

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Customs Appeal No.75572 of 2016
Customs Appeal No.75575 of 2016
Customs Appeal No.75576 of 2016
Customs Appeal No.75579 of 2016
Customs Appeal No.75584 of 2016
Customs Appeal No.75585 of 2016
Customs Appeal No.75939 of 2016
Customs Appeal No.75969 of 2016

(Arising out of Order-in-Original No.Kol/Cus/Port/05/2016 dated 29.01.2016 passed by Commissioner of Customs (Port), Kolkata)

M/s Wadhvani Commodities Trading

Mr. Chandra Prakash Wadhvani

Flat No.3, Block-A, Prithvivandan Apartments, Ramdaspath, Nagpur-440010

Shri Mahendra Kumar Modi

163, Rabindra Sarani, 2nd Floor, Kolkata-700007

Shri Chandan Shah

14, Basak Street, 2nd Floor, Kolkata-700001

Shri Soumen Das

95/18/6, Kabi Suanta Sarai, Kolkata-700085

Shri Satyendra Goel

Block-A4, Flat No.104,493B, G.T.Road, Howrah 2

M/s Perfect Cardamom & Spices Marketing Company Limited

FC-38, A.P.M.C.Market I, Phase 2, Sector 19, Vashi, Navi Mumbai-400703

**M/s Mayur G.Desai of Perfect Cardamom & Spices Marketing
Company Limited**

FC-38, A.P.M.C.Market I, Phase 2, Sector 19, Vashi, Navi Mumbai-400703

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

15/1, Strand Road, Kolkata-700001

Respondent

APPEARANCE :

Shri Prakash Sah and Shri Arijit Chakraborty, both Advocates for the Appellant
Shri S.Chakraborty, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.....75915-75922/2023

DATE OF HEARING : 19 .06.2023
DATE OF PRONOUNCEMENT : 04.07.2023

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

Per Ashok Jindal :

The issue in all the appeal is common and are against a common order. Therefore, all are decided by a common order.

2. The facts of the case are as under :

2.1 Intelligence was gathered to the effect that one exporter, namely Maa Jawala Enterprises having IEC No. 0208012231 in the name of Shri Ram Narayan Kedia with office at Room No. 727, Marshall House, 7th Floor, 33/1, N S Road, Kolkata-700001 was in the process of shipping four export consignments to Malaysia under Duty Free Import Authorization scheme (DFIA) through Haldia dock by resorting to mis-declaration of description, quantity and value of goods. Intelligence further suggested that Shri Alok Kedia, son of Shri Ram Narayan Kedia was the key person involved in the fraudulent export activities.

2.2 Acting on the aforesaid intelligence, discreet surveillance was maintained in and around haldia dock and on 30th December, 2010, four consignments in 20 containers attempted to be exported to Malaysia by Maa jawala Enterprises under the cover of shipping bill nos. E-189, E-191 & E-192, all dated 27th December, 2010 were identified at Haldia dock complex. Description of the goods declared in the shipping bills was "Processed Betel Nut (Supari) Powder and declared quantity was collectively 400MT in 8000 bags. The overseas buyer was Ned Marine Logistic, NBR 1 Jalanzamrud, Taman Gembira-41200, Kalang, Selkngore, D.E. Malaysia and declared FOB value was collectively Rs. 2,06,79,250/-. The aforesaid shipping bills had been assessed

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

provisionally by the concerned officers of customs and had been allowed for shipments after drawing samples.

2.3 The impugned export consignments were detained on 30th December, 2010 and the relevant documents were resumed from the customs authority at Haldia dock complex. On 31st December, 2010, all the 20 containers were examined observing necessary formalities. On physical examination only 188 MT of goods in 3760 HDPE woven sacks were found collectively in the containers instead of 400 MT in 8000 bags as was declared in the four shipping bills and the goods were found to be dust/waste of gutkha and panmasala factory having no commercial value Representative samples were drawn. The said goods covered under the aforesaid 4 shipping bills were seized on 31st December, 2010 under Section 110 of the Customs Act, 1962. The goods attempted to be exported were covered under 4 DFIA licenses and CIF value for duty free import of betel nuts utilizing the said licenses was collectively Rs.1,75,72,000/-. The Customs duty benefit available on these licenses comes to Rs. 1.90 crores appx. Details of the said 4 export consignments are as under:-

SB No. & Date	Description of goods	Qty in MT)	Declared C&F value (US\$)	Declared FOB value (in Rs.)	DFIA License No. & Date
E-189 27.12.10	'Processed Betel Nut (Supari) Powder'	100	1,15,000	51,69,812.50	0210149850/3/26 dt. 20.10.10
E-190 27.12.10	'Processed Betel Nut	100	1,15,000	51,69,812.50	0210152222/3/26 dt. 29.10.10

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

	(Supari) Powder'				
E-191 27.12.10	'Processed Betel Nut (Supari) Powder'	100	1,15,000	51,69,812.50	0210152226/3/26 dt. 29.10.10
E-192 27.12.10	Processed Betel Nut (Supari) Powder'	100	1,15,000	51,69,812.50	0210149849/3/26 dt. 29.10.10

2.4 Thereafter, the statements of Shri Ajoy Kedia and Shri Alok Kedia, were recorded from time to time and after thorough investigation, the Joint Director General of Foreign Trade Kolkata vide letter dated 5-1-2011 was also informed about the modus operandi adopted by 'Maa Jawala Enterprises' and was requested to initiate action for withholding transfer of DFIA Licenses obtained fraudulently. It was also requested to forward copies of the DFIA licenses obtained by 'Maa jawala Enterprises. The DGFT authority vide letter No. ALS-E2/02/21/076/00251/AM11/573 dated 13.1.2011 forwarded copies of the 14DFIA license. Subsequently, by another letter No. 18/98/2010-2011 ECA/CAL/Part-II/2636 dated 1.3.2011 they forwarded copies of VKUY licenses. The DGFT authority also forwarded copies of the show cause notices issued to 'Maa Jawala Enterprises' for invoking provisions of rule 7 (1) (K) of the Foreign Trade (Regulation) Act, 1993 and also to initiate action under Section 9 of the Foreign Trade (Development and Regulation) Act vide letter No. 18/98/2010-2011 ECA/CAL/part-II/2728 dated 17.3.2011. Pursuant to issue of the said show cause notices also defaulter order was issued by

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

the Deputy Director General of Foreign Trade, Kolkata and was communicated vide letter No. 18/98/2010-2011/ECA/CAL/284 dated 7.7.2011.

2.5 During further investigation, it was revealed during investigation that Maa Jawala Enterprises had obtained 18 licenses under DFIA against fraudulent exports of betel nut powder out powder out of which 13 were made transferable and sold to various persons namely (i) M/s Shyam Trader, (ii) M/s Baba Traders, (iii) M/s Wadhvani Commodities trading Pvt. Ltd., (iv) Perfect Cardamom & Spices Manufacturing Co. Pvt. Ltd., and (v) Bajrang Expo. One license ws utilized by them for import of betel nut themselves and 4 licenses could not be utilized due to interception of the export consignment by DRI, The details of licenses utilized for import are as under:-

Sl No.	License No.	Name of the Importer	Duty (in Rs.)
1.	0210117805	M/s Maa Jawala Enterprises	4747386.47
2.	0210134793	M/s Shyam Traders	8334346.35
3	0210149322		
4.	0210139153	M/s Baba Traders	12782670.95
5.	0210139155		
6	0210139322*		
7	0210139171		
8.	0210134795	M/s Wadhvani Commodities Trading Pvt. Ltd.,	8287786.24
9	0210139154		
10	0210149320		

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

11	0210134796		
12	0210139168*		
13	0210117811		
14	0210122723	M/s Perfect Cardmom &	12753018.78
15	0210122724	Spices Manufacturing Co. Pvt. Ltd.,	
16	0210139168*	M/s Bajrang Expo	1054231.43

2.6 From the above investigation, it revealed that M/s Maa Jawala Enterprises has obtained 18 licenses under DFIA against fraudulent exports of betel nut powder, out of which, 13 were made transferable and sold to the appellants/importers. Against those DFIA License, the appellants had imported betel nut split claiming exemption from payment of duty for some cases on execution of bond and bank guarantee. Therefore, it was alleged against the appellant that they are not entitled to claim the exemption of payment of Customs duty against the above said 13 DFIA License, which has been obtained by M/s Maa Jawala Enterprises against the fraudulent exports of betel nut power. Therefore, the duty has forgone.

2.7 In view of this, the show-cause notice dated 28.12.2011 was issued alleging that M/s Maa Jawala Enterprises appeared to have violated the provisions of Section 50 of the Customs Act, 1962 inasmuch as they mis-declared the description, quantity and value of goods attempted to be exported and exported in the past, which are

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

liable for confiscation under Section 113 (i) of the Customs Act, 1962. It was further alleged that in the show-cause notice, the appellants have not purchased the DFIA Licenses in a bonafide manner and purchased the same against certain transaction value, which raises suspicion regarding the genuineness of the said transaction. Accordingly, the Revenue are of the view that the import of betel nut by the appellants without payment of duty under DFIA Licenses, were effected by collusion and willful mis-statement to defraud the Government revenue, for which, extended period of limitation under Section 28 (4) of the Customs Act, 1962, is invokable and after issuance of show-cause notice, the impugned order was passed on the following parts of the impugned order :

M/s Shree Shyam Trader

(i) The Ld. of Commissioner confirmed the demand of duty of Rs.83,34,346.35 that is foregone on account of utilizing DFIA license No. 0210134793 dated 03.12.2009 and 0210149322 dated 13.10.2010 for the import of betel nuts vide Bill of Entry No. 772679 dated 02.08.2010 and warehouse Bill of Entry No. 834582 dated 10.09.2010 (Ex-bond Bill of Entry No. 633092 dated 29.12.2010) through Nhava Sheva Port vide Notification No. 98/2009-Cus dated 11.09.2009 and to be paid by them under erstwhile proviso to Section 28(1) and now under Section 28(4) of the Customs Act, 1962 alongwith interest at applicable rate.

(ii) He also ordered the enforcement of Bank Guarantee No.00281GPER00211 dated 23.03.2011 for Rs.13,95,517/- issued by

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

Bank of Baroda, Girish Park Branch, 219 C.R. Avenue, Kolkata – 6 and furnished by Shree Shyam Trader for provisional release of the consignment covered by warehouse Bill of Entry No. 834582 dated 10.09.2010 (Ex-bond Bill of Entry No. 633092 dated 29.12.2010) towards adjustment of the duty so payable on the said import consignment.

(iii) He ordered confiscation of the betel nuts imported vide Bills of Entry No. 772679 dated 02.10.2010 and warehouse Bill of Entry No. 834582 dated 10.09.2010 (Ex-bond Bill of Entry No. 633092 dated 29.12.2010) through Nhava Sheva port, assessable value being collectively Rs.75,00,311.69 utilizing DFIA license No. 0210134793 dated 03.12.2009 and 0210149322 dated 13.10.2010 respectively under Section 111(o) of the Customs Act, 1962. However, I refrain from confiscation of goods imported vide Bill of Entry No. 772679 dated 02.10.2010, the said goods are physically not available for confiscation as they were already cleared for home consumption and offer the option of redemption in lieu of confiscation on payment of fine of Rs.7,50,000/- for the goods provisionally released covered by warehouse Bill of Entry fNo. 834582 dated 10.09.2010 (Ex-bond Bill of Entry No. 633092 dated 29.12.2010) under Section 125 of the Customs Act, 1962.

(iv) He imposed a token penalty of Rs. 50,000/- on Shri Chandan Sah, Noticee No. 7 under Section 112(a) of the Customs Act, 1962.

(v) He imposed penalty of Rs. 5,00,000/- on Shri Satyendra Goel Noticee No. 8 under Section 112(a) of the Customs Act, 1962.

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

M/s Baba Traders

(i) The Id.Commissioner confirmed the demand of duty of Rs.1,27,82,670.95 foregone on account of import of betel nuts through Nhava Sheva port covered by warehouse Bills of Entry No. 867117 dated 28.09.2010 (Ex-bond Bill of Entry No. 631006 dated 28.12.2010), 848556 dated 18.09.2010 (Ex-bond bill of Entry No. 631010 dated 28.12.2010) utilizing DFIA licenses of Maa jawala Enterprises vide Notification No. 98/2009-Cus dated 11.09.2009 and to be paid by them under erstwhile proviso to Section 28(1) and now under Section 28(4) of the Customs Act, 1962 alongwith interest at applicable rate.

(ii) He ordered the encashment of Bank Guarantee No. 014GT01110870002 dated 23.03.2011 for Rs.43,48,317/- issued by HDFC Bank Ltd., M.G. Road Branch, 19 Armenian Street, Kolkata-I and furnished by Baba Traders for provisional release of the consignments covered by warehouse Bills of Entry No 867117 dated 28.09.2010 (Ex-bond Bill of Entry No. 631006 dated 28.12.2010), 848556 dated 18.09.2010 (Ex-bond Bill of Entry No. 631009 dated 28.12.2010) and 867074 dated 28.09.2010 (Ex-bond Bill of Entry No. 631010 dated 28.12.2010) towards adjustment of the duty so payable on the said import consignments.

(iii) He ordered confiscation of the betel nuts imported through Nhava Sheva Port under the cover of warehouse Bills of Entry No. 867117 dated 28.09.2010 (Ex-bond Bill of Entry NO. 631006 dated 28.12.2010), 848556 dated 18.09.2010 (Ex-bond Bill of Entry No. 631009 dated 28.12.2010) and 867074 dated 28.09.2010 (Ex-bond Bill

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

of Entry No. 631010 dated 28.12.2010) assessable value being collectively totaling Rs.1,15,03,483,58 utilizing DFIA license No. 0210139171, 0210139153 and 0210139155 all dated 11.03.2010 and 0210149322 dated 13.10.2010 and provisionally released to the importer under Section 111(o) of the Customs Act, 1962. However, I offer the option of redemption in lieu of confiscation on payment of fine of Rs.23,00,000/- under Section 125 of the Customs Act, 1962.

(iv) He imposed a token penalty of Rs.50,000/- on Shri Soumen Das, Notices No. 6 under Section 112(a) of the Customs Act, 1962.

(v) He imposed penalty of Rs. 5,00,000/- on Shri Satyendra Goel Noticee No. 8 under Section 112 (a) of the Customs Act, 1962.

M/s Wadhvani Commodities Trading Pvt. Ltd,

(i) The Ld.Commissioner confirmed the demand of duty collectively totaling Rs.82,87,786.24 foregone on account of import of betel nuts vide Bill of Entry No. 942970 dated 10.11.2010, 722767 dated 3.7.2010, 756923 dated 24.07.2010 and 797243 dated 20.08.2010 through Nhava Sheva port by M/s Wadhvani Commodities Trading Pvt. Ltd., vide Notifiatation No. 98/2009-Cus dated 11.09.2009 and utilizing DFIA licenses No. 0210134795 and 0210134796 both dated 3.12.2009 and 0210139168 dated 11.3.2010 and to be paid by them under erstwhile proviso to Section 28(1) and now under Section 28(4) of the Customs Act, 1962 along with applicable interest rate.

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

(ii) He ordered the final assessment to duty at Rs.1,13,85,057.49 consignment under Section 18(2) of the Customs Act, 1962 along with interest at applicable rate under Section 18(3) *ibid*, of bill of entry No. 650054 dated 7.1.2010 for import of betel nuts through Nhava Sheva port and encashment of the bank guarantee furnished by Wadhani Commodities Trading Pvt Ltd., for provisional assessment towards adjustment of the duty so payable on the said import.

(iii) He ordered confiscation of the betel nuts imported vide Bills of Entry No. 942970 dated 10.11.2010, 722767 dated 3.7.2010, 756923 dated 24.7.2010 and 797243 dated 20.8.2010 and 650054 dated 7.1.2010 through Nhava Sheva port, assessable value connectively totaling at Rs.1,77,04,143.03, utilizing DFIA licenses No. 0210134795 and 0210134796 both dated 3.12.2009 and 0210149168 and 0210139154 dated 11.3.2010 and 0210149320 dated 13.10.2010 under Section 111(o) of the Customs Act, 1962. However, I refrain from confiscation of goods imported vide Bills of Entry No. 942970 dated 10.11.2010, 722767 dated 3.7.2010, 756923 dated 24.7.2010 and 797243 dated 20.8.2010 as the said goods are physically not available for confiscation as they were already cleared for home consumption and offer the option of redemption in lieu of confiscation on payment of fine of Rs.24,00,000/- for the goods covered by provisionally assessed bill of entry No. 650054 dated 7.1.2010.

(iv) He imposed penalty of Rs.5,00,000/- on Shri Chandra Prakash Wadhwani under Section 112 of the Customs Act, 1962.

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

M/s Perfect Cardamom & Spices Marketing Co. Pvt. Ltd.,

(i) The Id.Commissioner confirmed the demand of duty collectively totaling Rs. 1,27,53,018.78 foregone on account of import of betel nuts vide Bills of Entry No. 632768 dated 12.05.2010, 622922 dated 22.12.2010, 606580 dated 14.12.2010, 622922 dated 22.12.2010 and 924086 dated 28.10.2010 through Nhava Sheva port by M/s Perfect Cardamom & Spices Marketing Co. Pvt. Ltd., vide Notification No. 98/2009-Cus dated 11.09.2008 and utilizing DFIA licenses No. 0210117811 dated 22.09.2008, 0210122723 and 0210122724 both dated 30.01.2009 and to be paid by them under erstwhile proviso to section 28(1) and now under Section 28(4) of the Customs Act, 1962 along with interest at applicable rate.

(ii) He ordered confiscation of the betel nuts imported vide Bills of Entry No. 632768 dated 12.05.2010, 622922 dated 22.12.2010, 606580 dated 14.12.2010, 622922 dated 22.12.2010 and 924086 dated 28.10.2010 through Nhava Sheva port, assessable value being collectively Rs. 1,14,79,147.57 utilizing DFIA licenses No. 0210117811 dated 22.09.2008, 02101122723 and 0210122724 both dated 30.01.2009 under Section 111(o) of the Customs Act, 1962. However, I refrain from confiscation as the said goods are physically not available for confiscation as they were already cleared for home consumption.

(iii) He imposed penalty of Rs.7,50,000/- on Shri Mayur G Desai Noticee No. 12 under Section 112(a) of the CA, 1962.

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

M/s Bajrang Expo

(i) The Id.Commissioner confirmed the demand duty of Rs.10,54,231,43 foregone on account of import of betel nuts by M/s Bajrang Expo vide Ex-bond Bill of Entry No. 724368 dated 06.07.2010 (warehouse Bill of Entry No. 840381 dated 06.01.2010) and to be paid by them under erstwhile proviso to section 28(1) and now under Section 28(4) of the Customs Act, 1962 with applicable rate of interest.

(ii) He ordered confiscation of the betel nuts imported under the cover of Bill of Entry No. 840381 dated 06.01.2010 (Ex-bond Bill of Entry No. 724368 dated 06.07.2010) through Nhava Sheva port, assessable value at Rs.9,48,732.39 utilizing DFIA license No. 0210139168 dated 11.03.2010 under Section 111(o) o the Customs Act, 1962. However, I refrain from confiscation as the said goods are physically not available for confiscation as they were already cleared for home consumption.

(iii) He imposed penalty of Rs.50,000/- on Shri Mahendra Proprietor o M/s Bajrang Expo, under Section 112(a) of the Customs Act, 1962.

3. Shri Prakash Sah and Shri Arijit Chakraborty, Ld.Advocates, appeared on behalf of the appellants and submitted that it is not case of the Revenue that the DFIA licenses or the Transfer record/ letter were fake or forged by Maa Jwala Enterprises. The case is of mis-declaration of particulars in the shipping bill for export of goods.

4. The Appellants are regularly imports Betelnuts, Cloves, Almonds, Poppy seeds etc. since 2004 and sells them domestically.The Appellants

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

used to pay import duties in respect of their import consignments by utilizing various types of licenses viz. DEPB/ DFIA etc. The said licenses are purchased through license brokers on payment of Licence Premium at prevailing market prices through normal banking channel.

5. The Appellants purchased the DFIA licenses of Maa Jwala through a broker, Mr. Gorawal. The Appellant purchased the DFIA licenses from the license holder viz. Maa Jwala Enterprises. The Appellant made all necessary enquiries before purchasing DFIA licenses and purchased the same after due verification.

6. The appellants are not in any manner related to Maa Jwala Enterprises. Payment was made by the Appellants to Maa Jwala Enterprises for these DFIA licenses through proper banking channels.

7. The DFIA licenses under dispute were valid at the time of clearance and were already utilized.

8. The Id.Counsel, further submitted that at the time of purchase of DFIA licenses, it was revealed that the licenses were fraudulently obtained by mis-representation of facts. It was only revealed during DRI investigation. All the licenses have been purchased by the appellants against the consideration.

9. It is submitted that the value of DFIA licenses for transfer is not based on the amount of duty saved. The premium of any DFIA license is determined basis the prevailing market price and cannot be linked to the duty forgone. The DFIA license under dispute are for import of Betel Nuts (Split), which is prone to smuggling from Nepal and

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

Bangladesh, due to which the premium on DFIA licenses covering duty free import of betelnuts is low.

10 It is further submitted that the license obtained by mis-declaration/mis-representation is only voidable and not void ab-initio.

11. It is settled law that even a license which is obtained by mis-declaration or mis-representation of facts is only voidable and not void. It is good in law until it is avoided/ cancelled.

12. On the other hand, the Ld.A.R. for the Revenue, submitted that it is on record that DFIA license obtained by M/s Maa Jawala Enterprises fraudulently by mis-declaring exports of goods. Therefore, the licenses have been obtained by fraud. In that circumstances, the duty forgone is recoverable from the appellants. To support his contention, he relied on the following decisions :

(i) Munjal Showa Limited Vs. Commissioner of Customs & Central Excise, Delhi-IV : 2022 (382) ELT 145 (S.C.) ;

(ii) Friends Trading Company Vs. Union of India : 2011 (267) ELT 33 (P & H) ;

(iii) Tata Iron & Steel Company Limited Vs. Commissioner of Customs, Mumbai : 2015 (319) ELT 546 (S.C.) ;

(iv) Sunil Kumar Gilra Vs. Commissioner of Customs (Exp.),Nhava Sheva : 2019 (370) ELT 1553 (Tri.-Mumbai) ;

(v) Ram Gopal Kudal Vs. Additional Commissioner of Customs (DEEC), Chennai : 2016 (334) ELT 50 (Mad.).

13. Heard the parties and considered the submissions.

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

14. After hearing the parties, the issue emerges before us is that *“whether the goods imported by the appellants under freely transferable DFIA license, of which, the appellants were a bonafide transferee of the said license for value and which was valid and subsisting on the date of import, are liable to be denied the DFIA benefit on the ground that the original license holder has fraudulently obtained the same” ?*

15. On the basis of the arguments advanced by the parties and on perusal of the records placed before us, we find that as per investigation, it has been revealed that M/s Maa Jawala Enterprises has obtained 18 licenses under DFIA against fraudulent export of betel nut powder, out of which, 13 were made transferable and sold to the appellants and the appellants have imported betel nut (split) using DFIA license of M/s Maa Jawala Enterprises without payment of duty. Therefore, it is the moot question before us that if the license which has been obtained by mis-declaration or mis-representation of facts, is voidable or not void.

15.1 It is also on record that these licenses were made transferable by the DGFT authorities after due verification. From the records, one such license as an example is extracted below :

**Customs Appeal Nos. 75572, 75575, 75576, 75579,
75584, 75585, 75939 & 75969/2016**

40

264

Office of Jt. Director General of Foreign Trade
4, ESPLANADE EAST, KOLKATA - 700009
LICENCE AMENDMENT SHEET

Amendment Sheet No. 1
Attached to Licence No. 0210134795
File No. 02/21/076/00207/AM10/ Dated : 03.12.2009
Issued By : Office of Jt. Director General of Foreign Trade, KOLKATA
Issued To :
RAM NARAYAN KEDIA
MAA JAWALA ENTERPRISES
33/1.N.S. ROAD, 7TH FLOOR, R.NO.727,
KOLKATA, W.B.
700001

FOB has been changed from :Rs. 5,800,800.00 to Rs. 5,284,672.00
FOB has been changed from :US\$ 114600.00 to US\$ 114461.17
FOB Value in US\$ has been changed from :114,600.00 to 114,461.17
CIF has been changed from : Rs. 4,484,000.00 to Rs. 4,403,893.00
CIF has been changed from :US\$ 95409.00 to US\$ 95384.30
CIF Value in US\$ has been changed from :95,409.00 to 95,384.30

Export Item (a) Details

Sl.No.	Export Item Name	Qty	UOM	FOB (Rs.)	FOB (US Dollars)	Amendment Type
1	Processed Beta Nut (Supari) Powder	100.000	MT	5,284,672.00	114,461.17	Modified

Import Item (a) Details

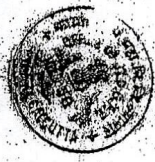
Sl.No.	Import Item Name	Qty	UOM	CIF (Rs.)	CIF (US Dollars)	Amendment Type
1	Beta Nut (Supari) Split	105.000	MT	4,403,893.00	95,384.30	Modified

(Issued from File Number 02/21/160/00322/AM11/ dated 16.07.2010)

Date: 16.07.2010
Place: KOLKATA

Pranay Kumar Ghosh
Foreign Trade Development Officer

श्री निरानंदा देवरी
श्री निरानंदा देवरी
विदेश व्यापक विकास अधिकारी
Foreign Trade Development Officer
कोलकाता / Kolkata



विशेषीय सन्निधि / संघ के संकल्प में श्री एफ. आर. के नियम में संशोधित एवं जारी किया गया
" Verified and found correct the export details of DFIA
with reference to the department records/system."

(MHAART) (MHAART) ID
FALU (DAD) (MHAART) ID
ए.ओ. (डी.एफ.टी.ए.)
E.O. (DFIA)

लि.अ. (डी.एफ.टी.ए.)
A.O. (DFIA)

स.आ. (डी.एफ.टी.ए.)
A.C. (DFIA)

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

34
275

Office of Jt. Director General of Foreign Trade
4, ESPLANADE EAST KOLKATA -700069

LICENCE AMENDMENT SHEET

Amendment Sheet No. 1
Attached to Licence No. :0210149320
File No :02/21/076/00201/AM11/ Dated : 13.10.2010
Issued By :Office of Jt. Director General of Foreign Trade, KOLKATA
Issued To :
RAM NARAYAN KEDIA
MAA JAWALA ENTERPRISES
33/1, N.S. ROAD, 7TH FLOOR, R.NO.727,
KOLKATA, W.B.
700001

FOB has been changed from :Rs. 5,271,600.00 to Rs.5,312,259.00
FOB has been changed from :US\$ 114600.00 to US\$ 114463.69
FOB Value in US\$ has been changed from :114,600.00 to 114,463.69
CIF has been changed from :US\$ 95500.00 to US\$ 95386.40
CIF Value in US\$ has been changed from :96,160.00 to 95,386.40

Export Item (s) Details

Sl.No.	Export Item Name	Qty	UOM	FOB (Rs.)	FOB (US Dollars)	Amendment Type
1	Processed Betal Nut (Supari) Powder	100.000	MT	5,312,259.88	114,463.69	Modified

Import Item (s) Details

Sl.No.	Import Item Name	Qty	UOM	CIF (Rs.)	CIF (US Dollars)	Amendment Type
1	Betal Nut (Supari) Split	105.000	MT	4,393,000.00	95,386.40	Modified

Issued from File Number :02/21/160/01279/AM11/ dated 22.12.2010

Date:22.12.2010
Place:KOLKATA

(Signature)
Foreign Trade Development Officer



श्रीमति एस. दास
SMT S. DAS
विदेश व्यापार विकास अधिकारी
Foreign Trade Development Officer
कोलकाता/Kolkata

Verified the Export Details and found
It is correct.

(Signature) / Dec 29/10
(Signature)

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

16. From the above, it revealed that at the time of importation by the appellants, these licenses were valid in law until and unless the same are cancelled by the Licensing Authority. The appellants being transferees of the above cited licenses, are bonafide purchaser of the licenses in question and imported the goods and cleared thereof. Therefore, subsequent suspension or cancellation of the license cannot affect the imports made prior to such suspension and cancellation.

17. In these regard, the appellant has relied upon the decision of the Hon'ble Supreme Court in the case of East India Commercial Company Ltd vs CC, 1983 (13) ELT 1342 (SC), wherein the Hon'ble Apex Court has held as under :

"35. *Nor is there any legal basis for the contention that licence obtained by misrepresentation makes the licence non est, with the result that the goods should be deemed to have been imported without licence in contravention of the order issued under Section 3 of the Act so as to bring the case within Clause. (8) of Section 167 of the Sea Customs Act. Assuming that the principles of law of contract apply to the issue of a licence under the Act, a licence obtained by fraud is only voidable : it is good till avoided in the manner prescribed by law. í í í í í í í .ö*

17.1 Further in the case of Union of India v Sampat Raj Dugar, 1992 (58) ELT 1663 (SC), wherein the Hon'ble Apex Court has observed as under :

"21. *.....No such prohibition can be pleaded in this case since on the date of the import the said goods were covered by a valid import licence. The subsequent cancellation of licence is of*

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

no relevance nor does it retrospectively render the import illegal.....”

17.2 Further in the case of CC, Bombay vs Sneha Sales Corporation – 2000 (121) ELT 577 (SC), the Hon’ble Apex Court again has held as under :

"5. *In the aforementioned decision of this Court it has been clearly laid down that in a case where the licence is obtained by misrepresentation or fraud it is not rendered non est as a result of its cancellation so as to result in the goods that were imported on the basis of the said licences and being treated as goods imported without a licence in contravention of the order passed under Section 3 of the Import and Export Act that fraud or misrepresentation only renders a licence voidable and it becomes inoperative before it is cancelled. In the present case the licences were cancelled by order dated December 18, 1986 after the goods had been imported and cleared. The Tribunal was, therefore, right in holding that the import of the goods was not in contravention of the provisions of Import and Export Order, 1955 and Import and Export (Control) Act, 1947 and the goods were not liable to be confiscated on that basis under Section 111(d) of the Act."*

17.3 Further, this issue has been examined by the Hon’ble High Court of Bombay in the case of Taparia Overseas P. Ltd v UOI, 2003 (161) ELT 47 (Bom.), wherein the Hon’ble High Court has observed as under :

"37. *Alternatively, let us consider it from another angle assuming that licence comes to an end upon it is suspension and/or cancellation, in catena of cases, it is laid down that the date of import of goods would be the date on which the Bill of Entry was presented under section 46. This legal position is clear from the decision of the Apex Court as laid down in Union of India*

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

v. Apar Ltd. [1999 \(112\) E.L.T. 3](#) (S.C.) and Garden Silk Mills v. Union of India - [1999 \(113\) E.L.T. 358](#) (S.C.). The same is the view taken by the Apex Court in Sampat Raj Durgar case (cited supra). Imports against replenishment Licences were permitted duty free if the importers produced an import Replenishment Licence the goods or the materials were imported into India. In the instant cases when the goods were imported into India, and even when the Bills of Entry were filed, neither were the licences suspended nor the same cancelled. In all these cases, Bills of Entry were filed by the petitioners well before the suspension and/or cancellation of the licences in question, thus the imports were made under valid licences, the goods could not be subjected to levy of customs duty in the peculiar facts and circumstances of the cases in hand.

In the circumstances, we hold that in all cases at hand, the goods were imported, under valid licences. The goods imported were neither prohibited nor restricted by or under the Customs Act, as such, it was not open for the Customs Authorities to withhold clearance thereof.

17.4 Further in the case of Pee Jay International Vs. Commissioner of Customs, 2016 (340) ELT 625 (P & H), the Hon'ble High has dealt this issue and observed as under :

"8. *The facts, which are not in dispute are that the appellant purchased DEPB Scrip No. 3010006203, dated 10-10-2000 from M/s. Beni Exports, Jalandhar. It was utilised to discharge duty liability on the goods imported by the appellant vide Bill of Entries dated 12-10-2000 and 19-10-2000. More than one year thereafter, Director General of Foreign Trade cancelled DEPB issued to M/s. Beni Exports, Jalandhar vide order dated 24-10-2001. As a result thereof, the appellant was issued show cause*

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

notice dated 14-11-2002 for withdrawing the benefits already availed of on the basis of DEPB purchased by the appellant. After considering the reply filed by the appellant, the adjudicating authority vide order dated 24-5-2005 confirmed demand of the customs duty and the special additional duty, benefit of which was availed of by the appellant on the basis of DEPB purchased by it from M/s. Beni Exports, Jalandhar. In addition, it was held that the goods imported by the appellant were liable for confiscation, however, as the goods were not available, having already been cleared for home consumption, redemption fine of ` 1,00,000/- was imposed in lieu of confiscation. Personal penalty on the appellant was also imposed. In appeal filed by the appellant against the aforesaid order before the Commissioner (Appeals), the demand of duty was confirmed, however, penalty was set aside. The Commissioner (Appeals), while setting aside the penalty, recorded the following findings :

"As regards to imposition of penalty of Rs. 4,85,453/- and Rs. 30,000/- on the appellant Nos. 1 and 2 under Section 114A and Section 112 of the Act respectively, I find that there is nothing on record to prove in any way that they have abetted or connived with the exporters to fraudulent obtain the DEPB scrips. However, it is on record that the appellants had purchased the freely transferable DEPB scrips in the bona fide manner and utilised the same towards exemption of duty."

9. *The appellant filed further appeal before the Tribunal. Even the revenue also preferred appeal against the order passed by the Commissioner (Appeals). One Member of the Tribunal opined that the appeals were liable to be dismissed applying the principle of "buyer beware". However, another Member opined that the appeal filed by the assessee was required to be allowed, whereas the revenue's appeal was meritless. The matter was referred to be considered by Third Member on difference of opinion. After the*

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

matter was considered by Third Member, the appeal filed by the appellant as well as the department were rejected. The department was raising the issue regarding levy of penalty, whereas the appellant was concerned about the demand of duty, as penalty had been set aside.

10. *In Vallabh Design Products' case, (supra), this court dismissed the appeal filed by the revenue involving identical issue finding that the importer therein was not a party to the fraud and there was categoric finding that he had purchased DEPB from the open market in bona fide belief of its being genuine. Reliance was placed upon an earlier judgment of this Court in Leader Valves Ltd.'s case (supra). There also, similar findings were recorded.*

11. *The same view was later followed in Fertichem India and M/s. Deebee Marketing Pvt. Ltd.'s cases (supra).*

12. *The judgment of this Court in Munjal Showa Limited's case (supra) is distinguishable on facts as in that case, transfer release advices issued against DEPB scrip were forged and even DEPBs were also forged. There was no finding recorded by the Tribunal or the authorities in that case that the assessee acted bona fide. The earlier judgments of this court in Vallabh Design Products and Leader Valves Ltd.'s cases (supra) were distinguished while recording that the importer in those cases had acted bona fide. Paragraph 15 thereof is extracted below :*

"15. We may also make a brief reference to the judgments of this court in Vallabh Design Products (supra) and Leader Valves Ltd. (supra), wherein a finding was clearly recorded that the importer had acted bona fide which finding was affirmed."

13. *In Friends Trading Co.'s case 1 (supra), the assessee's appeal was dismissed while relying upon the earlier judgment of this court in Munjal Showa Limited's case (supra) specifically*

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

noticing that the Tribunal in that case had recorded a finding that bona fides had not been established by the assessee, hence, the assessee was not entitled to place reliance upon the judgment of this court in Leader Valves Ltd.'s case (supra). In Friends Trading Co. v. Union of India, [2010 \(254\) E.L.T. 652](#) (P&H), the earlier judgment in Munjal Showa Limited's case (supra) was followed.

14. In Commissioner of Customs (Preventive) v. Aafloat Textiles India Private Limited and Others, (2009) 11 SCC 18 = [2009 \(235\) E.L.T. 587](#) (S.C.) as well, it was found that special import licences on the basis of which the buyer had claimed the benefit were, in fact, forged documents. It was under these circumstances, the maxim "caveat emptor" was applied. In cases, where scrip itself is forged, the fact could be found out in case the buyer seeks to verify this from the office issuing the scrip. However, it is not possible in a case where the scrip is genuine, but for the purpose of issuance thereof, the party concerned may have used some forged documents.

15. A similar issue was considered by a Division Bench of this Court in M/s. Gheru Lal Bal Chand's case (supra). It was a case, where under Haryana Value Added Tax Act, 2003, a purchasing dealer is entitled to get input tax credit on production of a statutory form. The claim was sought to be denied by the department while holding that the statement made in the form was not correct as the selling dealer had not paid the tax, for which the certificate was issued. This court opined that liability can be fastened on a person, who either acts fraudulently or is a party to the collusion or connivance with the offender. Genuineness of the certificate can be examined by the authority. In case of falsity, action should be taken against the selling dealers, except in the case of plea of fraud, collusion or connivance between the parties. Relevant paras thereof are extracted below :

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

"25. In legal jurisprudence, the liability can be fastened on a person who either acts fraudulently or has been a party to the collusion or connivance with the offender. However, law nowhere envisages to impose any penalty either directly or vicariously where a person is not connected with any such event or an act. Law cannot envisage an almost impossible eventuality. The onus upon the assessee gets discharged on production of Form VAT C-4 which is required to be genuine and not thereafter to substantiate its truthfulness by running from pillar to post to collect the material for its authenticity. In the absence of any mala fide intention, connivance or wrongful association of the assessee with the selling dealer or any dealer earlier thereto, no liability can be imposed on the principle of vicarious liability. Law cannot put such onerous responsibility on the assessee otherwise, it would be difficult to hold the law to be valid on the touchstone of articles 14 and 19 of the Constitution of India.

26. The rule of interpretation requires that such meaning should be assigned to the provision which would make the provision of the Act effective and advance the purpose of the Act. This should be done wherever possible without doing any violence to the language of the provision. A statute has to be read in such a manner so as to do justice to the parties. If it is held that the person who does not deposit or is required to deposit the tax would be put in an advantageous position and whereas the person who has paid the tax would be worse, the interpretation would give result to an absurdity. Such a construction has to be avoided.

27. In other words, the genuineness of the certificate and declaration may be examined by the taxing authority, but onus cannot be put on the assessee to establish the correctness or the truthfulness of the statements recorded therein. The authorities can examine whether the Form VAT C-4 was bogus and was procured by the dealer in collusion with the selling dealer. The

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

department is required to allow the claim once proper declaration is furnished and in the event of its falsity, the department can proceed against the defaulter when the genuineness of the declaration is not in question. However, an exception is carved out in the event where fraud, collusion or connivance is established between the registered purchasing dealer or the immediate preceding selling registered dealer or any of the predecessors selling registered dealer, the benefit contained in Form VAT C-4 would not be available to the registered purchasing dealer. The aforesaid interpretation would result in achieving the purpose of the rule which is to make the object of the provisions of the Act workable, i.e., realization of tax by the revenue by legitimate methods."

16. *In the case in hand, as has already been noticed above, there is a specific finding recorded by the first appellate authority and even by the Tribunal that the appellant was not party to the fraud with the seller of DEPB. DEPB was found to be a genuine document, though obtained by seller by producing some forged documents, to which the appellant was not a party."*

17.5 Further, in the case of Supreme Castings Limited Vs. Jt. Director General of Foreign Trade, Ludhiana, 2016 (342) ELT 176 (P & H), wherein the Hon'ble High Court again examined the issue and observed as under :

"27. *It is well settled that no action taken under a statute can have retrospective effect in the absence of a specific provision in the statute conferring such power.*

28. *In M.D. University v. Jahan Singh, (2007) 5 SCC 77, Hon'ble the Supreme Court held as under :*

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

"19. The Act does not confer any power on the Executive Council to make a regulation with retrospective effect. The purported regulations, thus, could not have been given retrospective effect or retroactive operation as it is now well settled that in absence of any provision contained in the legislative Act, a delegatee cannot make a delegated legislation with retrospective effect.

20. In *Mahabir Vegetable Oils (P) Ltd. v. State of Haryana* this Court stated : (SCC p. 633, paras 41-43)

"41. We may at this stage consider the effect of omission of the said note. It is beyond any cavil that a subordinate legislation can be given a retrospective effect and retroactive operation, if any power in this behalf is contained in the main Act. The rule-making power is a species of delegated legislation. A delegatee therefore can make rules only within the four corners thereof."

29. Similarly it was held in *DDA v. Joint Action Committee, Allottee of SFS Flats*, (2008) 2 SCC 672, as under :

"76. An executive officer, in absence of any provision of a statute, cannot apply his own decision with retrospective effect. A delegatee is bound to act within the four corners of the delegation and not beyond the same.

77. Delegation of power in favour of an authority under a statute must also be tested in terms of the statutory provisions. No provision under the Act or the Regulations has been brought to our notice which empowers the delegatee to alter the terms and conditions of the contract with retrospective effect. The purported policy decision must, therefore, be tested not only having regard to the provisions of the statute but also having regard to Clause 4 of the offer."

30. A closely similar case under the 1992 Act is *Vikrant Overseas v. Union of India*, (1999) 2 RCR (Civil) 397 = [2000](#)

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

[\(123\) E.L.T. 486](#) (P&H). In this case initially on September 8, 1998, the petitioner was granted a licence for the import of 3000 mt. tonnes of 'Khas Khas' (poppy seeds). The petitioner was permitted to import the poppy seeds from "the country of origin - Pakistan, Afghanistan, Turkey and Australia."

31. On December 8, 1998, the Joint Director General of Foreign Trade, Amritsar, informed the petitioner that names of Pakistan and Afghanistan were deleted from the licence with effect from the date of issue of licence. He was informed that this action had been taken under "Para 8 of Foreign Trade (Regulation) Rules, 1993." Aggrieved by the retrospective amendment of its licence, the petitioner therein approached the Court through a Writ Petition.

32. A Division Bench of this Court held that as there was no provision in the Foreign Trade (Development and Regulation) Act, 1992 or Rule 8 of the Foreign Trade (Regulation) Rules, 1993, to amend the licence with retrospective effect, the impugned amendment of the licence with retrospective effect was illegal.

The relevant observation of the Court are as under :

"8. Counsel for the parties have been heard.

9. The questions that arise for consideration are :-

(i) Do the respondents have the jurisdiction to retrospectively amend an import licence?

(ii) Can the respondents amend an import licence retrospectively or otherwise without the grant of any opportunity to the importer?

(iii) Is the action of the respondents in initiating proceedings for the confiscation of the goods legal and, thus, tenable?

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

Regarding (i) :

With the object of providing for the development and regulation of foreign trade, the Parliament has enacted the Foreign Trade (Development and Regulation) Act, 1992 (hereinafter referred to as the Act). The primary object of this Act is to facilitate "imports into and augment export from India.....". Section 9 of the Act inter alia provides for the issue of suspension and cancellation of licence. In Clause (2) "the Director General or an officer authorised by him" is competent to "grant or renew or refuse to grant or renew, a licence to import and export such class or classes of goods, as may be prescribed, after recording in writing his reasons for such refusal." A licence granted under Section 9 has to be in a prescribed form. It is valid for the period which may be specified therein. Terms, conditions and restrictions can also be imposed. The provision also authorises the competent authority to suspend or cancel a licence. Section 19 authorises the Central Government to "make rules for carrying out the provisions of the Act."

10. *In exercise of the powers conferred by the Act, the Central Government has framed the rules called the Foreign Trade (Regulation) Rules, 1993. Rule 8 is material for the purposes of this case. It provides as under :-*

"Rule 8 :

Amendment of licence :

The licensing authority may of its own motion or on an application by the licensee, amend any licence in such manner as may be necessary or to rectify any error or omission in the licence".

11. *On a perusal of the provisions of the Act and the rules, we do not find any power with the licensing authority to retrospectively amend a licence. Mr. Gumber, learned counsel for*

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

the respondents, has stated before us that the authority has been amending the licence retrospectively "in routine". The counsel has conceded that there is no provision which may specifically authorise the licensing authority to amend a licence retrospectively.

12. Besides the lack of an express provision, even in principle, we find it difficult to accept the contention as raised on behalf of the respondents that the authority can retrospectively amend a licence. If such a wide power was conceded, the results can be catastrophic. A licence may be granted today for the import of a 1000 Mt. tonnes of a particular commodity. The person may place the order. The consignment may be received. One fine morning, the authority may retrospectively reduce the quantity to 1 Mt. ton. Who would make good the loss? Who would be responsible for the consequences? There is no answer on behalf of the respondents. In this situation, it is not surprising that neither under the Act nor the rules any power has been reserved with the authorities to modify a licence retrospectively."

33. *There being no provision in Section 9(4) to cancel the licence with retrospective effect, on the ratio of the aforesaid case, it has to be held that the DEPB could not have been cancelled ab initio from the date of issue.*

34. *The order of cancellation of the DEPB being illegal and without jurisdiction the penalty imposed being a consequence thereof also cannot sustain.*

35. *In view of our decision on the aforesaid question, there is no necessity to opine on the first and third contentions of the Ld. Counsel for the petitioner.*

36. *Thus, this writ petition is allowed. The order dated 30-11-2004 (Annexure P-3) whereby the DEPB No. 3010005384, dated*

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

25-8-2000 for ` 9,30,514/- was cancelled and a penalty of ` 2,00,000/- was imposed on the petitioner and the order dated 7-2-2006 (Annexure P-6) whereby the appeal of the petitioner against that order has been dismissed, are quashed."

17.6. We further take note of the fact that in the case of M/s Neev Trading Company and M/s Vids Overseas Vs. Commissioner of Customs, ICD, Patparganj, Delhi reported in 2022 (3) TMI 1005-CESTAT, New Delhi, wherein this Tribunal has observed as under :

"28. Having considered the rival contentions, we find that the issue involved in the present case is regarding the utilisation of DFIA license Nos. 0310606860 dated 20.12.2010 and 0310606862 dated 20.12.2010 in the case of Neev Trading Co., and Licences Nos.0310603943 dated 01.12.2010 and No.0310610819 dated 13.01.2011 in the case of Vids Overseas, which were issued by the Director General Foreign Trade (DGFT) for an amount (as specified in paras 6 and 9 above), which was later on transferred to the appellant for consideration at premium of 97% approx. The amount of consideration for purchasing of the said licenses from the transferor was paid through Cheque or banking channel. The said license(s) was utilised by the appellants towards the import duty vide Bills of Entry filed during January, 2011 to August, 2011. It is not in dispute that these license(s) has been obtained by the exporters on the basis of fake export documents. The Department has taken up the matter for cancellation of the DFIA license(s) with DGFT by the DRI on 16.02.2012. In other words, the above license(s) are genuine licence in the record of DGFT.

29. Nowhere it is the case of the Department that these appellants colluded with any of the persons concerned, for alleged fraud/ forgery/ manipulation of the documents on the basis of

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

which, licenses were obtained. Nor it is the case of the Department that these appellants wilfully mis-stated any of the material facts with regard to their import consignments. Neither it is the case that these appellants suppressed any facts with intent to evade payment of duty. The only observation in the show cause notice and the impugned order is that these appellants did not exercise due diligence in checking the correctness of exports on the basis of which documents DEPB/DFIA licences were issued.

30. Once the DGFT makes the licences transferrable and negotiable on fulfilment of the export obligation, the licences are transferable by delivery and/or endorsement to the transferee. Once the licence is made 22 transferable, the same are traded by the parties through brokers, which is permitted under the DGFT Policy and Foreign Trade Policy. There was no reasons to disbelief the licences issued by the Competent Authority/DGFT. Thus, the same were duly reflected on the website of the DGFT. It is not the case of the Department that the licences itself were forged/fabricated. It is an admitted fact that the licences were genuinely issued by the DGFT after due diligence and were valid at the time of imports made by the appellants. In the circumstances, we find that the appellant is correct in relying on the Ruling of the Hon'ble Punjab & Haryana High Court in the case of P.J. International Vs. Commissioner of Customs (Supra).

31. We further observe that the Adjudicating Authority have erred in not appreciating that these appellants were bonafide purchaser of DIFA licences, which were validly issued and made transferable by DGFT, as well as registered by the Customs Department on their website, on the date of purchase and utilisation by these appellants. Further, admittedly, the licenses in question have been cancelled much thereafter in the month of May, 2012 by the DGFT.

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

32. We also find in case of *Commissioner of Customs vs. Leader Valves Limited* reported in 2007 (218) ELT 349 (P & H), the similar issue came for consideration in respect of DEPB license purchased from open market under the bonafide belief of being genuine. The para 9 of the judgment, which is relevant, is 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 they had purchased DEPB from the open market in the bona fide belief of its being genuine. They had paid full price and accordingly have availed the benefit. Merely because at a later stage, the DEPB has been found to be fabricated and fake on the basis of BCER the assessee respondent could not be deprived of the benefits which were legitimately available to them. It is also worth noticing that the assessee-respondent was never issued any show cause notice before cancelling the DEPB which was obtained by M/s. Parker Industries and obviously the notice was also to be issued to them alone. We are further 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 crystallized. The revenue cannot avail the extended period because the assessee-respondent could not be accused of mis-representation, collusion or suppression of facts within the meaning of proviso postulated by Section 28 of the Customs Act. Therefore, there is no merit in this appeal.

10. This judgment was further affirmed by Hon'ble Supreme Court reported in 2007 (218) ELT (349) (P&H). In case of *M/s Deep Export vs Commissioner of Customs* reported in 2016 (338) ELT 724 (Tri-Del)] it has been held at para 9, 10, 11 that REP license

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

obtained fraudulently by transferee on the forged documents the appellant were not in the knowledge of such fraud cannot be held to be ineligible for benefit under license.

11. We have also considered the submissions of Ld. AR and has as reliance in case of Friends Trading company vs. Union of India 2010 (254) ELT 654 (P & H). However, the case is distinguishable from the present case on account of the fact that in that case DEPB scrips were cancelled by the competent authority which is not the case here and hence this judgment has no application in the present case. Even as of now the Department has not been able to produce any evidence about the present licence having been cancelled by the DGFT.

We also find that the Show Cause Notice has invoked extended period for recovery of the Customs Duty, for import which has been affected by utilisation the FPS licence in question. It is evident that the appellant has not suppressed any fact from the Department to the extent that the license which was submitted for clearance of import consignment is issued by the DGFT, although the claimed to have been obtained fraudulently by the transferee and utilised on 06/12/11 on ICD Patpargang. The Show Cause Notice has been issued in this case on 02/12/2016, that is after the lapse of normal period of raising demand under the provisions of Section 28 of the Customs Act 1962. Therefore the demand is also time barred."

33. Accordingly, we set aside the demand of duty and penalty on these appellants. We also hold that in the facts and circumstances, the extended period of limitation is not invocable, as admittedly, there is no case of fraud, mis-statement or contumacious conduct on the part of these appellants.ö

18. The Revenue has relied on the decision in the case of Munjal Showa Ltd. (supra), which is distinguishable on facts as in that case,

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

during verification, it was found that the DEPB licenses on the basis of which TRAs were issued were forged and it was also found that these DEPB Scrips were forged. But in the case in hand, the DFIA License was genuine and the same were made transferrable by the DGFT and were valid at the time of import effected by the appellants. Therefore, the decision of the case Munjal Showa Ltd. (supra) cannot be equated in this case.

18.1 Further in the case of Friends Trading Company (supra), the scrips obtained by the appellants, were held to be void ab-initio. There is a big difference between the forged scrip which is ab-initio void at the time of import whereas the DEPB obtained on the basis of fraudulently by the exporter and sold to the appellants and transferrable to DGFT, may be voidable unless the same has been cancelled by the issuing authority. Accordingly, the same cannot be equated altogether.

18.2 Further, the case of Tata Iron & Steel Company Limited (supra) relied upon by the Id.A.R. for the Revenue, has no relevance in the facts and circumstances of this case as in that case the license holder has deliberately suppressed the fact of having availed movat credit and made willfully wrong declaration to the licensing authority to obtain the endorsement of transferability of the same while transferring the licenses to the appellants and the issue before the Hon'ble Supreme Court was that in such cases the extended period of limitation was invocable or not.

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

18.3 Further, in the case of Sunil Kumar Girda (supra), the said case was the claim of drawback on the basis of wrong declaration in the shipping bill, which is not the case in hand.

18.4 Further in the case of Ram Gopal Kudal (supra), the said case is not applicable to the facts and circumstances of this present case as there is no diversion of goods by the appellants and the goods are imported duty free under the license in the local market without utilizing them for the intended purposes.

19. From the above discussions, we find that the facts in this case, are similar to the case of M/s Neev Trading Company (supra) as at the time of importation, the DFIA license against which the appellants have affected the duty free import of betel nut (split) were valid and made transferrable by DGFT, therefore, relying on the decision in the case of M/s Neev Trading Company (supra), we found that the subsequent suspension cannot affect the duty free import made by the appellants as on the date of import license was valid and made transferable by DGFT.

20. In that circumstances, we hold that the cases relied upon by the Id.A.R. for the Revenue are distinguishable on facts and circumstances. Further, the judicial pronouncement in the similar set of facts to the facts of the case in hand, held that although the license obtained by fraud is , but is good till voided in the manner prescribed in law and at the time of import, the license is valid.

**Customs Appeal Nos.75572,75575,75576,75579,
75584,75585,75939 & 75969/2016**

21. In that circumstances, we hold that as the licenses in question were valid against which, the appellant has imported duty free goods, the duty cannot be demanded from the appellants being bonafide purchasers of DFIA licenses.

22. Therefore, whole of the demands against the appellants are set aside. Consequently, no penalties were imposable on the appellants.

23. In view of this, the appeals filed by the appellants are allowed with consequential reliefs, if any.

(Pronounced in the open court on **04.07.2023**)

Sd/
(Ashok Jindal)
Member (Judicial)

Sd/
(K.Anpazhakan)
Member (Technical)

mm