	सीमाशुल्क अग्रिम विनिर्णय प्राधिकरण **Customs Authority for Advance Rulings** **नवीन सीमाशुल्क भवन, बेलार्ड इस्टेट, मुंबई - ४०० ००१** **New Custom House, Ballard Estate, Mumbai - 400 001** **E-MAIL: cus-advrulings.mum@gov.in**	आज़ादी का अमृत महोत्सव

F.No. CAAR/CUS/APPL/79/2025 - O/o Commr-CAAR-Mumbai दिनांक/Date :11.12.2025

Ruling No. & date	CAAR/Mum/ARC/ 119 /2025-26 dated 11.12.2025
Issued by	Shri Prabhat K. Rameshwaram, Customs Authority for Advance Rulings, Mumbai
Name and address of the applicant	Jparks India Private Limited Ofiice No. S-260, Satra Plaza, Plot No. 19 & 20, Sector – 19D, Palm Beach Road, Vashi, Navi Mumbai, Maharashtra – 400101 Email- business@jparks.co
Concerned Commissionerate	The Pr. Commissioner of Customs, NS-V, JNCH, Nhava Sheva, Tal: Uran Distt: Raigad Maharashtra-400707. Email: commr-ns5@gov.in

ध्यान दीजिए/ N.B.:

1. सीमा शुल्क अधिनियम, 1962 की धारा 28I की उप-धारा (2) के तहत किए गए इस आदेश की एक प्रति संबंधित को निःशुल्क प्रदान की जाती है।
   A copy of this order made under sub-section (2) of Section 28I of the Customs Act, 1962 is granted to the concerned free of charge.

2. बोर्ड द्वारा प्राधिकृत कोई भी अधिकारी, अधिसूचना द्वारा या आवेदक प्राधिकरण द्वारा पारित किसी भी निर्णय या आदेश के खिलाफ ऐसे निर्णय वा आदेश के संचार की तारीख से 60 दिनों के भीतर क्षेत्राधिकार उच्च न्यायालय में अपील दायर कर सकता है।
   Any officer authorised by the Board, by notification or the applicant may file an appeal before the Jurisdictional High Court of **concerned jurisdiction** against any ruling or order passed by the Authority, within 60 days from the date of the communication of such ruling or order.

3. प्रधान आयुक्त या आयुक्त धारा 28KA की उप-धारा (1) के संदर्भ में अग्रिम निर्णय के खिलाफ अपील दायर करने के लिए अधिकृत होंगे।
   The Principal Commissioner or Commissioner shall be authorised to file appeal against the advance ruling in terms of sub-section (1) of section 28KA.

4. धारा 28-I के तहत प्राधिकरण द्वारा सुनाया गया अग्रिम विनिर्णय तीन साल तक या कानून या तथ्यों में बदलाव होने तक, जिसके आधार पर अग्रिम विनिर्णय सुनाया गया है, वैध रहेगा, जो भी पहले हो।
   The advance ruling pronounced by the Authority under Section 28 - I shall remain valid for three years or till there is a change in law or facts on the basis of which the advance ruling has been pronounced, whichever is earlier.

5. जहां प्राधिकरण को पता चलता है कि आवेदक द्वारा अग्रिम विनिर्णय धोखाधड़ी या तथ्यों की गलत बयानी द्वारा प्राप्त किया गया था, उसे शुरू से ही अमान्य घोषित कर दिया जाएगा।
   Where the Authority finds that the advance ruling was obtained by the applicant by fraud or misrepresentation of facts, the same shall be declared void *ab initio*.

अग्रिम विनिर्णय / Advance Ruling

1. Jparks India Private Limited (IEC No. AAECJ6675P) (hereinafter referred as "The Applicant") filed an application for advance ruling in the Office of Secretary, Customs Authority for Advance Ruling, Mumbai. The said application with the complete amendments was received in the secretariat of the CAAR, Mumbai on 29.05.2025, along with its enclosures in terms of Section 28H (I) of the Customs Act, 1962 (hereinafter referred to as the 'Act'). The applicant is seeking advance ruling regarding applicability of Notification No. 50/2018-Customs dated 30.06.2018 and determination of origin of goods in case of third-party invoicing under the Asia-Pacific Trade Agreement (APTA) regulations notified by Notification No. 94/2006-Cus. (N.T.) dated 31.08.2006 under the Customs Tariff Act, 1975

2. Submission by the Applicant:

2.1 The Applicant is a company registered under the Companies Act, 2013 and headquartered at Navi Mumbai, Maharashtra. The Applicant is engaged in the business of providing end to end EXIM compliance consultancy and holds a valid Importer Exporter Code ('IEC') AAECJ6675P. As a proposed business transaction, they seek to engage in distribution, sales and marketing of toys, games and similar other goods in India. In this regard, they seek to import electronic/non-electronic toy/toy parts into India from China and seeks to avail the benefit of preferential customs duty under the Asia-Pacific Trade Agreement ('APTA') on the import of its products. The APTA creates benefits for the importer, in the form that the importer shall not be liable to pay the Basic Customs Duty (BCD) to a certain extent on the goods so imported, as provided for in the exemption notification issued by the Government of the respective contracting countries.

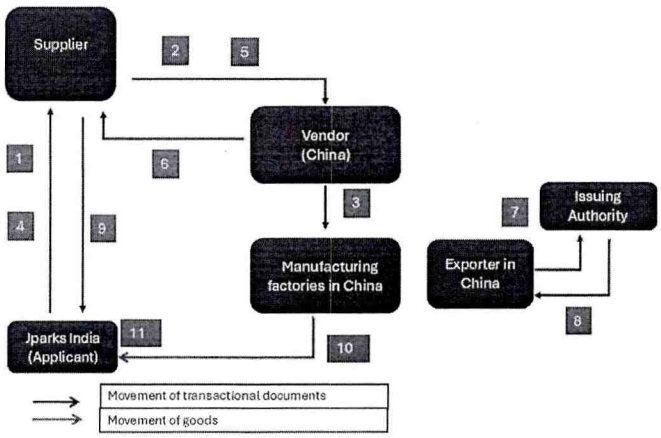
2.2 The applicant submitted that for implementation of the preferential tariff benefit agreed to be granted on imports from the notified countries under APTA, the Central Government vide Notification no. 94/2006-Cus. (N.T.), dated 31.08.2006 prescribed the Rules of Origin. Thereafter, vide Notification No. 50/2018-Cus. dated 30.06.2018 ("Exemption Notification") as amended from time to time, the Central Government granted a concession of tariffs on imports from notified countries, subject to the condition that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are originating from the notified countries, and satisfy the origin criteria in accordance with the provisions of Rules of Origin.

2.3 The applicant submitted that the imported goods duly satisfying the origin criteria i.e., goods having a local value-added content exceeding forty-five per cent as per the provisions contained in the Rules of Determination of Origin of Goods under Asia-Pacific Trade Agreement Rules, 2006 ("Rules of Origin") and the possession of a valid Certificate of Origin ("COO") at the time of import are the primary conditions to avail preferential benefit under the APTA. In addition to the COO, a declaration as required under Rule 3(1) of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 ("CAROTAR") declaring that the imported goods qualify as originating goods for a preferential rate of duty under APTA. Accordingly, the said goods duly satisfy the originating criteria, as specified under Rule 4 of the Rules of Origin.

2.4 **About the Transaction Flow** – The applicant submitted that as part of the sourcing structure of the Applicant, the global supplier located in Switzerland ("Supplier") will engage vendors located in various countries to manufacture products at designated manufacturing sites (including China) in accordance with certain design specifications provided by the Supplier. The Supplier will then buy these products from the manufacturing vendors and thereafter supply such products to the Applicant. For goods to be supplied to the Indian jurisdiction, the Supplier will enter into agreements with vendors predominantly in the Asia-Pacific region to manufacture such products, with a contractual

understanding that the manufacturing facility of the vendor located in China would be undertaking the manufacturing of the goods, in accordance with the Supplier's global quality control standards and design specifications. Once such products are manufactured, they are directly to be shipped from the manufacturing facility in China to the Applicant in India. The Applicant will purchase such products from the Supplier on a principal–to–principal basis for the purpose of sale and distribution of the products in India. Thus, in the said transaction flow, while the legal title of the product passes from the Supplier to the Applicant, the products are physically shipped from the manufacturing facility in China to be imported by the Applicant into India. Thus, the Applicant proposes to procure the product on the basis of what is generally understood as third-party invoicing. The sequence of the proposed transaction is explained as under:

Proposed Procurement Structure for China Imports



1. Inter-company agreement b/w the Supplier and Jparks India
2. MPA between the Supplier and the Vendor
3. In terms of the MPA, vendor authorizes different manufacturing factories in China to manufacture the goods under the MPA
4. PO raised by Jparks India on the Supplier (typically single PO for multiple goods)
5. PO raised by the Supplier on vendor (Individual PO per product per country)
6. Invoice raised by vendor on the Supplier
7. Application for COO to Issuing Authority
8. COO issued by the Issuing Authority
9. The Supplier raises invoice on Jparks India
10. Manufacturer in China directly deliver the goods to Jparks India
11. Jparks India imports goods upon filing of bill of entry, with relevant enclosures and the COO

2.5 The applicant submitted that the third-country invoicing refers to a transactional arrangement wherein the invoice accompanying the Preferential Certificate of Origin, used for customs clearance in the importing country, is issued not by the exporting entity but by an entity based in a different country, which may not necessarily be a signatory to the same Free Trade Agreement (FTA). This concept pertains to a transaction structure wherein the invoice for goods is raised on an entity in one country (the "Bill-To" country), while the goods are dispatched directly to another country (the "Ship-To" country). This 'Bill-To-Ship-To' model has become increasingly prevalent in global trade and industry, as it facilitates efficient cross-border transactions and optimizing supply chain operations, particularly in sectors such as manufacturing, consumer goods, and electronics.

2.6 The Applicant submitted that they seek to import electronic/non-electronic toy/toy parts into India from China and seeks to avail the benefit of preferential customs duty under APTA on the import of its products. They further submitted that in the instant case, the Supplier will make purchase orders to manufacturing vendors and shall specify how many of those and what products among the ones to be manufactured are to be allocated to the India market. Such goods allocated to the India market (backed by Applicant's Purchase Order) will be delivered directly to the Applicant. The vendor in China would raise an invoice in the name of the Supplier, for the exact goods to be exported and delivered to the Applicant in India; the Supplier after adding its commission would raise an invoice for the exact goods to the Applicant. Subsequently, the Airway Bill/ Bill of Lading in the present case would be issued from the place of export in China, having the consignee details of the Applicant, and the port of destination would also be in India; the commercial invoice issued to the Supplier would also indicate the port of destination to be in India. Therefore, the details of imported

goods and destination of the goods in Bill of Lading and the commercial invoice would correspond exactly to each other in these documents. Moreover, the Applicant would carry the COO certificate issued by the country of export, herein being China to substantiate that the goods originating from China meet the origin criteria prescribed under the APTA. In the above factual matrix, the Applicant seeks clarification on whether the transaction discussed above, which involves three parties would get covered under APTA and hence become eligible for availing preferential benefit in India considering that the transaction is in the nature of third-party invoicing or third-party trade which does not affect the main transaction between the importer and the exporter.

2.7 The applicant submitted that Customs Circular No. 53/2020 dated 08.12.2020 clarifies that third party invoicing can be accepted while claiming preferential tariff treatment in terms of Duty-Free Tariff Preference Scheme for Least Developed Countries ("DFTP") in respect of 'wholly obtained' goods. The said Circular was issued to avoid unnecessary disputes arising in case of third-party invoicing, especially since the Notification and the Rules under DFTP are silent on third party invoicing. It is pertinent to note that similar difficulty and disputes are being faced by the trade and industry in the context of APTA as well, since the Notification and Rules of Origin are silent on third-country invoicing under APTA.

2.8 The Applicant sought an advance ruling for the following questions,

i. Whether the concept of third-party invoicing is allowed under the Asia-Pacific Trade Agreement (APTA)?

ii. If the answer to question (i) is in affirmative, whether the Applicant can claim exemption under the Customs Notification No. 50/2018 dated 30.06.2018?

iii. If the answers to questions (i) and (ii) are in the affirmative, whether, the mentioning of the words "To Order" in Box 2 would facilitate the availability of preferential benefit to the Applicant even if the Box 1 indicates the name of Chinese exporter rather than the Swiss supplier?

iv. Whether non-mentioning of the name of the third-party supplier invoicing the Applicant in Box 1 of the Certificate of Origin, is acceptable?

v. Whether mentioning of the Chinese exporter as known to the COO issuing authority in China, in Box 1 is acceptable for grant of preferential benefit to the Applicant?

vi. How compliance with Box 1 (requiring exporter details to match the invoice) of the Certificate of Origin would be determined in the cases of third-party trade?

3. Applicants Interpretation of Law/Facts:

3.1 The applicant submitted that the benefit of preferential customs duty under the Exemption Notification should be allowed in terms of third-party invoicing under APTA for the following reasons:

Reason 1: Endorsement of Third-Party invoicing in Preferential Tariff Schemes

3.2 The applicant made a reference to the "Notes for completing Certificate of Origin" under the Rules of Origin issued under APTA wherein note 2 states that BOX 2 of the COO should contain the following entry:

Box 2 Goods Consigned to

Type the name, address and country of the importer. The name must be the same as the importer described in the invoice. ***For third party trade, the words "To Order" may be typed.***

3.3 The applicant submitted that "Third-party trade" is clearly recognized under the Notes for completing COO (in BOX 2) as prescribed under Rules of Origin issued under APTA and thus, the procurement structure involving a third-party invoicing should be eligible for benefit under APTA. Further, the practice of third-party/country invoicing in FTAs is an established practice in terms of the framework of World Customs Organisation (WCO). The applicant further made a reference to the recently issued Instruction no. 23/2024-Customs dated 21.10.2024 by Central Board of Indirect Taxes and Customs ("CBIC Instruction") to provide clarifications on certain aspects of origin procedures under FTAs. The relevant extracts of the same are provided below for reference:

> *2. In this regard, it is to note that third-party invoicing is a common business practice and a few trade agreements explicitly provide for it……*
>
> *……..*
>
> *3.It is pertinent to underline here that* ***the purpose of a COO is to serve as a proof that the goods qualify as originating within the terms of an FTA, irrespective of whether third-party invoicing is involved or not****. On the other hand, the seller's invoice, including a third-party invoice where applicable, is the document relevant for customs valuation.*

3.4 The applicant submitted that in light of the text of the above CBIC Instruction, it can be gleaned that third-party invoicing is considered to be a common and established business practice under FTAs. While few trade agreements provide for such provision explicitly, the COO issued within the framework of an FTA needs to be considered for examining the originating criteria under the terms of an FTA without considering whether the transaction involved third-party invoicing or not.

3.5 The applicant further submitted that in the context of least developed nations (LDCs), the Customs Circular No. 53/2020 dated 08.12.2020 ("Customs Circular") clarifies that third-party invoicing can be accepted while claiming preferential tariff treatment in terms of the DFTP Scheme for LDCs in respect of 'wholly obtained' goods. The relevant extract of the circular has been quoted below:

> *3. The matter has been examined. The Notification No. 29/2015-Cus. (N.T), dated 10-3-2015 is silent upon provisions for third party invoicing, i.e. commercial invoice for goods originating in the LDC is issued in the third country and not by the consignor in the exporting country. In some other notified preferential rules of origin, where specific provision for third party invoicing is provided, the origin of the good is nonetheless based upon the value addition done in the country of origin alone, with Free on Board (FoB) in country of origin being the base for arriving at the local value content.*
>
> *4. With regard to Notification No. 29/2015-Cus. (N.T.), read with Notification No. 96/2008-Cus., dated 13-8-2008, which offers unilateral tariff concessions to LDC, the Board is of the view that where value of goods does not have impact on the originating status, i.e. the originating criteria is 'wholly obtained', the Certificate of Origin issued in terms of Duty-Free Tariff Preference Scheme for Least Developed Countries with third party commercial invoice may be accepted. This is subject to ensuring that the goods referred to in the Certificate of Origin, and the invoice correspond to each other and that the goods satisfy the applicable rules of origin. The normal due diligence to check for authenticity of COO and correctness of claim should continue to be observed. Needless to state the existing stipulation of RBI in regard to third party invoicing, would apply.*

3.6 The applicant submitted that the said Circular has been issued to avoid unnecessary disputes arising in case of third-party invoicing, even in cases where the notification and the rules are silent on third party invoicing. The said Circular also draws reference from other notified preferential rules of origin, where specific provisions for third party invoicing are provided. Since the circular has its reference under other rules of origin, it can be relied upon for other FTAs as well.

3.7 The applicant further made a reference to the recently issued Public Notice no. 55/2024 dated 24.06.2024, Office of the Commissioner of Customs (NS-III), JNCH, Maharashtra prescribing the Guidelines for verification under CAROTAR, 2020, of the Country of Origin (COO). In the said, Public Notice, the authority categorically recognises the practice of third-country invoices under FTAs.

3.8 The applicant submitted that on a harmonious reading of the Rules of Origin, CBIC Instruction, Customs Circular and the Public Notice, the applicant is of the opinion that as long as the local value addition criterion has been satisfied, the preferential tariff treatment must be accorded to both 'wholly obtained goods' and 'not wholly obtained goods'. The applicant further placed its reliance on the following decisions, holding that the statutory provisions and Circular must be interpreted harmoniously:

(a) Verizon Communication India Pvt. Ltd. v. Assistant Commissioner, Service Tax, 2017 (9) TMI 632 - DELHI HIGH COURT [para. 48]

(b) C.S.T., Service Tax -Ahmedabad v. M/s. Sorath Builders, 2018 (3) TMI 1810 - CESTAT AHMEDABAD [para. 7]

3.9 The Applicant further submitted that in the case of Boston Scientific Pvt. Ltd. [CAAR/Del/Boston/36/2023], The CAAR, Delhi interpreted the scope of "third-country invoicing" under the ASEAN-India Free Trade Agreement ("AIFTA"). It is significant to highlight that the AIFTA expressly permits third-country invoicing. However, the issue before the Ld. Authority was whether a transaction involving multiple intermediaries (four parties in that case) qualifies as third-country invoicing under the AIFTA for availing concessional duty benefits, as outlined in the Rules of Origin. In this regard, the Ld. Authority clarified that "third-country invoicing" under the AIFTA is not restricted to three parties. Transactions involving multiple intermediaries, including four-party arrangements, qualify if the goods meet the origin criteria under the Rules of Origin. Consequently, the ruling affirmed that such transactions are eligible for concessional duty benefits under the AIFTA, subject to compliance with other substantial conditions.

3.10 The applicant submitted that in light of the above submissions, it is evident that third-party invoicing, when supported by supporting documents in compliance with the applicable Rules of Origin and requisite value addition criteria, has been widely endorsed under various preferential trade schemes and FTAs. Thus, the Applicant respectfully submits that transactions involving third-party invoicing, as per the facts of the present case, must be accorded preferential tariff benefits under the relevant FTA, subject to the goods meeting origin criteria and other prescribed conditions.

Reason 2 - Substantial Compliance with the Rules of Origin of APTA

3.11 The applicant submitted that the APTA, formerly known as the Bangkok Agreement, is a preferential trade arrangement among developing countries, signed in 1975. In terms of Article 2 and Article 5 of APTA, the objectives of APTA are to promote economic development through a continuous process of trade expansion among the developing member countries by providing non-tariff concessions in favour of the goods originating in all other notified states, which includes China. Pursuant to the signing of APTA, for smooth implementation of the preferential tariff benefit agreed

to be granted on imports from the notified countries, the Central Government vide Notification no. 94/2006-Cus. (N.T.), dated 31.08.2006 prescribed the Rules of Origin. Thereafter, vide Exemption Notification, the Central Government granted a concession of tariffs on imports from notified countries, subject to the condition that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are originating from the notified countries, and satisfy the origin criteria in accordance with the provisions of Rules of Origin.

3.12 The applicant submitted that as mentioned above, the concept of third-party trade has also been acknowledged by the Rules of Origin issued under the APTA and thus, the proposed transaction structure of the Applicant should be eligible for preferential benefit under APTA. Further, Rule 2 of the Rules of Origin contains provisions governing originating criteria of goods and specifies that goods shall be deemed to have originated in the exporting country if they are consigned directly according to Rule 6 and conform to the following conditions:

a. Products wholly produced or obtained in the exporting participating state as defined in Rule 3; or

b. Products not wholly produced or obtained in the exporting participating state, provided that the said products are eligible under Rule 4 or Rule 5.

3.13 The applicant submitted that Rule 4 of the Rules of Origin contains provisions governing goods not wholly produced or obtained, and specifies that goods 'not wholly obtained', shall be considered as originating in the exporting participating state, if the local value-added content in the exporting participating state is at least forty-five per cent and the final process of manufacture is performed within the territory of the exporting participating state. In light of the substantial compliance with the Rules of Origin under APTA, including the requisite local value addition criteria and adherence to the general principles of trade under APTA's Rules of Origin, the Applicant submitted that it is entitled to preferential tariff benefits under the Exemption Notification in light of the proposed transaction. This is in line with the CBIC Instruction cited above (supra).

Reason 3 - Doctrine of substantial compliance

3.14 The applicant submitted that, in terms of the "doctrine of substantial compliance", as upheld by the Hon'ble Supreme Court in numerous judgments, in case a person has complied with the essential condition of the statute, a procedural lapse should not deem the particular act to be in contravention of the law. In this regard, judgment of the Hon'ble Supreme Court in Commissioner of Central Excise, New Delhi vs. Hari Chand Shri Gopal and Ors [2010(260) ELT 3(S.C.)] is relied upon, which inter alia held as follows:

> *"32. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the Rule or the Regulation. Such a defence cannot be pleased if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met."*

3.15 The applicant further placed its reliance on the decision of the CESTAT in the case of M/s Universal Suppliers Vs Commissioner of Customs, Tuticorin [2021(10) TMI 341 - CESTAT

Chennai], wherein it was inter alia held that if the conditions of the notification are satisfied, the importer has to be given benefit of the exemption. The relevant extract of the judgment is reproduced below:

> *"At the time of filing the Bills-of-Entry, the Department cannot assume events that are likely to happen later if the conditions of the Notification are satisfied, the importer has to be given the benefit of the concession / exemption."*

3.16 The applicant further made a reference to the decision of CESTAT in the case of M/s SOTC Travels Services Pvt. Ltd. Vs. Pr. Commissioner of C. Ex., Delhi-I [2021 (55) G.S.T.L. 332 (Tri. – Del)], wherein it was held that if the substantive conditions to the notifications granting exemption stand fulfilled, exemption cannot be denied. The relevant extract of the judgment is reproduced below:

> *"It is only to ensure that there is no evasion of tax and that services have been rendered specifically to those diplomatic missions/consular officers to whom a certificate has been issued by the Protocol Officer that the Notifications require a correlation to be established between the invoices and the undertakings. Once these two documents can be correlated, though not in a manner provided for, the substantive conditions to the Exemption Notifications stand fulfilled and the exemption cannot be denied."*

3.17 The applicant submitted that in view of the above -mentioned judicial pronouncements, the 'doctrine of substantial compliance' is applicable in this case. The Applicant satisfies the originating criteria under the Rules of Origin, thereby meeting the essential requirements for claiming the preferential rate of duty in terms of the proposed transaction.

Reason 4 - Third country invoicing is an established practice by the 'World Customs Organisation' and other foreign trade agreements

3.18 The applicant placed its reliance on the 'Guidelines on Certification of Origin' issued by the WCO dated July 2014 and updated up to June 2018. The said guidelines, in the context of third-party sales, are provided as follows:

> *'6.2.2 Third country invoice (intermediary trade)- It is a common practice in today's international trade to involve an intermediary between the importer and the exporter. This practice must be recognized and the related procedures must be in place. In trade involving an intermediary residing in a third country, the invoice issued in the third country (a third country invoice) would be submitted to the Customs of the importing country to support the import declaration.*
>
> *In the case where third country invoicing is involved, the following guidelines are provided to ensure the appropriate processing of intermediary trade.*
>
> *Guideline: (INTERMEDIARY TRADE)*
>
> *8. Recognizing the current practices of trade, a proof of origin issued in the country of origin should be accepted in cases where the commercial invoice is issued in a third country, as long as it is discernible that the goods referred to in the proof of origin and the invoice correspond to each other and that the goods satisfy the applicable rules of origin.*
>
> *When a declaration of origin is issued by an approved exporter for goods which are traded via an intermediary business based in a third country, the declaration of origin should be made out on a commercial document other than an invoice which the approved exporter issues on his/her own responsibility, and which clearly identifies the goods it accompanies.*

3.19 The applicant further placed its reliance on the decision in Manisha Pharma Plasto Pvt. Ltd. [1999 (112) ELT 22 (Del)] which was affirmed by the decision of the Hon'ble Mumbai CESTAT in the case of Sima Khatib [2004 (166) ELT 119 (Tri-Mum)], wherein it was held that it is a settled position of law that the opinion given by WCO is very relevant for interpretation of the provisions of the Customs Act and the rules made thereunder.

3.20 The applicant further submitted that the provision of 'third party invoicing' has also been recognized under various foreign trade agreements. Some of the FTAs which categorically provide for third-country invoicing are AIFTA (ASEAN-India FTA), India-Chile FTA, India-Korea FTA, and India-Malaysia FTA.

3.21 The applicant submitted that in view of the above, third-party invoicing is a commonly accepted practice, and the guidelines as framed by the WCO are required to be adhered to, in the interest of facilitating ease of trade. Accordingly, they submitted that COO produced in relation to third party invoicing, should be accepted for availment of exemption in terms of the Exemption Notification, on import of the goods from China.

3.22 The applicant further submitted that acceptance of COO in the context of third-party invoicing has been settled by the ruling of Hon'ble Chennai CESTAT in the case of Olam Enterprises India Pvt Ltd vs CC, Tuticorin [2018 (362) ELT 378 (Tri - Chennai)]. The issue which arose for consideration before the Hon'ble CESTAT was whether COO produced by the importer can be accepted for granting exemption, when related commercial invoice has not been issued from the originating country. The Hon'ble CESTAT allowed the exemption benefit based on the following observations:

a. Goods are consigned from the exporter and the importer has been indicated as consignee;

b. Importer adduced sufficient proof to establish that the goods, though invoiced by third party, are the same goods, which have been originally invoiced by the exporter to the third party;

c. Importer also sufficiently established seminal connection and linkage with the imported goods, invoiced by third party and the COO submitted by the manufacturer in exporting country.

3.23 The applicant submitted that the aforementioned observations made by the Hon'ble CESTAT in the decision of Olam Enterprises India Pvt Ltd as referred supra are similar to the facts of the instant case. In view of the same, while the aforementioned judgement is in the context of 'Agreement of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India', it is humbly submitted that the COO produced by the Importer is valid for availing exemption benefit, arising by virtue of the Exemption Notification, even in the case of third party invoicing where the related commercial invoice has not been issued from the originating country.

Reason 5 - COO issued according to Rules of Origin under the FTA between two sovereign states should be regarded as sacrosanct

3.24 The applicant submitted that the COO issued as per the FTA serves as an official document that verifies the originating status of the goods and confirms compliance with the origin criteria for claiming preferential rates of duty under the Rules of Origin. As long as the Importer has obtained a valid and duly issued certificate of origin from the competent authorities in China, it should be recognized as conclusive evidence of the origin criteria eligibility for preferential treatment under the Rules of Origin which cannot be challenged by the Indian adjudication authorities.

3.25 The applicant submitted that under the FTAs, it is fundamentally the goods which become eligible to the preferential tariff if they satisfy the origin criteria under the rules of origin. Therefore, once eligible, the third country invoicing should not change that situation. There is no prescription

under law that mandates the Indian Custom authority to initiate investigation in case of availment of benefit of preferential tariff treatment under the agreement other than the cases involving palpable fraud or fraudulent practice being adopted by the importer. The applicant placed its reliance on the 'WCO Origin Compendium' issued by the WCO dated May 2017. The said compendium, in the context of proof of origin, provide as follows:

> *Minor errors in proof of origin to be disregarded*
>
> *"Where the originating status of the goods is not in doubt, the discovery of minor discrepancies between the statements made in the proof of origin and those made in the documents submitted to the Customs authority of the importing country should not ipso facto invalidate the proof of origin, provided that the documents evidently correspond to the products physically presented".*

3.26 The applicant further placed its reliance on the decision in the case of Bullion and Jewellers Association v Union of India, 2016 (335) E.L.T. 639 (Del.), wherein the Hon'ble court held that if Indian Customs Authority has any doubts regarding the origin of the goods, then the retroactive check as set out in Clause 16 of Annexure III to the Rules of Origin must be undertaken. If no recourse to such process has been undertaken, then the Customs Authority do not have any material ground for denial of preferential tariff treatment.

3.27 The applicant further submitted that as there is no bar placed on the Exemption Notification and all the conditions for granting exemption are satisfied, the benefit of concession cannot be denied on any extraneous consideration. In this regard, reliance is placed on the decision in the case of CCE v Riddhi Siddhi Bullion Ltd. [2017 (355) E.L.T. 585 (Tri.-Hyd)], wherein it was held that in the absence of any suspicion on documents i.e. the COO or other clarifications/documents issued by the issuing authority, the Indian adjudicating authorities, cannot deny the benefit under the Agreement, merely on assumptions and presumptions.

3.28 The applicant further placed its reliance on the decision in the case of R.S. Industries (Rolling Mills) Ltd. Vs. COMMISSIONER OF C. Ex., Jaipur-I [2018 (359) ELT 698 (Tri-Del)], wherein the Hon'ble Tribunal held that:

> *"We note that the denial of exemption, as claimed by the importer, is on the ground that the value addition in Sri Lanka fall below 35%. We note that the certificates of origin have been issued by Competent Authority of Sri Lankan Government. The same is not in dispute. We already note that the certificate were not recalled or cancelled by the issuing authority".*
>
> *"In view of the above discussion and analysis, we find that in the presence of valid certificates of origin issued by Competent Authority, the assessing authorities in India are not right in denying the benefit of exemption notification. Accordingly, we set aside the impugned order and allow the appeals".*

3.29 The applicant also made a reference to the decision in the case of BDB Exports Pvt. Ltd. Vs. Commissioner of Customs (Prev), Kolkata [2017 (347) ELT-662], wherein the Hon'ble Tribunal held that Certificate of origin given by the concerned contracting state cannot be dishonoured/rejected by the customs department unless said certificate is cancelled by the issuing authority.

3.30 The applicant submitted that in light of the aforesaid judicial precedents, COO issued by the competent authority qualifying the origin criteria cannot be challenged by the Custom Authorities, so as to deny the exemption benefit, provided that the originating criteria have been met in the exporting

country as evidenced by the COO, the custom department is not entitled to deny the exemption benefit. Therefore, such COO is sacrosanct and cannot be questioned by Indian customs authorities.

3.31 The applicant submitted that in view of the above submissions, the Applicant is entitled to the benefit of concession in the proposed transaction as provided under the Exemption Notification, provided the imported goods duly satisfy the originating criteria under Rules of Origin.

4. Port of Import and reply from Jurisdictional Commissionerate

4.1 The applicant in their CAAR-1 indicated that they intend to avail the benefit under Notification No. 50/2018-Customs dated 30.06.2018 and benefits of country of origin of goods in case of third-party invoicing under the Asia-Pacific Trade Agreement (APTA) regulations notified by Notification No. 94/2006-Cus. (N.T.) dated 31.08.2006 under the Customs Tariff Act, 1975 at the jurisdiction of office of the Pr. Commissioner of Customs, NS-V, JNCH, Nhava Sheva, Tal: Uran Distt: Raigad, Maharashtra-400707. In terms of Provisions of the Section 28-I(1) of the Customs Act, 1962 read with the Sub-regulation No. (7) of the Regulation No. 8 of the Customs Authority for Advance Rulings Regulations, 2021, the application was forwarded to the office of the Principal Commissioner of Customs, NS-V, JNCH, Nhava Sheva, Tal: Uran Distt: Raigad, Maharashtra-400707 on 12.06.2025 as indicated by the applicant at Sr. No. 13 of their CAAR-1 Forms calling upon them to furnish the relevant records with comments, if any, in respect of the said application. Further reminders were also sent on 18.08.2025, 16.09.2025 and 03.10.2025 to the concerned jurisdictional commissionerates. However, no reply till date has been received.

5. Records of Personal Hearing

5.1 A personal hearing was held on 10.09.2025 in the matter. Sh. Nishant Shah and Ms. Supriya Singh, both ARs appeared for PH. They reiterated the contentions filed with application that they seek to import Swiss brand electronic toys/ non-electronic toys manufactured in China satisfying the origin criterion. They contended that in terms of APTA provisions, they are eligible for availment of preferential benefits on the basis of third party invoicing. They relied upon Circular No. 53/2020 dated 08.12.2020, Instruction no 23/2024 –Customs, dated 21.10.2024 and other case laws filed with the application.

No one appeared for the hearing from the departments side.

6. Additional Submissions

6.1 The applicant vide its letter dated 24.09.2025 submitted that the products intended for the Indian market are manufactured by a vendor in China and are shipped directly from China to the Applicant in India. The commercial and documentary flow is as follows:

a. The Chinese manufacturer manufactures and ships the goods. The manufacturer issues its commercial invoice in favour of the Swiss Supplier, for the exact goods to be exported and delivered to the Applicant in India.

b. The Swiss Supplier, after adding its commission and margin, would raise an invoice for the exact goods to the Applicant, for goods that are to be allocated to the Indian market.

c. Bills of Lading/airway bills and packing lists issued at the point of export identify the Applicant as consignee/importer for consignments allocated to India; the goods are physically shipped directly from the Chinese manufacturer to India.

d. Certificates of Origin (COOs) are issued by the competent Chinese issuing authority in the form prescribed under the APTA Rules of Origin and the Applicant will retain the COO(s) for the

relevant shipments along with supporting documents to enable their verification of origin in the event of an inquiry.

6.2 The applicant further submitted that the Bill-to / Ship-to third-party invoicing model, as described above, is common in global supply chains and is recognised in international practice by the World Customs Organisation's Guidelines on Rules of Origin.

6.3 The applicant also sought to revise the questions. The revised questions on which Ruling is Sought by the Applicant are as follows:

a. Whether the concept of third-party invoicing is allowed under the Asia-Pacific Trade Agreement (APTA)?

b. If the answer to question (i) is in affirmative, whether the Applicant can claim exemption under the Customs Notification No. 50/2018 dated 30.06.2018?

c. If the answers to questions (i) and (ii) are in the affirmative, whether the mentioning of the words "To Order" in Box 2 would facilitate the availability of preferential benefit to the Applicant even if the Box 1 indicates the name of Chinese exporter rather than the Swiss supplier?

d. Whether non-mentioning of the name of the third-party supplier invoicing the Applicant in Box 1 of the Certificate of Origin, is acceptable?

e. Whether mentioning of the Chinese exporter as known to the COO issuing authority in China, in Box 1 is acceptable for grant of preferential benefit to the Applicant?

f. How compliance with Box 1 (requiring exporter details to match the invoice) of the Certificate of Origin would be determined in the cases of third-party trade?

g. Any other question that the Learned Authority may deem fit for adjudication.

6.4 The applicant reiterated their submissions made in the applications regarding their interpretation of fact and law.

7. Discussions and Findings

7.1 I have considered all the materials placed before me in respect of applicability of Notification No. 50/2018-Customs dated 30.06.2018 and determination of origin of goods in case of third-party invoicing under the Asia-Pacific Trade Agreement (APTA) regulations notified by Notification No. 94/2006-Cus. (N.T.) dated 31.08.2006 under the Customs Tariff Act, 1975. I have gone through the submissions made by the applicant during the personal hearing and additional submissions made by the applicant as well. Therefore, I proceed to pronounce a ruling on the basis of information available on record as well as existing legal framework.

7.2 The applicant has sought advance ruling in respect of the following questions:

a. Whether the concept of third-party invoicing is allowed under the Asia-Pacific Trade Agreement (APTA)?

b. If the answer to question (i) is in affirmative, whether the Applicant can claim exemption under the Customs Notification No. 50/2018 dated 30.06.2018?

c. If the answers to questions (i) and (ii) are in the affirmative, whether the mentioning of the words "To Order" in Box 2 would facilitate the availability of preferential benefit to the Applicant even if the Box 1 indicates the name of Chinese exporter rather than the Swiss supplier?

d. Whether non-mentioning of the name of the third-party supplier invoicing the Applicant in Box 1 of the Certificate of Origin, is acceptable?

e. Whether mentioning of the Chinese exporter as known to the COO issuing authority in China, in Box 1 is acceptable for grant of preferential benefit to the Applicant?

f. How compliance with Box 1 (requiring exporter details to match the invoice) of the Certificate of Origin would be determined in the cases of third-party trade?

7.3 At the outset, I find that the issue raised at the Sr. No. 08 in the CAAR-1 form is squarely covered under Section 28H(2) of the Customs Act, 1962 being a matter related to the applicability of a notification issued under Section 25(1) of the Customs Act, 1962. I further find that the applicant is a holder of an Importer Exporter Code (IEC) and thereby, is a valid applicant under Section 28E (c) of the Customs Act, 1962 for filing application under Section 28H of the Customs Act, 1962.

7.4 The applicant seeks to avail preferential duty benefits under the Asia-Pacific Trade Agreement (APTA), as implemented in India by Notification No. 94/2006-Customs (N.T.) dated 31.08.2006 as amended by Notification No. 79/2009-Customs (N.T.) dated 09.07.2009 and Notification No. 59/2018-Customs (N.T.) dated 30.06.2018, which prescribes the Rules of Origin, and Notification No. 50/2018-Cus, which grants the customs duty exemption. Therefore, before delving further into the issue, I find it prudent to discuss the relevant legal framework governing the Rules of Origin.

7.5 The Rules of Determination of Origin of Goods under the Asia-Pacific Trade Agreement, (formerly known as the Bangkok Agreement) Rules, 2006 were notified by Notification No. 94/2006-Customs (N.T.) dated 31.08.2006 superseding the earlier notification no. 430/1976-Customs dated 01.11.1976. The relevant provisions of these rules for determination of Origin are as under:

"Rule 2 – Originating products

Products covered by preferential trade within the framework of the Agreement imported into the territory of a Participating State from another Participating State which are consigned directly within the meaning of Rule 6 hereof, shall be eligible for preferential concessions if they conform to the origin requirement under any one of the following conditions:

(a) Products wholly produced or obtained in the exporting Participating State as defined in Rule 3; or

(b) Products not wholly produced or obtained in the exporting Participating State, provided that the said products are eligible under Rule 4 or Rule 5

Rule 3 – Wholly produced or obtained

Rule 4 – Products not wholly produced or obtained

(a) Within the meaning of Rule 2(b), products worked on or processed as a result of which the total value of the materials, parts or produce originating from non- Participating States or of undetermined origin used does not exceed 55 per cent of the f.o.b. value of the products produced or obtained and the final process of manufacture is performed within the territory of the exporting Participating State shall be eligible for preferential concessions, subject to the provisions of Rule 4(c), (d) and (e).

(b) Sectoral agreements

(c) The formula for calculating the content of non-originating materials, and its requirement for obtaining the originating status referred to in Rule 3(a) is as follows:

Value of imported non-originating materials, parts or produce + *Value of undetermined origin materials, parts or produce*

---

f.o.b. price × 100 ≤ 55%

(d) The value of the non-originating materials, parts or produce shall be:

(i) the c.i.f. value at the time of importation of materials, parts or produce where this can be proven; or

(ii) The earliest ascertainable price paid for the materials, parts or produce of undetermined origin in the territory of the Participating State where the working or processing takes place.

(e) Whether or not the requirements of Rule 2(b) are satisfied, the following operations or processes are considered to be insufficient to confer the status of originating products:

1. Operations to ensure the preservation of products in good condition either for transportation or storage (ventilation, spreading out, drying, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts, and like operations);

2. Simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making-up of sets of articles), washing, painting, cutting up;

3. Changes of packaging and breaking up and assembly of consignments;

4. Simple slicing, cutting or repacking or placing in bottles, flasks, bags, boxes, fixing on cards or boards, etc.

5. The affixing of marks, labels or other like distinguishing signs on products or their packaging;

6. Simple mixing;

7. Simple assembly of parts of products to constitute a complete product;

8. Slaughter of animals;

9. Peeling, unflaking, grain removing and removal of bones; and

10. A combination of two or more operations specified above.

Rule 5 – Cumulative Rules of Origin

Products which comply with origin requirements provided for in Rule 2 and which are used by a Participating State as input fora finished product eligible for preferential treatment by another Participating State shall be considered as a product originating in the territory of the Participating State where working or processing of the finished product has taken place provided that the aggregate content originating in the territory of the Participating States is not less than 60 percent of its f.o.b. value

Rule 6 – Direct consignment requirement.

The following shall be considered as directly consigned from the exporting Participating State to the importing Participating State:

(a) if the products are transported without passing through the territory of any non-Participating State :

(b) the products whose transport involves transit through one or more intermediate non-Participating States with or without transhipment or temporary storage in such countries, provided that :

(i) the transit entry is justified for geographical reason or by considerations related exclusively to transport requirements;

(ii) the products have not entered into trade or consumption there ; and

(iii) the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition

Rule 8 – Certificate of Origin

Products eligible for preferential concessions shall be supported by a Certificate of Origin issued by an authority designated by the government of the exporting Participating State and notified to the other Participating States in accordance with the attached sample Certificate of Origin and notes for the completion thereof"

7.6 From the above, I observe that for eligibility to preferential treatment under APTA, the imported goods must qualify as originating products under Rule 2, which requires that they be either wholly produced in the exporting Participating State (Rule 3) or, if not wholly produced, must satisfy the value-addition requirement that non-originating materials do not exceed 55% of the FOB value, with the final manufacturing process undertaken in that State, excluding the list of simple or minimal operations that cannot confer origin (Rule 4). Origin may also be established through cumulation, provided the aggregate originating content from Participating States is at least 60% of the FOB value (Rule 5). Further, the goods must satisfy the direct consignment requirement (Rule 6), meaning they are shipped directly or only transit through non-Participating States without entering trade or undergoing processing other than what is necessary to preserve them. Finally, preferential treatment may be claimed only when supported by a valid Certificate of Origin issued by the designated authority of the exporting Participating State (Rule 8).

Further, I observe that these rules have no provision regarding third-country invoicing or third-country trade.

7.7 Further, the Notification No. 94/2006 – Customs (N.T.) contains a sample certificate of origin along with notes for completing Certificate of Origin. The notes for completing Certificate of Origin given under the said notification are as under:

"I. General Conditions: To qualify for preference, products must:

a) fall within a description of products eligible for preference in the list of concessions of an Asia-Pacific Trade Agreement country of destination;

b) comply with Asia-Pacific Trade Agreement rules of origin. Each article in a consignment must qualify separately in its own right; and

c) comply with the consignment conditions specified by the Asia-Pacific Trade Agreement rules of origin. In general, products must be consigned directly within the meaning of Rule 6 hereof from the country of exportation to the country of destination.

II. Entries to be made in the boxes

...

Box 2 Goods Consigned to

Type the name, address and country of the importer. The name must be the same as the importer described in the invoice. For third party trade, the words "To Order" may be typed."

7.8 From the above, I infer that the General Conditions in the notes for completing Certificate of Origin instructions clearly demonstrates that in order to avail the preference benefit, the product must fulfil the following conditions:

(a) the goods fall within the concessions offered by the importing State;

(b) each product independently meets the APTA origin requirements; and

(c) the goods comply with the direct consignment requirement of Rule 6.

Further, the instructions for completing the Certificate of Origin further state in Box 2 that the importer's details must match the invoice and that, for third-party trade, the words "To Order" may be typed. Although the instructions mention third party trade in the notes for completing the Certificate of Origin, however, this is a procedural allowance, not a substantive authorization for third-party invoicing as there is no corresponding provision in the rules of determination of origin of goods notified vide notification no. 94/2006-Customs (N.T.).

7.9 The applicant has further relied on CBIC Instruction No. 23/2024-Customs dated 21.10.2024. I have gone through the said instruction. The relevant text of the instruction is as under:

Subject: Clarification on certain aspects of origin procedures under free trade agreements (FTAs) - regarding.

The Board is in receipt of various representations, citing difficulties encountered in import clearance where third-party invoicing, allowed under the provisions of a trade agreement, has been used.

1.1 It has been represented that certain field formations are questioning the origin status of products imported under FTAs with third-party invoicing, particularly under the ASEAN-India FTA (AIFTA), upon comparing the value recorded on the certificate of origin (COO) and that declared on the third-party invoice. Instances have also been brought to notice where preferential claims have been denied in such cases without conducting verification of COO with the issuing authority to check its authenticity and / or accuracy of information contained therein.

2. In this regard, it is to note that third-party invoicing is a common business practice and a few trade agreements explicitly provide for it. For example, Article 22 of Operational Certification Procedures for the Rules of Origin for the AIFTA states that:

"The Customs Authority in the importing Party shall accept an AIFTA Certificate of Origin where the sales invoice is issued either by a company located in a third country or an AIFTA exporter for the account of the said company, provided that the product meets the requirements of the AIFTA Rules of Origin."

7.10 The opening para of the said instructions makes it abundantly clear that this clarification is issued to ease the difficulties faced by the trade in respect of those FTAs in which third-party invoicing is already permitted under the provisions of the agreements. The explicit phrasing "allowed under the provisions of a trade agreement" — establishes that the clarification is not intended to create, expand, or imply a right to third-party invoicing where the underlying FTA does not itself contain such enabling provisions. The Instruction proceeds to give an example from the ASEAN-India FTA (AIFTA), which expressly provides for third-party invoicing through Article 22 of its Operational Certification Procedures reinforcing that its guidance applies to FTAs with existing third-party-trade clauses. Thus, the Instruction's scope is confined to agreements where third-party invoicing is already legally recognized, and it cannot be construed as extending this facility to FTAs — such as APTA — that is not explicitly or expressly provided. The said Instruction functions purely as a clarificatory guide for FTAs that already recognize third-party invoicing within their legal framework. As the APTA Rules of Origin contain no substantive provision authorizing third-party invoicing, the Instruction has no effect in creating or implying such a facility for APTA imports.

7.11 The applicant has further referred the circular no. 53/2020 dated 08.12.2020 to impress that third party invoicing is generally allowed. I have gone through the said circular. The relevant text and provisions are as under:

Subject: Third Party Invoicing in case of Preferential Certificates of Origin issued in terms of DFTP for "wholly obtained goods"-regarding

The Board has received representations from trade with regard to use of third party invoicing while claiming preferential tariff treatment in terms of Duty Free Tariff Preference Scheme for Least Developed Countries (DFTP) in respect of "wholly obtained goods".

2. It has been learnt that Certificates of Origin (COOs) issued in terms of customs notification no 29/2015-cus (N.T), dated 10.03.2015 and with third party invoicing were earlier being accepted by the proper officer but that same has been discontinued after implementation of CAROTAR, 2020.

3. The matter has been examined. The notification no 29/2015-cus (N.T), dated 10.03.2015 is silent upon provisions for third party invoicing, i.e. commercial invoice for goods originating in the LDC is issued in the third country and not by the consignor in the exporting country. In some other notified preferential rules of origin, where specific provision for third party invoicing is provided, the origin of the good is nonetheless based upon the value addition done in the country of origin alone, with Free on Board (FoB) in country of origin being the base for arriving at the local value content.

4. With regard to notification no 29/2015-cus (N.T), read with notification no. 96/2008-Cus, dated 13.08.2008, which offers unilateral tariff concessions to LDC, the Board is of the view that where value of goods does not have impact on the originating status, i.e the originating criteria is 'wholly obtained', the Certificate of Origin issued in terms of Duty Free Tariff Preference Scheme for Least Developed Countries with third party commercial invoice may be accepted. This is subject to ensuring that the goods referred to in the Certificate of Origin, and the invoice correspond to each other and that the goods satisfy the applicable rules of origin. The normal due diligence to check for authenticity of COO and correctness of claim should continue to be observed. Needless to state the existing stipulation of RBI in regard to third party invoicing, would apply.

7.12 The said circular was issued exclusively for the Duty-Free Tariff Preference (DFTP) Scheme for Least Developed Countries and was issued to address situations where goods are "wholly obtained" in the country of origin but the commercial invoice is issued by an entity located in a third country. The rules of determination of origin of goods in this instance were notified vide notification no. 29/2015-customs (N.T.) which does not expressly provide such third party invoice. The circular permits the acceptance of such invoicing only in case of wholly obtained goods as the origin criteria of these goods is not based on value-addition and third-party invoicing do not alter the origin. However, in the instant matter, it is not the applicant's case that the goods are wholly produced or obtained. The origin criteria in the instant matter are based upon value addition. Therefore, reliance on the above circular to create or imply a similar facility under APTA is not correct, as the circular pertains exclusively to wholly obtained goods under the DFTP Scheme and cannot be extended to agreements such as APTA, which contain no substantive provision permitting third-party invoicing.

7.13 Further, the applicant has relied on a number of judgments, I will go through each one by one and look into their applicability in the instant matter.

i. Advance Ruling in Boston Scientific Pvt. Ltd. (CAAR/Del/Boston/36/2023) – The matter here was related to ASEAN - India FTA (AIFTA) which explicitly permits third-party invoicing whereas the APTA has no such provisions.

ii. Judgment of the Hon'ble Supreme Court in Commissioner of Central Excise, New Delhi vs. Hari Chand Shri Gopal and Ors [2010(260) ELT 3(S.C.)] – The Hon'ble Supreme Court in its order at para 22 and 23 have clearly held that when an exemption notification prescribes specific conditions the assessee must comply with such conditions strictly and fully. The judgment distinguished between **substantive conditions**, which go to the core eligibility for exemption and must be complied with *rigorously*, and **procedural conditions**, which exist to facilitate implementation and may allow some degree of flexibility if the essential purpose is satisfied. The exact text of Para 22 and 23 is as under:

> *"22 The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption. In Novopan Indian Ltd. (supra), this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave- (1996) 2 SCR 253, held that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption.*
>
> *23. Of course, some of the provisions of an exemption notification may be directory in nature and some are of mandatory in nature. A distinction between provisions of statute which are of substantive character and were built in with certain specific objectives of policy, on the*

one hand, and those which are merely procedural and technical in their nature, on the other, must be kept clearly distinguished. In Tata Iron and Steel Co. Ltd. (supra), this Court held that the principles as regard construction of an exemption notification are no longer res integra; whereas the eligibility clause in relation to an exemption notification is given strict meaning wherefor the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed literally. An eligibility criteria, therefore, deserves a strict construction, although construction of a condition thereof may be given a liberal meaning if the same is directory in nature."

Further, in para 24, it was held that **substantive conditions cannot be relaxed** merely on equitable considerations, and that an assessee claiming exemption must demonstrate strict adherence to all mandatory requirements.

"24. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. ***Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met.*** *Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance.* ***Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed. Fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important.*** *Substantial compliance of an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non- compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance of those factors which are considered as essential."*

Further, the same position has been upheld by the Hon'ble Supreme Court in its judgment in the matter of ***Commissioner of Customs (Import), Mumbai vs. Dilip Kumar and Company & Ors.*** (2018) 9 SCC 1 : 2018 (361) E.L.T. 577 (S.C.) wherein it was also held that in substantive conditions of an exemption must be complied with strictly, and in case of any ambiguity in the scope of the exemption, the interpretation must favour the Revenue rather than the assessee.

iii. Order of CESTAT, Chennai in the matter of Olam Enterprises India Pvt. Ltd. Vs CC, Tuticorin [2018 (362) ELT 378 (Tri – Chennai)]. – This matter also pertains to ASEAN – India FTA (AIFTA) which explicitly permits third-country invoicing whereas APTA has no such provisions.

iv. The applicant has further relied on a number of judgments regarding the Sacrosanctity of the Certificate of Origin, however, none of the case law submitted pertains to third-country invoicing in the matter of APTA.

7.14 The applicant has further relied on the "Guidelines on Certificate of Origin" issued by the WCO in July 2014. I have gone through the same and I observe that the Guidelines on Certificates of Origin issued by the World Customs Organization (WCO) are, by their very nature, advisory instruments intended to promote uniformity and best practices among customs administrations. These guidelines do not possess any binding legal force unless their contents are expressly incorporated into a bilateral or multilateral agreement or formally adopted by the participating countries through their domestic legal processes. Consequently, the WCO guidelines cannot be relied upon to create, expand, or imply any right—such as the permissibility of third-party invoicing—that is not already provided for in the substantive Rules of Origin governing a particular preferential scheme. In the absence of explicit ratification or incorporation by the participating states, such guidelines serve only as interpretative aids and cannot override or supplement the legal framework established under the APTA Rules of Origin or the notifications issued thereunder.

7.15 As discussed above, in the absence of any enabling provision within the substantive APTA Rules of Origin, the mere mention of 'third-party trade' in the Notes for completion of the Certificate of Origin cannot be construed as conferring a right or creating an entitlement to preferential treatment, nor can a procedural instruction be interpreted to give effect to something that the Rules themselves do not permit. Further, Instruction No. 23/2024 cannot be treated as creating rights absent in the treaty text. It therefore cannot be construed as permitting third-party invoicing where the underlying FTA does not expressly makes the provision for the same.

8. I further observe that in the case of Commissioner of Customs, Ahmedabad Vs Baroda Rayons Corporation Ltd.-2023 (1) TMI 115, the Hon'ble Gujarat High Court has held that a taxing statue is to be strictly construed. In a taxing statue one has to look merely what is clearly said in the provision. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing has to be read in, nothing is to be implied.

8.1 Similarly, in the case of Preeti Chandra vs Directorate of Enforcement 2023 (6) TMI 650 ; Hon'ble Delhi HC has held that it is settle principal of interpretation that while interpreting a statue and/ or a section the courts are not to substitute or add or subtract words from the section

In a catena of judgements, the same view has been taken and upheld by Hon'ble Supreme Court.

9. In light of the above facts, discussions and observations, my views on the questions raised by the applicant are as under:

a. Whether the concept of third-party invoicing is allowed under the Asia-Pacific Trade Agreement (APTA)?

Ans. I answer in negative as there is no provision under the Asia – Pacific Trade Agreement which expressly or substantively permits the third-party invoicing.

b. If the answer to question (i) is in affirmative, whether the Applicant can claim exemption under the Customs Notification No. 50/2018 dated 30.06.2018?

Ans. Preferential duty benefit under APTA may be granted in a third-party invoicing scenario only if the applicant demonstrates to the satisfaction of the Deputy / Assistant Commissioner of Customs, as the case may be, that:

i. the goods satisfy the originating criteria under Rules 2–5,

ii. the goods satisfy the direct consignment requirement under Rule 6, and

iii. the Applicant establishes complete documentary linkage between the COO issued by the exporting APTA State, the transport documents, and the third-country commercial invoice.

c. If the answers to questions (i) and (ii) are in the affirmative, whether the mentioning of the words "To Order" in Box 2 would facilitate the availability of preferential benefit to the Applicant even if the Box 1 indicates the name of Chinese exporter rather than the Swiss supplier?

Ans. Not Applicable, the phrase "To Order" in Box 2 of the COO is NOT a basis for preferential eligibility. It merely indicates procedural handling of third-party trade.

d. Whether non-mentioning of the name of the third-party supplier invoicing the Applicant in Box 1 of the Certificate of Origin, is acceptable?

Ans. Not Applicable

e. Whether mentioning of the Chinese exporter as known to the COO issuing authority in China, in Box 1 is acceptable for grant of preferential benefit to the Applicant?

Ans. Not Applicable

f. How compliance with Box 1 (requiring exporter details to match the invoice) of the Certificate of Origin would be determined in the cases of third-party trade?

Ans. Not Applicable

9. I rule accordingly.

11/11/25

(Prabhat K. Rameshwaram)
Customs Authority for Advance Rulings, Mumbai

F. No. CAAR/CUS/APPL/79/2025-O/o Commr-CAAR-Mumbai **Dated:11-12-2025**

This copy is certified to be a true copy of the ruling and is sent to:

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8. Guard file.

(Vivek Dwivedi)
Dy. Commissioner & Secretary
Customs Authority for Advance Rulings,
Mumbai