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Date: 12.08.2025

CESTAT Mumbai- Customs authorities cannot overstep their jurisdiction by questioning MEIS benefits without the DGFT's intervention

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Mumbai, recently delivered a significant judgment in the case of *Heranba Industries Ltd. vs. Commissioner of Customs, NS-II, Nhava Sheva*. This case revolved around the classification of exported goods under the Merchandise Export India Scheme (MEIS) and the jurisdiction of customs authorities to demand recovery of export benefits. The Tribunal's decision not only clarified the scope of jurisdiction under the Foreign Trade Policy (FTP) but also reinforced the principles of limitation in adjudication proceedings.

Background of the Case

Heranba Industries Ltd., a manufacturer of pesticides and insecticides, exported products under the MEIS scheme, claiming benefits at 3% of the Free on Board (FOB) value based on their classification under specific tariff headings (CTH 38089910/38089990). The Directorate General of Revenue Intelligence (DRI) and the Special Intelligence and Investigation Branch (SIIB) later alleged misclassification, claiming the products should have been classified under different headings (CTH 38086100/38086200/38086900), which were either ineligible for MEIS benefits or entitled to a lower rate of 2%.

The customs authorities issued two separate show cause notices (SCNs) for overlapping periods, invoking the extended period of limitation and demanding recovery of MEIS benefits. The second SCN, issued by SIIB, became the subject of this appeal.

Key Issues Addressed by the Tribunal

The Tribunal examined four critical issues:

- Jurisdiction of Customs Authorities:** The Tribunal ruled that customs authorities cannot question the validity of MEIS benefits unless the scrips issued by the Directorate General of Foreign Trade (DGFT) are canceled or invalidated. The MEIS scheme falls under the purview of the DGFT, and only the DGFT has the authority to adjudicate disputes related to the scheme. The Tribunal relied on the Delhi High Court's decision in *Designco vs. Union of India* and the Supreme Court's ruling in *Titan Medical Systems Pvt. Ltd. vs. Collector of Customs* to reinforce this principle.
- Invocation of Extended Limitation Period:** The Tribunal held that the extended period of limitation could not be invoked in this case. It noted that the customs department was already aware of the alleged misclassification when the first SCN was issued by the DRI. Issuing a second SCN for the same period and products was deemed impermissible. The Tribunal cited the Supreme Court's judgment in *Nizam Sugar Factory vs. Collector of Central Excise*, which prohibits the invocation of extended limitation when facts are already within the department's knowledge.
- Classification of Exported Goods:** The Tribunal observed that even the customs authorities were unclear about the correct classification of the products, as the two SCNs proposed different classifications. This lack of clarity undermined the charge of suppression or willful misstatement against the appellants.
- Recovery of Export Benefits Under Section 28/28AAA of the Customs Act:** The Tribunal clarified that Sections 28 and 28AAA of the Customs Act pertain to the recovery of import duties and do not empower customs authorities to recover export benefits. The demand for recovery of MEIS benefits under these provisions was therefore unsustainable.

Tribunal's Decision

The Tribunal set aside the impugned order on both grounds of limitation and jurisdiction. It emphasized that customs authorities cannot overstep their jurisdiction by questioning MEIS benefits without the DGFT's intervention. The appeal was allowed, and the demands raised in the SCN were quashed.

Key Takeaways from the Judgment

- Jurisdictional Clarity:** The judgment reinforces that disputes related to export incentive schemes like MEIS fall exclusively under the DGFT's jurisdiction. Customs authorities cannot unilaterally invalidate benefits granted under the FTP.
- Limitation Principles:** The ruling underscores the importance of adhering to limitation principles. Once a show cause notice is issued, subsequent notices for the same period and issue are impermissible.
- Consistency in Classification:** The case highlights the need for clarity and consistency in the classification of goods. Divergent views within the customs department weaken the foundation of allegations against exporters.
- Industry-Wide Implications:** This decision has far-reaching implications for exporters, ensuring that they are not subjected to arbitrary demands by customs authorities without proper adjudication by the DGFT.

Conclusion

The Tribunal's decision in the *Heranba Industries* case is a landmark ruling that provides much-needed clarity on the jurisdictional boundaries between the DGFT and customs authorities. It also reinforces the

principles of fairness and limitation in adjudication proceedings. For exporters, this judgment serves as a reassurance that their rights under the FTP will be protected, and any disputes will be resolved by the competent authority. This case is a reminder of the importance of adhering to established legal principles and ensuring that administrative actions are within the bounds of the law.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Mumbai

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

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87330 of 2024

(Arising out of Order-in-Original No. 95/2024-25/Commr/NS-II/CAC/JNCH dated 16.07.2024 passed by the Commissioner of Customs, NS-II, Nhava Sheva)

Heranba Industries Ltd.

2nd Floor, A wing, Fortune Avirahi,
Jambli Galli, Jain Derasar Lane,
Boriwali (West), Mumbai- 40 092.

.... Appellants

Versus

Commissioner of Customs, NS-II, Nhava Sheva

Centralized Adjudication Cell,
Jawaharlal Nehru Custom House,
Nhava Sheva, Raigad- 400 707.

.... Respondent

APPEARANCE:

Shri Chirag Shetty, Advocate for the Appellants

Shri A.K. Shrivastava, Authorized Representative for the Respondent

CORAM:

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

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86228/2025

Date of Hearing: 10.02.2025

Date of Decision: 08.08.2025

Per: S.K. MOHANTY

Brief facts of the case, leading to this appeal, are summarized herein below:

1.2 The appellants are engaged *inter alia*, in the manufacture of Technical Grade Ingredients and Formulation of Insecticides, Fungicides, Herbicides and Weedicides etc. The products manufactured by the appellants are sold under three broad categories viz., (i) Technicals, (ii) Intermediates; and (iii) Formulations. The present case relates to export of four products viz., Lambda Cyhalothrin, Alphacypermethrin, Deltamethrin and Bifenthrin (hereinafter, together referred to as 'products in dispute'). The appellants sold the aforesaid goods within the country as well as export the same to outside the country.

1.3 Since the products in dispute fall under the category of pesticides, including insecticides, weedicides, fungicides etc., it is a mandatory requirement for the manufacturer to obtain registration under the Insecticides Act, 1968, in order to manufacture and sell the same. Accordingly, the appellants had made applications for registration of their products under Section 9 of the Act of 1968 and obtained the requisite registration certificates under the categories of pesticides and insecticides.

1.4 A new scheme called 'Merchandise Export India Scheme' (MEIS) came to be introduced under Foreign Trade Policy (FTP) 2015-2020 by the Director General of Foreign Trade, Ministry of Commerce & Industry. With the introduction of the aforesaid new scheme, the incentive rate came to be revised based on Harmonized System of Nomenclature (HSN) i.e., for insecticides, fungicides and herbicides of CTH being 380891, 380892 and 380893, respectively, the incentive rate for these items was fixed @ 2% on the FOB value. Similarly, for other pesticides, the relevant CTH being 38089910 or 38089990, the incentive rate was fixed @3% on the FOB value.

1.5 The appellants had classified all their export goods including the products in dispute under CTH 38089910 or 38089990 of the Tariff Act and claimed MEIS benefit @3% on the FOB value. The DGFT had also issued the said MEIS scrips based on aforesaid classification. The said scrips were used by the appellants for duty free import of goods in terms of Notification No. 24/2015-Cus. dated 08.04.2015.

1.6 The appellants maintained the same classification i.e., CTH 38089910 or 38089990 for local supply and paid applicable central excise duty/GST, as the case may be. The competent authorities in the DGFT so far have not disputed the aforesaid classification claimed by the appellants.

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 and

the 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.

1.8 After the commencement of the investigation by DRI in the month of February 2019, the appellants had started classifying their products in dispute under CTH 380891 of the Tariff Act and claimed MEIS benefit @2% of the FOB value on export of the same.

1.9 Consequent upon DRI's investigation on the subject issue of exportation of disputed goods, the Special Intelligence and Investigation Branch (Export), JNCH (SIIB-JNCH) had once again re-agitated the issue, for which the DRI had already issued the aforesaid SCN dated 20.10.2020. The SIIB officers were of the view that the appellants had availed undue benefit under MEIS on export of the products under dispute during the period January 2017 to December 2019 (hereinafter referred as 'period in dispute'), by allegedly mis-classifying the same under CTH 38089199/ 38089290/ 38089910/ 38089990 of the Tariff Act; instead of CTH 38086100/ CTH 38086200/CTH 38086900 of the Tariff Act, in terms of sub-heading note no. 2. It was further alleged that since CTH 38086100 or 38086200 or 38086900 are not covered under Appendix-3B (MEIS Schedule), the products in dispute are not entitled to any benefit under MEIS scheme.

1.10 During the aforesaid investigation by SIIB-JNCH, statement of ShriR.K Shetty, the Director of the appellants' firm was recorded, wherein he had *inter alia*, stated that the DRI had already issued the SCN for the same products in dispute and they were of the view that the said goods are classifiable under CTH 380891 of the Tariff Act. On the basis of the statement, SIIB-JNCH had verified the issue, whether DRI has dealt with similar issue of mis-classification in the case of the appellants for the same period in dispute, and thereafter, excluded the common shipping bills, which were a part of DRI's SCN. On conclusion of the investigation, the SIIB-JNCH had issued the SCN being No. 1438/2023-24/Commr/CEAC/NS-II/CAC/JNCH dated 28.09.2023 to the appellants, *inter alia*, demanding the

export benefits availed in terms of the MEIS scrips during the period in dispute under Section 28(4) of the Act of 1962 and/or Section 28AAA *ibid*. The said SCN is the subject matter of the present appeal. The SCN dated 28.09.2023 had sought to reject the classification of the export goods claimed by the appellants; confiscation of the same under Section 113(i) *ibid*; recovery of the MEIS benefit under Section 28(4) *ibid* along with interest; and for imposition of penalties under Sections 114 (iii), 114AA, 114AB *ibid*.

1.11 The SCN dated 28.09.2023 was adjudicated by the learned Commissioner of Customs, NS-II vide Order-in-Original No.95/2024-25/Commr/NS-II/CAC/JNCH dated 16.07.2024 (for short, referred to as the 'impugned order'), wherein the demands proposed therein were confirmed. In support of confirmation of the adjudged demands, the learned adjudicating authority has *inter alia*, held that the products in dispute are rightly classifiable under CTH 38086100/38086200/38086900 of the Tariff Act, as the case may be, in terms of sub-heading Note 2 to Chapter 38. The adjudged demands were confirmed in the impugned order, by invoking the extended period of limitation.

2. Feeling aggrieved with the impugned order dated 16.07.2024, the appellants have preferred this appeal before the Tribunal.

3. Shri Chirag Shetty, learned Advocate appearing for the appellants has assailed the impugned order, by making the following submissions:

(a) The present dispute pertains to eligibility of the Appellants under the MEIS and the classification of the products under dispute exported by the Appellants under Appendix 3B of the Handbook of Procedures (hereinafter referred to as 'HBP'). In case, the MEIS benefit taken by the Appellants is correct then the entire case of the Department is not sustainable. The issue therefore pertains to interpretation of FTP and the Appendices thereunder, which falls within the exclusive jurisdiction of the DGFT. In terms of Para 2.57 of FTP, the decision of DGFT shall be final and binding on all matters relating to interpretation of policy and provision in the Handbook of Procedures, Appendices, classification of any item for import/export in the ITC (HS). In the present case only DGFT has the jurisdiction to issue notice for determining whether the products under dispute exported

by the Appellants are eligible for MEIS benefit and the decision of the DGFT shall be final and binding. It is not in dispute that till date DGFT has not cancelled the MEIS scrips issued to the Appellants. Thus, the present Show Cause Notice is wholly without jurisdiction. Consequently, the Impugned order confirming the show cause notice ought to be set aside. Reliance was placed on the decision of the Hon'ble Supreme Court of India in the case of *Titan Medical Systems Pvt. Limited v. Collector of Customs* [2003 (151) ELT 254 (SC)], the Hon'ble Delhi High Court in the case of *Designco, M/S Amit Exports And M/S Sharma International Versus Union Of India & Ors.* [2024 (11) TMI 1150 - Delhi High Court] and on the recent decision of this Hon'ble Tribunal in the case of *Bharat Rasayan Ltd v Commissioner of Customs* 2024 (5) TMI 281 (Tri-Mum) upheld by Hon'ble Supreme Court 2025 (2) TMI 758.

- (b) In the present case, the Department admittedly has demanded the recovery of export benefit in terms of Section 28 (4) and/or Section 28AAA of the Act. Both Section 28 (4) and Section 28 AAA of the Act deals with power of the proper officer to recover the import duty wrongly forgone. It does not give power to the proper officer for recovery of the export benefit. Hence, the demand of export benefit in terms of Section 28 and or Section 28AAA of the Act is not sustainable.
- (c) Classification is the function of the department. The Appellants has also locally supplied the products under dispute under the same tariff heading i.e., CTH 38089910 or CTH 38089990 as "Pesticides, not elsewhere specified or included" or "others" on payment of applicable GST/excise duty as the case may be. Neither the excise department nor GST authorities has yet disputed the classification adopted by the Appellants. A sample invoice was also shown in support of the aforesaid contention. It is settled law that the different wings/Departments of the Government cannot adopt contrary stand in respect of the same product. Thus, the customs authorities and the excise / GST department cannot take contrary stands in respect of the same issue. Reliance in this regard was placed on the decision of the *Central Warehousing Corporation vs. Adani Port Special Economic Zone Limited & Ors* [2022 SCC OnLine SC 1398] and *Lloyd*

Electric and Engineering Limited vs. State of Himachal/ Pradesh [(2016) 1 SCC 560].

- (d) The Central Insecticide Board and Registration Committee under the Insecticides Act, 1968 is the competent authority to determine whether the product is pesticides, insecticides etc. The Appellants has obtained registration under Section 9 of the Insecticide Act, 1968. The registration certificate issued by the Central Insecticide Board and the Registration Committee in respect of products under dispute specifically states the "Name of Insecticide" and "Name of Pesticide" as the case may be. In case where the registration certificate mentions the chemical as Pesticide, the Appellants has classified the same under CTH 38089910 or 38089990. A sample copy of the registration was shown in support of aforesaid contention. It is settled law that when the competent authority determines the classification of product then customs cannot hold otherwise. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of *B.P.L. Pharmaceuticals Ltd. v. CCE [1995 (77) ELT 485] and CCE v. Pandit D.P. Sharma, 2003 (154) ELT 324 (SC)*.
- (e) It is an undisputed fact that the Customs Department was aware that the products under dispute were allegedly wrongly classified by the Appellants at the time of DRI investigation and demand was raised in this regard for the same period in dispute vide show cause notice dated 20.10.2020. The same is evident from para 8 of the present show cause notice and Annexure Z as well. However, vide the show cause notice dated 28.09.2023, the Customs authorities again raised the demand on the products under dispute which were not covered by the aforesaid show cause notice dated 20.10.2020 by invoking extended period of limitation by again changing the classification and the same is not permissible in law. The Department was aware that similar proceedings were undertaken in respect of the classification of the products under dispute by the DRI when they issued the first Show cause notice, hence the adjudicating authority erred in confirming the demand raised by the present show cause notice by invoking extended period which is not permissible. Reliance in this regard was placed on the decision of the Hon'ble Supreme Court in

the case of *Nizam Sugar Factory Vs. Collector [2006 (197) ELT 465 (SC)]*.

- (f) The entire issue regarding availability of the MEIS scrips on the products under dispute is an industry wide issue. Thus, the Customs Department was aware of the ongoing dispute pertaining to the products under dispute and wrongly alleged suppression when the Customs Department was well aware of the facts. Reliance in this regard was made to the decision of the Hon'ble Tribunal in the case of *Oriental Insurance Co. Ltd. Versus Commissioner, LTU, New Delhi [2021 (55) G.S.T.L. 369 (Tri. - Del.)]*.
- (g) That even the Customs Department was not sure about the classification of the products under dispute and the same is evident from the fact that the DRI show cause notice had classified the products under dispute under CTH 380891 or 380892 or 380893 of the Tariff Act, whereas in the present case the Customs Department allege that the same is classifiable under CTH 38086100/38086200/38086900 of the Tariff Act. In view thereof, it is clear that the even the Department is not sure about the classification of the products under dispute and have taken contrary stand. Hence, present case relates to interpretation of statute and the Department themselves are not clear about the classification. Therefore, in the present case the allegation of fraud against the Appellants was not sustainable and extended period cannot be invoked. Reliance was placed on the decision passed in the case of *Principal Commissioner v Gandhar Oil Refinery (I) Ltd 2018 (360) ELT A177 (SC)*.
- (h) The Appellants was classifying their products under dispute under CTH 38089199 or CTH 38089910 of the Tariff Act during the period in dispute and the Customs Department had cleared the same without any demur. Thus, the Customs Department was always aware of the classification adopted by the Appellants and had accepted the same and cleared the said goods. In fact, the Appellants changed the classification for the products under dispute as per the instructions of the department after the DRI investigation. Hence, the Appellants, was always under the bonafide belief that their

classification was correct. Nothing has been brought on record to show that the Appellants has acted with a mala fide intent to escape the payment of Customs duty. Thus, extended period was wrongly invoked in the present case for this reason as well.

4. On the other hand, Shri Ajay Kumar Shrivastava, learned Authorised Representative, appearing for Revenue reiterated the findings recorded in the impugned order.

5. We have heard both sides and examined the case records, including the written submissions filed during the course of hearing of the appeal.

6. The issues involved in the present appeal for consideration by the Tribunal are as under:

- (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?

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."

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.

14. In view of the foregoing discussions and analysis, we are of the considered opinion that the impugned order cannot be sustained, both on grounds of limitation as well as on merits. Therefore, the impugned order confirming the adjudged demands on the appellants is set aside and the appeal is allowed with consequential benefit, if any, as per law.

(Order pronounced in open court on 08.08.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM