CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 27 of 2011

(Arising out of Order-in-Original CAO No. 101/2010/CAC/CC/SS/ dated 21.12.2010 passed by the Commissioner of Customs (E.P.), Mumbai Zone -I)

Borax Morarji Ltd .... **Appellant**
Prospect Chamber, 317-21,
Dr. D.N. Road, Fort, Mumbai- 400 001.

Versus

Commissioner of Customs (Export Promotion) Mumbai ....**Respondent**
New Custom House,
Ballard Estate, Mumbai 400 001.

APPEARANCE:

Shri Jeffry Cales, Advocate for the Appellant
Shri Deepak Sharma, Authorized Representatives for the Respondent

WITH

Customs Appeal No. 85210 of 2013

(Arising out of Order-in-Original No. 31/2012-13 dated 28.09.2012 passed by the Commissioner of Customs (Export), JNCH Nhava Sheva)

Kundal Rice Mills Ltd. .... **Appellant**
D-17, Central Market, Prasant Vihar,
Delhi - 110 085.

Versus

Commissioner of Customs (Export) Nhava Sheva ....**Respondent**
Jawaharlal Nehru Custom House, Nhava Sheva,
Dist. – Raigad, Maharashtra – 400 707.

APPEARANCE:

Shri Prakash Shah, Advocate for the Appellant
Shri Deepak Sharma, Authorized Representatives for the Respondent

WITH

Customs Appeal No. 86208 of 2013

(Arising out of Order-in-Original CAO No.167/2009/CAS/CC/RBT dated 24.11.2009 passed by the Commissioner of Customs (E.P.), Mumbai.)

DCM Shriram Industries Ltd. .... **Appellant**
Unit Hindon River Mills, Kanchenjunga Building,
18, Barakhamba Road, New Delhi 110 001.

Versus

Commissioner of Customs (Export Promotion) Mumbai ....**Respondent**
New Custom House,
Ballard Estate, Mumbai 400 001.

APPEARANCE:

Shri Jeffry Cales, Advocate for the Appellant
Shri Deepak Sharma, Authorized Representatives for the Respondent

WITH

Customs Appeal No. 87429 of 2013

(Arising out of Order-in-Appeal No. 288 To 297/MCH/ADC/Gr.V/2013 dated 19.04.2013 passed by the Commissioner of Customs (Appeals), Mumbai Zone-I)

Ganesh International .... Appellant
205-6-7, Yogeshwar Building, 135-39,
Kazi Sayed Street, Mumbai – 400 001.

Versus

Commissioner of Customs (Import), Mumbai ....Respondent
New Custom House,
Ballard Estate, Mumbai 400 001.

APPEARANCE:

Shri J. C. Patel, Advocate for the Appellant
Shri Deepak Sharma, Authorized Representatives for the Respondent

WITH

Customs Appeal No. 87928 of 2013

(Arising out of Order-in-Appeal No. 205(Gr.VII-I)/2013 (JNCJ)/EXP-49 dated 13.03.2013 passed by the Commissioner of Customs (Appeals), JNCH Mumbai -II)

Atlas Mercantile Pvt. Ltd. .... Appellant
513, Kakad Market, 306-Kalbadevi Road,
Mumbai – 400 002.

Versus

Commissioner of Customs (Export) Nhava Sheva ....Respondent
Jawaharlal Nehru Custom House, Nhava Sheva, Tal. Uran
Dist. – Raigad, Maharashtra – 400 707.

WITH

Customs Appeal No. 85315 of 2014

(Arising out of Order-in-Appeal No. 939(GR.VII-I)/2013 (JNCH)/EXP-218 dated 30.09.2013 passed by the Commissioner of Customs (Appeals), JNCH, Sheva, Mumbai-II)

Icon Fibers & Fabrics Pvt. Ltd. .... Appellant
513, Kakad Market, 306-Kalbadevi Road,
Mumbai – 400 002.

Versus

Commissioner of Customs (Export) Nhava Seva ....Respondent
Jawaharlal Nehru Custom House, Nhava Sheva, Tal. Uran
Dist. – Raigad, Maharashtra – 400 707.

WITH

Customs Appeal No. 85316 of 2014

(Arising out of Order-in-Appeal No. 939(GR.VII-I)/2013 (JNCH)/EXP-218 dated 30.09.2013 passed by the Commissioner of Customs (Appeals), JNCH, Sheva, Mumbai-II)

Atlas Marcantile Pvt. Ltd. .... Appellant
513, Kakad Market, 306-Kalbadevi Road,
Mumbai – 400 002.

Versus

Commissioner of Customs (Export) Nhava Sheva ....Respondent
Jawaharlal Nehru Custom House, Nhava Sheva, Tal. Uran
Dist. – Raigad, Maharashtra – 400 707.

APPEARANCE:

Shri Prakash Shah, Advocate for the Appellant
Shri Deepak Sharma, Authorized Representatives for the Respondent

WITH

Customs Appeal No. 85490 of 2014

(Arising out of Order-in-Appeal No. 939(GR.VII-I)/2013 (JNCH)/EXP-218 dated 30.09.2013 passed by the Commissioner of Customs (Appeals), JNCH, Sheva, Mumbai-II)

R Kishin & Co. .... Appellant
Room No. 21, 2nd Floor, Bherumal House,
149, Zaveri Bazar, Mumbai 400 002.

Versus

Commissioner of Customs (Export) Nhava Sheva ....Respondent
Jawaharlal Nehru Custom House, Nhava Sheva,
Tal. Uran, Dist. – Raigad, Maharashtra – 400 707.

APPEARANCE:

None for the Appellant
Shri Deepak Sharma, Authorized Representatives for the Respondent

WITH

Customs Appeal No. 85248 of 2018

(Arising out of Order-in-Original No. PCCP/ADJ/AKJ/09/2017 dated 22.12.2017 passed by the Commissioner of Customs (Preventive), Mumbai.)

MS Kodak India Pvt. Ltd. .... Appellant
1st Floor, Dani Corporate Bank,
158, Dani Compound, Vidyanagari Marg,
Kalina, Santacruz (East), Mumbai – 400 098.

Versus

Commissioner of Customs (Preventive) Mumbai ....Respondent
2nd Floor, New Custom House,
Ballard Estate, Mumbai 400 001.

APPEARANCE:

Shri Jeffry Cales, Advocate for the Appellant
Shri Deepak Sharma, Authorized Representatives for the Respondent

WITH

Customs Appeal No. 86464 of 2018

(Arising out of Order-in-Appeal No. 14{Adjn.(Exp)}/2018 (JNCH)/Appeal-I dated 25.01.2018 passed by the Commissioner of Customs (Appeals), Mumbai-II)

Pushapanjali Floriculture Ltd. **.... Appellant**
301, Anand Building, 3rd Floor,
82/84,Kazi Sayed Street,
Masjid (W), Mumbai 400 009.

Versus

Commissioner of Customs, Belapur **....Respondent**
Jawaharlal Nehru Custom House, Nhava Sheva,
Tal. Uran, Dist. – Raigad, Maharashtra – 400 707.

APPEARANCE:

Shri Prakash Shah, Advocate for the Appellant
Shri Deepak Sharma, Authorized Representatives for the Respondent
,

WITH

Customs Appeal No. 89786 of 2014

(Arising out of Order-in-Appeal No.2990 (Adj. Export)/2010/JNCH/Export-142 dated 16.07.2014 passed by the Commissioner of Customs (Adjudication), Mumbai.)

Icon Fibers & Fabrics Pvt. Ltd. **.... Appellant**
513, Kakad Market, 306-Kalbadevi Road,
Mumbai – 400 002.

Versus

Commissioner of Customs (Export) Nhava Seva **....Respondent**
Jawaharlal Nehru Custom House, Nhava Sheva,
Tal. Uran, Dist. – Raigad, Maharashtra – 400 707.

APPEARANCE:

Shri Prakash Shah, Advocate for the Appellant
Shri Krishna Azad, Authorized Representatives for the Respondent

WITH

Customs Appeal No. 86785 of 2015

(Arising out of Order-in-Original No.06/2015-16 dated 30.06.2015 passed by the Principal Commissioner of Customs (NS-II))

Raymond Ltd. **.... Appellant**
Pokharan Road No.1, P.O. Jekegram,
Thane (West), Thane – 400 606.

Versus

Commissioner of Customs (Nhava Sheva-II) Mumbai ....Respondent
Jawaharlal Nehru Custom House, Nhava Sheva,
Tal. Uran, Dist. – Raigad, Maharashtra – 400 707.

APPEARANCE:

Shri Prakash Shah, Advocate for the Appellant
Shri L.B. D'Coasta, Authorized Representatives for the Respondent

WITH

Customs Appeal No. 87154 of 2015

(Arising out of Order-in-Original No.06/2015-16 dated 30.06.2015 passed by the Principal Commissioner of Customs (NS-II))

Dixon Technologies (India) Pvt. Ltd. **.... Appellant**
C-3/1, Selakul Industrial Area, Dehradun,
Uttaranchal – 248001.

Versus

Commissioner of Customs (Nhava Sheva-II) Mumbai ....Respondent
Jawaharlal Nehru Custom House, Nhava Sheva,
Tal. Uran, Dist. – Raigad, Maharashtra – 400 707.

APPEARANCE:

Shri Akhilesh Kangsia, Advocate for the Appellant
Shri L.B. D'Coasta, Authorized Representatives for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85228-85240/2026

Date of Hearing: 02.02.2026
Date of Decision: 02.02.2026

PER: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants in this case, have imported certain goods and cleared the same against transferable Duty Credit Scrips/Licenses viz., Duty Entitlement Passbook Scheme (DEPB), Duty Free Import Authorization (DFIA) etc., which were purchased by them for valuable consideration. The goods were allowed clearance with the benefit of duty credit/exemption against such scrips/licenses by the customs authorities at the port of import. Subsequent to such clearance of imported goods, the scrips/licenses were cancelled by the competent Licensing Authorities on the ground that the original licensees had obtained the same by fraud and/or by submitting forged export documents. In view such cancellation, Show Cause Notices (SCNs) were issued by the customs authorities to the importers-transferees of the scrips/licenses, demanding duty under proviso to Section 28(1) of the Customs Act, 1962 and proposing for confiscation of goods under sub-sections (m) and (o) of Section 111 ibid and imposition of penalty on the appellants under Section 114A/112 of the said Act of 1962. The SCNs were contested by the appellants, both on merits as well as on limitation. On merits, it was submitted that since the scrips/licenses were valid and subsisting on the date of import and clearance of the goods, the subsequent cancellation of the scrips/licenses cannot adversely affect the prior importation of goods. It was contended that a scrip/license obtained by fraud is not *void*, but only voidable, and if the goods are imported and cleared by a Bonafide transferee of the scrip/license without involvement of any fraud, then subsequent cancellation of the scrip/license cannot affect the prior import activity of such transferee. However, the aforesaid submission of the appellants did not find favour with the adjudicating authority/First Appellate Authority, who have held that a scrip/ license obtained by fraud by the original licensee is void from inception and therefore, import of goods by transferee of such scrip/license is not entitled to duty benefit thereunder. On that basis, the proposals made in the SCNs were confirmed in the respective impugned orders. Feeling aggrieved with the impugned orders, the appellants have preferred these appeals before the Tribunal.

2. Heard both sides and examined the case records.

3. The issue involved in the present appeals for consideration by the Tribunal is whether, the goods imported by the appellants, as the Bonafide transferee under freely transferable Duty Credit Scrips/Licenses, which were valid and subsisting on the date of import, would be liable for denial of the benefit of duty exemption in lieu of such scrips, or otherwise, on the ground that the 'original license holder' had fraudulently obtained the same?

4. To encourage export of goods with the objective of earning foreign exchange, the Government of India issues various export incentive schemes from time to time, encouraging the exporters to export the goods at internationally competitive price. In terms of the schemes, on the basis

of the achievement of export turnover, the exporters are entitled for the benefit of various scrips/licenses issued by the Directorate General of Foreign Trade (DGFT). The said scrips/licenses can be used by the exporters, by themselves for importation of duty-free goods and are also transferable by way of trading in the open market, for a consideration. In other words, by purchasing the scrip/ license from the exporter to whom it was issued, any importer can import the goods duty free in lieu of such scrip/license. As long as the scrip/license issued by the licensing authority is valid, being not cancelled, even if the same had been obtained by fraudulent means, the beneficiary of such document cannot be denied with the benefit of duty-free import of goods, as long as such scrip/license is valid. In the case in hand, the appellants had purchased the scrips/licenses from the persons, who were recognized by the licensing authorities as the exporter of the goods and upon subjective verification, the same were issued in their favour by the competent authorities. Thus, under such circumstances, even if the said documents were obtained by the main beneficiary by adopting to the fraudulent means or practices, it cannot be questioned at the stage of the ultimate beneficiary, who had purchased such document duly issued by the competent authority and utilized the same for duty free importation of goods.

5. We find that the issue arising out of the present dispute is no more *res integra*, in view of the order passed by the Co-ordinate Bench of the Tribunal in the case of *Apar Industries Limited Vs. Commissioner of Customs (Export Promotion), Mumbai* – (2026) 38 Centax 39(Tri.-Bom.). Upon analysis of the factual matrix involved in the said case, vis-à-vis the legal position, the Tribunal has held as under:

> ***"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 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.*
>
> *xxx xxx xxx xxx*
>
> ***28.*** *The Supreme Court dealt with a case where the DEPB scrips and the Transfer Release Advices, on the basis of which the*

imports were sought to be cleared duty free, were found to be forged and had actually not been issued by DGFT at all. It is in such circumstances that the Supreme Court held:

> *"8. From the judgment and order passed by the Tribunal and even from the findings recorded by the Department, it has been found that the DEPB licenses/Scrips, on which the exemption benefit was availed of by the appellant(s) (as buyers of the forged/ fake DEPB licenses/Scrips) were found to be forged one and it was found that the DEPB licenses/Scrips were not issued at all. A fraud was played and the exemption benefit was availed on such forged/fake DEPB licenses/Scripps.*
>
> *9. In that view of the matter and on the principle that fraud vitiates everything and such forged/fake DEPB licenses/Scrips are void ab initio, it cannot be said that the Department acted illegally in invoking the extended period of limitation. In the facts and circumstances, the Department was absolutely justified in invoking the extended period of limitation."*
>
> *(emphasis supplied)*

29. *The judgment of the Supreme Court in Commissioner of Customs (Preventive) v. Aafloat Textiles (I) P. Ltd. [2009 (235) E.L.T. 587 (S.C.)] deals with a case of import of goods on the strength of forged Special Import Licence which was never issued by DGFT. It is taking in consideration this fact that the Supreme Court held:*

> *"28. As noted above, SILs were not genuine documents and were forged. Since fraud was involved, in the eye of law such documents had no existence. Since the documents have been established to be forged or fake, obviously fraud was involved and that was sufficient to extend the period of limitation."*

30. *The judgment of the Punjab and Haryana High Court in Friends Trading Co. v. Union of India [2011 (267) E.L.T. 33 (P&H.)] and the decision of the Tribunal in Mercedes Benz India Private Ltd. v. Commissioner of Customs, Delhi [(2022) 1 Centax 328 (Tri.-Del)] are also on the same lines in as much as in these cases also, the DEPB scrips and the TRAs were forged and were not actually issued by the DGFT. The High Court and the Tribunal, therefore, held that the transferee importers were not eligible for the exemption under the Customs Exemption Notification since the documents based on which the exemption was sought did not exist in the eye of law at any point of time.*

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.*

xxx xxx xxx xxx

35. *The submission of learned senior counsel for the appellant that the facts in dispute are the same as that in the decision of the Tribunal in Deep Exports and so the appellant would be entitled to all the favourable consequence that follows is justified. This decision, as set out above, has comprehensively examined all relevant decisions and provides appropriate benchmark on entitlement to retain the privilege of exemption arising from use of transferred scrips that, even if cancelled subsequently, were not void to the extent that these are not forged or fake at the time of import. The goods, not bring prohibited for import nor imported subject to any condition, were incorrectly held as liable to confiscation under section 111 of Customs Act and penalty imposed under section 112 will not, therefore, survive.*”

6. In view of the foregoing discussions, we do not find any merits in the impugned orders, insofar as the adjudged demands were confirmed against the appellants. Therefore, the impugned orders are set aside and the appeals are allowed in favour of the appellants.

(Operative portion pronounced in the Open Court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

SM