

Bombay High Court upholds customs jurisdiction; denies enforcement of treaty-based dispute mechanism

Purple Products Pvt. Ltd. & Kothari Metals Ltd. v. Union of India & Ors.¹

The Bombay High Court dismissed writ petitions filed by importers challenging show cause notices issued under Section 28 of the Customs Act, 1962 (Customs Act). The petitioners contended that dispute resolution mechanism under Article 24 of the ASEAN-India Free Trade Agreement (AIFTA) must be adhered to and, that the Customs Department could not adjudicate issues related to origin or AIFTA content / Regional Value Content (RVC), without recourse to the treaty-based procedure.

Background of the case

- The petitioners had imported Tin Ingots from Malaysia and claimed concessional duty benefits under Customs Notification No. 46/2011, which implements the AIFTA treaty. Benefit was availed on the basis of Certificates of Origin (COO) issued by the Malaysian authorities.
- Subsequently, based on investigations by the Directorate of Revenue Intelligence (DRI), show cause notices were issued, alleging that the imports did not meet the minimum 35% RVC threshold and that the petitioners had misrepresented facts to avail the exemption. The petitioners challenged these notices by way of writ petitions, arguing that the dispute

must be resolved only through the mechanism prescribed under Article 24 of AIFTA.

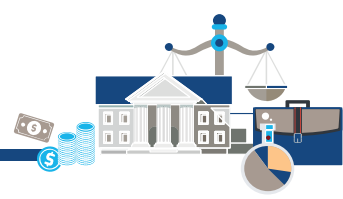
Submissions by the Petitioners

- **Treaty-based dispute resolution:** It was contended that in terms of Article 24 of AIFTA, disputes concerning origin or RVC must be resolved between the contracting states as provided in the treaty, and that unilateral proceedings under the Customs Act were without jurisdiction.
- **Supremacy of treaty provisions:** The petitioners relied on Indian and international jurisprudence to contend that international obligations must be honoured and cannot be overridden by domestic authorities without explicit parliamentary legislation.
- **Invalidity of unilateral actions:** The show cause notices, it was argued, sought to nullify the COOs and deny treaty benefits, without following the dispute resolution process mandated under the ASEAN-India agreement.

Submissions by the Revenue Department

- **Treaty not incorporated into domestic law:** The Customs Department contended that treaty provisions, including Article 24 of AIFTA, are not

¹ Writ Petition No. 2831 of 2018 – Bombay High Court



self-executing and cannot be enforced unless incorporated through municipal legislation.

- **Jurisdiction under the Customs Act:** The Customs Act provides the authorities sufficient powers to issue show cause notices in cases of misrepresentation or fraud, irrespective of any treaty provision.
- **Precedent from Gujarat High Court:** The Revenue Department relied on the Gujarat High Court's judgment in *Trafigura India Pvt. Ltd.*², which upheld similar notices and held that Article 24 of AIFTA does not override domestic laws unless legislatively enacted, which in this case was not done.

Discussions and Findings

- The Court extensively examined the legal framework governing the interplay between international treaties and domestic law, relying on decisions of the Supreme Court in *Agricas LLP*³, *Gramophone Co. of India*⁴, and *G.M. Exports*⁵. It reiterated India's dualist position in international law, where treaties are to be respected and implemented but, must be enacted into municipal law to be enforceable.
- It was held that:
 - Article 24 of AIFTA had not been transformed into Indian law through any Parliamentary statute or delegated legislation (such as the DOGPTA Rules, 2009).
 - Treaty provisions, even if agreed upon internationally, do not curtail or override statutory powers under the Customs Act, unless specifically enacted.
 - Section 28 of the Customs Act is wide enough to empower customs authorities to issue notices in cases involving fraud or suppression, including where preferential duty claims are involved.

- The Court declined to accept the argument that enactment of Chapter VAA in the Customs Act, effective March 2020 specifically Section 28DA concerning administration of rules of origin under trade agreement, implied lack of pre-existing jurisdiction. It observed that earlier provisions were adequate to address such violations and that subsequent amendments do not retrospectively curtail the jurisdiction of customs authorities.

Decision

- The Bombay High Court dismissed the writ petitions, holding that the Customs Department has jurisdiction under Section 28 of the Customs Act to investigate and adjudicate alleged misrepresentations in claim of treaty benefits or concessions. The challenge to the show cause notices based on Article 24 of AIFTA was rejected. The adjudication, thus, of the show cause notice could continue.

Dhruva Comments

This judgment reaffirms the settled principle that international treaty provisions are not enforceable in India unless specifically incorporated into domestic legislation. This principle is also enshrined in the judgment of the Supreme Court in *Nestle SA*⁶ wherein it was held that Most Favoured Nation (MFN) clause benefits in Double Tax Avoidance Agreement aren't automatic; notification under Section 90 of the Income Tax Act, 1961 is required, to enforce lower tax rates.

Businesses availing FTA-based duty concessions must ensure compliance with origin criteria and maintain defensible documentation, particularly for third-country trade routes.

The ruling strengthens the Customs Department's position to independently verify claims under FTA exemptions and issue proceedings where prima facie misrepresentation is observed.

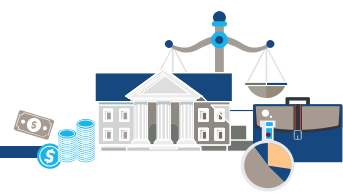
² R/Special Civil Application No.14028/2020 & Ors.

³ 2020 (373) E.L.T. 752 (S.C.)

⁴ (1984) 2 SCC 534

⁵ (1984) 2 SCC 534

⁶ Civil Appeal No. 1420 OF 2023



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