CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH, COURT NO. I

CUSTOMS APPEAL NO. 151 OF 2010

[Arising out of the Order-in-Original No. 08/2006 dated 31/01/2006 passed by Committee of Chief Commissioner of Customs, New Delhi.]

Commissioner of Customs, **Appellant**
ICD TKD,
New Delhi.

VERSUS

M/s Samtel Color Ltd. **Respondent**
Village Chhapraula, Bulland Shahar Road,
Ghaziabad U.P.

APPEARANCE
Shri Rakesh Kumar, Authorized Representative (DR) – for the Department
None – for the respondent.

CORAM : **HON'BLE SHRI JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50982/2025

DATE OF HEARING/DECISION : 30.06.2025

JUSTICE DILIP GUPTA

This appeal has been filed by the department to assail that part of the order dated 31.01.2006[1] passed by the Commissioner that confirms duty with penalty against the exporter who had obtained the DEPB scrips. The relief claimed by the department is that the demand should have been confirmed against the subsequent purchaser of the scrips, namely M/s Samtel Color Ltd.[2] and not the exporter who had obtained the scrips.

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1. **impugned order**
2. **the respondent**

2. The issue, therefore, that needs consideration is if the scrips are not a forged or fraudulent document, which is not the case in the present appeal, then can a subsequent purchaser of the scrips be held liable for payment of duty. This issue was considered by a Division Bench of the Tribunal in **M/s Apar Industries Ltd.** versus **Commissioner of Customs (Export Promotion), Mumbai**[3] and it was held :-

> "13. **The issue, therefore, that would arise for consideration is as to what will be the customs duty liability on the goods imported by either the original scrips holder or the transferee of the scrips on the strength of such DEPB scrips issued by DGFT in the following situations**:
>
> (i) Where the DEPB scrips have been validly issued by the licensing authority and the same are valid on the date of import of the goods even though the DEPB scrip had been obtained through mis-representation or producing fraudulent/fake documents before the licensing authority;
>
> (ii) Where the import has been effected on the strength of DEPB scrips which have not actually been issued by the licensing authority, but have been found to be forged or fake; and
>
> (iii) Where the DEPB scrips issued by the DGFT, even if based on mis-representation or production of fraudulent export documents have been cancelled by the licensing authority after the imports were effected.
>
> …..
>
> 26. **All the aforesaid decisions clearly hold that a licence/scrip obtained by fraud is not void ab-initio and is merely voidable**. The concept that fraud vitiates everything would not be applicable if the licence/scrip had been obtained

3. Customs Appeal No. 594 of 2004 decided on 13.05.2025

for valuable consideration without any notice of fraud having being committed by the original licencee/scrip holder while obtaining licence/scrip. **The decisions also hold that cancellation of the scrips after the imports had been made on the basis of the scrips would not have any impact on the import as at that point of time the scrips were valid**.

….

31. **What, therefore, transpires from the aforesaid decisions is that wherever the licensing authority has issued the licence/DEPB scrip on the basis of which the exemption is sought from customs duty, either by the original licence holder or by the transferee, even if the licence/DEPB scrip have been obtained by producing fraudulent/fake export documents or bank documents, then during the validity of the licence/scrip the exemption cannot be denied and the goods cannot be confiscated. This would be so, even if the licence is cancelled by the licensing authority subsequently after the imports have been effected. What is relevant is a valid licence/DEPB issued by the licensing authority and presentation of the same at the time of import of the goods and at the time of filing the Bill of Entry**.

32. The position would be totally different if the licence/DEPB scrip or TRAs have not been issued by the DGFT and the same have been found to be fake or forged. In such a situation, customs duty exemption would not be available either to the original licence holder or to the transferee importer".

(emphasis supplied)

3. The relief claimed by the department that duty should be confirmed against the subsequent purchaser cannot be granted in view of the decision of the Tribunal in **Apar Industries** as it is not the case of the department that the scrips were forged or fraudulent documents.

4. The aforesaid decision of the Tribunal in **Apar Industries** also hold that duty cannot be confirmed against the exporter who had obtained the scrips, unless the scrips were found to be forged. It could also not have been confirmed against the exporter for the reason that section 28AAA of the Customs Act was inserted on 28.05.2012, much after the DEPB scrips were obtained by the exporter.

5. The appeal filed by the department for setting aside the confirmation of duty against the exporter who had obtained the scrips, therefore, deserves to be allowed for the simple reason that duty could not have been confirmed against the exporter who had obtained the scrips. This apart, the said exporter has not been impleaded as a respondent in this appeal.

6. The impugned order dated 31.01.2006 passed by the Commissioner in so far as it confirms the duty against the exporter who had purchased the scrips would, therefore, have to be set aside and is set aside. The relief claimed for confirming the demand against the subsequent purchaser cannot be granted.

7. The appeal filed by the department is allowed only to the extent indicated above.

(Dictated and pronounced in open court.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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