

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE**

Appeal(s) Involved:

C/339/2008-DB

*[Arising out of Order-in-Appeal No. 167/07 dated
31/12/2007 passed by the Commissioner of Customs
(Appeals), Bangalore.]*

M/s. RAJASHREE PACKAGERS LTD

SURVEY NO.5, 6&7,
BALKAMPADY INDUSTRIAL AREA,
MANGALORE - 11

Appellant(s)

Versus

**The Commissioner of Customs
(Appeals)**

C.R. BUILDING, QUEENS ROAD,
P.B.NO. 5400,
BANGALORE - 560 001.
KARNATAKA

Respondent(s)

Appearance:

**Mr. C. Nanda Gopal, Advocate
ECONOMIC LAWS PRACTICE ADVS**

1502, DALAMAL TOWER , NARIMAN POINT,
MUMBAI - 400 021.
M.H.

For the Appellant

**Dr. J. Harish,
Dy. Commissioner (AR)**

For the Respondent

Date of Hearing: 03/12/2018

Date of Decision: 06/12/2018

CORAM:

**HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER**

Final Order No. 21850 /2018

Per : P. ANJANI KUMAR

This appeal is directed against the Order-in-Appeal
No.167/2007 passed by the Commissioner of Customs (A),
Bangalore.

2. Brief facts of the case are that the appellants have imported three consignments of crude palmolein and cleared them on the strength of 3 DEPB licenses purchased by them in the open market. The imports were during February – March 2003. On investigation conducted by the Department, it was established that the licenses were *ab initio* void being forged. DGFT authorities have cancelled the licenses w.e.f. 10.9.2003. Subsequently, the Department has received investigation report on 30.3.2004 and a show-cause notice dated 6.10.2004 was issued to the appellant to recover customs duty foregone. The Commissioner of Customs vide OIO No.3/2004 directed the Asst. Commissioner of Customs to finalize the assessment of said Bills of Entry in terms of Section 82 of Customs Act, 1962. On appeal filed, CESTAT decided the appeals No. C/60/2005 and C/150/2005 by remanding back to the original authority and disallowing the appeal for the reason that the learned Commissioner (A) had only directed the lower authorities to finalize the provisional assessment. The Asst. Commissioner passed OIO No.11/2007 dated 31.3.2007 finalizing the provisional assessment by demanding duty of Rs.75,78,417/-. On an appeal filed, the Commissioner (A) has passed the impugned order.

3. The learned counsel for the appellants has submitted that they have purchased the DEPB license in the open market. The payment for the same was made through a genuine broker. The payments were made after the TRA was issued and the signatures were verified by the respective custom house. Therefore, it is seen that the appellants have done all that could have been done by a *bona fide* importer. At the time of import, the licenses were valid and TRA was given by the custom house. The licenses came to be cancelled only in September 2003, therefore, no *mala fide* can be attached to the appellants and they cannot be denied the benefit of exemption available under the scrips. In view of the Bombay High Court's decision in the case of ***Taparia Overseas (P) Ltd. vs. UOI: 2003 (161) ELT 47 (Bom.)*** wherein it was held that license is invalid only from the date of suspension or cancellation. Import being made under valid license goods not subjected to levy of customs duty. He further submitted that the Hon'ble Supreme Court in the case of ***UOI vs. Blue Blends & Texture Mfg. Co. Ltd.: 2017 (349) ELT A93 (SC)*** has upheld the decision of Bombay High Court.

4. The learned AR for the department has submitted that this very Bench has decided the issue in the case of the appellant himself in favour of the Revenue and has held that Department

was within its right to take into consideration the fact that the licenses were forged and *ab initio* void at the time of finalization of the provisional assessment. The Tribunal has held as follows:

“10. We have gone through the records of the case carefully. The thrust of the learned advocate’s argument is that on submission of the Bill of Lading the assessment ought to have been finalized. This contention is not acceptable. It is a fact that goods were cleared on the basis of the forged DEPB scrips. Though, the appellants acted *bonafidely*, the exchequer has been put to a colossal loss of Rs. 75,78,417/-. It is the duty of the Revenue officers to recover the lost revenue within the framework of law. The Customs Act has not prescribed any time limit for the finalisation of provisional assessment. Even though the Bill of Lading has been produced on 12-3-2003, the authorities kept the provisional assessment pending without finalisation. The discovery that the DEPB scrips were forged came in handy to the Revenue at the time of finalization. The argument that Revenue cannot take advantage of its delay in finalisation of the provisional assessment cannot be accepted in the face of clearance of goods on the basis of forged DEPB scrips. In our view, a hasty finalisation of provisional assessment in the present case would have prevented the Revenue from taking remedial action to recover the Revenue lost. In a way, the delay in finalizing the provisional assessment is a blessing in disguise for the Revenue. In any case, as far as the impugned order is concerned it is only a remand order passed to give the appellant an opportunity to represent the case before the original authority. It is for the appellants to urge all their points before the original authority. In these circumstances, I do not find any infirmity in the impugned order, hence, the appeal is dismissed.”

4.1 The learned AR also relied upon the case of ***ICI India Ltd. vs. Commissioner of Customs (Cal.): 2005 (184) ELT 339 (Cal.)*** which was also upheld by the Hon’ble Supreme Court in ***2005 (187) ELT A31 (SC)***. He also relied upon the following decisions:

- *Rajput Steels vs. CCE, Delhi-I: 2017 (358) ELT 598 (Tri.-Del.)*
- *Friends Trading Company vs. UOI: 2011 (267) ELT 33 (P & H)*
- *Commissioner of Customs (Preventive) vs. Aafloat Textiles (I) Pvt. Ltd.: 2009 (235) ELT 587 (SC)*

5. Heard both sides and perused the records.

6. We find that in the instant case the assessments were provisional and at the time of finalization it was brought to the light that the DEPB scrips were forged having known the fact the department cannot put the Revenue at loss due to the argument that the importer was a *bona fide* transferee of the scrips and was not having any knowledge of the forgery etc., in respect of the scrips. Moreover, we find that the case of **Taparia Overseas (P) Ltd.** cited by the counsel for the appellant is in respect of licenses issued before pre-DEPB era. Therefore, the facts are not identical. We find that in respect of DEPB scrips, Tribunal and Courts have been consistently holding that the forged DEPBs are *ab initio non est*. We find that Calcutta High Court in the case of **ICI India Ltd.** cited supra has held that "*whether there was collusion or fraud on the part of the appellants in the issue of DEPB licenses/scrips becomes absolutely immaterial and irrelevant since no credit can be derived from a forged DEPB. The credit is made available on the strength of a valid DEPB. If the DEPB is forged, then the same is non est and therefore, there is no valid DEPB, as such, no credit can be derived thereunder. In such circumstances, one can defend his case that one may not be liable for collusion or fraud and exposed to other penalties*

therefor, but still then one would be liable to pay the duty and interest and for other statutory consequences which one cannot avoid.”

6.1 We find that the ratio of this case is squarely applicable. Moreover, in this case as the assessments were provisional as observed by this Bench (supra) the department is in its right to recover appropriate duty of customs on the imported goods. We also see that the original authority has not imposed any penalty, etc., on the appellants, in which case, the appellant's contention that they are *bona fide* transferee would have been of some help to them. In the result, we find no infirmity with the order passed by the Commissioner (A) and that the appeal does not survive.

7. In view of this, the impugned order is upheld and the appeal is dismissed.

(Order was pronounced in Open Court on **06/12/2018.**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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