

F. No. 20000/6/2015-OSD(ICD)

Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes & Customs International
Customs Division

Room No. 227 A, North Block, New Delhi
Dated the 21st October, 2024

To,

All Principal Chief Commissioners / Chief Commissioners of Customs / Customs (Preventive)/
Customs and Central Tax

All Principal Commissioners / Commissioner of Customs / Customs (Preventive)

All Principal Directors General / Directors General under CBIC

Madam / Sir,

Subject: Clarification on certain aspects of origin procedures under free trade agreements (FTAs) - regarding.

The Board is in receipt of various representations, citing difficulties encountered in import clearance where third-party invoicing, allowed under the provisions of a trade agreement, has been used.

1.1 It has been represented that certain field formations are questioning the origin status of products imported under FTAs with third-party invoicing, particularly under the ASEAN-India FTA (AIFTA), upon comparing the value recorded on the certificate of origin (COO) and that declared on the third-party invoice. Instances have also been brought to notice where preferential claims have been denied in such cases without conducting verification of COO with the issuing authority to check its authenticity and / or accuracy of information contained therein.

2. In this regard, it is to note that third-party invoicing is a common business practice and a few trade agreements explicitly provide for it. For example, Article 22 of Operational Certification Procedures for the Rules of Origin for the AIFTA states that:

“The Customs Authority in the importing Party shall accept an AIFTA Certificate of Origin where the sales invoice is issued either by a company located in a third country or an AIFTA exporter for the account of the said company, provided that the product meets the requirements of the AIFTA Rules of Origin.”

3. It is pertinent to underline here that the purpose of a COO is to serve as a proof that the goods qualify as originating within the terms of an FTA, irrespective of whether third-party

invoicing is involved or not. On the other hand, the seller's invoice, including a third-party invoice where applicable, is the document relevant for customs valuation.

4. Where the proper officer has reason to believe that the subject product does not meet the prescribed originating criteria, he/she may seek information and supporting documents in relation to the originating status of the product, as may be deemed necessary, from the importer, *consistent with the trade agreement*. When the requisite information is not provided by the importer or the information furnished is insufficient to assess origin criteria, the laid down process of verification gets triggered in terms of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR in brief) read with Section 28 DA of the Customs Act, for which a reference is to be made by the proper officer to the issuing authority through the FTA Cell (under the Directorate of International Customs).

5. Further, it may be noted that both - the information being sought and the process of verification must be *consistent with the trade agreement*. It may also be noted that CAROTAR does not obligate the importer to provide commercially confidential information, pertaining to the exporter/third-party. Also, CAROTAR does not require an issuing authority or a seller to use a specific or same currency for declaring value in COO and invoice respectively.

6. Rule 5(5) of CAROTAR provides that the proper officer may deny a preferential duty claim without causing further verification on the basis of the information and documents furnished by the importer and available on record. However, it is emphasised that if the concerned trade agreement *does not allow* for outright denial without causing a verification in accordance with provisions laid down in the subject agreement, the provision of the trade agreement shall prevail. CBIC vide its Instruction No. 19/2022-Customs dated 17.08.2022 has reiterated that in the event of conflict between the provisions of the trade agreement and CAROTAR read with Section 28 DA, the provisions of the trade agreement shall prevail to the extent of the conflict.

7. In cases where non-compliance of origin criteria is established after following the due process, an speaking order must be passed following the principles of natural justice as well as the specific obligations in this regard covered in the respective FTA. Merely pointing out that the value addition is artificially inflated by wrongfully adding certain ineligible elements (e.g. freight) may not be sufficient to reject a claim, unless it is demonstrated that the value addition calculated as per formula prescribed in the trade agreement does not meet the threshold percentage point when such elements are removed.

8. It is requested that customs formations under your jurisdiction may be suitably sensitized on the issues elaborated above.

Yours sincerely,

Neetisha
21/10/2024
(Neetisha Verma)
OSD (ICD)