Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10916 of 2013 - DB

(Arising out of OIO-KDL-COMMR-54-2012-13 dated 11/01/2013 passed by Commissioner of CUSTOMS-KANDLA)

Prakash Impex Pvt Ltd **........Appellant**
B-18,
Shankar Tekri,
Jamnagar, Gujarat

VERSUS

Commissioner of Customs-Kandla **......Respondent**
Custom House,
Near Balaji Temple,
Kandla, Gujarat

WITH

Customs Appeal No. 10917 of 2013 - DB

(Arising out of OIO-KDL/COMMR/53/2012-13 dated 11/01/2013 passed by Commissioner of CUSTOMS-KANDLA)

Bharat Impex **........Appellant**
Plot No. 12 & 14,
Naghedi Industrial Estate, Naghedi,
Jamnagar, Gujarat

VERSUS

Commissioner of Customs-Kandla **......Respondent**
Custom House,
Near Balaji Temple,
Kandla, Gujarat

WITH

Customs Appeal No. 10918 of 2013 - DB

(Arising out of OIO-KDL/COMMR/52/2012-13 dated 10/01/2013 passed by Commissioner of CUSTOMS-KANDLA)

Raksha Impex **........Appellant**
Plot No. 457,
Gidc, Shanker Tekri, Udyognagar,
Jamnagar, Gujarat

VERSUS

Commissioner of Customs-Kandla **......Respondent**
Custom House,
Near Balaji Temple,
Kandla, Gujarat

APPEARANCE:
Shri Rahul Gajera, Advocatet for the Appellant
Shri Tara Praksha Deputy Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 11749-11751/2024

DATE OF HEARING: 13.06.2024
DATE OF DECISION: 13.08.2024

RAMESH NAIR

These appeals are filed against the Order of Commissioner of Customs, Kandla by which duty demand has been confirmed and penalty has been imposed on the following parties M/s. Prakash Impex Pvt Ltd, M/s. Raksha Impex and M/s. Bharat Impex (“appellants” hereinafter). The appellants are importers of goods availing exemption under Notification No. 34/97 dated 7.4.1997 as amended against DEPB licenses. Since the issue involved is identical in all these three appeals, appeal of M/s. Prakash Impex Pvt Ltd is being taken up for ease as lead matter.

1.1 The facts in brief are that officers of CIU, Customs, Air Cargo Complex, Sahar, Andheri (E) Mumbai initiated investigation in respect of imports made against DEPB Licenses issued to M/s. Bhanu Sales Pvt Ltd, B-49, Ramesh Nagar, New Delhi-110015 who sold the licenses in the market. The said DEPB licenses were purchased by appellant in respect of which Customs Department, Nhava Sheva, Mumbai had issued Release Advises (RAs) in favour of appellants. The appellants on that basis imported and cleared at Kandla, brass scrap honey valued at Rs. 1,69,97,161/- by filing Bill of Entry No. 3119 dated 7.6.2001 and 3074 dated 6.6.2001 against the said DEPB licenses/RAs and was granted exemption of customs duty of Rs. 29,25,624 in terms of Notification No. 34/97 dated 7.4.1997 as amended.

1.2 By letter dated 25.8.2001 Commissioner of Customs, Jawahar Custom House, Sheva addressed to the Commissioners of Customs, New Custom House, Mumbai and to the Commissioner of Customs, Air cargo

Complex, Mumbai, informing that the aforesaid licenses shown in the register of Custom House, Sheva are purported to have been forged and have been submitted for verification. In that background, the statement dated 05.10.2001 under section 108 of the Act of Director of the appellant Shri Ramgopal Occhavalal Maheshwari was recorded by which it was interalia stated that release advises related to DEPB licenses were purchased by the appellant from Shri Shrikantbhai Jhawar of M/s. Fibrometals Pvt. Ltd. E/57 2nd floor DG Tower, Shahibaug road, Ahmedabad that he knew Shrikantbhai Jhawar since last 8 years; that they had paid value of the license/RAs relating to M/s. Abhiman Exports and M/s. Bhanu Sales Pvt. Ltd. as and when they received fax message from Shrikant Jhawar and as per his direction the DDs were got prepared and were sent directly to Delhi; that these Licenses/Release Advices were purchased by them @108% premium that they paid the said amount by DD/cheque and provided the details of payment. He further stated that Release Advices were directly sent by Shrikant Jhawar to CHA, M/s. Prime Forwarders, Gandhidham for clearance of goods and that he did not know any person in M/s. Abhiman Exports and M/s. Bhanu Sales Pvt. Ltd.

1.3 On the basis of the aforesaid letter dated 25.8.2001 and the statement of the Director, a show cause notice dated 14.12.2001 was issued to the appellant by which it was contended that exemption of payment of Customs duty under Customs Notification No. 34/97-Cus dated 7.4.1997, as amended is fraudulently availed on the basis of forged DEPB Licenses and Release Advices, and appellant have suppressed the facts from the department and therefore the extended period under the provisions of Section 28 of Customs Act, 1962 is invocable to demand Customs duty amounting to Rs. 29,25,624/-, 4% SAD and penalty under section 112 of the Act.

1.4 In reply to the said show cause notice, the appellant interalia demanded a copy of the letter dated 25.8.2001 of Commissioner of Customs relying upon which Show Cause Notice was issued. However, the same was not considered by the commissioner of customs who confirmed the duty demand and imposed penalties upon the appellant by his order dated 19.1.2006. Appeals against the said Order dated 19.1.2006 were preferred and this Tribunal by Common Order No. A/1958-1963/WZB/AHD/2010 dated 15.12.2010 passed the following order while remanding the matter to decide afresh:

> *"We have considered the submissions. We find that in the reply to show cause notice appellants made specific request for supply of documents relied upon by the Revenue in the show cause notice. Even then, the letter of the Commissioner of Customs, Bombay was not supplied which formed the basis for the show cause notice. On the sole ground of non-observance of principles of natural justice the matter is remanded to the original adjudicating authority who shall supply the relied upon documents and thereafter proceed to adjudicate the matter. Needless to say appellants shall be given reasonable opportunity to present their case before a final order is issued."*

Thereafter De-novo adjudication order was passed wherein learned Commissioner relied upon a letter dated 6.11.2012 of Deputy Director General of Foreign Trade, New Delhi by which it was informed that the License Numbers pertained to advance license and issued to the parties other than that mentioned parties in the DEPB license in question. He proceeded on the basis that the letter dated 25.08.2001 of the Commissioner of Customs, Nhava Sheva has intimated that DEPB licenses were forged and further that this fact has been confirmed by Dy. DGFT vide letter dated 6.12.2012 and hence it is not in dispute that DEPB scrips are forged and are void-ab-initio. Accordingly, learned Commissioner proceeded to confirm duty demand and further imposed penalty of Rs. 18,00,000 upon the appellant. Against the said Order the present appeal of the appellant is preferred.

2. Shri Rahul Gajera, Learned Advocate for the appellant vehemently argued that there is no evidence to establish that licenses were forged; that the letter dated 25.8.2001 of the Commissioner of Customs, Sheva relied upon in the Show Cause Notice could not be the material to make out a serious case of forgery; that the letter merely states investigation has been initiated in respect of the licenses in question; and that the letter dated 6-11-2012 of Dy. DGFT furnished for the first time during adjudication and relied upon in the impugned order is purported to have been issued by the DGFT does not bear stamp/seal of the said authority and further comments of the said authority in respect of the said licenses given after more than 10 years of the imports and is exterior to the show cause notice and hence cannot be relied upon in support of the department's case. He further submitted that there is no investigation in the matter to take the case of the department to its logical conclusion or to prove beyond doubt the forged nature of licenses. He further submitted that even officers of customs at Nhava Sheva port who verified the licenses and issued Release Advices have not questioned the authenticity of the licenses. He further submitted that notice is barred by limitation.

3. Shri Tara Praksha, learned Deputy Commissioner (AR) appearing for the department submitted that appellant has not filed police complaint against the original license holder shows that he was aware about the forged nature of licenses. He further reiterated the finding given in the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. The issue involved in the present appeals is whether DEPB licenses based on which TRAs issued by Bombay Customs House, against which appellant imported goods at Kandla port availing duty exemption under Notification No. 34/97-Cus. dated 07.04.1997 as amended, are forged and hence void-ab-initio as held by the Commissioner. It is noticed that based on letter dated 25.08.2001 of Commissioner of Customs, Jawahar Custom House, Sheva, a show cause notice was issued by the Deputy Commissioner, Kandla which was then by corrigendum dated 30.09.2002 was made answerable to Commissioner of Customs, Custom House, Kandla. Upon perusal of the said letter dated 25.08.2001 of the Commissioner of Customs, Sheva it is noticed that the same doubts the authenticity of the licenses shown in the register of the custom house. It states that the investigation with reference to the above mentioned DEPBs and TRAs have been taken up by Air Cargo Complex, Mumbai and Bombay Custom House and in the meanwhile to safeguard revenue interest immediate action to identify clearance and to demand duty may be taken. It follows from the record that absolutely no investigation was carried out thereafter to establish the alleged forged nature of the said DEPB licenses. Clearly, show cause notice issued solely based on said letter dated 25.08.2001 lacks its very foundation. At this juncture, it will be useful to refer to the ratio laid down by the Hon'ble Supreme Court in the case of Commissioner of Central Excise V. Brindavan Beverages Pvt. Ltd. reported as 2007 (213) ELT 487 (SC), it was held as under:

> *"The show cause notice is the foundation on which department has to build up its case. If the allegation in the show cause notice are not specific and on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity indicated in the show cause notice."*

4.1 It is further noticed that records do not reveal about inquiries made or statements recorded of officers of customs at port where DEPB licenses were registered and who issued TRAs against the said DEPB licenses. It appears that there were no efforts made before issuance of show cause notice to verify the licenses with the DGFT or with the forensic expert to establish the alleged forged nature of the licenses or any other modus of its misuse. Thus, the inference that can be drawn is that officers at port have duly verified the validity of the DEPB licenses before issuing TRAs and this fact remains uncontroverted. Thus, from the material relied upon in the show cause notice the only conclusion that can be arrived is that alleged forged nature of DEPB licenses is not established.

4.2 It is further noticed that learned commissioner has also relied upon letter dated 6.11.2012 of Joint, Director General of Foreign Trade, New Delhi during de-novo adjudication by which it is stated that as per the records, licenses in question are issued as advance licenses and issued to the parties other than mentioned parties in the DEBP license. It is observed that learned Commissioner acting as adjudicating authority, carried out inquiry with the DGFT office after more than 10 years of the issuance of show cause notice and relied upon the said letter to conclude that the DEPB licenses are forged. Upon perusal of the said letter dated 6.11.2012, it does not categorically state the Licenses in question are forged, further it does not rule out possibility of issuance of same series of numbers to licenses of DEPB category by the issuing authority. Be that as it may, as rightly pointed out, commissioner adjudicating the show cause notice could not have commenced inquiry with DGFT at such a belated stage and improve upon the department’s case relying upon new material which was not part of the show cause notice. Reliance is placed upon the case of Commissioner of

Central Excise Delhi III V. Carrier Aircon Ltd reported as 2005 (184) ELT 113 (SC) in which it has been held that it is not permissible for the Commissioner in review to introduce new material and travel beyond record of original proceedings.

4.3 In view of above discussion, since the alleged forged nature of DEPB licenses is not proved beyond doubt, impugned order denying exemption granted to the appellants is liable to be set aside. Consequently, duty confirmed, and penalty imposed by the impugned order are also liable to be set aside.

5. As per our above discussion and findings, the impugned orders are set aside. Appeals are allowed.

(Pronounced in the open court on 13.08.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha