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Tough days ahead for importers claiming preferential benefit under FTAs – CAROTAR, 2020

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Introduction

'Rules of Origin' are principles, basis which the source country of a product is established, based on which tariff concessions or applicable duties are determined.The motive is to curb the imports by an abuse of Free Trade Agreement (FTA) route, taking advantage of lower tariffs by presentation of documents purporting that goods came from a country with which India has a trade agreement.

Recently, the Department of Revenue has notified the **Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020** [hereinafter referred to as "CAROTAR, 2020" for brevity and convenience] to be effective from 21st September 2020, vide **Notification no. 81/2020-Customs (N.T.) dated 21st August 2020**. A set of certain guidelines have been set out for the enforcement of the 'rules of origin' for allowing preferential rate on imports under free trade agreements which aim to supplement the operational certification procedures related to implementation of the Rules of Origin. CAROTAR, 2020 applies to import of goods into India where the importer makes a claim of preferential rate of duty in terms of a trade agreement.

Framework and Provisions

In terms of the CAROTAR, 2020, in order to claim preferential rate of duty under a trade agreement, the importer is required to make a declaration in the bill of entry that the imported products qualify as originating goods for preferential rate of duty under that agreement, in addition to producing the Certificate of Origin (CoO). The importer is also required to possess all relevant information, the comprehensive list of which is given in Form-I annexed to CAROTAR, 2020, related to country of origin criteria, including the manufacturing process, regional value content and product specific criteria etc. and submit the same to the proper officer on request. This is a very comprehensive form in relation to the imported goods. Thus, the importer has been made liable for every information in relation to the imported goods where he claims any preferential treatment. The customs authority has been given very wide powers to reject

the preferential claim. The Principal Commissioner has been given the authority to disallow the claim even without any verification from the authority in the exporting country (which is there in all the FTAs with India), if the information and documents received by the importer are sufficient to prove that goods do not meet the origin criteria. There is a discretion given to the proper officer whether or not to verify the CoO from the exporting country and still doubt the authenticity of the CoO merely on the information possessed by the importer.

Therefore, in simple words, CAROTAR, 2020, read with section 28DA of the Customs Act 1962, makes it incumbent upon the importer claiming the preferential rate of duty to possess relevant and sufficient information to satisfy the country of origin criteria, and in case there is a doubt with regard to origin of goods, information is first sought from the importer before initiating verification with the exporting country if any on the discretion of the officer.

Traditionally, for claiming preferential tariff treatment for originating goods, a CoO issued by a competent body was required to be submitted to the customs authority by the importer, together with the documents required for importation of goods like bill of entry and invoice. However, with the implementation of CAROTAR, 2020, submission of merely a CoO by an importer will no longer suffice for availing concessional benefits. The customs authorities have been entrusted with a wide array of powers basis which they can ask importers to substantiate and satisfy with respect to the scrutiny undertaken on the question of origin. This means that, with the introduction of the stricter norms of origin, the importer has been burdened with additional compliance procedures and liability to possess the requisite information and documents to conclude the origin of the imported goods.

Even though the guidelines have been tightly enumerated in CAROTAR, 2020, nevertheless, there may still be some scope of grey area or conflict between the provisions of CAROTAR, 2020 and Rules of Origin with respective country. In this connection, **Circular no. 38/2020 dated 21st August 2020** has been issued to supplement the Notification, which goes on to clarify that in the event of a conflict between a provision of CAROTAR, 2020 and a provision of the Rules of Origin, the provision of the Rules of Origin will prevail to the extent of the conflict. For an instance, CAROTAR, 2020 has given a power to the Principle Commissioner to disallow the claim of preferential rate of duty even before proceeding for verification in certain specified cases. Whereas, Rules of Origin, like Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between the Republic of India and Japan) Rules 2011 provide for verification of CoO. This is an area of ambiguity wherein ideally, as per the Circular, Rules of Origin will have a supreme effect and the relevant provision of the above-mentioned Rules of Origin reads, "*For the purposes of determining whether a good imported from the exporting Party under preferential tariff treatment qualifies as an originating good of the exporting Party, the customs authority of the importing Party may request information relating to the origin of the good from the competent governmental authority of the exporting Party*

on the basis of the certificate of origin." It is pertinent to note that the word used here is "may" which gives a discretion to the customs authorities to carry on the verification process. In light of the fact that the Rules of Origin overpower CAROTAR, 2020, this could possibly pose an opportunity for an uprising situation where importers' claims are vehemently denied without carrying out the verification process, even though in terms of CAROTAR, 2020, verification proposal is mandatory, in case where information and documents received from the importer are insufficient to conclude the origin criteria. So even though CAROTAR, 2020 gives wide discretion to the officer regarding the verification to be conducted or not, however, in some circumstances as mentioned above, the verification is mandatory in CAROTAR, 2020 but not in the respective Rules of Origin. Similarly, there could be situations where CAROTAR, 2020 poses additional restrictions which may be contradictory to any provision in respective Rules of Origin. In such a case, the respective Rules of Origin with the countries shall apply and not CAROTAR, 2020.

Conclusion

India has signed trade agreements with several countries, including free trade agreements with numerous countries like Japan, South Korea, ASEAN Members etc. In terms of the FTAs and supplementary Rules of Origin, a preferential tariff treatment is given to originating goods of the exporting country.There has been an escalation of imports under FTAs over time and the undue claims of preferential tariff benefits in terms of FTAs have been posing a threat to the domestic industry. In wake of the said circumstances, there was a requirement of stringent checks. The idea behind introduction of the stricter origin norms in form of CAROTAR, 2020 is to deter the crooked importers from misusing the facility of claiming concessional customs duty under various Trade Agreements by simply producing the CoO. CAROTAR, 2020 essentially casts staunch responsibility on the importers claiming preferential duty benefit to possess and furnish accurate and true information with respect to the country of origin. The intention of the government is to curb the malpractices in the trade. However, a strict implementation of CAROTAR, 2020 would certainly give room to near exploitation of powers by the proper officer and denial of claims of honest importers. The test of time would, nevertheless, reveal the reality of CAROTAR, 2020, i.e. whether it's a boon or a bane.

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