CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85263 of 2025

(Arising out of Order-in-Original No. 92/2022-23/Commr/NS-II/CAC/JNCH dated 23.02.2023 passed by Commissioner of Customs, NS-II, JNCH)

Heranba Industries Limited **.... Appellant**
2nd Floor, A Wing, Fortune, Avirahi Jambli Galli,
Jain Derasar Lane,
Borivali, Mumbai 400 092.

Versus

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

APPEARANCE:

Shri Chirag Shetty, a/w Ms. Ayushi Agarwal, Advocates for the Appellants

Shri Ram Kumar, Authorized Representative for the Revenue

CORAM:

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

FINAL ORDER NO. A/87040/2025

Date of Hearing: 11.12.2025

Date of Decision: 11.12.2025

PER: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants herein are *inter alia,* engaged in the manufacture of technical grade pesticides and formulation of insecticides, fungicides and herbicides, weedicides and combination products etc., under three categories viz., (i) Technicals, (ii) Intermediates, and (iii) Formulations. The appellants had classified the said goods under Customs Tariff Item (CTI) 3808 9910 or CTI 3808 9990 of the Customs Tariff Act, 1975 and claimed the benefit of Merchandise Exports from India Scheme (MEIS) @ 3% of the FOB value. During the disputed period i.e., from 01.04.2015 to 06.07.2018, the appellants had exported the subject goods under 588 Shipping Bills (S/B), against which 58 MEIS scrips were obtained from Director General of Foreign Trade ('DGFT'). The Directorate of Revenue Intelligence (DRI) had initiated investigation against the appellants on the information that they had been exporting the subject goods by allegedly mis classifying them under CTI 3808 9910 or CTI 3808 9990, instead of sub-headings 380891, 380892 or 380893 and claiming higher MEIS i.e., 3% instead of 2%. On the basis of the investigation, DRI had issued Show Cause Notice (SCN) to the appellants, seeking recovery of ineligible MEIS duty amount to Rs.3,17,54,058/-, by reclassifying the impugned goods under sub-heading 380891, 380892 and 380893 and for payment of interest and imposition of penalty. The SCN dated 20.10.2020 was adjudicated by the learned Commissioner of Customs, NS-II, JNCH, Raigad vide Order-in-Original No.92/2022-23/Commr./NS-II/CAC/JNCH dated 23.02.2023 (for short, referred to as 'the impugned order'), in rejecting the classification of the goods as claimed by the appellants and directed to classify the goods as per Annexure-A to the SCN. Further, the impugned order has also appropriated the amount deposited by the appellants towards recovery of ineligible MEIS benefits. Besides confirmation of the duty demands, it has also been ordered for payment of interest and imposed penalties on the appellants under various provisions of the Customs Act, 1962. Feeling aggrieved with the impugned order dated 23.02.2023, the appellants have preferred this appeal before the Tribunal.

2. Learned Advocate appearing for the appellants submitted that the issue arising out of the present dispute is no longer *res integra* in view of the Final Order No. A/86228/2025 dated 08.08.2025 passed by the Tribunal in the case of the appellants for the subsequent period. He further submitted that based on the information received from DRI, though the DGFT had issued SCN to the appellants, alleging that they had misclassified the subject goods for claiming the higher rates of incentive, but the said SCN has so far not been adjudicated by the competent authorities in the DGFT. Thus, he submitted that the 58 numbers of MEIS licenses are still valid having not been cancelled by way of passing of an order by the competent authority under the Foreign Trade Policy (FTP). Learned Advocate has relied upon the order of the Tribunal in the case of *Bharat Rasayan Ltd*. *Vs. Commissioner of Customs* [2024 (5) TMI 281 - CESTAT MUMBAI], to state that on the issue of wrongful availment of MEIS Scrip in an identical case, involving the product in question i.e., Lamda Cyhalthrin Technical, the Tribunal in the case of Bharat Rasayan Ltd Vs. Commissioner of Customs [2024 (5) TMI 281 - CESTAT MUMBAI] (confirmed by Hon'ble Supreme Court), has held that the customs authorities have overstepped their jurisdiction by resorting to re-classification of the export

goods, when the MEIS scrips were not cancelled by the DGFT. Learned Advocate has pleaded that the show cause proceedings initiated by the department are barred by limitation of time inasmuch as the issue involves interpretation of the statutory provisions.

3. Learned Authorized Representative (AR) appearing for Revenue reiterated the findings in the impugned order.

4. Heard both sides and perused the case records.

5. On examination of the case records, we find that the issues involved in the present appeal are entirely identical to the facts of the case decided by this Bench of the Tribunal vide Order dated 08.08.2025 passed in the case of the appellants themselves. The period of dispute in the said decided case is from 2017 to 2019, and the period involved in the present appeal is from 01.04.2015 to 06.07.2018. In the said order, the SCN dated 20.10.2020 was referred to, which pertains to the present appeal filed by the appellants. In the order dated 08.08.2025, the Tribunal has elaborately discussed the issues with regard to proper classification of the subject goods, limitation aspect for initiation of SCN proceedings, competency of the customs department for initiation of proceedings against the appellants, especially in the circumstances, where the SCN issued by the DGFT had not been adjudicated by the competent authorities under the FTP. Upon analysis of the factual matrix involved in the case pertaining to the subsequent period, the following questions were framed by the Tribunal in the Order dated 08.08.2025 for consideration.

(a) Whether the Customs Department can demand export benefit under Section 28 (4) and/or 28AAA of the Act of 1962, when the MEIS scrips have not been cancelled by the DGFT?

(b) Whether the export benefit can be demanded by invoking Section 28(4) and /or 28AAA of the Act of 1962?

(c) Whether the products in dispute are classifiable under CTH 38089199/ 38089290/ 38089910/38089990 of the Tariff Act, as claimed by the appellants; or under CTH 38086100 or 38086200 or 38086900 of the Tariff Act, as held by the adjudicating authority?

(d) Whether the extended period of limitation is invocable, especially considering the facts and circumstances involved in the present case?

6. On consideration of the above issues, the Tribunal vide the Order dated 08.08.2025 has elaborated each of the above questions, by holding as under:

"1.7 The Directorate General of Revenue Intelligence ('DRI') had started an investigation in February 2019, based on the belief that the appellants had wrongly availed MEIS benefit, by mis-classifying their export goods. Subsequently, DRI had issued show cause notice (SCN) dated 20.10.2020, alleging that the appellants had wrongly classified their export goods including the products in dispute under CTH 38089910 or 38089990 of the Tariff Act; instead of CTH 380891, 380892 and 380893 of the Tariff Act andthe same had resulted in appellants' being granted MEIS scrips on the goods exported @ 3% of the FOB value, instead @ 2% of the FOB value. The said SCN had proposed recovery of differential duty of Rs.3,17,54,058/-, by invoking the extended period of limitation under Section 28(4) of the Customs Act, 1962, for the period April 2015 till February 2019. The said SCN is not the subject matter of present proceedings.

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7. The present appeal relates to the SCN dated 28.09.2023 issued by SIIB-JNCH for the period January 2017 to December 2019 and the same had been issued by invoking the extended period of limitation. It is the case of SIIB-JNCH that the appellants had wrongfully availed the MEIS scrips by mis-classifying the products in dispute under CTH 38089199/38089290/ 38089910/ 38089990 of the Tariff Act; instead of CTH 38086100/CTH 38086200/CTH 38086900 of the Tariff Act. It is an undisputed fact that for the same period in dispute, the officers in DRI had already issued the SCN dated 20.10.2020, wherein demand was sought to be confirmed on the ground that MEIS scrips issued on the export of products under dispute was wrongly availed by mis-classifying the same under CTH 38089910 or 38089990 of the Tariff Act. The counsel for the appellants has argued that the entire demand is barred by limitation, inasmuch as, once the DRI had issued SCN dated 20.10.2020 for the same products in dispute and that too for the same period, then SIIB-JNCH, which is also an investigating branch of Ministry of Finance, cannot issue the present show cause notice dated 28.09.2023, by invoking extended period of limitation. We are in agreement with the submissions made by the appellants that the extended period of limitation cannot be invoked for recovery of the adjudged demands from the appellants, in view of the fact that the entire facts regarding the exportation of the products in question and availment of MEIS benefits were within the knowledge of the department, when they had issued the first SCN dated 20.10.2020. We further note that both the SCNs have been issued for the same period and for the same products, which is impermissible in law. If the said act of different wings in the same department is accepted, then there will be no end to litigation, which is never the intention of the legislature to do so. Be that as it may, it is a settled law that second show cause notice cannot be issued invoking extended period, when the first show cause notice on the same issue has already been issued by the customs department. The Hon'ble Supreme Court in the case of Nizam Sugar Factory v. Collector of Central Excise - 2006 (197) ELT 465 (SC), have held that suppression of facts cannot be alleged in the second show cause notice, when all the relevant facts were in knowledge of authorities, when first show cause notice was issued. The relevant paragraph in the said judgement is extracted herein below:

> *"9. Allegation of suppression of facts against the appellants cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. We agree with the view taken in the aforesaid judgments and*

> *respectfully following the same, hold that there was no suppression of facts on the part of the assessee/appellants."*

8. We find that the facts of the present case are at a better footing than the case of Nizam Sugar Factory (supra), inasmuch as the SCNs were issued by the officers in DRI and officers in SIIB for the same period in dispute. We also find that officers in SIIB-JNCH themselves, in the present SCN dated 28.09.2023, have accepted that for the same period in dispute relating to same products in dispute, the DRI had already issued the SCN. Such acknowledgement of fact is recorded at paragraph 8 of the SCN dated 28.09.2023, as under:

> *"8. Investigation by DRI Ahmedabad As per the statement of Shri Raghuram Kanyan Shetty, Managing Director of M/s Heranba Industries Ltd, show cause notice issued by DRI, Ahmedabad was checked and it was found that DRI has dealt with similar issue of mis-classification of CTH by the same exporter, in the shipping bills mentioned in the DRI SCN. Vide such SCN, it was found that there are certain Shipping Bills, as mentioned in Annexure-Z, which are common in DRI investigation and the ongoing investigation by SIIB (X), JNCH. Since, the DRI has already issued the SCN against the shipping bills mentioned in Annexure-Z and the same are under adjudication process, therefore said shipping bills were removed from the purview of this investigation. After removal of common shipping bills, as mentioned in Annexure-Z, the SIIB (X)/JNCH continued the investigation in respect of Shipping Bills mentioned in Annexure-R."*

9. On reading of the above quoted paragraph, it would transpire that the products under dispute having the same description and same period in dispute were part of the investigation under the DRI SCN dated 20.10.2020 as well. Accordingly, in view of the ratio laid down by the Hon'ble Supreme Court, in the case of Nizam Sugar Industries (supra), it was not open for SIIB-JNCH to issue the second SCN for the very same period, for which the first SCN was issued by DRI, invoking extended period of limitation. Considering the above, we are of the view that the allegation of suppression of facts etc., against the appellants cannot be sustained and accordingly, the impugned order deserves to be set aside on the ground of limitation itself.

10. We also find that the charge of suppression of facts cannot be sustained in present case, as the investigating authorities (SIIB and DRI) themselves were not clear about the correct classification of products under dispute. The same is evident from the fact that while the first SCN dated 20.10.2020 issued by DRI, proposing for classification of products in dispute under CTH 380891, CTH 380891 or 380892 or 380893 of the Tariff Act; the SIIB-JNCH in the second SCN had alleged that the same goods are classifiable under CTH 38086100/38086200/38086900 of the Tariff Act. Thus, it is clear that two different wings in the department of Customs had expressed difference of opinion on the classification of the products in dispute. Keeping the same in mind, we are of the view that when the department itself is unclear on the correct classification, the charge of suppression and/or wilful misstatement etc., cannot be levelled against the appellants, justifying invocation of extended period of limitation for confirmation of the adjudged demands. In this context, the Hon'ble Supreme Court, in the case of Jaiprakash Industries Vs. Commissioner of C. Ex, Chandigarh - 2002 (146) ELT 481 (SC), have held that extended period cannot be invoked, when the divergent views have been taken by various High Court on the same issue. The relevant paragraph of the judgement is reproduced below:

> *"8. In this case, there was a divergent view of the various High Courts whether crushing of bigger stones or boulders into smaller pieces amounts to manufacture. In view of the divergent views, of the various High Courts, there was a bona fide doubt as to whether or not such an activity amounted to manufacture. This being the position, it cannot be said that merely because the Appellants did not take out a licence and did not pay the duty the provisions of Section 11A got attracted. There is no evidence or proof that the licence was not taken out and/or duty not paid on account of any fraud, collusion, wilful mis-statement or suppression of fact. We, therefore, set aside the demand under the show cause notice dated 3rd May, 1993."*

11. We also find merits in the argument placed by the appellants that classification of goods under a particular CTH/CTI is a function of the department in assessment of goods, and claim to a particular classification in the shipping bill by exporter will not lead to suppression or wilful mis statement. Considering the above, we are of the view that the charge of suppression is not sustainable against the appellants and consequently, the department has incorrectly invoked the extended period of limitation. 12. On limitation, though we are of the considered opinion that the show cause proceedings cannot be sustained, but it is also important to look into the issue of jurisdiction raised by the appellants in this appeal. It is the case of the appellants that Customs authorities have no power to reject the MEIS benefit under Section 28(4) and/or 28 AAA of the Act of 1962, when the MEIS scrips have not been cancelled by the DGFT. The entire case of the Customs department is confined to wrongful availment of MEIS scrip benefits by the appellants upon mis-classification of the products in dispute. We note that the MEIS scheme was introduced in the Foreign Trade Policy 2015-2020 (FTP 2015-20) as an incentive scheme for the export of goods. Objectives of the MEIS was to promote the manufacture and export of notified goods/products. The DGFT issues the MEIS scrips, upon verification of the documents submitted by an applicant to the effect of their truthful eligibility. For the purpose of availing the import benefits, the MEIS Scrip was very much available with the appellants. The Foreign Trade (Development & Regulation) Act, 1992 (in short "FTDR') provides for a proper procedure for cancellation of the scrips. Further, Rule 10 of Foreign Trade (Regulation) Rules, 1993 empowers the DGFT to withdraw the MEIS benefits by cancelling the license granted by them. It is not the case of the department that the MEIS scrips issued to the appellants were invalidated by the competent authorities in DGFT as per above prescribed procedure. We find that the issue with regard to wrongful availment of the MEIS scrips by mis-classification of the goods and demand of customs duty was dealt with by the Hon'ble Delhi High Court, in the case of Designco and others Vs. Union of India - 2024 (11) TMI 1150. While examining the action initiated by the Custom authorities to deprive the benefits claimed by assessee under MEIS, the Hon'ble Delhi High Court has held as under: "108. We are thus of the firm opinion that it would be impermissible for the customs authorities to either doubt the validity of an instrument issued under the FTDR Act or go behind benefits availed pursuant thereto absent any adjudication having been undertaken by the DGFT. An action for recovery of benefits claimed and availed would have to necessarily be preceded by the competent authority under the FTDR Act having found that the certificate or scrip had been illegally obtained. We have already held that the reference to a proper officer in Section 28AAA is for the limited purpose of ensuring that a certificate wrongly obtained under the Customs Act could also be evaluated on parameters specified in that provision.

> *However, the said stipulation cannot be construed as conferring authority on the proper officer to question the validity of a certificate or scrip referable to the FTDR Act."*
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> *13. In the present case, since the competent authority under the FTP i.e., the DGFT having not ruled against the appellants' claim for the benefits under MEIS, it would not be open for the Customs authorities to take punitive action against the appellants for denying the benefits under such scheme. We find that on the issue of wrongful availment of MEIS Scrip in an identical case, involving the product in question i.e., Lamda Cyhalthrin Technical, the Tribunal in the case of Bharat Rasayan Ltd Vs. Commissioner of Customs - 2024 (5) TMI 281, has held that customs authorities have overstepped their jurisdiction by resorting to re-classification of the export goods, when the MEIS scrips were not cancelled by the DGFT. For arriving at such a conclusion, the Tribunal in the said case has referred to and analysed the judgement of Hon'ble Supreme Court delivered in the case of Titan Medical Systems Pvt. Ltd. Vs. Collector of Customs, New Delhi – 2003 (151) E.L.T. 254 (S.C.). The said order of the Tribunal has also been upheld by Hon'ble Supreme Court vide order dated 17.2.2025, reported in 2025 (2) TMI 758. Thus, as per the judicial pronouncements, it is clear that customs authorities cannot question to the benefits provided by DGFT under the FTP, unless such scrips are either cancelled or invalidated by such competent authorities."*

7. On careful reading of the above quoted paragraphs from the Order dated 08.08.2025, it would transpire that the allegations levelled against the appellants in both the proceedings are on the same subject matter, excepting for the period of dispute, Thus, the ratio of the said Order dated 08.08.2025 passed by the Tribunal would entirely be applicable for deciding the present appeal. Since, upon detailed analysis of the disputed issues involved in the Customs Appeal No. 87330 of 2024, the Tribunal has allowed the appeal both on merits and on the ground of limitation, different interpretation cannot be placed at this juncture for deciding the present appeal differently.

8. In view of the foregoing discussions, we do not find any merits in the impugned order, both on merits as well as on the ground of limitation. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants, with consequential benefit, if any, as per law.

(Operative part of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM