CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85545 of 2024

[Arising out of Order-in-Original No. 190/2023-24/Commr/NS-II/CAC/JNCH dated 06.12.2023 passed by the Commissioner of Customs (NS-II), Jawaharlal Nehru Custom House-JNCH, Nhava Sheva.]

Bayer Crop Science Limited **.... Appellants**
Bayer House, Central Avenue
Hiranandani Estate, Thane (West)
Maharashtra – 400 607.

Versus

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

APPEARANCE:

Shri Akhilesh Kangsia, Advocate for the Appellants

Shri Jitesh Kumar Jain, 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/85033/2026

Date of Hearing: 16.10.2025

Date of Decision: 20.01.2026

Per: M.M. PARTHIBAN

This appeal has been filed by M/s Bayer Crop Science Limited, Thane (herein after, referred to as 'the appellants', for short), assailing the Orders-in-Original No. 190/2023-24/Commr/NS-II/CAC/JNCH dated 06.12.2023 (herein after, referred to as 'the impugned orders'), passed by the Commissioner of Customs (NS-II), Jawaharlal Nehru Custom House (JNCH), Nhava Sheva.

2.1 Briefly stated, the facts of the case are that the appellants herein, *inter alia*, is engaged in manufacture of Agrochemicals, Pesticides, Insecticides and Herbicides, and mainly export insecticides viz. 'ADMIRE', 'DECIS', 'SHOONA, 'SOLFAC', 'SOLOMON' by classifying such goods under Customs Tariff Item (CTI) 3808 91 99 of the Customs Tariff Act, 1975. The

appellants are one of the largest and leading research-intensive companies in the agricultural industry, offering a broad range of innovative and biological products for improving plant health, along with high value seeds. The appellants were exporting their manufactured products to various countries by availing export inventive schemes such 'Merchandise Exports from India Scheme (MEIS) under Chapter 3 of the Foreign Trade Policy 2015-2020.

2.2 The issue under dispute, involved in the present case, is regarding revision of classification of exported insecticides under CTI 3808 6100/ 3808 6200/ 3808 6990 proposed by the department, as opposed to declared classification of export goods by the appellants, as mentioned in various Shipping Bills under CTI 3808 9137/ 3808 9199, and consequent denial of export benefits under the Merchandize Exports of India Scheme ('MEIS'). On the basis of such understanding, the department had had proposed for reclassifying the exported goods on the basis of Sub-Heading Note 2 to Chapter 38 of First Schedule to the Customs Tariff, besides confiscation of such goods under Section 113(i) of the Customs Act, 1962 and for imposition of penalties on the appellants under Sections 114 (iii), 114AA and 114AB ibid. The Show Cause Notice (SCN) was adjudicated resulting in confirmation of the adjudged demands vide the impugned order dated 06.12.2023. Feeling aggrieved with the said impugned order, the appellants have preferred this appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellants submitted at the outset, that the Special Intelligence and Investigation Branch (SIIB) of the department had earlier initiated similar proceedings in respect of export of Alphacypermethrin in the year 2019 by their group company M/s Bayer Vapi P Ltd. During such investigation, the appellants had represented vide their letters dated 18.02.2020 and 18.03.2020 to Chief Commissioner of Customs, JNCH, Nhava Sheva, and Additional Commissioner of Customs, SIIB Exports, JNCH, Nhava Sheva. After due verification and examination, SIIB vide its letter dated 10.08.2020 informed that they did not find any misdeclaration of the subject goods viz. Alphacypermethrin and these goods have been rightly classified by the appellants under CTI 3808 9199. Under such background, the SIIB wing of the department had again started one another investigation in 2022 in respect to claim of benefit under MEIS on export of subject goods containing Alpha cypermthrin, Deltamethrin and

Cyfluthrin for the period 01.04.2017 to 31.12.2020, which they claimed is improper.

3.2 Further, he submitted that the sole basis in the above investigation to revise the classification based on sub-Heading Note 2 to Chapter 38 to the First Schedule (import tariff) to the Customs Tariff, which was in existence when the first investigation was undertaken and concluded by SIIB. Therefore, learned Advocate claimed that such investigation to deny MEIS claim on account of alleged mis-classification and recover the same under Section 28AAA and/ or 28(4) of the Customs Act, 1962 and impose redemption fine and penalty is ab-initio improper and the confirmed demands are not sustainable. In this regard, he further submitted that the entire case of the customs department for re-classifying the subject goods is based on Sub-Heading Note 2 to Chapter 38 under the First Schedule of Customs Tariff. The First Schedule of Customs Tariff pertains to import of goods into India. However, the relevant schedule for classification of goods is the Second Schedule of Customs Tariff ('Second Schedule / Export Tariff') which pertains to export of goods from India. As per Notes to Second Schedule, only General Rules of Interpretation of the First Schedule, Section and Chapter Notes shall alone apply to the interpretation of Second Schedule. Thus, the sub-heading note 2 to chapter 38 shall not be applicable to export goods under the second schedule, and therefore the entire show cause proceedings is without authority of law and therefore he claimed that the impugned order is liable to be set aside.

3.3 Learned Advocate also submitted that the disputed issue is no more *res integra*, as in similar cases the Tribunal have held the case in favour of the appellants. In this regard, he relied upon the decision of the Tribunal in the case of *Bharat Rasayan Limited Vs. Commissioner of Customs, Nhava Sheva-II, District Raigad* - (2025) 29 Centax 1 (Tri.-Bom), wherein it was held that customs authority have no right or power to go beyond the licence granted by DGFT in respect of MEIS and re-determination of the classification of already exported goods, in the absence of any export duty involved therein and resultant confiscation and imposition of penalty is not sustainable. He further submitted that the said decision of the Tribunal was also upheld by the Hon'ble Supreme Court by dismissing the Civil Appeal filed by the department. Therefore, he pleaded that the present case may also be decided on the above basis.

3.4 In support of their stand, learned Advocate had relied upon the following case laws:

(i) *United Phosphorous (India) LLP Vs. Commissioner of Customs (NS-II), Raigad* – 2025 (7) TMI 723 – CESTAT Mumbai

(ii) Heranba Industries Limited *Vs. Commissioner of Customs, NS-II, Nhava Sheva* – 2025 (8) TMI 728 – CESTAT Mumbai

(iii) Designco, M/s Amit Exports and M/s Sharma International Vs. Union of India & Ors. - 2024 (11) TMI 1150 – DELHI High Court

4. On the other hand, learned Authorised Representative for Revenue reiterated the findings of Commissioner in the impugned orders.

5. Heard both sides and perused the records of the case. We have also perused the additional written submissions presented in the form of paper books for this case.

6.1 In the impugned order dated 06.12.2023, the learned Commissioner of Customs had found that the exported goods were wrongly classified by the appellants-exporter knowingly and intentionally, in order to claim in eligible MEIS benefits, and therefore, he rejected the classification under which the goods were exported in various shipping bills, denied consequent MEIS benefits and confirmed its recovery under Section 28(4)/28AAA of the Customs Act, 1962 along with interest. Besides, he confiscated the export goods under Section 113(i) ibid and imposed redemption fine of Rs. Three crores in lieu of confiscation of the goods under Section 125 ibid; imposed penalties on the appellants for an amount of Rs. Three crores each under Section 114(iii), 114AA and 114AB ibid.

6.2 In arriving at the above conclusion, the Commissioner had *inter-alia* given his findings on some of the important issues in the impugned order dated 06.12.2023 as follows:

> *"24.1. I notice that….*
> *(ii) The Sub-heading Note 2 to Chapter 38, was inserted in First Schedule to Customs Tariff Act vide Finance Act, 2016 (28 of 2016) dated 14.05.2016 effective from 1st January, 2017 as under:….*
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> *(iii) M/s Bayer Crop Sciences Ltd. continued exporting the subject goods under CTH 3808 9199 with MEIS @2% (of FOB) despite above substitution in the First Schedule to the Customs Tariff Act, 1975. The goods in question were Insecticides described as SPFACE, SOLOMON, SHOONA etc., containing Deltamethrin and Cyfluthrin of Technical and formulation grade, which covered under Sub-heading note 2 and thus deserving merit classification was under CTH 3808 6100 or 3808 6200 or 3808 6900, (as the case may be) wherein MEIS was NIL.*
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> *xxx xxx xxx xxx*

(v)..So, I find that M/s Bayer Crop Sciences Ltd. that had intentionally mis-classified the goods as each of those products were known to Bayer Crop Sciences Ltd. and they had separate heading for goods specified under sub-heading note 2 leaving little scope for mis-understanding. Therefore, I find that the exporter had mis-classified the goods under CTH items 3808 9199 as the subject goods are correctly classifiable under CTH item 3808 6100, 3808 6200 and 3808 6900 and the same were based on packing of net weight content.

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25.1 (ii) I find that the rates of MEIS of various products including subject goods are as per the corresponding ITC (HS) code wise. I notice that the benefit of the MEIS is not available under the CTH 3808 6100/ 3808 6200 / 3808 6900. Hence, consequent to the above mis-classification of the subject goods under CTH 3808 9199, the exporter has availed undue benefit of MEIS ….

(iii)… The cancellation of MEIS scripts is procedural in nature and pleading in this context of the exporter cannot be the reason to make them eligible for the benefit of MEIS for the export of those goods which are classifiable under CTH 3808 6100/3808 6200 / 3808 6900 wherein MEIS benefit is not available.

(iv) In view of the above, I find that the subject goods are not eligible for the benefit of MEIS for the reason that the said goods are not classifiable under the CTH 3808 9199 and for the correct classification of the said goods under CTH 3808 6100/3808 6200 / 3808 6900, there is no drawback ['MEIS benefit' incorrectly shown as drawback] available.

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26.2(i) I find that the enquiry of the intelligence revealed that the exporter by way of wilful mis-statement, mis-representation and suppression of facts as regards the classification of goods, presented the subject goods for export before the designated authority of Customs with intent to fraudulently avail benefit of MEIS. M/s Bayer Crop Sciences Limited had violated the provisions of Section 17 and 50 of the Customs Act, 1962 which is their duty to comply with. In view of the above, I therefore, find that the Exporter had indulged in fraudulent export o the goods by mis-declaring the actual classification of goods so exported, which squarely fell within the ambit of 'illegal export' as was in contravention of various provisions of Customs Act, 1962, Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade (Regulations) Rules, 1993 and Foreign Trade Policy.

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26.3.(iii) (a) Further, at the outset, I find that in a case of the statutory offence regardless of mens-rea, penalty can be invoked on the offender i.e. the exporter. The mens-rea is not an essential ingredient for contravention of the provisions of a civil act….In view of the above, I have no doubt in holding that the Sections 113(i), 114(iii), 114AA and 114AB of Customs Act, 1962 are invokable."

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

(i) to decide the appropriate classification of exported goods by the appellants as to whether, the same merits classification under

Customs Tariff Item (CTI) 3808 9199 as claimed by the appellants; or, is it classifiable under CTI 38086100 or CTI 38086200 or CTI 38086900 as determined by the learned Commissioner of Customs, for deciding on the eligibility to export incentive/MEIS benefit, in respect of various Shipping Bills filed during the disputed period.

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

(iii) Whether the extended period of limitation for recovery of export benefit is invocable, and whether confiscation of goods and imposing of redemption fine, imposition of penalties on the appellants are legally sustainable, especially considering the facts and circumstances involved in the present case?

8.1 In order to address the above issues of classification of exported goods and consequential eligibility of MEIS benefits, we would like to refer the relevant legal provisions contained in Section 12 of the Customs Act, 1962; the Customs Tariff Act, 1975 and rules framed thereunder for consideration of proper and appropriate classification of the subject goods under dispute.

Customs Act, 1962

"***Section 12. Dutiable goods.*** -

(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."

Customs Tariff Act, 1975

"***Section 2. Duties specified in the Schedules to be levied.*** -

The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.

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THE FIRST SCHEDULE – IMPORT TARIFF

(Refer Section 2)

THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions: ………

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6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

THE SECOND SCHEDULE- EXPORT TARIFF

Notes:

1. In this Schedule, "Chapter", "heading", "sub-heading" and "tariff item" mean a Chapter, heading, sub-heading and tariff item respectively of the First Schedule to the Customs Tariff Act.

2. The ***rules for the interpretation of the First Schedule to the Customs Tariff Act, the Section and Chapter Notes*** *and the General Rules for the interpretation* ***of the First Schedule shall apply to the interpretation of this Schedule****."*

8.2 On plain reading of the above legal provisions, it transpires that for the purpose of classification of imported goods, the relevant schedule is the First Schedule to the Customs Tariff and the relevant terms of the headings and any relative Section or Chapter Notes as may be applicable. The sub-heading notes are given for ease of reference, in classification of the goods, where ever it is warranted, in terms of the national treatment required for domestic market. For the purpose of classification of export goods, the relevant schedule to be looked into is the Second Schedule to the Customs Tariff i.e., the Export Schedule. Though there are no separate Section Notes or Chapter notes provided therein, for the purpose of determination of appropriate classification among the limited number of goods provided under a single table consisting of 63 odd items, for the purpose of levy of export duty, the Section Notes and Chapter Notes alone are made applicable for the Second Schedule. Therefore, it is evident that 'Sub-Heading Notes' of First Schedule to the Customs Tariff i.e., Import Tariff have not been made applicable for interpreting the Second Schedule i.e., Export Tariff. Accordingly, re-classification of subject goods which have been exported from India, has been incorrectly ordered by the Commissioner of Customs in the impugned order, on the basis of the Sub-

Heading Note 2 to Chapter 38 of the First Schedule. Therefore, on this ground alone the impugned order is liable to be set aside.

8.3 In the Finance Act, 2016 (No.28 of 2016) bringing into effect the legislative changes through Union Budget, 2016, certain changes were being incorporated in the First Schedule to the Customs Tariff Act, to be effective from 01.01.2017, to align with the Harmonized System of Nomenclature (HSN). The relevant change in Chapter 38 for introduction of sub-heading notes are as below:

> *"(18) in Chapter 38,—*
> *(i) for Sub-heading Notes 1 and 2, the following shall be substituted, namely:—*
> *'Sub-heading Notes:*
> *1. Sub-headings 3808 52 and 3808 59 cover only goods of heading 3808, containing one or more of the following substances: alachlor (ISO); aldicarb (ISO); aldrin (ISO); azinphos-methyl (ISO); binapacryl (ISO); camphechlor (ISO) (toxaphene); captafol (ISO); chlordane (ISO); chlordimeform (ISO); chlorobenzilate (ISO); DDT (ISO) (clofenotane (INN), 1, 1, 1-trichloro-2, 2-bis(p-chlorophenyl)ethane); dieldrin (ISO, INN); 4, 6- dinitro-o-cresol (DNOC (ISO)) or its salts; dinoseb (ISO), its salts or its esters; endosulfan (ISO); ethylene dibromide (ISO) (1, 2-dibromoethane); ethylene dichloride (ISO) (1, 2-dichloroethane); fluoroacetamide (ISO); heptachlor (ISO); hexachlorobenzene (ISO); 1, 2, 3, 4, 5, 6 hexachlorocyclohexane (HCH (ISO)), including lindane (ISO, INN); mercury compounds; methamidophos (ISO); monocrotophos (ISO); oxirane (ethylene oxide); parathion (ISO); parathion-methyl (ISO) (methylparathion); penta- and octabromodiphenyl ethers; pentachlorophenol (ISO), its salts or its esters; perfluorooctane sulphonic acid and its salts; perfluorooctane sulphonamides; perfluorooctane sulphonyl fluoride; phosphamidon (ISO); 2, 4, 5-T (ISO) (2, 4, 5 trichlorophenoxyacetic acid), its salts or its esters; tributyltin compounds. Sub-heading 3808 59 also covers dustable powder formulations containing a mixture of benomyl (ISO), carbofuran (ISO) and thiram (ISO).*
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> *2. Sub-headings 3808 61 to 3808 69 cover only goods of heading 3808, containing alpha-cypermethrin (ISO), bendiocarb (ISO), bifenthrin (ISO), chlorfenapyr (ISO), cyfluthrin (ISO), deltamethrin (INN, ISO), etofenprox (INN), fenitrothion (ISO), lambda-cyhalothrin (ISO), malathion (ISO), pirimiphos-methyl (ISO) or propoxur (ISO)."*

8.4 The aforesaid changes have also been explained by the World Customs Organization in its Newsroom Report dated 28.10.2016, as follows: The Amendment in the HSN Classification in Chapter 30 and 38 was introduced to monitor and provide a separate category for products that could be used as antimalarial products. Further, WCO also published a Table correlating the changes made in the HSN in October 2016 comparing the tariff entries in HSN 2017 and HSN 2012 wherein it was clearly observed that sub-Heading 3808 61, 3808 62 and 3808 69 along with sub-Heading Note 2 were introduced to include antimalarial products solely.

Further, a similar addition was also made to Chapter 30. Relevant extract of the Concordance table is reproduced as under:

TABLE I – CORRELATING THE 2017 VERSION TO THE 2012 VERSION OF THE HARMONIZED SYSTEM

2017 Version	2012 Version	Remarks
3002.19	ex3002.10	
3003.41 3003.42 3003.43 3003.49 3003.60 3003.90	ex3003.40 ex3003.40 ex3003.40 ex3003.40 ex3003.90 ex3003.90	Subheading 3003.40 has been subdivided to create new subheadings 3003.41, 3003.42 and 3003.43, facilitating the monitoring and control of pharmaceutical preparations containing ephedrine, pseudoephedrine or norephedrine, or salts thereof. At the same time, new subheading 3003.60 has been created to provide separately for antimalarial medicaments. Furthermore, the scope of the new subheading 3003.60 has been defined in new Subheading Note 2 to Chapter 30.
3004.41 3004.42 3004.43 3004.49	ex3004.40 ex3004.40 ex3004.40 ex3004.40	Subheading 3004.40 has been subdivided to create new subheadings 3004.41, 3004.42 and 3004.43, facilitating the monitoring and control of pharmaceutical preparations containing ephedrine, pseudoephedrine or norephedrine, or salts thereof.
3004.60 3004.90	ex3004.90 ex3004.90	At the same time, new subheading 3304.60 has been created to provide separately for antimalarial medicaments. Furthermore, the scope of the new subheading 3004.60 has been defined in new Subheading Note 2 to Chapter 30.
3808.52 3808.59 3808.61 3808.62 3808.69 3808.91 3808.92 3808.93 3808.94	ex3808.50 ex3808.50 ex3808.91 ex3808.92 ex3808.93 ex3808.94 ex3808.99 ex3808.91 ex3808.91 ex3808.91 ex3808.91 ex3808.92 ex3808.93 ex3808.94	Expansion of the scope of subheading 3808.5 to cover the products listed in Subheading Note 1 to Chapter 38, facilitating the monitoring and control of the products consequential to the Rotterdam Convention. At the same time, subheading 3808.50 has been subdivided to create new subheading 3808.52 for DDT (ISO) (clofenotane (INN)), in packings of a net weight content not exceeding 300 g. Furthermore, new subheadings 3808.61 to 3808.69 have been created for certain products used as antimalarial commodities. The scope of the new subheadings 3808.61 to 3808.69 has been defined in new Subheading Note 2 to Chapter 38.

On careful perusal of the above table for the changes introduced for sub-headings 380861, 380862, 380869 in which the impugned order has held the classification of disputed export goods, vis-à-vis the sub-heading 380891 declared by the appellants, it clearly transpires that only in respect of goods which satisfy the scope of sub-heading notes 1 and 2 alone have been transported from sub-heading 380891 to either of sub-headings 380861, 380862, 380869, by showing the first three entries with ex380891. Further, those goods which do not satisfy the sub-heading notes or not covered under the scope of such sub-heading notes are allowed to be continued to be classifiable under sub-heading 380891, as the ex380891 appear both at prior 2012 and post amendment 2017 in the fourth/last entry. It is a fact on record that the subject goods being

mixtures and insecticides are not those goods having antimalarial properties containing any of the specified substances. Therefore, we are of the considered view that the appellants have correctly classified the exported goods under Sub-Heading 3808.91, and therefore even on this account, the impugned Order is liable to be set aside.

9.1 We find that this Bench of the Tribunal, in an identical set of facts involved in the respondent's Commissionerate, in respect of another exporter M/s *Heranba Industries Limited* (supra), have examined all the disputed issues including issues at 7(ii) & 7(iii) in detail, and have held these in favour of the appellants by setting aside the order of the Commissioner. The relevant paragraphs of the said order is as follows:

> *"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.*
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> *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:*
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>> *"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."

9.2 Further, we also find that the Co-ordinate Bench of the Tribunal in the case of *Bharat Rasayan Limited* (supra) vide Final Order No. 85446/ 2024-WZB in Appeal No. C/87134/2022, decided on 01.05.2024, have set aside the duty demands and redemption fine and penalties imposed on the appellants. The relevant paragraphs of the said order is quoted below:

***"5.** Now coming to the merits of the appeal. The whole issue arises due to re-classification of already exported and to be exported goods by the customs department and also because of cancellation of MEIS scrips by the said department. The allegation against the appellant is mis-classification on the ground that goods in issue i.e. 'Lambda Cyhalothrin Technical' have been wrongly classified under CTH 38089199 in order to avail MEIS benefits as, according to the customs department, the same is appropriately classifiable under the heading 38086900 [in which heading no MEIS benefit is available] and the sub-heading 380891 covers the 'others' of main heading 3808 in which sub-heading note 2 of Chapter 38 clearly list the names of the goods which can be classified under the subheading 380861 to 380869 wherein name of item in issue 'lambda cyhalothrin (ISO)' has been specifically mentioned. According to learned counsel for the appellant, the goods in issue i.e. 'Lambda Cyhalothrin Technical' were being classified under CTH 38089199 not only by the appellant but also by many other exporters in the country during the very same period and it was the prevailing industry practice to classify the said item under CTH 38089199. He further submits that initially they classified the subject goods under CTH 38089137 but DGFT raised query regarding its classification and subsequently the DGFT approved changed classification code 38089199 for the said item and issued Advance License to the appellant mentioning HS code 38089199 for their final product 'Lambda Cyhalothrin Technical'. He also submits that the customs department has no authority to cancel the scrips issued by DGFT i.e. the licensing Authority. And once this contention finds favour with the Tribunal, the question of redemption fine, interest or penalty does not arise. Per contra learned Authorised Representative*

appearing on behalf of revenue supported the findings recorded in the impugned order and prayed for dismissal of appeal. According to learned Authorised Representative considering the description of CTH and sub-heading notes 2 of Chapter 38 there is no dispute that subject goods are appropriately classifiable under heading 3808 6900 as proposed by customs department. As a result the MEIS scrips were rightly cancelled by the department.

6. *The period involved herein is from 2016 to 2019. Merchandise Exports from India Scheme (hereinafter referred to as 'MEIS') was introduced in the Foreign Trade Policy 2015-2020 (FTP 2015-20) as an incentive scheme for the export of goods. Objective of the MEIS is to promote the manufacture and export of notified goods/products. Trade facilitation is a priority of the Government for cutting down the transaction cost and time, thereby rendering Indian exports more competitive. The rewards are given by way of duty credit scrips to the exporters. This scheme is notified by Director General of Foreign Trade (DGFT) and implemented by the Ministry of Commerce & Industry. The said scheme aims to offset associated costs or infrastructural inefficiencies involved in export of goods or products produced or manufactured in India. The incentives under the said schemes are given in percentage, anywhere ranging between 2% to 5% of the realized free-on-board (hereinafter referred to as "FOB") value of exports as per shipping bills. These scrips can be utilized to pay customs duties or anti-dumping duties or it can also be transferred to other persons. The entitlement to MEIS benefits is governed by the Chapter-III of the said Policy. In other words, the substantive rights and obligations are created by the MEIS Scheme under Chapter-III of the FTP. According to Para 3.04 of the said Policy once the notified goods are exported to a notified market, the exporter becomes entitled to the MEIS benefits. Thus, entitlement, restriction thereof and conditions, if any, have to be looked into within Chapter-III of the FTP 2015-20. The exporter becomes entitled to the MEIS benefits once it exported the notified goods to the notified market and this benefit cannot be deprived except by cancellation of the said scrips by the DGFT itself after following due procedure. A detailed procedure for cancellation of the scrips has been set out under Section 9(4) of the Foreign Trade (Development & Regulation) Act, 1992 (in short "FTDR') which is extracted as under:-*

> *"9 (4) The Director General or the officer authorised under sub-section (2) may, subject to such conditions as may be prescribed, for good and sufficient reasons, to be recorded in writing, suspend or cancel any licence granted under this Act: Provided that no such suspension or cancellation shall be made except after giving the holder of the licence a reasonable opportunity of being heard."*

Unless and until this provision has been invoked by DGFT, the presumption is that the scrips are valid and exporter becomes entitled to the MEIS benefits once the goods are exported.

7. *Rule 10 of Foreign Trade (Regulation) Rules, 1993 also provides that DGFT is the only authority which can withdraw the MEIS benefits by cancelling the license granted by them. For ease of reference the said Rule 10 is extracted as under:-*

> ***"10. Cancellation of a licence.*** *-*
> *The Director General or the licensing authority may by an order in writing cancel any licence granted under these rules if –*
> *(a) the licence has been obtained by fraud, suppression of facts or misrepresentation; or*

(b) the licensee has committed a breach of any of the conditions of the licence; or
(c) the licensee has tampered with the licence in any manner; or
(d) the licensee has contravened any law relating to customs or foreign exchange or the rules and regulations relating thereto."

8. *In view of the aforementioned Act of 1992 and Rules, 1993 made thereunder, for withdrawing the MEIS benefits, the license issued to the exporter by the DGFT has to be cancelled firstly by the licensing authority i.e. DGFT. The customs department is not at all empowered to venture into the authority of DGFT to withdraw the MEIS benefits. Nothing has been brought on record to establish that DGFT has initiated any proceedings for cancelling the licence of appellant for alleged mis-classification or for withdrawing the MEIS benefit. The Customs authorities can initiate action for recovery under the Customs Act, 1962 only once DGFT initiates action for cancellation of an instrument and cancelled the same by following due procedure. Until the DGFT has taken any action for cancellation, the Customs department cannot recover the duty by discarding the scrips issued by DGFT.*

9. *'Ineligible categories under MEIS' have been provided under clause 3.06 of FTP and it provides that the following exports categories/sectors shall be ineligible for Duty Credit scrip entitlement under MEIS:*
(i) Supplies made from DTA units to SEZ units;
(ii) Export of imported goods covered under paragraph 2.46 of FTP;
(iii) Exports through trans-shipment, meaning thereby exports that are originating in third country but transshipped through India;
(iv) Deemed Exports;
(v) SEZ/EOU/EHTP/BTP/FTWZ products exported through DTA units;
(vi) Export products which are subject to Minimum export price or export duty;
(vii) Exports made by units in FTWZ.

The department failed to point out under which of the abovementioned ineligible categories as enumerated in clause 3.06 of the Scheme the case in hand falls.

10. *These proceedings have been initiated by the customs authorities u/s. 28(4) of Customs Act, 1962 for recovery of alleged fraudulently availed MEIS duty credits utilized by the appellant for the payment of customs duty at the time of import alongwith interest u/s. 28AA ibid. In these proceedings, initiated by the customs authorities, everything including confiscation of the goods is revolving around the re-classification of the exported goods by the customs.*

11. *It has also been noticed by us that the details of MEIS Scrips issued against aforesaid 54 shipping bills were sought by the customs department from DGFT, New Delhi vide letter dated 20.7.2021 followed by various reminders dated 31.8.2021, 14.10.2021 and 26.10.2021 respectively, but were not responded by DGFT. The MEIS scrips issued against the respective bills had already been utilized towards the payment of Customs duty levied on the goods imported by the appellant themselves. As per para/clause 3.19 of the Foreign Trade Policy 2015-20 over-claimed or illegally claimed MEIS benefits alongwith interest is recoverable by the Regional Authorities of DGFT, if the scrip is issued to the Exporter and the same is not utilized for the payment of customs duty. Therefore, in the first place only the DGFT is empowered to cancel or recover the MEIS scrips and that too only if it's not utilized for payment of customs duty. What the customs authorities are trying to recover from the appellant u/s. 28(4) ibid is MEIS benefits already availed by the appellant during the years 2016-2019 which certainly they cannot do as under the said provision the customs department can*

recover only the 'duty' not levied or not paid or short levied or short paid or erroneously refunded or 'interest' not paid, part-paid or erroneously refunded by reason of collusion or willful mis-statement or suppression of facts and not the MEIS benefits and, that, too only on the ground of ineligibility to MEIS. The learned Counsel has also submitted that there is no customs duty liability on export of the impugned product even if the classification is changed and the issue is only about the availability of MEIS benefits to the appellant which we have already made clear.

12. *Hon'ble Supreme Court in the matter of Titan Medical Systems (P) Ltd v. Collector of Customs, New Delhi; 2003 (151) E.L.T. 254 (S.C.) has laid down that 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 because if there was any misrepresentation, it was for the licensing authority to take steps in that behalf. The Hon'ble Supreme Court has held that if the licensing authority i.e. DGFT has not questioned the veracity of the transactions undertaken under the license, the customs authorities cannot refuse exemption on an allegation that there was any misrepresentation. Likewise in the present situation the appropriate authority could only be the authority which issued the license i.e. DGFT and not the customs authorities. This Tribunal also in the matter of Axiom Cordages Ltd. v. CC, Nhava Sheva-II; (2023) 4 Centax 120 (Tri.-Bom) has held that the allegation with regard to MEIS benefits wrongly availed by the appellant does not have an independent nexus to the Customs Act, 1962 inasmuch as such scheme, designed for the Merchant Exporter, are dealt with under the Foreign Trade Policy (2015-20) and Foreign Trade (Development & Regulation) Act, 1992 and thus the administration of MEIS squarely falls within the jurisdiction of the office of the DGFT and not the customs authority. It further held that the division of exercise of authorities between the DGFT and customs authorities is well recognized judicially and should be respected to prevent abuse of due process of law.*

13. *We deem it proper to address a very pertinent issue which arises in situation we are dealing with and it is about the role of customs authorities. Merchandise Exports from India Scheme (MEIS) is intended to offer incentives to eligible exporters on the basis of their export performance in a given year. Thus, the actual exports, as evidenced in shipping bills endorsed in accordance with Section 51 of Customs Act, 1962, are scrutinized by the licensing authority i.e. DGFT and scrips issued thereon in accordance with eligibility for inputs as designed in the Standard Input Output Norms (SION). Customs authorities have no role in this process once the exports have been completed. It lies within the exclusive domain of the agency designated under Foreign Trade (Development & Regulation) Act, 1992 and no other. To invalidate exports, it is necessary for customs authorities to invoke section 113 of Customs Act, 1962 and Section 113(i) in particular. Under this provision, only goods entered for exportation can be subject to confiscation and, as per section 2(18) 'export' means 'taking out of India to a place outside India,' implying that once goods have left India they cease to be under exportation. Such exports, under Section 51 of Customs Act, 1962, attain finality and can be reopened only if duty has not been collected or goods are found to be prohibited; there is no other empowerment for post-export confiscation. Eligibility for any benefit arising therefrom lies alone within the exclusive domain of the agency designed under Foreign Trade (Development and Regulation) Act, 1992 as the shipping bill cannot be nullified except in the said circumstances.*

14. *The role of customs authorities, if at all, may commence only upon presentation of scrips for clearance of exported goods that too in accordance with Notification No. 24/2015-dt. 8.4.2015 issued u/s. 25 of the Customs Act, 1962. Once the scrips are issued and are presented before customs authorities to be debited towards duty liability as assessed, the acceptance thereof is governed by the notification (supra) issued u/s. 25 ibid. This is segregation of jurisdiction, which is implicit in the notification applicable to utilization of scrips on imports of goods. There is, thus, no concurrent jurisdiction over the stages involved between export and import and each stage is governed to the limits of licensing and assessment jurisdiction by the respective statutes.*

15. *The functions of the licensing authorities and the customs authorities operate in different fields. The function of the licensing authorities is to consider whether any particular item should be allowed to be imported or exported due to various circumstances such as the requirement of the item, the amount of foreign exchange involved, permissibility and the relevant factors. If satisfied about the feasibility and permissibility the licensing authority grants license and, at times, may impose such conditions as they find necessary. This granting of licence may be dependant upon a policy enunciated in advance by the Government or may even be made to depend on the individual judgment of the licensing authority. As against this, the function of customs authorities start only after the goods are imported and brought into the territorial water of the country. Customs authorities are concerned with the recovery of Customs duty and to check evasion of payment of duty and with the prevention of entry of goods which are prohibited goods as defined by the Customs Act. It is not for the customs authorities to interpret licensing policy or to enforce the same once a valid licence is produced or to dissect the license granted. This function is of the licensing authority. If this bifurcation of function is not adhered to, there is every likelihood of utter confusion. The licensing authority may interpret the policy one way and the customs authorities may take contrary view producing a conflict between the two authorities resulting in harassment to the importer or exporter, as the case may be. It is therefore, that the function of the two authorities which operate in two different spheres must be kept within their proper ambit. If a licence is granted in respect of a particular item by the licensing authority, the customs authority will have no right or power to go beyond the licence and determine the classification or reclassifying the same. It is only the licensing authority who has to determine the said question at the time of granting licence.*

16. *Before parting with this matter, there is another aspect of the present proceedings that needs highlighting. The exercise of rejecting the entitlement to the scrip commenced with reclassification of the export goods, for assigning a different tariff item in Schedule to Customs Tariff Act, 1975. The classification of the goods is exclusive to Section 12 of Customs Act, 1962 and that too only for levy of duty. The classification declared by the exporter can be disturbed only by reference to the General Rules for Interpretation of the Export Tariff appended to Customs Tariff Act, 1975. Like undertaking of reclassification for imported goods, it is necessary that the onus of identifying the correct classification as substitute for declared classification rests with the assessing officer/proper officer. Such reclassification is to be undertaken solely for the purpose of conformity with the General Rules for Interpretation and not for any other purpose. Reclassification for any other purpose has no place in adjudication.*

__17.__ In view of the discussions made hereinabove, we are of the view that the customs authorities have overstepped its jurisdiction by resorting to re-classification of exported goods and cancelling the MEIS scrips. The same are hereby restored to the appellants. Accordingly the impugned order is set aside and the appeal filed by the Appellant is allowed with consequential relief, if any, in accordance with law."

9.3 The department being not satisfied with the above order of the Tribunal had preferred to file Civil Appeal vide Diary No. 60797 of 2024 before the Hon'ble Supreme Court. In deciding the case, the Hon'ble Supreme Court had observed that they do not find any good ground and reason to interfere with the impugned judgment of the Tribunal. Hence, the Hon'ble Supreme Court had dismissed the appeal filed by the department. The extract of the said judgement dated 17.02.2025 is extracted and given below:

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
(@ Diary No. 60797/2024)

COMMISSIONER OF CUSTOMS, NHAVA SHEVA - II ..... APPELLANT(S)

VERSUS

M/S. BHARAT RASAYAN LTD. ..... RESPONDENT(S)

O R D E R

Delay condoned.

Having regard to the facts of the present case, especially the fact that the controversy with regard to classification was earlier examined and decided by the Directorate General of Foreign Trade to the effect that the goods, Lamda Cyhalothrin Technical, be classified under the heading "CTH 38089199" and, thereupon, it had issued Merchandise Exports from India (MEIS) Scrips, we do not find any good ground and reason to interfere with the impugned judgment. Hence, the appeal is dismissed.

We, however, clarify that the issue with regard to the power and jurisdiction of the Customs authorities has been left open.

Pending application(s), if any, shall stand disposed of.

................CJI.
(SANJIV KHANNA)

..................J.
(SANJAY KUMAR)

NEW DELHI;
FEBRUARY 17, 2025.

10. 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 including imposition of redemption fines and penalties is set aside, as the same does not stand the scrutiny of law.

11. In the result, the impugned order is set aside, and the appeal filed by the appellants is allowed in their favour, with consequential relief, if any, as per law.

(Order pronounced in the Open Court on 20.01.2026)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM