itself has expired or such certificate having been issued for an item which is not eligible for preferential tariff treatment.

12. Rule 5 of the CAROTAR empowers the proper officer to call for further information from an importer if it has reason to believe that the origin criteria prescribed has not been met. The said Rule reads as follows:-

> "**RULE 5. Requisition of information from the importer.** - (1) Where, during the course of customs clearance or thereafter, the proper officer has reason to believe that origin criteria prescribed in the respective Rules of Origin have not been met, he may seek information and supporting documents, as may be deemed necessary, from the importer in terms of rule 4 to ascertain correctness of the claim.
>
> (2) Where the importer is asked to furnish information or documents, he shall provide the same to the proper officer within ten working days from the date of such information or documents being sought.
>
> (3) Where, on the basis of information and documents received, the proper officer is satisfied that the origin criteria prescribed in the respective Rules of Origin have been met, he shall accept the claim and inform the importer in writing within fifteen working days from the date of receipt of said information and documents.
>
> (4) Where the importer fails to provide requisite information and documents by the prescribed due date or where the information and documents received from the importer are found to be insufficient to conclude that the origin criteria prescribed in the respective Rules of Origin have been met, the proper officer shall forward a verification proposal in terms of rule 6 to the nodal officer nominated for this purpose.
>
> (5) Notwithstanding anything contained in this rule, the Principal Commissioner of Customs or the Commissioner of Customs may,

for the reasons to be recorded in writing, disallow the claim of preferential rate of duty without further verification, where :

(a) the importer relinquishes the claim; or

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

13. In terms of Rule 6, the proper officer is enabled to undertake a verification of the COO certificate from the concerned verification authority where doubt exists regarding the genuineness or authenticity of the certificate or where it has reason to believe that the COO criteria has not been met. The proper officer is additionally empowered to undertake a verification on a random basis in furtherance of an obligation to exercise due diligence and to verify whether the goods meet the origin criteria. Rule 6 reads as follows:-

"**RULE 6. Verification request.** - (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 :

Provided that a verification request in terms of clause (b) may be made only where the importer fails to provide the requisite information sought under rule 5 by the prescribed due date or the information provided by importer is found to be insufficient. Such a request shall seek specific information from the Verification Authority as may be necessary to determine the origin of goods.

(2) Where information received in terms of sub-rule (1) is

incomplete or non-specific, request for additional information or verification visit may be made to the Verification Authority, in such manner as provided in the Rules of Origin of the specific trade agreement, under which the importer has sought preferential tariff treatment.

(3) When a verification request is made in terms of this rule, the following timeline for furnishing the response shall be brought to the notice of the Verification Authority while sending the request :

(a) timeline as prescribed in the respective trade agreement; or

(b) in absence of such timeline in the agreement, sixty days from the request having been communicated.

(4) Where verification in terms of clause (4) or (b) of sub-rule (1) is initiated during the course of customs clearance of imported goods

(a) the preferential tariff treatment of such goods may be suspended till conclusion of the verification;

(b) the Verification Authority shall be informed of reasons for suspension of preferential tariff treatment while making request of verification; and

(c) the proper officer may, on the request of the importer, provisionally assess and clear the goods, subject to importer furnishing a security amount equal to the difference between the duty provisionally assessed under section 18 of the Act and the preferential duty claimed.

(5) All requests for verification under this rule shall be made through a nodal office as designated by the Board.

(6) Where the information requested in this rule is received within the prescribed timeline, the proper officer shall conclude the verification within forty five days of receipt of the information, or within such extended period as the Principal Commissioner of Customs or the Commissioner of Customs may allow:

Provided that where a timeline to finalize verification is prescribed in the respective Rules of Origin, the proper officer; shall finalize the verification within such timeline.

(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."

14. On 18 February 2022, India and the **United Arab Emirates**[7] entered into a **Comprehensive Economic and Partnership Agreement**[8]. The aforesaid agreement was ratified by the issuance of a notification dated 30 April 2022 providing for reduced and preferential rates of customs duty and cess on various goods subject to the fulfilment of the conditions specified in the CEPA Rules. The CEPA Rules themselves were notified on 30 April 2022.

15. In order to effectuate imports and to enable importers to avail of benefits flowing from the UAECEPA entered into between the two nations, it is incumbent for the imported goods to be accompanied by a COO certificate. This becomes evident from a reading of Rules 14 and 15 of the CEPA Rules which make the following provisions:-

> "**14. Proof of Origin. -** (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 digitised 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.
>
> (2) A Certificate of Origin shall be valid for twelve months from the date of issue in the exporting Party.
>
> (3) The Certificate of Origin shall be submitted to the Customs Administration of the importing Party in accordance with the procedures applicable in that Party

[7] UAE
[8] UAECEPA

15. Certificate of Origin and Certification Procedures. - (1) The Certificate of Origin shall be in the format as specified in Annexure-E and shall include the HS Code, description and quantity of the products, name of consignee, name of exporter or producer or manufacturer, country of origin, and origin criteria such as value content or change in tariff classification.

(2) The Certificate of Origin shall be in the English language.

(3) The Certificate of Origin shall bear a unique, sequential serial number separate for each office of issuance and affixed by the issuing authority in the exporting Party.

(4) The Certificate of Origin shall be issued by the competent authority of each Party and it shall bear the authorised signature and official seal of the competent authority.

(5) The Certificate of Origin shall be valid for the purpose of only one import and shall include one or more products.

(6) The number and date of the commercial invoice or any other relevant documents shall be indicated in the box reserved for this purpose in the Certificate of Origin.

(7) The Certificate of Origin shall be submitted within its validity period.

(8) In exceptional circumstances, the Certificate of Origin may be accepted by the Customs Administration in importing Party for the purpose of granting preferential tariff treatment even after the expiry of its validity, provided that the failure to observe the time limit results from force majeure or other valid reasons beyond the control of the exporter and the products have been imported before the expiry of the validity period of the said Certificate of Origin.

(9) The Certificate of Origin shall be forwarded by the exporter to the importer and importer shall produce original copy of the Certificate of Origin to the customs authorities.

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

(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, 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.

(12) In the event of theft, loss or destruction of a Certificate of Origin, the manufacturer, producer, exporter or their authorized representative may apply in writing to the issuing authority for a certified true copy of the original made on the basis of the export documents in their possession bearing the endorsement of the words "CERTIFIED TRUE COPY" (in lieu of the original certificate) and the date of issuance of the original Certificate of Origin. The certified true copy of a Certificate of Origin shall be issued within the validity period of the original Certificate of Origin. The exporter shall immediately notify the loss and undertake not to use the original Certificate of Origin for exports under these rules to the competent authority.

(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"

16. The CEPA Rules also lay in place a detailed procedure for the verification of the COO certificate as would be evident from a perusal of Rules 22 and 23 which read as under: -

"**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.

(3) Insofar as possible, the competent authority of the importing Party conducting a verification shall seek necessary information or documents relating to the origin of imported product from the importer, in accordance with its laws and regulations, before making any request to the competent authority of the exporting Party for verification.

(4) In cases where the competent authority of the importing Party deems necessary to seek verification from the competent authority of the exporting Party, it shall specify whether the verification is on a random basis or the veracity of the information is in doubt In case the determination of origin is in doubt, the competent authority shall provide detailed grounds for the doubt concerning the veracity of the Certificate of Origin.

(5) The proceedings of verification of origin as provided in these rules shall also apply to the products already cleared for home consumption under preferential tariffs in accordance with the provision of these rules.

23. Procedure for Verification. - (1) Any request made pursuant to rule 22 shall be in accordance with the procedure set forth in this rule.

(2) The Customs Administration of the importing Party shall make a request for verification by providing a copy of the Certificate of Origin and any supporting document such as an invoice, packing list, bill of lading or airway bill, etc.

(3) The Customs Administration of the importing Party shall specify whether it requires a verification of the genuineness of the Certificate of Origin to rule out any forgery, seeks the minimum required information with supporting documents or seeks to verify the determination of origin.

(4) In cases where the Customs Administration of the importing Party seeks to verify the determination of origin, the competent authority of the importing Party shall send a questionnaire to the competent authorities of the exporting Party, which shall be passed on to the exporter or producer or manufacturer, for such inquiry or documents, as necessary.

(5) The competent authority of the exporting Party shall provide the information and documentation requested, within,-

(a) fifteen days of the date of receipt of the request, if the request pertains to the authenticity of issue of the Certificate of Origin, including the seal and signatures of the issuing authority;

(b) thirty days of the date of receipt of the request, if the request seeks a copy of the relevant document with the minimum required information; or

(c) ninety days from the date of receipt of such request, if the request is on the grounds of suspicion of the accuracy of the determination of origin of the product. Such period may be extended through mutual consultation between the Customs Administration of the importing Party and issuing authority of the exporting Party for a period not more than sixty days.

(6) If, upon receiving the results of the verification questionnaire pursuant to sub-rules (4) and (5), the competent authority of the importing Party has reasons to believe and therefore deems it necessary to request further investigative actions or information, the competent authority of the importing Party shall communicate the fact to the competent authority of the exporting Party. The term for the execution of such new actions, or for the presentation of additional information, shall be not more than ninety days from the date of the receipt of the request for the additional information.

(7) If, upon receiving the results of the verification pursuant to sub-rules (4) and (5), the competent authority of the importing Party

deems it necessary, it may deliver a written request to the competent authority of the exporting Party to facilitate a visit to the premises of the exporter or producer or manufacturer, with a view to examining the records, production processes, as well as the equipment and tools utilized in the manufacture of the product under verification.

(8) The request for a verification visit shall be made no later than thirty days of the receipt of the verification report referred to in sub-rules (4) and (5). The requested Party shall promptly inform the dates of the visit, but no later than forty-five days of the receipt of request and give a notice of at least twenty-one days to the requesting Party and exporter or producer or manufacturer so as to enable arrangements for the visit.

(9) The competent authorities of the exporting Party shall accompany the authorities of the importing Party in their visit, which may include the participation of specialists who shall act as observers. Each Party can designate specialists, who shall be neutral and have no interest whatsoever in the verification. Each Party may deny the participation of such specialists whenever the latter represent the interests of the companies involved in the verification.

(10) Once the visit is concluded, the participants shall subscribe to a "Record of Visit". The said record shall contain the following information: date and place of the carrying out of the visit; identification of the Certificate of Origin which led to the verification; identification of the products under verification; identification of the participants, including indications of the organs and institutions to which they belong; and a record of proceedings."

17. In terms of Rule 24, in case the respondents were to harbour a reasonable suspicion regarding the origin of the products, they are statutorily entitled to request the submission of a guarantee as a precondition for completion of importation operations. Rule 24 reads as under:-

"**24. Release of Products.** - Upon reasonable suspicion regarding the origin of the products, the importing Party may request a guarantee in any of its modalities or may take any action necessary in order to preserve fiscal interests as a pre-condition for the completion of the importation operations, subject to and in accordance with its laws and regulations."

18. Rule 26 enables the Customs Administration of the importing party to deny a claim for preferential tariff treatment or for recovering

unpaid duties in the following terms: -

> "**26. Denial of Preferential Treatment.** - (1) The Customs Administration of the importing Party may deny the claim for preferential tariff treatment or recover unpaid duties in accordance with its laws and regulations, when,-
>
> (a) the Customs Administration of the importing Party determines that the product does not meet the requirements under these rules;
>
> (b) it is established that the exporter or producer or manufacturer of the product is failing to maintain records or documentation necessary for determining the origin of the product or is denying access to the records, documentation or visit for verification;
>
> (c) the exporter or producer or manufacturer of the product fails to provide sufficient information and documents, including breakup of costs relating to material, labour, other overheads, and any other relevant elements such as profits and related components that the importing Party requested to determine that the product is an originating product;
>
> (d) the exporter or producer or manufacturer denies access to the relevant records or production facilities during a verification visit;
>
> (e) the competent authority of the exporting Party fails to provide sufficient information, including breakup of costs relating to material, labour, other overheads and any other relevant elements such as profits and related components in pursuance to a written request for verification or fails or refuses to respond to a request for verification within stipulated timelines under rule 23;
>
> (f) the information provided by the competent authority of the exporting Party or exporter or producer or manufacturer is not sufficient to prove that the product qualifies as an originating product as defined under these rules.
>
> (2) In cases where the Certificate of Origin is rejected by the Customs Administration of the importing Party, after following the due process provided under its domestic laws, a copy of the decision, containing the grounds of rejection, shall be provided to the importer and the competent authority of the exporting Party. The Customs Administration of the importing Party shall, along with the communication of the decision, return the original Certificate of Origin to the competent authority of the exporting Party.
>
> (3) Upon being communicated the grounds for denial of preferential tariff treatment, the exporter or producer or manufacturer in the

> exporting Party may, within the period provided for in the custom laws of the importing Party, file an appeal against such decision with the appropriate appellate authority under the customs laws and regulations of the importing Party."

19. Before us, there is no dispute that platinum alloy sheets are goods which are otherwise entitled to preferential tariff treatment under the CEPA Rules. This is evident from 'Platinum in other forms' being duly noticed at Serial No. 99 of Table 1 in Annexure B dealing with product specific rules and which form part of those Rules.

20. The classification of platinum alloy sheets is also subject to Chapter 71 of the **Customs Tariff Act, 1975**[9]. Of significance is Note 5 to Chapter 71 which defines a 'platinum alloy' as under:

> "For the purpose of this Chapter, any alloy (including a sintered mixture and an inter-metallic compound) containing precious metal is to be treated as an alloy of precious metal if any one precious metal is to be treated as an alloy of precious metal if any one precious metal constituents as much as 2% by weight, of the alloy. Alloys of precious metal are to be classified according to the following rules:
>
> (a) An alloy containing 2% or more, by weight, of platinum is to be treated as an alloy of platinum;
>
> (b) An alloy containing 2% or more, by weight, of gold but no platinum, or less than 2% by weight, of platinum, is to be treated as an alloy of gold;
>
> (c) Other alloys containing 2% or more, by weight, of silver are to be treated as alloys of silver."

21. Having heard Mr. Gulati, learned senior counsel who appears for the writ petitioners as well as Mr. Singla, learned counsel representing the Customs authorities, we find that the detention of the imported articles, for reasons which we assign hereinafter, is clearly rendered unsustainable on the following counts.

[9] 1975 Act

22. It becomes pertinent to note at the very outset that the detention of the goods is not prefaced by the recordal of any reasons by the proper officer of circumstances on the basis of which it came to the form the opinion or had reason to believe that the goods sought to be imported did not conform to the COO criteria. It is also not alleged by the proper officer that the genuineness of the COO certificate itself was doubted.

23. We note that under the CAROTAR, the proper officer would be justified in holding back a clearance of goods provided it has reason to believe that the origin criteria has not been met. If that be the ground for detention, Rule 5 enables that officer to call for further information from the importer. In the facts of our case, it is not disputed that the information which was sought from the writ petitioners was duly provided.

24. The detention would also not sustain when tested on the anvil of the CEPA Rules. Before us, it was not disputed that a COO certificate can be duly verified online and consequently, there was no justification for the respondents having failed to undertake such an exercise. We also take note of the petitioners themselves having placed verified copies of the COO certificates on our record.

25. Notwithstanding the above, we find from a reading of the CEPA Rules that a detailed procedure for verification of the COO certificate stands laid in place. As was noticed by us hereinabove, Rule 3(2) of the CAROTAR spells out the various contingencies in which the proper officer would be justified in stalling the import pending verification. The validity of a COO certificate may be doubted if it is either

incomplete, not in accordance with the format prescribed, has been altered, the certificate not authenticated or where its validity itself may have expired. The impugned order fails to found the decision to detain the goods on any of those contingencies.

26. Similar would be the position which would flow when the impugned action is tested on the anvil of the CEPA Rules. Rule 21 obliges the importer desirous of claiming preferential tariff treatment to present the COO certificate before the proper officer. Along with the COO certificate, the importer is also obliged to submit a declaration of the product qualifying as an originating product. It is only where the proper officer doubts the authenticity or correctness of the information given in the COO certificate that an exercise of verification is liable to be initiated.

27. In terms of Rule 22(4) of the CEPA Rules, in case the competent authority of the importing party deems it necessary to undertake a process of verification, it is entitled to approach the competent authority of the exporting party specifying whether the verification exercise has been initiated on a random basis or where it doubts the veracity of the information furnished or even in situations where the determination of origin is in doubt.

28. In addition to the aforenoted contingencies, the Customs Administration of the importing Party while initiating a procedure for verification must also specify whether it is required to undertake a verification to rule out forgery, seek minimum required information or verify the determination of origin. None of these circumstances is even remotely alluded to by the respondents while passing the impugned

order. They are in fact totally silent with respect to the requisite formation of opinion and which is a *sine qua non* for the detention of goods or imports under the CAROTAR and CEPA Rules.

29. On a conjoint consideration of Section 28DA of the Act read along with the CEPA Rules and CAROTAR, the following scheme of verification emerges. In terms of Section 28DA(3), where a proper officer has reasons to believe that the COO criteria has not been met, it may require the importer to furnish further information "consistent with the trade agreement" and in such manner "as may be provided by Rules". Sub-section (10) enables the proper officer to refuse an extension of preferential tariff treatment in the circumstances enumerated therein. This includes cases where it is found that a tariff item is ineligible for preferential tariff treatment, the COO certificate fails to embody a complete description of goods, an alteration in the COO certificate remains unauthenticated by the Issuing Authority or the COO certificate bearing a date which has already expired.

30. This takes us to the CEPA Rules and which by virtue of Rule 22 prescribes the procedure for determination of authenticity and correctness of the COO Certificate. The procedure for verification is thereafter detailed in Rule 23 of the CEPA Rules. In terms of Rule 23(2), the Customs Administration of the importing Party is enabled to make a request for verification. While initiating that exercise, the Customs Administration of the importing Party is obliged to specify the reasons for initiation of that verification process and whether it is directed to rule out forgery, elicit minimum required information or determine the point of origin. The aforesaid request is liable to be

directed to the Customs Administration of the exporting Party and which is statutorily obliged to provide and transmit the requisite information in terms of Rule 23(5) of the CEPA Rules.

31. Rule 24 of the CEPA Rules and which deals with contingencies where the proper officer harbours a reasonable suspicion regarding the origin of products, an importing Party may submit a request for the furnishing of a guarantee in order to secure fiscal interest and as a pre-condition for the completion of the import. Rule 26 thereafter stipulates the circumstances in which the Customs Administration of the importing Party may deny a claim for preferential tariff.

32. CAROTAR follows a similar scheme of verification. Rule 3(2) speaks of the situations where the proper officer may deny a claim for a preferential rate of duty pending verification of a COO certificate. Rule 5 of CAROTAR enables the proper officer to seek further information and call for additional documents where it has *reason to believe* that the origin criteria has not been met. Rule 6 of CAROTAR seeks to statutorily regulate the manner in which a verification request is to be submitted and processed.

33. What we seek to emphasize is that the power to initiate a verification process is neither unbridled nor unfettered. In order to initiate such a process, it is incumbent upon the proper officer to form the requisite opinion in support of a doubt or suspicion that may be harboured in respect of a COO certificate or the origin of the imported articles. It becomes apparent from a reading of those provisions that the detention of the goods or stalling the process of importation and completion of procedures connected therewith, must be preceded by a

requisite formation of opinion.

34. Since those provisions speak of reasons to believe and reasonable apprehension that may weigh in the mind of the proper officer, the record itself must reflect the material on the basis of which that formation of opinion rests. In our considered opinion, the foundation of the requisite opinion must be demonstrably apparent from the reasons that the proper officer chooses to record and the order that it may frame. The formation of the requisite opinion cannot be left to surmise and conjecture. The order which the proper officer chooses to frame must itself be reflective of the reasons which weighed upon that authority to block or pause the importation.

35. We bear in mind the indubitable fact that the Act read along with the CEPA Rules and CAROTAR constructs a well-defined criteria which must inform an importation being interrupted. It was, therefore, incumbent upon the respondents to specify the nature of the infraction alleged, the statutory prescription which stood violated and the reasons which informed the tentative denial of preferential duty treatment. Even if the formation of that opinion, be tentative or prima facie, the law would require the reasons underlying that decision being duly recorded.

36. What we seek to emphasise is that since such an action, undoubtedly, would have serious repercussions, it cannot conceivably be left to rest on conjecture or inference. It is this facet of the statutory scheme which would mandate the recordal of reasons, quite apart from the same otherwise being liable to be held to be a necessary concomitant of the principles of fair play, just action and the command of Article 14 of the Constitution itself.

37. As a necessary corollary to the above, the validity of the action would have to be necessarily tested on the basis of the reasons recorded and assigned. It is by now well-settled that the requirement of reasons being recorded forms the core of our jurisprudential doctrine of fairness, constitutes an important safeguard against arbitrary exercise of power and serves as validation of due application of mind. It constitutes a fundamental component of the rule of law itself.

38. When tested on the aforesaid precepts, it is apparent that the impugned orders clearly fail to satisfy the aforesaid tests. All that the respondents assert is that although the SIB has concluded its investigation, they have been advised to assess the Bill of Entry under a PD Bond and the furnishing of a Bank Guarantee. The impugned orders woefully fail to record any reason which may be reflective of consideration having been accorded to the various factors which would be relevant to an exercise of verification being initiated, for a COO certificate being doubted or the action being necessitated under any provision of the Act, CEPA Rules or CAROTAR.

39. The respondents also do not appear to have initiated any process of reciprocal verification as is envisaged under the CEPA Rules or CAROTAR. The need to verify or enquire must necessarily be preceded by the formation of opinion of a justiciable doubt or suspicion being harboured with respect to the validity of the import and the same in turn resting on any one of the stated contingencies which the statute speaks of.

40. Regard must also be had to the fact that the COO certificate when found to have been issued by the competent authority of the

reciprocal State, cannot be lightly ignored or questioned except on the basis of well-substantiated grounds resting on valid, credible and reasonable belief which constrains the authority to initiate a verification exercise. Before us, the respondents did not even dispute the assertion of the writ petitioners that such a verification exercise can, in fact, be initiated and completed by way of an online verification process and in real-time. If those certificates were to be loosely brushed aside, it would shake the very edifice of a Trade Agreement and be contrary to the reciprocal arrangement agreed upon by respective States.

41. The submission of Mr. Singla based on space constraints on the portal also fails to convince us to change the view expressed above bearing in mind the legal imperative of the order itself being reflective of the proper officer having duly applied its mind to issues that the statute ordains to be germane for the purposes of detention of goods. We have no hesitation in holding that it was incumbent upon the concerned officer while framing an order to ensure that the same reflected and embodied reasons, howsoever briefly or succinctly noted, and which formed the basis for the formation of its opinion. The perceived constraints of space would not absolve the proper officer from recording a gist of the reasons which convinced it to take the impugned action.

42. Insofar as the condition of requiring a Bank Guarantee or differential duty is concerned, the respondents appear to have mechanically proceeded upon a purported understanding of the **Guidelines regarding Provisional Assessment under section 18 of**

the Customs Act, 1962[10], which have been framed by the **Central Board of Excise and Customs**[11].

43. It becomes pertinent to note that in terms of Section 18 of the Act, the proper officer is empowered to detain the goods before being released for home consumption and undertake a provisional assessment in situations which are stipulated in that provision. Section 18 stands couched in the following terms:-

> "**SECTION 18. Provisional assessment of duty**.—[(1) Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46 [and section 50],—
>
> (*a*) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or
>
> (*b*) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or
>
> (*c*) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or
>
> (*d*) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry,
>
> the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.]
>
> [(1-A) 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 finalise the provisional assessment within such time and in such manner, as may be prescribed.]
>
> (2) When the duty leviable on such goods is assessed finally [or re-assessed by the proper officer] in accordance with the provisions of

[10] Guidelines
[11] CBEC

this Act, then—

(*a*) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty [finally assessed or re-assessed, as the case may be] and if the amount so paid falls short of, or is in excess of, [the duty [finally assessed or re-assessed, as the case may be]], the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

(*b*) in the case of warehoused goods, the proper officer may, where the duty [finally assessed or re-assessed, as the case may be] is in the excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

[(3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order [or re-assessment order] under sub-section (2), at the rate fixed by the Central Government under section [28AA] from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

(4) Subject to sub-section (5), if any refundable amount referred to in clause (*a*) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment of duty finally [or-re-assessment of duty, as the case may be], there shall be paid an interest on such unrefunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount.

(5) The amount of duty refundable under sub-section (2) and the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to—

(*a*) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(*b*) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

(*c*) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(*d*) the export duty as specified in section 26;

(*e*) drawback of duty payable under sections 74 and 75.]”

44. As is evident from a reading of the aforesaid provision, this is clearly not a case where clause (a) of Section 18(1) was attracted. That only leaves us to examine whether the proper officer sought to detain the goods and undertake a provisional assessment in contingencies which are spoken of in clauses (b), (c) and (d) of Section 18(1). However, we find that while passing the impugned order, the respondent has failed to sustain its action based on any of the grounds which are contemplated under those clauses of Section 18(1).

45. More importantly, we note that the stipulation of a Bank Guarantee as security has been applied ostensibly in light of clause 6(b) of Paragraph 3 of the Guidelines. Clause 6(b) of Paragraph 3 would have been attracted provided the proper officer had found it necessary to order a provisional assessment for the purposes of a chemical test, a felt a need for further information being called for from the importer or causing further inquiries. Even these situations and conditions which would have justified a demand for a Bank Guarantee are neither spelt out nor are they discernible from the reasons assigned. The respondent has also abjectly failed to bear in consideration clause 5(b) of Paragraph 3 of the Guidelines and which stipulates that where cases are selected on a random basis for verification of origin, there would be no justification for a Bank Guarantee or cash deposit being obtained as security. As we read the orders impugned, it becomes apparent that the condition relating to the submission of a Bank Guarantee has been mechanically imposed with no justification having been proffered.

46. This we note notwithstanding the consistent position taken by this Court that the prescription of onerous conditions for provisional

release based on guidelines framed by the CBEC would not be sustainable in law. In fact, and as the Division Bench had observed in **Bullion and Jewellers Association (Regd.) vs. Union of India**[12], such a guideline or prescription may, in fact, be violative of Section 151A of the Act itself. In *Bullion and Jewellers Association*, the Court had observed as follows:-

> **"54.** Examined in light of the legal position explained in the above decisions, it is plain that the impugned circulars dated October 6, 2015 and January 20, 2016 do in fact whittle down the scope of the exemption available for import of gold jewellery from Indonesia, across the board, only because, according to the Department, the certificates of origin issued by the issuing authority in Indonesia could not be verified. The circular dated October 6, 2015 requires an Officer of the Customs who has issued a show-cause notice not to pass orders of provisional assessments. It requires the original certificates of origin along with "appealable orders" to be sent to the Central Board of Excise and Customs. Clearly the circular does not, as was sought to be explained by Mr. Dubey, merely elaborate the procedures. It interferes with the discretion to be exercised by the customs officer who is performing a quasi-judicial function. Paragraph 7.1 of the said circular requires the importers to present facts in support of the certificates of origin, which is not a requirement in the original exemption notification. There is considerable merit in the contention that this goes beyond the mandate of the Customs Tariff Origin Rules and constitutes an unreasonable and onerous condition as far as the importers are concerned.
>
> **55.** As far as the circular dated January 20, 2016 is concerned, regulation 2(2) of the Customs (Provisional Duty Assessment) Regulations, 2011 provides for a maximum payment of only 20 per cent. of duty differential in the case of a provisional assessment. The insistence on a bank guarantee for the entire differential duty appears to be contrary to regulation 2(2). The court is unable to accept the plea of Mr. Dubey that the above circular emerges from the regulation 4 and is intended to adequately secure the Revenue and ensure uniformity of provisional assessments across all ports. The said circular does not leave the issue of what conditions should be imposed for provisional assessment to the concerned customs officer. It requires the officer to demand 100 per cent bank guarantee even in respect of those bills of entries which have been

[12] 2016 SCC OnLine Del 2437

> provisionally assessed under section 18 of the Act. It certainly is contrary to proviso (a) to section 151A inasmuch it dictates to the customs officer in what manner he should complete a provisional assessment. The consequent impugned letter dated January 22, 2016 came to be issued to M/s. J. B. Overseas only on the basis of the said circular.
>
> **56.** The court, therefore, holds that the impugned circulars dated October 6, 2015 and January 20, 2016 are ultra vires section 151A of the Act and unsustainable in law."

47. While Mr. Singla had also alluded to a perceived abuse of CEPA Rules, specifically Rule 7, and the import of platinum alloys being motivated by an unstated intent to import gold by circumventing the relevant procedural stipulations, we find that it is not their case that the imports effected by the writ petitioners failed to comply with the specifications spelt out in Note 5 of Chapter 71 of the 1975 Act.

48. We are further constrained to observe that the asserted spurt in gold imports, the reservations expressed with respect to the import of alloys of precious metals and other allied aspects which are adverted to in the counter affidavit would clearly not concern a court of law, which is bound to examine the challenge raised based upon the statutory scheme which prevails. Whether the apprehensions or reservations expressed warrant a review of the import regime, modulation of the terms of the Trade Agreement or merit an amendment to the list of eligible products are clearly issues which fall in the realm of policy. Accordingly, and for all the aforesaid reasons, we find ourselves unable to sustain the impugned orders.

49. We consequently allow the present writ petitions and quash the impugned orders dated 31 July 2024. We direct the respondents to reconsider the release of the imported articles with due expedition

bearing in mind the observations made hereinabove. The proper officer is also cautioned to bear in mind the aspect of onerous conditions which was explained by the Court in *Bullion and Jewellers Association*.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 13, 2024/neha/kk