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CESTAT Chennai Clarifies Law on Validity of DEPB Licences for Innocent Buyers

On August 21, 2025, the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Chennai, delivered a significant judgment in Customs Appeal Nos. 40971 and 41142 of 2015. This decision, involving The India Cements Ltd. and Seshasayee Paper and Boards Ltd., has far-reaching implications for importers who unknowingly purchase duty entitlement scrips obtained fraudulently by the original license holders.

Background of the Case

The appeals arose from Order-in-Original No. 144/2015 issued by the Commissioner of Customs, Chennai. The case revolved around the fraudulent acquisition of DEPB (Duty Entitlement Pass Book) licenses by CEEAN Commerce (P) Ltd., Kolkata, which were later sold to innocent transferee importers, including the appellants. These licenses were used to avail customs duty exemptions during imports.

The Customs authorities, after investigation, alleged that the licenses were obtained through misrepresentation and fraud. Consequently, they demanded duty along with interest and imposed penalties under Section 114A of the Customs Act, 1962. Aggrieved by this decision, the appellants approached the Tribunal.

Key Arguments by the Appellants

- 1. Validity of Licenses:** The appellants argued that the DEPB licenses were valid at the time of import and had not been canceled by the Directorate General of Foreign Trade (DGFT). They contended that customs authorities could not reject these licenses unless they were officially suspended or canceled by the competent authority.

2. **Distinction Between Fraudulent and Forged Licenses:** The appellants highlighted the difference between licenses obtained through misrepresentation (voidable) and forged licenses (void ab initio). They argued that the former remains valid until canceled by the issuing authority.
3. **Bona Fide Purchasers:** Both appellants emphasized that they were bona fide buyers who purchased the licenses in good faith and for valuable consideration. They relied on established legal principles, including the doctrine of promissory estoppel and the provisions of the Sales of Goods Act, 1930.
4. **Time-Barred Demand:** The appellants also argued that the demand for duty was time-barred under Section 28 of the Customs Act, 1962.

Tribunal's Observations and Ruling

Key Findings:

1. **Fraudulent vs. Forged Licenses:** The Tribunal distinguished between licenses obtained through fraud (voidable) and forged licenses (void ab initio). It held that licenses obtained through fraud remain valid until canceled by the issuing authority. Therefore, customs authorities cannot deny duty exemptions based on such licenses unless they are officially canceled.
2. **Precedents:** The Tribunal relied on landmark judgments, including *Titan Medical Systems Pvt. Ltd. vs. Collector of Customs* and *Taparia Overseas (P) Ltd. vs. Union of India*, which upheld the validity of licenses not canceled at the time of import.
3. **Bona Fide Purchasers Protected:** The Tribunal recognized the appellants as bona fide purchasers who acted in good faith. It ruled that they could not be penalized for the fraudulent actions of the original license holders.
4. **Time-Barred Demand:** The Tribunal found merit in the appellants' argument that the demand for duty was time-barred.

Final Decision:

The Tribunal set aside the impugned order, allowing the appeals and granting consequential relief to the appellants. It emphasized that customs authorities must honor valid licenses unless canceled by the appropriate authority.

Implications of the Judgment

This decision reinforces the legal protection available to bona fide importers who unknowingly purchase licenses obtained fraudulently. Key takeaways include:

1. **Clarity on License Validity:** The judgment clarifies that licenses obtained through fraud are voidable, not void ab initio, and remain valid until canceled by the issuing authority.
2. **Protection for Innocent Buyers:** Bona fide purchasers of licenses are shielded from penalties and duty demands if they act in good faith.
3. **Time-Barred Demands:** The ruling underscores the importance of adhering to statutory timelines for issuing show cause notices.
4. **Customs Authorities' Limitations:** The judgment limits the power of customs authorities to reject licenses without proper cancellation by the DGFT.

Conclusion

The CESTAT's decision in this case is a landmark ruling that upholds the principles of fairness and justice in customs law. It provides much-needed clarity on the treatment of licenses obtained fraudulently by the original holder but sold to innocent transferees. This judgment will serve as a guiding precedent for similar disputes in the future, ensuring that bona fide importers are not penalized for the misdeeds of others.

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 Chennai

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

Customs Appeal No.40971 of 2015

(Arising out of Order-in-Original No. 144/2015-AIR dated 27.2.2015 passed by the Commissioner of Customs, Chennai – VII)

The India Cements Ltd.
Dhun Building, 827, Anna Salai
Chennai – 600 002.

Appellant

Vs.

Commissioner of Customs
Chennai VII Commissionerate
New Custom House, Meenambakkam
Chennai – 600027.

Respondent

APPEARANCE:

Shri S. Murugappan, Advocate for the Appellant
Smt. Anandalakshmi Ganeshram, Authorised Representative for the Respondent

And

Customs Appeal No.41142 of 2015

(Arising out of Order-in-Original No. 144/2015-AIR dated 27.2.2015 passed by the Commissioner of Customs, Chennai – VII)

Seshasayee Paper and Boards Ltd.
Pallipalayam, Namakkal District
Erode – 638 007.

Appellant

Vs.

Commissioner of Customs
Chennai VII Commissionerate
New Custom House, Meenambakkam
Chennai – 600027.

Respondent

APPEARANCE:

Shri D. Santhana Gopalan, Advocate for the Appellant
Smt. Anandalakshmi Ganeshram, Authorised Representative for the Respondent

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Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NOS. 40844-40845/2025

Date of Hearing : 06.03.2025
Date of Decision: 21.08.2025

Per M. Ajit Kumar,

Both these appeals arise out of Order in Original No. 144/2015 dated 27.2.2015 and hence they are taken up together for disposal.

2. Brief facts of the case are that CEEAN Commerce (P) Ltd, Kolkata filed 399 Export Bills for 'alloy steel forging' under the DEPB scheme, declaring that the shipments were destined for Bangladesh. The goods were allegedly transported using 99 trucks, through Indian Land Customs Station, Ghojadanga, West Bengal. Investigations revealed that no goods were exported or transported, and the licenses obtained were fraudulent. Some of these licenses obtained by the 'primary importer' were purchased, as permissible by the EXIM Policy, and used by M/s India Cements Ltd. and Seshasayee Paper and Boards Ltd., the transferee importers for import of goods, as permissible by the EXIM Policy. After investigation, a Show Cause Notice was issued to the appellants. After following due process, the Customs authorities confirmed the duty demanded along with interest. Penalties were also imposed under section 114A of the Customs Act, 1962, on the appellants. No redemption fines were imposed since the goods were not available for confiscation. Aggrieved by the order the appellants are before this Tribunal in appeal.

3. Shri S. Murugappan, Ld. Counsel appeared for India Cements Ltd. and Shri D. Santhana Krishna, Ld. Counsel appeared for Seshasayee Paper and Boards Ltd. Smt. Anandalakshmi Ganeshram, Ld. Authorized Representative appeared for the respondent.

3.1 Shri S. Murugappan, Ld. Counsel submitted on behalf of M/s India Cements Ltd., that there is no allegation that the appellants suppressed or misstated anything to attract the extended period for

issue of SCN against them. Even otherwise in respect of Bills of Entry dated 26th November 2002 the notices issued are beyond five years. And they are not sustainable in terms of Section 28 of Customs Act 1962. Duty credit scrips issued by DGFT authorities cannot be rejected by customs authorities unless such scrips have been suspended or cancelled by competent authorities under the Foreign Trade & Development Regulation Act (**FTDR ACT**). In the present case the impugned order completely failed to indicate anything regarding the action taken by the DGFT authorities against the licenses issued. Also, there is a distinction between a forged or fake DEPB scrip and a DEPB scrip validly issued by authorities but which was obtained by misstatement or misrepresentation etc. While the former act will vitiate everything, the later will not affect the validity of the scrip unless it is cancelled. He referred to various judgments/ orders in the appellants favour. In the light of the above he prayed that the Tribunal may be pleased to set aside the same with consequential relief and thus render justice.

3.2 Shri D. Santhana Krishna, Ld. Counsel appeared for Seshasayee Paper and Boards Ltd. He stated that the appellant was a bonafide buyer of DEPB licence. There was no suppression or mis-statement by the appellant, either in the purchase of DEBP or in the import of goods. The DEBP licence was valid on the date of import and were utilized much before the investigation. The appellant purchased the DEPB licence for valuable consideration and in good faith. He further stated that:

- i) Licence cannot be cancelled after it is used.

- ii) No demand can be made from the bona fide buyer of the DEPB license.
- iii) The issue is covered by the decision of the Bombay High Court in **Taparia Overseas**.
- iv) Notice cannot be issued imposing penalty in the name of exporter and the appellant when the import was made bonafide on the basis of a licence valid at the time of import.
- v) Principles of section 29 of the Sales of Goods Act, 1930 applies to the present case.
- vi) The appellant is entitled to invoke the principle of promissory estoppel against the government.
- vii) The entire demand is time barred.
- viii) No penalty can be imposed under section 114A of Customs Act 1962
- ix) No interest is chargeable.

A host of judgments were referred to in support of the above points. The Ld. Counsel hence prayed that the impugned order may be set aside.

3.3 The Ld. A.R. Smt. Anandalakshmi Ganeshram has reiterated the points given in the impugned order. She further referred to the following judgments in the departments favour;

- i) **M/s Farida Prime Tannery Vs CC, Chennai** [Final Order No. 1358/2005 dated: 28.09.2005],
- ii) **Balaji Impex Vs Commissioner of Cus. (Seaport), Chennai** [2019 (367) ELT 349 (Mad.) and;
- iii) **M/s Munjal Showa Ltd Vs Commissioner of Customs and Central Excise (Delhi)** [2022 (382) ELT 145 (SC),

The Ld. AR prayed that the appeal may be rejected.

3.4 The rival parties have relied on a large number of judgements in their favour, on multiple issues, leading to a citation over load. Only a few of the decisions/ judgments were actually cited at the Bar. Even otherwise the Hon'ble Supreme Court in **Rashmi Metaliks Ltd. Vs Kolkata Metropolitan Development Authority**, [(2013) 10 SCC 95], held:

“6. . . . The sheer plethora of precedents makes it essential that this Court should abjure from discussing each and every decision which has dealt with a similar question of law. Failure to follow this discipline and regimen inexorably leads to prolixity in judgments which invariably is a consequence of lengthy arguments.

7. It is a capital exhaustion of Court time, lack of which has become critical. .”

The above judgment was relied upon by a five Judge Bench of the Supreme Court recently, in **VIVEK NARAYAN SHARMA Vs UNION OF INDIA** [(2023) 1 S.C.R. 1], wherein the Hon'ble Court has deprecated the practice of citing several decisions when the matter was covered by a leading judgment. We shall hence follow the discipline of discussing leading judgments of Constitutional Courts and then if necessary other judgments relevant to the issues raised, which have been cited at the Bar.

4. We have perused both the appeals and have heard the contesting parties. The central issue is whether licences or scrips issued by DGFT to the original importer-licence holder—though obtained fraudulently by misstatement and misrepresentation and later sold to innocent transferee importers—can be used to pay Customs duty/ avail customs duty exemption at the time of import of the goods. The appellants argue that if an importer unknowingly buys such a licence/scrip, which remains valid at the time of import, having not been cancelled by the

appropriate authority, it should be accepted, unlike forged/fake documents that were never legitimately issued and hence cannot be cancelled. We find that the issue is no longer res integra and have been settled by Constitutional Courts. Relevant judgments are discussed below.

5. **Where the licence/scrip were obtained by misrepresentation and fraud by the original licence holder from the licencing authority and later sold to innocent transferee importers, which remains valid at the time of import having not been cancelled by the appropriate authority.**

5.1 In **Titan Medical Systems Pvt Ltd Vs Collector of Customs, New Delhi** - 2003 (151) ELT 254 (SC), the Apex Court examined an appeal where CEGAT have held that the appellant - M/s. Nicolian Brothers had made a misrepresentation to the licensing authority and that licence had been obtained on the basis of such misrepresentation. The misrepresentation alleged is that in their application they had indicated that they would use indigenous components of the value of Rs. 2,32,69,200/- and that labour, packing and other charges would be to an extent of Rs. 2,07,83,447/-, whereas in actual facts they used components only to the extent of Rs. 8 lakhs and paid approximately only Rs. 5 lakhs towards labour charges. It is also held that neither M/s. Nicolian Brothers nor M/s. Titan Medical Systems Pvt. Ltd. had undertaken any manufacturing activity at all. The Hon'ble Court held:

“13. As regards the contention that the appellants were not entitled to the benefit of the exemption notification as they had misrepresented to the licensing authority, it was fairly admitted that there was no requirement, for issuance of a licence, that an applicant set out the quantity or value of the indigenous components which would be used in the manufacture. Undoubtedly, while applying for a licence, the appellants set out the components they would use and

their value. However, the value was only an estimate. It is not the respondents' case that the components were not used. The only case is that the value which had been indicated in the application was very large whereas what was actually spent was a paltry amount. To be noted that the licensing Authority having taken no steps to cancel the licence. The licensing authority have not claimed that there was any misrepresentation. Once an advance licence was issued and not questioned by the licensing authority, the customs authorities cannot refuse exemption on an allegation that there was misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf.

5.2 Similarly, in **East India Commercial Co. Ltd. Vs The Collector of Customs, Calcutta** [(S.C.) [2002-TIOL-138-SC = 1983 (13) E.L.T. 1342 (S.C.)], the Hon'ble Supreme Court rejected the Revenue's claim that a licence obtained by misrepresentation was void from the outset and was non est in the eyes of law. The Court held that even when applying contract law principles, such a licence is voidable—meaning it can only be set aside by the licensing authority—and not does not become void ab initio or automatically void. Therefore, the transferee still holds a valid licence at the time of import unless the appropriate authority takes action to void it.

5.3 The appellant had relied upon the judgment of the Hon'ble High Court of Bombay in the case of **TAPARIA OVERSEAS (P) LTD. Vs UNION OF INDIA** [2003 (161) E.L.T. 47 (Bom.)]. The facts of the case were that the petitioners had acquired 2 licences issued under the provisions of Import (Control) Order, 1955 (**Order**), originally issued in favour of one M/s. Suraj Textiles Traders, New Delhi. Before acquiring the licence the petitioners sought confirmation as to whether the licences were issued as per ITC regulations. The Joint Chief Controller of I.& E., New Delhi, expressly confirmed that two licences were issued to M/s. Suraj Textile Traders, New Delhi. On import of the goods, the Customs Authorities inspected the goods but did not clear the same, though they found that the goods imported were as per

specification. The petitioners subsequently came to be served with the copy of an order addressed to the original licence holders; whereby the Deputy Chief Controller of I. & E., New Delhi had informed suspension of the operation of the Licences issued to the original licence holder in exercise of powers conferred under clause 9(3) of the Order on the ground that it was obtained by fraud. The Hon'ble Court after examining the well settled, established and well recognised concept of law held that the effect of fraud is not to render the transaction void *ab initio* but renders it voidable at the instance of the party defrauded and transaction continues valid until the party defrauded has decided to avoid it. It found that in the said 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. They thus went on to hold that in the 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.

5.4 The issue has also been examined in detail by a Larger Bench of this Tribunal in **Hico Enterprises Vs Commissioner of Customs, Mumbai** [2005 (189) ELT 135 (Tri.- LB)].

5.5 The above judgments makes it clear that in a case where the licence/scrip was were obtained fraudulently by misstatement or misrepresentation by the original licence holder and later sold to

innocent transferee importers, the concept of 'fraud vitiates everything' is not applicable. Further if the licence was not cancelled by the appropriate authority at the time of the import of the goods, the said licence should be honored by the Custom authorities.

6. **Where the licence/scrip were forged/fake and were never legitimately issued by the licencing authority and hence the question of cancelling them would not arise.**

6.1 The Hon'ble Calcutta High Court in **Sheikh Mohammed Sayeed Vs Assistant Collector Of Customs** (A.I.R. 1970 Cal. 134), relying on the judgment of the Apex Court in **FEDCO (P) Ltd. Vs S.M. Bilgrami** (A.I.R. 1960 S.C. 415 / 1960 SCR (2) 408), examined the issue in detail and held as under:

32. This argument though attractive, seems to me to be without merit. The different sections of the Act cannot be read in isolation. The definition of "imported goods" in Section 2(25) has to be read along with Section 111 of the Act which deals with goods brought from a place outside India. This section is in Chapter XIV of the Act which provides for confiscation of goods and conveyances and imposition of penalties. Under Section 111(d) of the Act any goods which are imported contrary to any prohibition imposed by or under this Act or any other law for the time being in force shall be liable to confiscation. The goods which have been seized in this case cannot be imported into India without a licence under the Import Control Act and there is therefore a prohibition in law for the import of the goods except in compliance within Import Control Act. It is true that the goods were cleared from the Customs barrier on the basis of import licence produced by the petitioner, but the respondents' case is that the import licences, on the basis of which the goods were cleared were not genuine. The licences which were utilised by the petitioner for the purpose of clearing the goods, according to the respondents, were forged licences. **If a licence is forged it is no licence at all, and any import of goods, of which the importation is prohibited by law, cannot be a valid import under the Act. Goods so imported cannot therefore be treated to be lawfully "imported goods" within the definition of that term in Section 2(25) of the Act.** Since the respondents' case is that the licences on the basis of which the goods were imported were forged licences, if the allegation of forgery is true, the goods must be held to have been brought into India contrary to a prohibition imposed by law as contemplated by Section 111(d) of the Act, and in that case such goods are liable to confiscation and the power to seize under Section 110(1) of the Act can be invoked by the Customs authorities and the goods, though cleared after payment of duty can be seized under Section 110(1) of the Act. The contention on behalf of the

petitioner that the goods having been imported into India for home consumption would cease to be imported goods and the decision of the Customs authorities to release the goods upon payment of the duty imposed cannot be revised by any authority other than the Board in exercise of its power under Section 130(1) of the Act therefore fails and is rejected.

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36. The next contention of the learned counsel for the respondents was that the license used by the petitioner for the purpose of clearing the goods was not a genuine license, but was a forged one, and therefore there was no license at all; and that being so, the import of the goods was unlawful and the goods even though cleared from the Customs barrier, were liable to confiscation and the petitioner who was responsible for using a forged licence for clearing the goods was in addition liable to an order of penalty. In support of this contention reliance was placed on a decision of the Supreme Court. **Fedco (P) Ltd. v. S.N. Bilgrami**, [A.I.R. 1960 S.C. 415]. In that case it was held that the entire scheme of control and regulation of imports by licences was on the basis that the licence was granted on a correct statement of relevant fact and that if the grant of the licence was induced by fraud or misrepresentation that basis disappeared. It was also held that it would be absolutely unreasonable that such licence should be allowed to continue. In my view this contention of the learned counsel for the respondents is well founded. The import of goods on a licence. In the case of goods the import of which is prohibited, must be confined to imports made on a licence lawfully obtained. If a licence is forged, and I wish to make it clear that in this case I do not say that it has been forged, as that would be a matter for determination in other proceedings against the petitioner, there is no licence at all. The respondents' case is that the licence used by the petitioner is a forged one, and if such forgery is proved in appropriate confiscatory and penal provisions of the proceedings, the import of the goods would be unlawful and would attract the Customs Act and other statutes. (emphasis added)

6.2 In **Munjal Showa Ltd. vs. Commissioner of Cus. & C. Ex.** (Delhi-IV), [2022 (382) E.L.T. 145 (S.C.)], the Hon'ble Supreme Court ruled on a case involving forged DEPB scrips and Transfer Release Advices, which were not issued by DGFT but were used to clear imports duty-free. The Apex 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/Scraps, on which the exemption benefit was availed of by the appellant(s) (as buyers of the forged/ fake DEPB licenses/Scraps) were found to be forged one and it was found that the DEPB licenses/Scraps were not issued at all. A fraud was played and the exemption benefit was availed on such forged/fake DEPB licenses/Scraps.

9. In that view of the matter and on the principle that fraud vitiates everything and such forged/fake DEPB licenses/Scripts 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)

7. The facts of the issue in the above judgments are different from those discussed earlier, where the licence/scrip were obtained fraudulently by misstatement or misrepresentation. The judgments make it clear that in cases where licence/scrip were fake/forged, customs duty exemption would not be available either to the original licence holder or to the transferee importer. In such a case the principle that fraud vitiates everything, would be applicable and such forged/fake DEPB licenses/Scripts are void ab initio.

8. Revenue has relied on the judgment of the Hon'ble Madras High Court in the case of **Balaji Impex** (supra). The importer in that case was issued with a show cause notice proposing to deny the benefit of duty exemption availed for the import of goods against a 'Free Replenishment Certificate Scheme' licence, which was cancelled by the Joint Director General of Foreign Trade. In the case of **M/s Farida Prime Tannery** (supra), a Co-ordinate Bench of this Tribunal examined a case where the DEEC licence under which the goods were imported was a fake one. Again in the case of **M/s Munjal Showa Ltd** (supra), decided by the Apex Court the exemption benefit was availed of by the appellant, as buyers of the forged/fake DEPB licence/scrips and has been discussed above. Hence in all the above judgments the issue is distinguished on facts and cannot be deployed in support of revenue's stand. The appeals hence succeed.

9. We find that the position of law on the fundamental point of the dispute favours the appellant and thus the other issues like demand for

duty, interest, extended period, penalties etc do not survive. Hence we do not feel it necessary to examine the other issues raised by the appellants.

10. Considering the discussions above, we set aside the impugned order and allow the appeals. The appellants are eligible for consequential relief as per law. The appeals are disposed of accordingly.

(Order pronounced in open court on 21.08.2025)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)

Rex