

CBIC issues clarification in respect of third-party invoicing and origin procedures under Free Trade Agreements (FTAs)

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A Certificate of Origin (CoO) confirms the originating status of the goods and is required to claim customs duty benefits under FTAs. Further, some FTAs, like the India-ASEAN FTA, also permit third-party invoicing for customs duty benefits, subject to conditions. However, customs authorities have raised concerns over CoOs involving third-party invoicing, particularly regarding the origin status and value addition, leading to disputes and denial of these benefits.

To address these concerns, the Central Board of Indirect Taxes and Customs (CBIC) has issued Instruction No. 23/2024-Customs dated 21 October 2024 to clarify certain aspects of origin procedures under the FTAs.

Key clarifications:

Third-party invoicing under FTAs and its impact on import clearance:

- Third-party invoicing is a recognised business practice, and certain FTAs, like the ASEAN-India FTA (AIFTA), explicitly permit it under Article 22 of the Operational Certification Procedures.
- The COO confirms the originating status of the goods within the FTA, regardless of third-party invoicing.
- The seller invoice and/or third-party invoice have more relevance from a customs valuation perspective.

Handling discrepancies between COO and third-party invoices during import clearance:

- When customs officers have concerns about the product's originating status, they can request additional supporting documentation from the importer.
- The Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR), along with Section 28 DA of the Customs Act, 1962, provides a mechanism for the verification of CoO through the FTA Cell.
- Importers are not required to provide commercially sensitive information about third parties.
- CAROTAR does not require an issuing authority or a seller to use a specific or same currency to declare value in the COO and invoice.

Verification of origin when information is insufficient:

- Officers can deny preferential claims based on the available documents if they believe the information is inadequate.
- However, if the relevant trade agreement does not allow denial without verification, then the provision of the trade agreement shall prevail.
- Provisions of trade agreement shall prevail over CAROTAR in case of conflicts.

Cases of artificially inflated value addition:

- A speaking order must be passed in case of non-compliance with origin criteria.

- Claims cannot be rejected simply by identifying that certain elements, such as freight, have inflated value addition unless it is shown that the value addition calculated as per the formula prescribed in the trade agreement does not meet the threshold percentage point when such elements are removed.

Our comments

The authorities raised concerns over FTA benefits claimed in cases involving third-party invoicing, highlighting discrepancies in the FOB value, number of items mentioned, and difference in the CTH mentioned in the COO and third-party invoices. In response, a Public Notice No. 33/2024 dated 20 March 2024 was issued, detailing procedures for verifying COOs in such cases, requiring importers to submit the originating country exporter's invoice.

The importers faced difficulties claiming FTA benefits due to the authorities' specific requirements, so representations were made to the CBIC. Consequently, Public Notice No. 55/2024, dated 24 June 2024, was issued, allowing the customs officers to offer early clearance against a bond and bank guarantee.

The issue persisted despite the provisional clearance of goods or payment of duty under protest. In some cases, the benefit was denied outright without issuing a formal order, prompting the trade to challenge these actions.

To resolve these concerns, the CBIC has clarified that the provisions of the FTA take precedence over CAROTAR, and preferential customs duty benefits cannot be denied under CAROTAR without further verification if the trade agreement does not allow for outright denial. Furthermore, a speaking order must be issued if non-compliance with the origin criteria is established after due process.

This clarification is expected to address the ongoing issues related to third-party invoicing under FTAs and facilitate smoother trade without further disputes. Additionally, the CBIC has acknowledged that third-party invoicing is a common business practice and confirmed that the bill-to-ship-to model is permissible under the FTA.

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