

**HIGH COURT OF TRIPURA
AGARTALA
WP(C)No.109 of 2021**

Shri Goutam Roy,
son of Shri Sukumar Roy,
resident of Vidyasagar Chowmuhani,
Jogendranagar, P.S. East Agartala,
Agartala-799004, District : West Tripura

----Petitioner(s)

Versus

1. Union of India,
represented by the Secretary of Revenue,
North Block, New Delhi-110001

2. The Assistant Commissioner,
Agartala Customs Division, Bardowali,
Agartala, Tripura-799003, holding the
Charge of Agartala Land Customs Station

3. The Superintendent of Customs,
Agartala Land Customs Station, Bardowali,
Agartala, Tripura-793003

---- Respondent(s)

For Petitioner(s)	:	Mr. N. Dasgupta, Adv. Mr. T.K. Deb, Adv.
For Respondent(s)	:	Mr. Biswanath Majumder, CGC. Mr. P. Datta, Adv.
Date of hearing	:	31.03.2021
Date of delivery of Judgment & Order	:	26.04.2021
Whether fit for reporting	:	NO

**BEFORE
HON'BLE MR. JUSTICE S. TALAPATRA**

Judgment & Order

The petitioner is an exporter and importer through the Land Customs Stations at Agartala. He carries on his business under

name and style of M/s Goutam Ray. On 26.12.2020 the petitioner had imported soybean oil of net volume of 55,200 kg. in 5000 cartons from Bangladesh by the bill of entry No.659390/INP/AGT-LCS/2020-21 dated 26.12.2020 through the Agartala Land Customs Station.

2. According to the petitioner, he had submitted all requisite import documents without any complaint from the respondents. However, the imported goods were directed to be wire housed without assessing the duty under Section 17 of the Customs Act, 1962 and without assigning any reason. The copy of the Importer's Bill of Entry was not returned by the respondent No.3. Based on the said Bill of Entry, the petitioner had deposited IGST amounting to Rs.2,34,191/- (two lakh thirty four thousand one hundred ninety one) by the challan No.5074 dated 13.01.2021 and the petitioner requested for clearance of the imported goods, but the respondent authority did not clear the goods neither assessed the duty under Section 17 of the Customs Act. Section 17 of the Customs Act, 1962 provides the procedure for assessment of duty. The proper officer may verify the entries made under Section 46 or Section 50 of the Customs Act and may allow the self-assessment of the duty for the goods. The verification by the proper officer shall primarily be done on the basis of risk evaluation. The proper officer may require the importer to produce any document or information and on such requisition, the importer shall produce such documents or information. If it is found on verification, examination or testing of the goods or otherwise, the self-assessment

as done was not done correctly, the proper officer may without any prejudice to any other action which may be taken under the Customs Act, reassess the duty leviable on such goods. The importer may confirm his acceptance of reassessment in writing. The proper officer shall thereafter pass the speaking order for reassessment within 15 days from the day of reassessment of the bill of entry. The petitioner has seriously questioned the order passed by the respondent authorities as impermissible under Sections 17 and 18 of the Customs Act, 1962.

3. It has been specifically alleged that the petitioner has not been informed, or in other words, it is not made known to the petitioner whether the petitioner's goods are held up for any verification regarding the Certificate of Origin produced by him for availing the concessional rate of the custom duty or for any other reason. It has not been disputed by the petitioner that the respondent authorities are at liberty to initiate verification but they cannot hold up the assessment/clearance of the goods for any indefinite period without passing a reasoned order. The petitioner has categorically asserted that the petitioner has declared and observed the requirement of the CAROTAR, 2020. The petitioner possessed all information regarding the country of origin of goods as per Rule 4 of the CAROTAR, 2020. Soybean oil as imported is not wholly originated in Bangladesh. The petitioner has submitted the Certificate of Origin issued by the Director, Export Promotion Bureau, Dhaka, Bangladesh

who has been designated as the competent authority in Bangladesh, showing value addition as under :

Imported component in Bangladesh	58.99%
Value Addition in Bangladesh	41.01%

4. In support of the Certificate of Origin, the petitioner has submitted the cost break up to Customs Authorities for availing concessional Customs Tariff under South Asian Free Trade Area (SAFTA arrangement). The value addition in the originating country is minimum 30%. Moreover, Bangladesh being a least Developed Country (LDC) another concession has been granted. A minimum value addition to the extent of 20% in Bangladesh qualifies for South Asian Free Trade Area (SAFTA) Tariff concession.

5. The petitioner has emphatically submitted that he has become remediless, as the respondent authority has not passed any order at all. According to the petitioner, the clearance of goods should have been allowed following the provisions of Sections 17 or 18 of the Customs Act, 1962, either accepting the concessional rate of duty as claimed by the petitioner under self assessment or rejecting it or by doing reassessment under Section 17 of the Customs Act. The petitioner has quite succinctly submitted that the assessment could not have been denied for indefinite period for such freely importable goods particularly when the goods are of perishable nature. Thus, the petitioner has urged this court for directing the respondents to release the goods imported by the Bill of Entry dated 26.12.2020 and to direct the respondent authorities to assess the duty under section 17 of the

Customs Act, 1962 without requiring bank guarantee furnished considering the goods being highly perishable and ware-housed since 27.06.2020.

6. Mr. N. Dasgupta, learned counsel appearing for the petitioner has drawn the attention of this court Rule 6 of the CAROTAR, 2020 which mandates verification of the Certificate of Origin. In case of deficiency on the part of the importer, if the provisional assessment is resorted, the importer is required to furnish the full duty bank guarantee. In the event of the revenue authority initiating any verification on random basis, no bank guarantee is required to be furnished by the importer. It has been provided in the CAROTAR, [see Rule 6(1)(c)] that no bank guarantee is required when the department initiates the verification on random basis. In this regard, reference has been made by Mr. Dasgupta, learned counsel to the CBEC's circular No.38/2016-Customs dated 22.08.2016 and circular No.42/2020 dated 29.09.2020 which provide the guidelines for provisional assessment under section 18 of the Customs Act. According to the said guidelines, the cases selected on random basis for verification of Origin, no bank guarantee to be obtained as security of the differential duty. Even where despite best efforts by the proper officer differential duty cannot be computed, no bank guarantee can be obtained.

7. According to Mr. Dasgupta, learned counsel the case of the petitioner falls within the category of random verification and such

verification is covered by para-5(b) of the circular dated 22.08.2016 [Annexure-11 to the writ petition]. Mr. Dasgupta, learned counsel has further submitted that CBIC's instruction No.20/2020 dated 17.12.2020 [Annexure-14 to the petition] has specifically directed not to disrupt the process of import for routine verification under the CAROTAR, 2020. By the CBIC's notifications dated 05.06.2020, 30.07.2020 and CBIC's circular dated 04.09.2020, *Turant Customs Clearance* has been introduced which is faceless, anonymous assessment, self registration of the goods by importers, automated clearance of the Bills of Entry, digitations of customs documents etc. It sought exponentially faster clearance of goods. The petitioner has asserted that the said policy has been given a go-bye by the respondents.

8. The petitioner has contended that if the respondent authorities had initiated any verification of the Certificate of Origin, without taking the petitioner on board and without intimating him to meet any deficiency under Rule 6(1)(C) of the CAROTAR, 2020 no bank guarantee can be obtained as security for release of the goods. In this regard, Mr. Dasgupta, learned counsel has placed his reliance on a recent decision of this court in **Pijush Banik versus Union of India and Others** [judgment and order dated 08.01.2021 delivered in WP(C)No.855/2020] wherein this court had occasion to observe as follows :

"It is apparent that when the verification was initiated, no record was available with the

respondents nor any communication was made to the petitioner that the verification was being carried out under Rule 6(1)(a) or Rule 6(1)(b) or Rule 6 (4)(c) of the CAROTAR 2020 and hence, there was no reference to the security (BG). However, from the records as produced [which are the posterior records] such as the communication dated 30.10.2020 [Annexure-3 to the reply filed by the respondent No.3] and the communication dated 24.11.2020 [Annexure-D to the reply filed by the respondent No.3] or the communication dated 20.11.2020 [Annexure-E to the reply filed by the respondent No.3], it appears to this court that verification is on 'mis-declaration'. The petitioner was not afforded any opportunity to meet the purported deficiency for which the clearance has been refused. No observation on the legality or regularity of the process of verification on merit is called for at this stage, considering that the verification is still inconclusive. But in the emerged circumstances, the assessing officer and the other respondent-authorities are directed to provisionally assess the duty and to release the goods on obtaining an indemnity bond, to be submitted by the petitioner binding himself to deposit the duty or the difference between the duty that would be assessed by the competent authority on verification and the preferential duty within a period of 7(seven) days. In the event of failure to deposit the assessed duty on completion of verification within the said stipulated time, the payable duty shall carry interest at the rate of 15% per annum from 26.09.2020 till the said duty is deposited. The provisional assessment in respect of the goods covered under the Bill of Entry dated 26.09.2020 shall be completed within a period of two days from the date of receipt of a copy of this order. After furnishing of the indemnity bond, those goods be released within next 24 (twenty four) hours."

9. Mr. P. Datta, learned counsel appearing for the customs has stated that the custom authority has not initiated a random verification as contended by the petitioner. The verification has been initiated under Rule 6(1)(b) of the CAROTAR, 2020. Rule 6(1)(b) of CAROTAR, 2020 is in respect of the verification where the importer fails to provide the requisite information under Rule 5 of the CAROTAR.

10. Mr. Datta, learned counsel has further submitted that the respondent authorities has not initiated verification under Rule 6(1)(b) of CAROTAR, 2020 as alleged by the petitioner is wholly unfounded. The petitioner had the option to get his goods cleared under Rule 6(4)(c) of the CAROTAR, 2020 and avoid the goods getting damaged. Due notice in this regard was issued. Surprisingly, the respondents has made a statement in para 7 in their reply in the form of clarification that to qualify for the SAFTA Preferential Duty, minimum value addition needed in Bangladesh is 20%, which in an originating country other than Bangladesh is 30%. It is unintelligible how such statement can be considered as contrary to the statement made by the petitioner.

The respondents has referred to the communication dated 26.12.2020 where they have made the statements that the cost break-up submitted by the petitioner vide letter dated 21.12.2020 is of 31.08.2020, which is almost four month 'outdated'. In this period of time, the dollar value changed several times and as such the cost break up cannot be considered as the latest one.

11. Further, it has been stated that the packing material cost at US dollar 164.80 was considered to be verified. The break-up for the pouch instead of 500 ml. bottle that has been imported, by the petitioner cannot be the correct information. So, the proper scrutiny was considered appropriate.

12. By another communication dated 09.03.2021 (Annexure-E to the reply) the petitioner was asked to make request to the proper officer to assess the duty provisionally and to set the goods cleared as per Rule 6(4)(c) of the CAROTAR, 2020 subject to furnishing of the security amounting to the difference between provisionally assessed duty under Section 18 of the Customs Act and the preferential duty as claimed.

13. Mr. Datta, learned counsel has further submitted that despite that communication the petitioner did not approach the proper officer for clearance in terms of Rule 6(4)(C) of the CAROTAR to avail the clearance after provisional assessment and on furnishing the security (bank guarantee).

14. According to the respondent customs, on going through the declaration of the petitioner it was found that at first the petitioner had given cost break up mentioning the packing material as pouch, outer polly of gum tap but he gave subsequently the same cost break up showing the packaging materials as bottles instead of pouch. They have also asserted as follows :

"Further, in the Country of Origin Certificate under Ref. No. EPB/20/other/8009 dated 24.09.2020 the importer has declared in the 3rd column the origin criterion as 'B' for which Rule 8 is applicable. The benefit of Special Treatment to Least Developed Countries as provided under Rule 10 of the Rules of Developed Countries as provided under Rule 10 of the Rules of Determination of Origin of Goods under the Agreement on South Asian Free Trade Area (SAFTA) is not available to the Petitioner. The petitioner was communicated vide letter No.IMP/MISC/4/2020-LCS-AGT-COMM/SHILL/1062, dated 18.02.2021 the reasons for non clearance of goods in accordance with Rule 6(1)(b) of the

CAROTAR, 2020. The Petitioner was also informed about the verification proceeding initiated by the Customs Authority. He was also informed about the option available to him to get the goods cleared vide letter No.IMP/MISC/17/2020-LCS/AGT-DIV-COMMI-SHILL/1110 dated 09.03.2021."

15. Having appreciated the submissions made by the counsel for the parties and the averments made in the writ petition and in the reply, the pertinent question which emerges and is falls for consideration whether the verification is random verification falling under Rule 6(1)(c) of the CAROTAR, 2020 or the verification falls under the category leveled by Rule 6(1)(b) of the CAROTAR, 2020 . The petitioner has brought categorical allegation against the respondents that he has furnished all requisite documents and information for clearance but the imported goods have been warehoused without any reason being disclosed to the petitioner whether those goods were held up for any verification regarding the Certificate of Origin produced by the petitioner for availing the concessional rate of the customs duty or for any other reason. This allegation has been levelled in para-7 of the writ petition and in reply thereof, the respondents have evaded any specific reply. They have simply stated that "assessment/clearance of goods has not been stopped. Only preferential treatment of customs duty has been denied till the doubt on the Country of Origin certificate is resolved. "

The said reply does not conform to any verification under Rule 6(1)(b) of the CAROTAR, 2020 which is structured on the failure to provide the requisite information, as no such information was asked

from the petitioner. The said verification cannot be treated as prima facie verification under Rule 6(1)(b) of the CAROTAR, 2020, rather it would prima facie come under Rule 6(1)(C) of the CAROTAR, 2020. Thus, Rule 5(b) of CBEC's circular No.38/2016-customs dated 22.08.2016 will apply in the present case. After thorough verification, if some defects is located, such verification will take a different character. In the present case, the respondents have stated that the petitioner has furnished the subsequent statement which conforms to the nature of container.

16. Hence, the respondents are directed to release the imported goods under the Bill of Entry No.659390/INP/AGT-LCS/2020-21 dated 26.12.2020 on obtaining an indemnity bond to be submitted by the petitioner binding himself to deposit the duty meaning the difference between the duty that would be assessed by the competent authority on verification and the preferential duty which has been paid by the petitioner.

It is made absolutely clear that in the event of failure to deposit the assessed duty on completion of verification within seven days from the date of such assessment, such duty shall carry interest @ 15 p.a. from 26.09.2020 till the said duty is deposited. The imported goods, as ware-housed be released within twenty four hours from the time when the petitioner shall file such indemnity bond as stated above. It is made clear that the petitioner will be at liberty to

exercise his right to question the decision in respect of the assessment as per law.

In the result, this writ petition stands allowed to the extent as indicated above.

The record as produced is returned.

JUDGE

