CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL NO. 51178 OF 2025

(Arising out of Order-in-Original No. CC(A)/CUS/D-II/IMPORT/ICD/TKD/553/2024-25 dated 27.03.2025 passed by the Principal Commissioner of Customs, (Import), ICD TKD, New Delhi)

M/s City Graphics **....Appellant**
A-12, Mangolpuri Industrial Area,
Phase-II,
New Delhi-110034

Versus

Principal Commissioner of Customs, (Import) Inland Container Depot, **....Respondent**
Tughlakabad, New Delhi

APPEARANCE:

Shri Piyush Kumar, Advocate for the Appellant
Shri M.K. Shukla, Authorised Representative of the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

DATE OF HEARING/ DECISION: 20.05.2026

FINAL ORDER NO. 50993/2026

JUSTICE DILIP GUPTA:

This appeal has been filed for setting aside the order dated 27.03.2025 passed by the Principal Commissioner (Appeals)[1] by which the appeal filed by the appellant to assail the order dated 15.04.2021 passed by the Joint Commissioner of Customs, ICD-Import, Tughlakabad, New Delhi,[2] has been dismissed. The Joint Commissioner, by the aforesaid order, had confirmed the demand of customs duty in respect of Bill of Entry No. 7892759 dated 05.01.2015 under section 28(4) of the Customs

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1. **the Principal Commissioner**
2. **the Joint Commissioner**

Act, 1962[3] with applicable interest under section 28AA. Penalties under sections 114A and 114AA of the Customs Act were also imposed upon the appellant.

2. It transpires from the record that on 24.09.2014, Director General of Foreign Trade[4] issued a duty free license under Focus Market Scheme for Rs. 20,65,447/- to M/s Siddharth Corporation for registration at Chennai Port. On 30.09.2014, the license was utilized for payment of duty of Rs. 20,59,589/-. Subsequently, the said license was re-registered by the Customs Authorities at Nhava Sheva Port on 26.12.2014 under Registration No. 3000585705. The appellant had engaged a customs broker for clearance of its consignments through Bill of Entry No. 7892759 dated 05.01.2015. The appellant had purchased the said license which was registered at Nhava Sheva Port through a customs broker for valuable consideration. The Proper Officer granted the consignment an out of charge order.

3. It further transpires that in June, 2018 Special investigation and Intelligence Branch, ICD, Tughlakabad, initiated investigation and a show cause notice dated 01.01.2020 was issued to the appellant demanding customs duty of Rs. 19,79,381/-, paid by way of debit from the license by invoking the extended period of limitation contemplated under section 28(4) of the Customs Act.

4. The appellant filed a reply to the show cause notice and not only contended that the demand should be dropped but also contended that the extended period of limitation could not have been invoked in the facts and circumstances of the case.

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3. the Customs Act
4. DGFT

5. The Joint Commissioner, however, by order dated 15.01.2021 confirmed the demand of duty by invoking the provisions of section 28(4) of the Customs Act and also imposed penalties upon the appellant under sections 114A and section 114AA of the Customs Act.

6. Feeling aggrieved, the appellant filed an appeal before the Commissioner (Appeals), who by order dated 27.03.2023 dismissed the appeal.

7. Shri Piyush Kumar, learned counsel for the appellant submitted that the license was registered at Nhava Sheva Port and the appellant, as a subsequent purchaser, cannot be held liable for payment of duty even if the license was fraudulently re-registered at Nhava Sheva Port. Learned counsel also submitted that the extended period of limitation under section 28(4) of the Customs Act could not have been invoked in the facts and circumstances of the case.

8. Shri M.K. Shukla, learned authorized representative appearing for the department, however, supported the impugned order and submitted that it does not call for any interference. Learned authorized representative pointed out that as the license was fraudulently re-registered at Nhava Sheva Port, the demand of customs duty by invoking the extended period of limitation under section 28(4) of the Customs Act is justified. To support this contention, learned authorized representative placed reliance upon the decision of the Tribunal in **M/s GFC Weld House** vs. **Principal Commissioner, Customs-New Delhi (ICD TKD)**[5]. Learned authorized representative also placed reliance upon the decision of the Tribunal in **M/s NACL Industries Limited** vs. **The**

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5. Customs Appeal No. 50462 of 2023 decided on 17.12.2023

Commissioner, Officer of the Commissioner of Customs, (Adjudication) Delhi Zone, New Delhi[6].

9. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

10. It is not in dispute that the license was re-registered at the Nhava Sheva Port, as is also clear from paragraph 2 of the order dated 15.04.2021 passed by the Joint Commissioner. The said paragraph is reproduced below:

> "**2.** The Commissioner of Customs, NS-II, JNCH, Special Investigation and Intelligence Branch, Nhava Sheva vide their letter F. No. SG/INV-34/2017SIIB(X)JNCH dated 08.09.2019, intimated that their office had received a draft local audit inspection report on the online records of EDI system for the license/duty scrips issued by the DGFT, Mumbai. **It was seen from the report that license/duty scrips No. 0319008582 dated 24.09.2019 was initially registered at Chennai Port (INMAA1) and subsequently, the same found re-registered at Nhava Sheva Port (INNSA1). The license re-registered at Nhava Sheva Port had been utilized for payment of duty to the tune of Rs. 19,79,380.60/- & Rs. 85,777.30/-against two Bill of entries/RA No. 7892759 dated 05.01.2015 and No. 8311586 dated 16.02.2019 respectively at this port i.e. ICD Tughlakabad (INTKD6).** Further, they requested to initiate recovery proceedings against the said bill of entries."
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> **(emphasis supplied)**

11. It is also not in dispute that the said license was earlier registered at Chennai port and that duty amount had been paid by utilizing this license.

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6. Customs Appeal No. 54732 of 2023 decided on 27.04.2026

12. The first issue, therefore, that arises for consideration is whether the demand of customs duty could have been confirmed against the appellant, which is a subsequent purchaser of the license. Even if the license was fraudulently re-registered at the Nhava Sheva port, the appellant cannot be asked to pay the customs duty after it had utilized it for payment of customs duty. The situation would have been different if the license was not re-registered at Nhava Sheva Port.

13. Such a situation was examined at length by a Division Bench of this Tribunal in **M/s Apar Industries Ltd.** vs. **Commissioner of Customs (Export Promotion), Mumbai**[7]. The appellant therein had purchased the DEPB scrips in the normal course of business for valuable consideration through pay orders/cheques without knowledge of the fact that the said scrips had been obtained on the basis of forged documents. The Division Bench examined as to what will be the customs duty liable on the goods imported by either the original scrips holder or the transferee of the scrips on the strength of such DEPB scrips which had been obtained through mis-representation or producing fraudulent or fake documents before the licensing authority or when the scrips had actually not been issued by the licensing authority but were found to be forged or fake.

14. The Division Bench noticed that the Bombay High Court in **Taparia Overseas (P) Ltd** vs. **Union of India**[8]**,** after referring to two judgments of the Supreme Court in **East India Commercial Co. Ltd. Calcutta** vs. **Collector of Customs, Caluctta**[9] and **Collector of Customs, Bombay** vs. **Sneha Sales Corporation**[10], had observed:

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7. Customs Appeal No. 594 of 2004 decided on 13.05.2025
8. 2003 (161) E.L.T. 47 (Bom.)
9. 1983 (13) E.L.T. 1342 (S.C.)
10. 2000 (1221) E.L.T. 577 (S.C.)

"31. ***** **On the above canvas of settled law; recognised by the Apex Court and catena of decisions of the various High Courts including of this Court, it is clear that a licence obtained by fraud is not void ab initio and is merely voidable. It is good till avoided in the manner prescribed by law.**

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36. **It is true that legal fraud vitiates everything even judgments and orders of the Court, but the question is: as to what extent this concept can be imported in commercial transactions, where question of transfer of properties is life and soul of trade.** In a mercantile transactions, as well as in those connected with real properties, the general rule undoubtedly is, that a person cannot transfer to another a right which he does not himself possesses. The rule of caveat emptor spells out two exceptions to the rule, one in cases for encouragement of commerce such as sales in market overt, and other to the transfer of negotiable instruments. **Take for example, if the seller has endorsed and delivered to the buyer the Bill of Leading or any other documents of title to the goods and the buyer has endorsed and delivered it to his sub buyer, then the sub buyer, provided he has taken the document in good faith, as well as for valuable consideration, is entitled to the goods free from any right in the original seller to stop them, and thus his position is better than that of the original buyer, same is a position of sales in market-overt.**

Without attempting to enumerate the various rights which are assignable, either by the express act of the parties, or by the operation of law, we may observe, generally, the maxim assignatus utitur jure auctoris, i.e. an assignee is clothed with the rights of his assignor is subject to many restrictions, shortly enumerated hereinbelow. (See Broom's Legal Maxiims, tenth Edition, p. 302)

Assignatus utitur jure auctoris (Hal. Max, p.14) - An Assignee is clothed with the rights of his assignor.

"This maxim applies generally to all property, real and personal, and refers to assigns by act of parties, as where the assignment is by deed; and to assigns by operation of law, as in the case of an executor. All rights of the assignor in the thing assigned must pass from him to the assignee by virtue of the assignment, for duo non possunt in solido unam rem possidere. It should be observed, also that the thing assigned takes with it all the liabilities attached to it in the hands of the assignor at the time of the assignment, except in cases for the encouragement of commerce, such as sales in market overt, negotiation of promissory notes, bills of exchange, etc., and, in the case of equities, where the assignee is a bona fide purchaser for value without notice."

[Emphasis supplied]

It is thus no doubt true that as a general rule, if a transaction has been originally founded on fraud, the original vice will continue to taint it, and not only is the person who has committed fraud is precluded from deriving any benefit under it, but an innocent person is so likewise, unless there has been some consideration moving from himself. **In the cases at hand, it is not in dispute that all the petitioners had obtained licences for valuable consideration without any notice of the fraud alleged to have been committed by the original licence holders while obtaining licences. If that be so, the concept that fraud vitiates everything would not be applicable to the cases where the transaction of transfer of licence is for value without notice arising out of mercantile transactions, governed by common law and not by provisions of any statute.**

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On the above canvas, having examined the well settled, established and well recognised concept of law 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.

37. Alternatively, let us consider it from another angle assuming that licence comes to an end upon it is suspension and/or cancellation, in catena of cases, it is laid down that the date of import of goods would be the date on which the Bill of Entry was presented under section 46. This legal position is clear from the decision of the Apex Court as laid down in Union of India v. Apar Ltd. 1999 (112) E.L.T. 3 (S.C.) and Garden Silk Mills v. Union of India - 1999 (113) E.L.T. 358 (S.C.). The same is the view taken by the Apex Court in Sampat Raj Durgar case (cited supra). Imports against replenishment Licences were permitted duty free if the importers produced an import Replenishment Licence the goods or the materials were imported into India. **In the instant 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.**"

(emphasis supplied)

15. The Division Bench also referred to the decision of the Punjab and Haryana High Court in **Commissioner of Customs** vs. **Leader Valves Ltd.**[11] wherein it was held:

"9. After hearing learned Counsel for the parties, we are of the considered view that this appeal is devoid of any merit. **The assessee-respondent admittedly is not a party to the fraud. There are categorical finding that they had purchased DEPB from the open market in the *bona fide* belief of its being genuine. They had paid full price and accordingly have availed the benefit. Merely because at a**

11. 2007(218)E.L.T. 349 (P&H)

> **later stage, the DEPB has been found to be fabricated and fake on the basis of BCER the assessee-respondent could not be deprived of the benefits which were legitimately available to them.** It is also worth noticing that the assessee-respondent was never issued any show cause notice before cancelling the DEPB which was obtained by M/s. Parker Industries and obviously the notice was also to be issued to them alone. We are further of the view that notice under Section 28 of the Customs Act could not be issued to the assessee-respondent because a period of six months stipulated by Section 28 of the Customs Act stood already expired and the rights of the parties had been crystallized. The revenue cannot avail the extended period because the assessee-respondent could not be accused of mis-representation, collusion or suppression of facts within the meaning of proviso postulated by Section 28 of the Customs Act. Therefore, there is no merit in this appeal."
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> **(emphasis supplied)**

16. The Division Bench then held:

> "**26.** All the aforesaid decisions clearly hold that a licence/scrip obtained by fraud is not void ab-initio and is merely voidable. The concept that fraud vitiates everything would not be applicable if the licence/scrip had been obtained for valuable consideration without any notice of fraud having being committed by the original licencee/scrip holder while obtaining licence/scrip. The decisions also hold that cancellation of the scrips after the imports had been made on the basis of the scrips would not have any impact on the import as at that point of time the scrips were valid."

17. The Division Bench then distinguished the decision of the Supreme Court in **Munjal Showa Ltd.** vs. **Commissioner of Cus. & Ex. (Delhi-IV)**[12] and the decision of the Supreme Court in **Commissioner of**

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12. 2022 (382) E.L.T. 145 (S.C.)

Customs (Preventive) vs. **Aafloat Textiles (I) P. Ltd.**[13]. The Division Bench also distinguished the decision of Punjab and Haryana High Court in **Friends Trading Co.** vs. **Union of India**[14] and the decision of the Tribunal in **Mercedes Bench India Private Ltd. and others** vs. **Commissioner of Customs, Delhi**[15] and ultimately held:

> "**31.** What, therefore, transpires from the aforesaid decisions is that wherever the licensing authority has issued the licence/DEPB scrip on the basis of which the exemption is sought from customs duty, either by the original licence holder or by the transferee, even if the licence/DEPB scrip have been obtained by producing fraudulent/fake export documents or bank documents, then during the validity of the licence/scrip the exemption cannot be denied and the goods cannot be confiscated. This would be so, even if the licence is cancelled by the licensing authority subsequently after the imports have been effected. What is relevant is a valid licence/DEPB issued by the licensing authority and presentation of the same at the time of import of the goods and at the time of filing the Bill of Entry.
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> **32.** The position would be totally different if the licence/DEPB scrip or TRAs have not been issued by the DGFT and the same have been found to be fake or forged. In such a situation, customs duty exemption would not be available either to the original license holder or to the transferee importer."

18. It would be seen from the aforesaid decision of the Tribunal in **APAR Industries** that the exemption from customs duty cannot be denied even if the license/DEPB scrip is issued by producing fraudulent/fake export documents or bank documents. However, if the license/DEPB scrip has not been issued by the DGFT, then customs duty exemption would not be available.

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13. 2009 (235) E.L.T. 587(S.C.)
14. 2011 (267) E.L.T. 33 (P&H)
15. (2022) 1 Centax 328 (Tri.-Del.)

19. The aforesaid decision of the Division Bench of this Tribunal in **Apar Industries** was followed by this Bench in **GFC Weld House, Sambhav International** and **NACL Limited.**

20. It is not possible to accept the contention of the learned authorized representative appearing for the department that the license issued in the present case should be considered as a forged license since they were fraudulently re-registered at the Nhava Sheva Port. This is for the reason that it is not in dispute that the license was re-registered at the Nhava Sheva Port by the department.

21. Once the license was re-registered at the Nhava Sheva Port, the appellant, as a subsequent purchaser, cannot be asked to pay customs duty even if it is subsequently found that the license was fraudulently registered at the Nhava Sheva Port.

22. Reliance on the two decisions of the Tribunal in **M/s GFC Weld House** vs. **Principal Commissioner, Customs- New Delhi (ICD TKD)**[16]and **M/s Sambhav International** vs. **The Principal Commissioner of Customs (Import), New Delhi**[17] by the learned authorized representative is misconceived. These were cases where the value of the scrips was fraudulently enhanced and the Division Bench placed reliance upon the decision of the Supreme Court in **Munjal Swaha Ltd**. This decision, as noticed above, was distinguished by the Tribunal in **Apar Industries**.

23. Such being the position, it is not possible to sustain the confirmation of the duty demanded from the appellant.

24. The second submission advanced by the learned counsel for the appellant that the provisions of section 28(4) of the Customs Act invoking

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16. Customs Appeal No. 50462 of 2023 decided on 17.12.2025
17. Customs Appeal No. 51946 of 2024 decided on 22.08.2025

the extended period of limitation could not have been invoked also deserves to be accepted.

25. As noticed above, the appellant cannot be asked to pay duty even if it had purchased a license that had been fraudulently re-registered at Nhava Sheva port. The only reason assigned in the show cause notice for invoking the extended period of limitation is that the appellant should have taken due care to ascertain the correctness of the license before purchasing it and since the license was fraudulently re-registered at the Nhava Sheva port, the extended period of limitation was correctly invoked. As noticed above, if the license was re-registered at Nhava Sheva Port, it cannot be said that the appellant had not taken due care before purchasing it. Such being the position, the extended period of limitation could not have been invoked in the facts and circumstances of the case.

26. Thus, for all the reasons stated above, the impugned order dated 27.03.2025 passed by the Principal Commissioner deserves to be set aside and is set aside. The appeal is, accordingly, allowed.

(Order dictated in the Open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(ANJANI KUMAR)
MEMBER (TECHNICAL)

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