CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 54732 of 2023

(Arising out of Order-in-Original No. 08/Manish Saxena/Commr(Adj.)/ Delhi/NCH/2022-23 dated 04.01.2023 passed by the Commissioner, Officer of the Commissioner of Customs (Adjudication) New Customs House, New Delhi.)

M/s. NACL Industries Limited **....Appellant**
Plot No. 12-A, C-block, Lakshmi Towers,
Nagajunna Hills, PUnjagutta,
Hyderabad-500082

Versus

The Commissioner, Officer of the Commissioner of Customs, (Adjudication) Delhi Zone, New Delhi **....Respondent**

APPEARANCE:

Shri B.L. Narasimhan with Ms. Anjali Gupta and Mr. Ashwani Bhatia, Advocates for the Appellant
Shri Girijesh Kumar, 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: 27.04.2026

FINAL ORDER NO. 50822/2026

JUSTICE DILIP GUPTA

M/s NACL Industries Ltd[1] has filed this appeal for quashing the order dated 02.01.2023 passed by the Commissioner of Customs (Adjudication), Delhi Zone[2] by which the classification of the goods in the Shipping Bills under Customs Tariff Item[3] 3808 99 10 or CTI 3808 99 90 has been rejected and the Shipping Bills have been reassessed.

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1 the appellant
2 the Commissioner
3 CTI

The Commissioner has confirmed the demand of duty with interest and penalty.

2. It transpires from the records that under the Merchandise Exports from India Scheme[4], scrips were issued to the appellant by the Director General of Foreign Trade[5] and these scrips were utilized by the appellant for discharge of customs duty liability on the import of raw materials used for manufacturing exported goods during the period 23.01.2016 to 04.03.2020.

3. The department believed that the appellant had availed higher MEIS benefit @ 3% on the exported goods by mis-classifying the goods under CTI 3808 99 10 and CTI 3808 99 90 instead of the respective Customs Tariff Sub-Heading for the exported goods on which MEIS benefit of 2% is available as per the Public Notice dated 01.04.2015.

4. A show cause notice was, accordingly, issued to the appellant proposing to reject the classification of the exported goods in the Shipping Bills and for re-classifying the same under the respective customs tariff items. This show cause notice was adjudicated by order dated 02.01.2023 by the Commissioner. The classification of the exported goods was rejected and the duty proposed in the show cause notice was confirmed under section 28(4) of the Customs Act 1962[6] with applicant rates.

5. The submission advanced by Shri B.L. Narasimhan, learned counsel appearing for the appellant assisted by Ms. Anjali Gupta and Mr. Ashwani Bhatia is that the order passed by the Commissioner

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4 MEIS
5 DGFT
6 the Customs Act

deserves to be set aside for the sole reason that the duty scrips were valid at the time of import and, therefore, imports made using such scrips cannot be impacted even if scrips were later cancelled. Learned counsel submitted that the appellant had used MEIS scrips issued on the exported goods and utilized the same for import of goods and, therefore, subsequent cancellation of the scrips after the utilization to the extent of availing excess 1% credit cannot be made the basis to demand duty for the goods imported using such MEIS scrips. To support this contention, learned counsel placed reliance upon decisions of this Tribunal in **M/s APAR Industries** vs. **Commissioner of Customs**[7]**, K.K. Exports** vs. **C.C., New Delhi (Import & General)**[8] and **Pankaj Chordia** vs. **The Commissioner of Customs, Air Cargo Complex, New Delhi**[9]**.** Learned counsel for the appellant also made other submissions, including that relating to the invocation of the extended period of limitation.

6. Shri Girijesh Kumar, learned authorized representative appearing for the department, however, supported the impugned order and submitted that the appellant had deliberately misclassified the goods before the DGFT for issuance of the scrips with 3% Customs duty benefit and, therefore, it is not open to the appellant to now contend that the appellant should be entitled to the benefit of the scrips. Learned authorized representative also pointed out that the scrips were ultimately cancelled and it has been held that the appellant would be entitled to the benefit of 2% customs duty only. Learned authorized representative pointed out that the decision of the Tribunal in **APAR**

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7 2025-VIL-731-CESTAT-MUM-CU
8 2025-VIL-1760-CESTAT-DEL-CU
9 2025-VIL-1434-CESTAT-DEL-CU

Industries would not apply to the facts of the present appeal since in that case the issue was in connection with a purchaser of the scrips and not the original holder of the scrips.

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

8. It is not the case of the department that the MEIS scrips were not issued by the DGFT for it is the case that the scrips were obtained by fraudulent means and ultimately the benefit of customs duty was reduced from 3% to 2%.

9. The issue, therefore, that arises for consideration is whether such reduction of customs duty from 3% to 2% under the MEIS scrips can be made applicable to imports that were made by the appellant prior to the modification.

10. This issue was examined at length by a Division Bench of this Tribunal in **APAR Industries**. After referring to various decisions, the Tribunal 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.
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> **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."

11. What follows from the aforesaid decision of the Tribunal is that during the validity of the scrips the appellant cannot be denied the benefit of the scrips and this would be so even if the scrips are subsequently cancelled by the DGFT. The Tribunal also held that it would not make any difference if the original scrip holder utilizes the scrips or a subsequent purchaser utilizes it. This decision of the Tribunal was subsequently followed by the Tribunal in **K.K. Exports and Pankaj Chordia.**

12. It is, therefore, not possible to accept the contention of the learned authorized representative that the decision of the Tribunal in **APAR Industries** will not apply merely because in this appeal the benefit of the scrips was taken by the original scrip holder and not by the subsequent purchaser. Once the DGFT had issued the MEIS scrips to the appellant, the benefit of it cannot be denied to the appellant, though the MEIS scrips may have been subsequently modified by the DGFT by reducing the benefit of customs duty from 3% to 2%.

13. The fact as to whether the appellant had deliberately misclassified the goods while obtaining this scrips from DGFT or not is not relevant to the controversy involved in this appeal.

14. It would, therefore, not be necessary to examine the other contention raised by the learned counsel for the appellant.

15. Such being the position, the confirmation of demand by the Commissioner with interest and penalty cannot be sustained.

16. The order dated 04.01.2023 passed by the Commissioner is, accordingly, set aside and the appeal is allowed.

(Order dictated in the Open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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