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LITIGATION ALERT

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Bombay High Court Allows FTA Benefit ;
Holds that Public Notices Cannot
Override Statutory Framework

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Covestro India Private Limited vs. Assistant Commissioner of Customs & Ors.¹

The Bombay High Court set aside orders denying preferential customs duty ('FTA benefit') to Covestro India, claimed under the ASEAN-India Free Trade Agreement ('AIFTA'), by holding that the denial was premised on a Public Notice issued by a field-level Commissioner without the CBIC's sanction and, which was subsequently clarified/superseded by CBIC instructions.

Background and facts

- The Petitioner, Covestro India Pvt. Ltd., is engaged in manufacturing and trading of polycarbonate resins, films, and polyurethane raw materials. It regularly imports goods such as Makrofol, Bayfol, Makrolon, and Bayblend from Thailand.
- India had entered into Free Trade Agreements ('FTAs') with ASEAN countries, providing preferential duty rates, subject to proof of origin. Covestro had consistently availed such benefits based on Country of Origin ('CoO') certificates.
- Section 28DA of the Customs Act (inserted by the Finance Act, 2020 and effective from 27 March 2020) and CAROTAR 2020², dated 21 September 2020 prescribe the framework for claiming such preferential duty (FTA benefit), sets out the obligations on importers and prescribes the power of verification vested in customs authorities.
- On 20 March 2024, the Commissioner of Customs (NS III) issued Public Notice No. 33/2024

prescribing additional requirements in cases of third-party invoicing (e.g., submission of exporter's invoice, FOB value disclosure).

- Factually, Covestro imported goods manufacturer by Covestro (Thailand) Co. Limited, Thailand; supplied through Covestro (Hong Kong) Limited. Relying on this Public Notice, the Assistant Commissioner rejected Covestro's claim for preferential duty by an adjudication order dated 12 June 2024, primarily on the ground that the FOB value in the CoO could not be verified from the third-party invoice and that the manufacturer's invoice was not furnished. The origin of goods and authenticity of CoO were not disputed.
- Subsequently, the CBIC issued Instruction No. 23/2024-Customs, dated 21 October 2024, clarifying that third-party invoicing is a legitimate trade practice; that importers are not required to furnish commercially sensitive documents; that denial of FTA benefit without verification is permissible only in limited circumstances; and that trade agreement provisions prevail over the CAROTAR in case of conflict.
- Further, Public Notice No. 55/2024, dated 24 June 2024 (which superseded Public Notice No. 33/2024) was modified by Public Notice No. 10/2025, dated 23 January 2025, considering the CBIC Instruction. The said modification provides that Public Notice No. 55/2024 must be applied in consonance with, CBIC Instruction No. 23/2024-Customs dated 21 October 2024, which *inter alia* clarifies that CAROTAR 2020 does not oblige

¹ Writ Petition No.12430 OF 2024

² Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020

importers to furnish commercially sensitive information and that the provisions of the applicable trade agreement shall prevail over CAROTAR in case of conflict.

Findings of the Court

- The adjudication order was premised solely on Public Notice No. 33/2024, the basis of which stood undermined by subsequent CBIC Instruction and modifications by issue of later dated Public Notices by the Commissioner of Customs.
- The Court held that Public Notices No. 33/2024 and 55/2024 issued by the Commissioner of Customs (NS-III) cannot override statutory provisions, trade agreements, or CBIC-issued Instructions, and that any such attempt would be legally impermissible.
- The Public Notice No. 33/2024 attempted to impose new substantive conditions (of submission of exporter invoices and provision of FOB values), which were not contemplated under the Customs Act specifically Section 28DA, or CAROTAR, 2020.
- Section 28DA and CAROTAR, 2020 provide a complete code for verification of origin and Customs officers must strictly adhere to the prescribed framework. Any deviation amounts to rewriting the law, which is impermissible.
- The Court noted that CBIC's letter dated 8 June 2024 clarified that importers cannot be compelled to furnish commercially sensitive documents (for example exporter invoices) in third-party invoicing cases and that verification, where required, must be undertaken strictly in accordance with CAROTAR, 2020.
- The Court recognised that third-country invoicing, wherein the commercial invoice is raised by an intermediary entity located in a country different from the country of origin, while the goods are shipped directly from the country of origin to the importing country; is a permissible and accepted practice including under the AIFTA. It held that procedural requirements introduced through Public Notices cannot be used to dilute or defeat the benefit available under the trade agreement.
- The adjudication order was based entirely on procedural discrepancies (such as inability to

reconcile FOB values or, non-submission of manufacturer's invoices), without disputing the origin of goods or authenticity of the CoO certificate, thereby rendering the denial of the FTA Benefit unsustainable.

- The Court emphasised that where doubts arise regarding origin, the proper course is to initiate verification with the issuing authority in accordance with the statutory framework, rather than summarily denying the benefit.
- The Court, importantly, underscored the need for certainty and predictability in trade facilitation, cautioning that ad hoc procedural requirements imposed by field formations can disrupt legitimate trade and undermine the efficacy of preferential trade agreements.

Judgement

- Bombay High Court allowed the writ petitions and set aside the order dated 12 June 2024.
- The matter was remanded to the adjudicating authority for a fresh consideration, in accordance with law and CBIC Instruction.
- It was noted that Public Notice No. 33/2024 was issued without any legal basis or reference to any specific provision granting the Commissioner of Customs with the jurisdiction to issue such public notices.
- The Court directed the Customs authorities to reconsider the preferential duty benefits to importer-party based on the valid CoO.

DHRUVA INSIGHT

The ruling delivers valuable clarity on two aspects - the limits of institutional authority in Customs administration and framework for denial of FTA-based preferential duty claims.

Regarding institutional authority, the Court has effectively reaffirmed that field-level formations cannot, through public notices, alter or supplement the statutory framework governing FTA benefits. The power to issue binding Instructions particularly those impacting substantive entitlements under trade agreements vests exclusively with the CBIC. Public Notices that expand importer obligations beyond the prescription in CAROTAR 2020 and the governing FTA, are legally unsustainable. The ruling thus reinforces that the administrative hierarchy in Customs is not merely procedural but operates as a substantive constraint on the exercise of delegated powers.

The ruling underscores that Section 28DA of the Customs Act, 1962 read with CAROTAR, 2020 constitute the complete governing code for verification of origin, and authorities must operate strictly within this framework.

From a practical standpoint, this ruling is a guiding light and will be relevant for importers facing increased scrutiny in claim of FTA Benefits , especially in third-party invoicing structures. It lays down that denial of preferential benefits must be grounded in the statutory verification process and not on ad hoc procedural requirements; thereby strengthening predictability in procedures.

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