

**HIGH COURT OF TRIPURA
AGARTALA
WP(C)No.110 of 2021**

M/s Delwara Steel Industries Private Limited,
registered office at Netaji Subhash Road, Near RCC,
Agartala-799001
represented by Shri Subham Acharjee,
son of Shri Manik Acharjee, Village-Patunnagar,
P.O. Durjyaynagar, P.S. Airport, Agartala-799009,
District : Tripura West, Director of M/s Delwara Steel
Industries Private Limited.

----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

3. The Superintendent of Customs,
Agartala Land Customs Station,
Agartala, Tripura-799003

---- 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 a company, incorporated under the Companies Act. The petitioner is carrying on business of importing Galvanized Steel Sheets in coil from Bangladesh through Land Customs Stations in Tripura for manufacturing steel products. The petitioner had imported Galvanized Steel Sheets in coil weighing 14.890 metric tons from Bangladesh by the Bill of Entry No.659298/INP/AGT-LC/2020-21 dated 17.12.2020 through the Agartala Land Customs Station. The petitioner had claimed to have submitted all requisite documents but the respondent custom authorities in grave abuse of Section 17 of the Customs Act, 1962, did make no assessment for clearance of the goods. Even, no reason for such inaction has been disclosed. Under South Asian Free Trade Area (SAFTA) arrangement, the Department of Revenue, Central Board of Indirect Taxes and Customs (CBIC) has issued notification dated 09.11.2011 allowing nil duty of customs on most of the goods imported from Bangladesh under SAFTA. Galvanized Steel Sheet in coil also attracts no custom duty. As no order disclosing the reasons for warehousing the imported goods has been passed, the petitioner had been left remediless. The clearance of goods should have been allowed following the provisions under 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 by doing re-assessment under Section 17 of the said Act.

2. 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 an indefinite period without passing a reasoned order. The petitioner has categorically asserted that the petitioner had 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 CAROTAR, 2020. Galvanized Steel Sheets in coil 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 an indefinite period for such freely importable goods. Hence, the petitioner has urged this court for directing the respondents to release the goods imported under the Bill of Entry dated 26.12.2020 and to direct the respondent authorities to provisionally assess the duty under Section 18 of the Customs Act, 1962 without requiring bank guarantee considering the import of the goods not placed under verification under Rule 6(1)(b) of the CAROTAR, 2020.

6. Mr. N. Dasgupta, learned counsel appearing for the petitioner has drawn attention of this court to 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 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 the Country of Origin Certificate, 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. Mr. Dasgupta, learned counsel has further submitted 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 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. Dasgputa, 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 contended that the petitioner was asked to submit additional information. On scrutiny of the declaration in Form-1 under Rule 5(1) of the CAROTAR, 2020 it was found that there were grounds for verification of the Country of Origin Certificate as submitted by the petitioner. Such verification was initiated under Rule 5(4) of the CAROTAR, 2020 with intimation to the importer. The petitioner was informed by the letter dated 20.12.2020 the reason for not clearing the goods. The petitioner was asked to avail the option to get the goods cleared on provisional assessment under Section 18 of the Customs Act, 1962 read with Rule 6(4)(c) of the CAROTAR, 2020. It has been further stated that the proper officer had reason to believe that the information criterion mentioned in the Country of Origin Certificate was not correct and hence, verification was initiated and

preferential Tariff was not accepted till conclusion of such verification in view of Rule 6(4)(a) of the CAROTAR,2020. They have stated further that that the figure given by the petitioner for the minimum value addition needed in Bangladesh for qualifying for SAFTA duty concession was not factually correct. According to them, in the case of Bangladesh the minimum value addition is 30% for the imported product whereas for the other originating country other than Bangladesh, the minimum value addition is 40%. They have categorically denied that the petitioner was pressurized for submitting bank guarantee. The petitioner has not furnished any bank guarantee as stated by him. Thus, the allegation that the petitioner was not taken on board is gross distortion of fact. Mr. Datta, learned counsel has referred to the communication dated 20.12.2020 [Annexure-B to the reply] where it has been categorically disclosed that the Assistant Commissioner, on scrutiny of the cost break-up, forwarded the matter to the Commissioner of Customs (P)NER,Shillong in order to verify the Certificate of Origin in terms of the Rule 6 of the CAROTAR, 2020. The petitioner was apprised that he might opt for provisional assessment under Section 18 of the Customs Act, 1962 for purpose of release on furnishing the security till the issue is settled. A separate notice dated 01.10.2020 [Annexure-D to the reply] had been issued to the petitioner asking him to produce all supportive documents to justify his claim within ten days. On 17.10.2020 the petitioner was informed

by the communication that *"the goods may be released provisionally on payment of differential duty of bank guarantee/cash security as amount of Rs.12,74,031/- and borne on full assessable value of clearance of the Bill of Entry No.659629/IMP/AGT-LCS/2020-2021 dated 29.09.2020"*. By the communication dated 09.12.2020 the petitioner was clearly informed that the verification is required of the Country of Origin Certificate dated 28.09.2020 issued by Bangladesh under SAFTA. Such verification was initiated in terms of Rule 6(1)(b) of the CAROTAR, 2020. The information as per the prescribed annexure be submitted along with the legible copies of the Country of Origin Certificate, commercial invoice, bill of lading, form one and cost break up are forwarded therewith for taking further necessary action. It has been assessed that some components of manufacturing costs/expensed cannot be determined. Even the Director (ICD) Central Board of Indirect Tax and Customs, Department of revenue has been requested to verify the Country of Origin Certificate. The petitioner was duly apprised by the letter dated 17.10.2020.

10. Mr. Datta, learned counsel has categorically stated that the writ petition is wholly misconceived and it has no similarity with the perspective fact of **Pijush Banik versus Union of India and Others** [the judgment and order dated 08.01.2021 delivered in WP(C)No.855/2020]. The said decision has been relied by the petitioner.

11. 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 falls for consideration is whether the process of verification is random in nature or it is a verification which falls under Rule 6(1)(b) of the CAROTAR, 2020. Even though the petitioner has brought allegation against the respondents by stating that he has met all the requirements for getting the clearance, but it has been found by the customs that he has made some inaccurate statement in respect of minimum value addition in Bangladesh. That apart, some components contributing to the price could not be figured out. Thus, the verification on deficiency is prima facie justified. Within a short while, the reason for warehousing had been disclosed to the petitioner. The petitioner was apprised of his right of exercising option for the provisional assessment of the duty subject to the final decision. The petitioner therefore might get the imported goods released on furnishing the Bank Guarantee (BG) for an amount of Rs.12,74,031/-, but the petitioner has not done so in terms of the communication dated 17.10.2020 [Annexure-E to the reply]. In the facts and circumstances as surfaced, this court is not inclined to interfere in the manner as asked for. The petitioner may take release of the imported goods covered by Bill of Entry No.659, 629/IMP/AGT-LCS/2020-2021 dated

29.09.2020 without prejudice to his claim. But he has to furnish security (bank guarantee or cash) for such release.

Having observed thus, this writ petition stands dismissed.

However, there shall be no order as to costs.

Records as produced be returned.

JUDGE

