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
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Room No. 277 A, North Block, New Delhi- 110 001
Dated the 8th June, 2024

To
The Chief Commissioner of Customs
Mumbai Customs Zone - II
JNCH, Raigad, Maharashtra.

Sir,

Subject: Verification of FOB value indicated on COO Certificates issued as per ASEAN-India Trade in Goods Agreement - Notification No. 189/2009-Cus (NT) dated 31.12.2009 - regarding.

Please refer to your letter dated 27.05.2024 in respect of the above-mentioned subject.

2. The issue raised has been examined. In this regard, observations are as follows:

i. As per extant provisions of CAROTAR,2020 while the importer may be requested for supporting information but he is under no compulsion to submit commercially sensitive information such as the export invoice in case of third-party invoicing. The bill-to-ship-to business model ensures commercial confidentiality in global value chains.

CAROTAR, 2020 does not require an importer to seek details, which may be business confidential. Rule 5 (4) of CAROTAR 2020 provides that in case the importer fails to or is unable to provide sufficient information/documents, the verification process as prescribed under the trade agreement shall have to be initiated.

ii. Section 28DA read with Rule 3 (2) of CAROTAR 2020 specifies the limited conditions under which the preference may be denied without initiating a verification. In addition, Rule 5(5) specifies that a preferential claim can be denied without further verification only when the information and documents furnished by the importer and available on record provide sufficient evidence to prove that goods do not meet the origin criteria prescribed in the respective Rules of Origin.

In the present case, it appears that the field officers are finding it difficult to verify value addition due to the unavailability of the export invoice, where third-party invoicing is taking place. Any verification, if required to be done, should only be carried out in terms of above legal provisions.

iii. Further, it is submitted that Article 22 of the Operational Certification Procedures for the Rules of Origin of AIFTA, allows third country invoicing provided the product meets the Origin Criteria under the AIFTA Rules of Origin.

As per Appendix A of AIFTA, FOB Price equals a sum of Ex-Factory Price and other costs. It is pertinent to mention that 'other costs' covers those costs which are incurred in placing the products in the ship for export. Therefore, the Value Addition (VA) is to be calculated on the FOB value mentioned in the commercial invoice, issued by the manufacturer/supplier/consignor of AIFTA state. Moreover, the value indicated in the invoice raised by the consignor of AIFTA to the third-party shall, in all probability, not be the same as the one mentioned in the sales invoice raised by the third-party.

iv. The fact of VA at AIFTA country and VA considering third party invoice should **also be determining** factor whether a verification process is required under CAROTAR, **2020.**

3. In view of the above, it is requested to re-examine the matter and provide comments/action taken in the matter. Further, it is mentioned that trade has represented delay in clearance of goods on account of the Public Notice issued by NS-II Customs Commissionerate. It is requested that goods maybe released without delay, if required including under the provisions of CAROTAR,2020.

Yours sincerely,

Encl: as above

Neetisha
08/06/2024

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