

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
CHENNAI**

REGIONAL BENCH - COURT No. I

Customs Appeal No. 40778 of 2016

(Arising out of Order-in-Appeal No. C.Cus.II No.201/2016, dated 25-02-2016, passed by Commissioner of Customs, (Appeals – II), 60, Rajaji Salai, Custom House, Chennai 600 001)

Indras Agencies Pvt. Ltd.

No.285, Wall Tax Road
Chennai 600 003

... Appellant

VERSUS

Commissioner of Customs

Custom House,
No.60 Rajaji Salai,
Chennai – 600 001.

...Respondent

APPEARANCE :

Ms. K.T.K. Priyadarshini, Advocate for the Appellant

Ms. Anandalakshmi Ganeshram, Authorised Representative for the Respondent

CORAM :

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER No.41416/2025

DATE OF HEARING: 31.07.2025

DATE OF DECISION:02.12.2025

Per Mr. Ajayan T.V.

Indras Agencies Pvt. Ltd., the appellant herein, is in appeal against the Order in Appeal No.C.Cus.II No.201/2016, dated 25.02.2016.

2. Relevant facts are that the appellant had availed the benefit of duty free imports during 2012 and 2013 while importing three consignments of patchouli oil SPX by utilising 2 DFIA licenses originally issued to an exporter namely M/s. Pan Parag India Ltd., Kanpur. These licenses which were issued to the exporter for export of panmasala / Gutkha were validly transferred to the appellant for its use.

3. It appears that investigation were conducted regarding irregular exports made by various exporters who had on the basis of such exports obtained DFIA licenses and consequently secured undue benefits of import duty exemptions. The aforesaid exporter, M/s. Pan Parag India Ltd., was also one such exporter who had been investigated. Pursuant to the investigation, it appears that SCN dated 22.03.2013 was issued to the said exporter. The concerned regional DGFT authority is also stated to have issued an SCN dated 18.07.2012 to the said exporter proposing cancellation of the DFIA licence issued to them. It is stated that the matter is pending adjudication.
4. The department, having formed an opinion that the DFIA licenses were obtained on the strength of wilful suppression of facts by the aforesaid exporter and the impugned DFIA licences are proposed to be cancelled ab-initio, the subsequent duty free imports made by the appellant utilising such transferred DFIA license is also unlawful and the import duty foregone is therefore recoverable under the Customs Act. A notice dated 03/05-12-2014 was therefore issued to the appellant invoking the extended period of limitation demanding the import duty foregone of Rs.25,12,280/- along with applicable interest. Pursuant to the reply filed by the noticee contesting the demand as well as the invocation of the extended period of limitation, the Adjudicating Authority, after due process of law, passed the Order in Original No.43014/2015 dated 17.11.2015 confirming the demand along with applicable interest. Aggrieved by the said order, the appellant preferred an appeal before the Commissioner of Customs (Appeals – II) Customs House, Chennai. The appellate authority however, vide the impugned order, rejected the appeal. The appellate authority placed reliance on the decisions of the Tribunal, Kolkata Bench in the case of Eastern Silk Industries Ltd. and Others Vs. Commissioner of Customs, Calcutta, 2016- TIOL-457- CESTAT, Kolkata while rejecting the appeal. Aggrieved by the impugned order, the Appellant has preferred the present appeal.
5. Shri S. Murugappan, Ld. Advocate appearing on behalf of the appellant, submitted that the Show Cause Notice has not alleged any misrepresentation by the appellants. They were not a party to the exporter allegedly obtaining the duty credit script fraudulently. The appellant has

purchased the scripts in the normal course of trade. At the time of import these scripts produced by the appellant, were scrutinised by the Customs Officers and clearances were allowed. The Ld. Counsel submits that any subsequent cancellation of scripts after several years of import, will not make the imports made, violative of legal provisions. He placed reliance on the decisions in ***East India Commercial Co. Ltd. Calcutta Vs. Collector of Customs, Calcutta, 1983 (13) E.L.T. 1342 (S.C.)*** and ***Sampat Raj Dugar Vs. Union of India, 1992 (58) E.L.T.163 (S.C.)*** in this regard.

6. The Ld. Counsel further submits that the extended period of demand of duty in the absence of any allegation of misrepresentation or suppression of facts made by the appellant could not have being invoked in the instant case. Reliance was placed on the decisions in ***Commissioner of Customs Vs. Binani Cement Ltd. 2009 (238) E.L.T.33 (Guj.)***, ***Commissioner of Customs, Amritsar Vs. Vallabh Design Products, 2007 (219) E.L.T. 73 (P & H) affirmed by Supreme Court in 2016 (341) E.L.T. A222 (S.C.)*** and ***Whirpool of India Ltd, Vs Commr. Of Customs, New Delhi, 2024 (388) E.L.T.316 (Tri.-Del)***.
7. The Ld. Counsel emphasised that there is a distinction between a forged or fake duty credit scrip and a scrip which was validly issued by the DGFT authorities, but were issued based on misrepresentation and which were cancelled subsequently after they have been utilised. It is submitted that while the forged script can vitiate every subsequent action, validity of the scrips duly issued by the DGFT Authorities, though based on non-disclosure of input details, will not affect their validity till they are cancelled before their use. Reliance was placed on the decisions in ***Commissioner of Customs Vs. Leader Valves Ltd. 2007 (218) E.L.T.349 (P & H)***, against which the SLP was dismissed as reported in ***2008 (227) E.L.T. A 29 (S.C.)***, ***Commissioner of Customs, Amritsar Vs. Gopi Chand Krishan Kumar Bhatia 2013 (295) E.L.T.739 (Tri. – Del.)***, ***Taparia Oversea (P) Ltd. Vs. Union of India, 2003 (161) E.L.T. 47 (Bom.)*** and ***Collector of Customs, Bombay Vs. Sneha Sales Corporation, 2000 (121) E.L.T.577 (S.C.)***.Ld. Counsel prayed that the impugned order demanding duty with interest may be set aside.

8. Ms. Ananadalakshmi Ganeshram, Ld. A.R. appearing for the department submitted that the investigation made by DRI has found that the DFIA licenses have been issued to several exporters by the DGFT licensing authorities on misrepresentation of facts by the exporters. DGFT had also issued SCNs to such exporters proposing cancellation of licences ab initio. The Ld. A.R. submits that the appellant has been issued a SCN demanding the duty invoking the extended period of limitation as the appellant has utilised the transferred DFIA license for imports. Ld. A.R. further submits that higher forum has in a number of cases examined the issue whether duty can be demanded from the transferees of the DFIA licence obtained by the exporters on misrepresentation of facts. Reliance was placed on the decisions in ***Eastern Silk Industries Ltd. & Others Vs. CC, Kolkata, 2016-TIOL-457-CESTAT, Friends Trading Co., 2012 (281) E.L.T A 106 (SC)*** affirming the Judgement in the case of ***Friends Trading Co., 2010 (254) E.L.T 652 (P&H)*** and were submitted at the Bar. Reliance was also placed on the decisions in:
- a) M/s. Essar Oil Ltd. 2004 (172) E.L.T.433 (S.C.)
 - b) M/s. Essar Oil Ltd. 2007 (217) E.L.T.A 34 (S.C.)
 - c) M/s. ICI India Ltd. 2005 (184) E.L.T.339 – High Court of Calcutta
 - d) M/s. ICI India Ltd. 2005 (187) E.L.T.A 31 (S.C.)
 - e) AAFloat Textiles (I) P. Ltd. 2009 (235) E.L.T.587(S.C.)
 - f) K I International Ltd. 2012 (282) E.L.T. 67 CESTAT, Chennai
 - g) Satish Mohan Agarwal, 2016 (336) E.L.T.562 – CESTAT, Chennai
 - h) Balaji Impex 2019 (367) E.L.T. 349, Madras High Court
 - i) Union of India, 2011 (2) TMI 382 Punjab and Haryana High Court
 - j) Munjal Showa Ltd. 2022 (9) TMI. 1076 (SC)
 - k) ITC Filtrona Ltd, 2024 (10) TMI 577 – CESTAT, Bangalore
 - l) Bharat Futuristic Corporation, 2025 (4) TMI 120, CESTAT, Bangalore
9. Ld. A.R. also submitted that since the extended period has been rightly invoked the duty demand is correct and legal, the appeal may be rejected.
10. Heard both sides. Carefully perused the appeal records and the decisions submitted.

11. The solitary issue that arises for determination is whether the demand of duty made on the appellant consequent to utilisation of DFIA scrips transferred to the appellant invoking extended period of limitation; on the ground that these transferred DFIA scrips were initially obtained by misrepresentation of facts; is tenable.
12. It is not in dispute that the SCN dated 03/05-12-2014 issued pertaining to the imports made by the appellant during Nov 2012, Dec 2012 and May 2013 are beyond the normal period of limitation.
13. We find that the SCN at para 10 gives the grounds for invoking the extended period of limitation as under:

"10. On the basis of facts as mentioned in para 2 & 3 supra, the DFIA licences appeared to have been issued on the strength of manipulated export documents or fraudulent export undertakings. Hence the Export Incentives/benefits appeared inadmissible and demand of duty in respect of which exemption was claimed on the basis of fraudulently obtained DFIA licence is liable to be recovered under the provisions of Section 28 of Customs Act, 1962. Further, since exports have been made by suppression of facts and thereby obtaining DFIA fraudulently, recovery of duty with interest can be made by invoking provisions of extended period under Section 28(4) of the Customs Act, 1962."

The referred para 2 & 3 of the SCN, are as under:

"2. During the course of investigation, it was found that 'Exporters' appeared to have contravened the provisions of para 4.55.3 of Handbook of Procedure Vol.I of Foreign Trade Policy (FTP) (2004-09) as well as Para 4.32.2 of Handbook of Procedure Vol.I of FTP (2009-14) which enjoins the exporter to disclose technical characteristics, quality and specification of the essential oil said to have been used in the manufacture of the pan masala/gutkha in their shipping bills at the time of export and thereafter while applying for the Duty Free Import Authorisation (DFIA) licences under Chapter 4 of FTP 2004-09 and FTP 2009-14. On completion of the export obligation, the said DFIA licences were made transferable.

3. The '*Exporters*' did not disclose the technical characteristics, quality and specification of the essential oil used in the manufacture of the pan-masala/gutkha in their shipping bills at the time of export under the DFIA Schemes. Further, it was observed that the '*Exporters*' were invariably showing Natural essential oil (viz. sandal wood oil, geranium oil, mint oil, vetiver oil,

rose oil, etc) as their inputs in the Appendix 23 to their DGFT applications; which appeared to be case of distortion and suppression of vital facts in order to obtain DFIA licences. It appeared that this was consciously done, because if they declare the said specification, the import of the essential oil may become too restrictive in terms of description and value and the subsequent buyers of the Scripts/importers may not be able to import the high valued essential oil under the DFIA licences of such exporters. Thus it appeared that 'Exporters' had wilfully suppressed the technical characteristic, quality and specifications etc. like the name and specific gravity of essential oil used in the export product at the time of export and, thereafter, further suppressed the facts to be given to the licensing authority while availing facility of transferable DFIA. By so doing, they have obtained the above said DFIA licences having Natural essential oil (viz. sandal wood oil, geranium oil, mint oil, vetiver oil, patcholi oil, rose/kewara oil) in the LIST OF IMPORT ITEMS. It appeared that the above said DFIA licences were thereafter used for undue and unlawful importation."

14. Thus, what is borne out from the aforesaid allegations in the SCN is that the Exporters who had initially obtained the DFIA licences are alleged to have obtained the licences by resorting to wilful suppression of the technical characteristic, quality and specifications etc. like the name and specific gravity of essential oil used in the export product at the time of export. The allegations in the aforesaid paragraphs do not detail any fraud or forgery perpetrated by the Exporter. While the SCN alleges that the Department as well as DGFT is stated to have initiated proceedings by issuance of Show cause notice raising allegations against the exporter, nothing has been shown to us to evidence that these allegations have shifted from the realm of being mere allegations to concrete findings that what was alleged have been proved. There is also no evidence let in of any consequential cancellation of the DFIA licences ab initio. In any event, it remains an incontrovertible fact that the SCN does not allege that the appellant has indulged in any wilful suppression or misstatement of facts with an intent to evade payment of duty.
15. The provisions of Section 28 (4) of the Customs Act, 1962 invoked as prevailing during the relevant period, read as under:

"28(4) Where any duty has not been levied or has been short-levied or erroneously refunded, or any interest payable has not been paid, part- paid or erroneously refunded, by reason of, -

(a) collusion, or

(b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied....."

xxxxx

"Explanation 1 : For the purpose of this section, "relevant date" means -

(a) In a case where duty is not levied, or interest is not charged, the date on which the proper officer makes an order for the clearance of the goods;

xxxxx

(d) in any other case, the date of payment of duty or interest."

16. The impugned order, save for placing reliance on the decision of the Tribunal in Eastern Silk Industries case, does not render any specific finding on the invoking of extended period of limitation.
17. From the perusal of the abovementioned provisions, it is evident that extended period of five years can be invoked only in the cases of collusion, wilful misstatement and suppression of facts by the person who is liable to pay the duty i.e. the Importer/Noticee. Since the SCN does not have any such allegation as against the appellant, much less evidence let in of any such positive act on the part of the appellant that would constitute the ingredients required to invoke the said provisions for demand of duty, we are of the considered view that sans any such allegation and proof of any of the ingredients of collusion, or any wilful misstatement or suppression of facts by the importer, put to the notice of the importer, recourse to the said provisions of Section 28(4) of the Customs Act, 1962 cannot be taken by the Revenue to demand the duty foregone consequent to the utilisation of the transferred DFIA licence by the appellant.
18. Our aforesaid view stands fortified by the decision of the Hon'ble High Court of Punjab & Haryana in the decision in **Commissioner of Customs,**

Amritsar v. Vallabh Design Products, 2007 (219) ELT 73 (P & H),

wherein it has been held as under:

"9. After hearing learned Counsel for the parties, we are of the considered view that this appeal is devoid of any merit. The assessee-respondent admittedly is not a party to the fraud. There are categorical finding that it had purchased DEPB from the open market in the bona fide belief of its being genuine. The assessee-respondent had paid full price and accordingly had availed the benefit.

10. It is also worth noticing that the assessee-respondent was issued a show cause notice dated 10-6-2002 (P-2) before cancelling the DEPB, which was obtained by M/s. Parker Industries, however, **we are of the view that notice under Section 28 of the Customs Act could not be issued to the assessee-respondent because a period of six months stipulated by Section 28 of the Customs Act stood already expired and the rights of the parties had been crystalised, the imports having been affected on 15-11-1997. The revenue cannot avail the extended period because the assessee-respondent has not been accused of mis-representation, collusion or suppression of facts within the meaning of proviso to Section 28 of the Customs Act.**"

It is seen that the Hon'ble Supreme Court has dismissed the Civil Appeal No. 4503 of 2008 filed by Commissioner of Customs, Amritsar against the said Judgement, reported as ***Commissioner v. Vallabh Design Products - 2016 (341) E.L.T. A222 (S.C.)***.

19. We also find that in a decision in ***Commissioner of Cus., Amritsar v. Gopi Chand Krishna Kumar Bhatia, 2013 (295) ELT 739 (Tri-Del)***, a coordinate bench of this Tribunal, has noticed the difference between void and voidable licences and after examining a number of decisions, including some of those relied upon by the Ld. A.R as cited supra, has held in favour of the respondent therein. Relevant paragraphs are as under:

"5. We find that in this case the originally the DEPB scrip had been issued by the Licencing Authority to M/s. Amber Export, part of which had been transferred to the respondent, against which the respondent had made duty free import. The DEPB scrip was cancelled only after the import had been affected. It is not the case of the Revenue that the respondent were also a party to the fraud committed by the exporter - M/s. Amber Exports, as there is no allegation that the respondent had knowledge about obtaining of DEPB scrip by M/s. Amber Export by fraud or misrepresentation. In view of these

circumstances, we are of the view that the issue involved in this case is squarely covered by Larger Bench of the Tribunal in the case of *Hico Enterprises v. C.C., Mumbai* reported in 2005 (189) E.L.T. 135 (Tri.-LB), which had been upheld by the Apex Court *vide* judgment reported in 2008 (228) E.L.T. 161 (S.C.).

6. Tribunal's judgment in case of *ICI India Ltd.* reported in 2003 (151) E.L.T. 336 (Tri.-Del.), relied upon in the Revenue's appeal is not applicable to the facts of this case as this is not a case where the DEPB scrip were fake or forged. In this case, the DEPB scrip had been issued by the Licensing Authority, though against misrepresentation and production of forged documents by the exporter.

7. Judgment of Hon'ble Punjab & Haryana High Court in case of *Golden Tools International* reported in 2006 (199) E.L.T. 213 (P&H) is not applicable to this case, as in this case, what the Hon'ble High Court has upheld is imposition of penalty on the Exporter M/s. Golden Tools International under Foreign Trade (Development & Regulation) Act, 1992 for obtaining DEPB scrip by producing forged documents. The question as to whether a *bona fide* transferee not having any knowledge about the DEPB scrip having been obtained by fraud, could make duty free imports against the DEPB scrip, prior to its cancellation by the DGFT, was not before the Hon'ble High Court. This question was considered by Hon'ble High Court in the case of *C.C. v. Leader Valves Ltd.* (supra) and the ratio of that judgment is in favour of the respondent.

8. In the background of the facts that -

(a) DEPB scrip/licence had been actually issued by DGFT, though against misrepresentation and forged papers produced by the exporter;

(b) there is neither allegation nor evidence that the respondent was aware of the fraud committed by the exporter - M/s. Amber Exports at the time of making imports; and

(c) at the time of import, in March 2000, the DEPB scrip was valid as the same was cancelled only on 7-12-2004;

the principle that fraud nullifies everything would not be applicable to the respondent, as -

(i) issue of DEPB scrip to an exporter by DGFT against certain stipulated export performance is like an agreement in the nature of grant and when the DEPB scrip has been issued against forged papers produced or misrepresentation by the Exporter, the agreement would be a voidable agreement and the DEPB scrip would be valid till it is cancelled;

(ii) in terms of Apex Court's judgment in case of *Vikas Sale Corporation* reported in [1996] 102 STC 106 and judgment of Hon'ble Delhi High Court in

case of *Philco Exports v. STO* reported in (2001) 124 STC - 503 (Cal.), REP licence and DEPB scrip are 'goods' attracting sales tax on their transfer on sale;

(iii) in this case, when the respondent had obtained the DEPB scrip from M/s. Amber Exports on transfer and at the time of its use for duty free imports, he was not aware of the fraud committed by the seller/transferor M/s. Amber Exports, it is the provisions of Section 29 of the Sales of Goods Act read with Sections 19 and 19A of the Contract Act which would be applicable and the respondent would have to be treated as having good title to the DEPB scrip;

(iv) it is the above principle which has been followed by the Apex Court in case of *East India Commercial* reported in 1983 (13) E.L.T. 1342 (S.C.) (para 35) and by the Tribunal in the case of *Hico Enterprises v. C.C., Mumbai* (supra) (paras 30 and 31); and

(v) the cases like this case, where a DEPB scrip actually issued by DGFT, though obtained by fraud by the Exporter, is used by a *bona fide* transferee who had no knowledge about the fraud committed by the Exporter, cannot be compared with the cases where the DEPB scrip had been forged/fabricated by a person and had not been issued at all by the DGFT and the forged/nonest DEPB scrip had been used for duty free imports by another person - in the second category of cases, it is the judgment of the Apex Court in case of *Aafloat Textiles* reported in 2009 (235) E.L.T. 587 (S.C.), which would apply.

8.1 The cases like the present case are governed by the principles laid down in the Apex Court's judgments in cases of *East India Commercial* (supra), and *Collector v. Sneha Sales Corporation* reported in 2000 (121) E.L.T. 577 (S.C.) and Hon'ble Punjab & Haryana High Court's judgment in case of *Leader Valves Ltd.* (supra). Though a Coordinate Bench of the Tribunal in case of *Friends Trading Co.* reported in 2011 (267) E.L.T. 57 (Tri.-Del.) has taken a contrary view on this issue, in that judgment the distinction between void licence and voidable licence has not been considered.

9. In view of the above discussion, we do not find any merit in the Revenue's appeal. The same is dismissed."

20. We also find that the facts of this case as detailed above, are different from that obtaining in the decisions cited by the Ld. A.R., as is evident in the light of our discussions supra. Hence, these decisions stand distinguished.

21. In light of our aforesaid deliberations, and respectfully following the decisions of the coordinate benches as well as the Honourable High Court of Punjab & Haryana cited supra, we hold that the impugned order in appeal is unsustainable and is liable to be set aside. Ordered accordingly.

The appeal is allowed with consequential relief(s) in law, if any.

(Order pronounced in open court on 02.12.2025)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)

ra