CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH - COURT NO. 1

CUSTOMS APPEAL NO. 86694 OF 2016

(Arising out of Order-in-Appeal No. 23 to 32(General)/2016/JNCH)-Appeal-I dated 29.04.2016 passed by the Commissioner of Customs (Appeals-I), Mumbai-II)

M/s Saguna Poultry Farm Ltd. **.... Appellant**
(Presently known as M/s Saguna Foods Pvt. Ltd.)
1057, 5th Floor, Avinashi Road, Jaya Enclave,
Coaimbatore, Tamil Nadu – 641 018

Versus

Commissioner of Customs, JNCH, Nhava Sheva **.... Respondent**
JNCH, Taluka – Uran, Dist. Raigad,
Maharashtra – 400 707

APPEARANCE:

Shri Akhilesh Kangsia a/w Ms. Apoorva Parihar, Advocates for the appellant

Shri Deepak Sharma, Authorized Representative for the Respondent

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

DATE OF HEARING: 16.04.2026
DATE OF DECISION: 16.04.2026

FINAL ORDER NO. 85561/2026

JUSTICE DILIP GUPTA:

This appeal filed by M/s Saguna Poultry Farm Ltd.[1] seeks the quashing of the order dated 29.04.2016 passed by the Commissioner of Customs (Appeals) by which the order dated 28.05.2015 passed by the Additional Commissioner of Customs has been upheld and appeal has been dismissed. The Additional Commissioner of Customs, by the said order dated 28.05.2015, rejected the FOB value of the goods exported in two shipping bills under rule 8 of the Customs Valuation (Determination of

1 **the appellant**

Value of the Export Goods) Rules, 2007[2] and ordered for re-determination of the goods under rule 6 of the 2007 Rules read with section 14 of the Customs Act, 1962[3]. In respect of the imported goods, the Additional Commissioner also denied the benefit of DEPB license purchased by the appellant, on the basis of which two Bills of Entry dated 26.02.2011 and 19.03.2011 were filed.

2. It transpires from the records that the appellant had purchased DEPB license from the original licensee after making payment through proper banking channels.

3. A show cause notice dated 06.03.2014 was issued to the appellant alleging that as the DEPB scrips were fraudulently obtained by the person from whom the appellant had purchased the scrips and they had been cancelled subsequently, the appellant would not be entitled to avail the benefit of DEPB licenses and would also be liable to pay additional duty with interest and penalty.

4. It is not the case of the Department in the show-cause notice that DEPB scrips obtained by the person from whom the appellant had purchased were not genuine. The case of the department is that the scrips were issued on the basis of fraudulent documents.

5. The Additional Commissioner, by the order dated 28.05.2015, found that as the scrips had been cancelled *ab initio,* the appellant would not be entitled to the benefit of the scrips.

6. The Commissioner (Appeals) upheld the order passed by the Additional Commissioner and in doing so noted the following facts:

> "6. **I find that the original authority has confirmed that these firms purchased DEPB**

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2 the 2007 Rules
3 the Customs Act

license from a common source named M/s. Thakur Impex and used the impugned DEPB licenses for duty free import. Upon investigation these licenses were cancelled by DGFT ab-initio.

7. **Now the issue to be decided before me is as to whether the imports affected against the impugned DEPB scrips were liable to the duty and penalty as confirmed by the Original Authority. Secondly, whether extended period of demand is justifiable in the case?**

8. The appellant's contention in their defence is similar in content and tone. **Their main contentions are that they were not aware of the fraud and they were genuine purchaser of DEPB. They further pleaded that DEPB scrips were valid on the respective dates of import of goods and subsequent cancellation of the licenses do not make imports unauthorized.** They referred to many case laws in support of their contention that they are not liable to pay the fine and penalty and that is the demand of duty is time barred and extended period cannot be invoked in their case as there has been no misdeclaration, fraud committed by them."

(emphasis supplied)

7. After having considered the submissions advanced by the appellant, the Commissioner (Appeals) confirmed the demand proposed in the show cause notice and in coming to the aforesaid conclusion, the Commissioner (Appeals) placed reliance upon the judgment of Punjab & Haryana High Court rendered in **Friends Trading Co.** vs. **Union of India**[4].

8. Shri Akhilesh Kangsia, learned counsel for the appellant assisted by Ms. Apoorva Parihar submitted that the Commissioner (Appeals) committed an error in upholding the order passed by the Additional Commissioner of Customs as the Commissioner (Appeals) failed to

4 **2011 (2) TMI 382 – Punjab & Haryana High Court**

appreciate the distinction between scrips that are obtained by fraudulent means and scrips that were not issued at all and were forged documents. In support of this contention, learned counsel placed the reliance on a Division Bench decision of the Tribunal in **M/s Apar Industries Ltd.** vs. **Commissioner of Customs (Export Promotion), Mumbai**[5], which decision was subsequently followed by another Division Bench of this Tribunal in **Borax Morarji Ltd** vs. **Commissioner of Customs (Export Promotion), Mumbai**[6].

9. Shri Deepak Sharma, learned authorized representative appearing for the department has supported the impugned order.

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

11. It is not in dispute that the scrips that were purchased by the appellant were obtained by the seller of scrips on the basis of fraudulent documents. There is no finding in the impugned order that scrips were not genuine or had not been issued by the DGFT.

12. This issue was precisely considered by a Division Bench of this Tribunal in **Apar Industries** and after referring to various decisions, including the judgment of the Punjab and Haryana High in **Friends Trading Co.**, the Tribunal observed as follows:

> "**30.** The judgment of the Punjab and Haryana High Court in Friends Trading Co. v. Union of India [2011 (267) E.L.T. 33 (P&H.)] and the decision of the Tribunal in Mercedes Benz India Private Ltd. v. Commissioner of Customs, Delhi [(2022) 1 Centax 328 (Tri.-Del)] are also on the same lines in as much as in these cases also, the DEPB scrips and the TRAs were forged and

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5 Customs Appeal No. 594 of 2004 decided on 13.05.2025 (Tri.-Mumbai)
6 Customs Appeal No. 27 of 2011 decided on 02.02.2026

were not actually issued by the DGFT. The High Court and the Tribunal, therefore, held that the transferee importers were not eligible for the exemption under the Customs Exemption Notification since the documents based on which the exemption was sought did not exist in the eye of law at any point of time.

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.

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 licence holder or to the transferee importer.

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35. The submission of learned senior counsel for the appellant that the facts in dispute are the same as that in the decision of the Tribunal in Deep Exports and so the appellant would be entitled to all the favourable consequence that follows is justified. This decision, as set out above, has comprehensively examined all relevant decisions and provides appropriate benchmark on entitlement to retain the privilege of exemption arising from use of transferred scrips that, even if cancelled subsequently, were not void to the extent that these are not forged or fake at the time of import. The goods, not bring prohibited for import nor imported subject to any condition, were incorrectly held as liable

> to confiscation under section 111 of Customs Act and penalty imposed under section 112 will not, therefore, survive."

13. The department thereafter filed an application for Rectification of Mistake of the aforesaid order, which application was also rejected by a detail order dated 22.01.2026.

14. The Division Bench of this Tribunal in **Borax Morarji** took the same view after placing the reliance on the aforesaid decision rendered in **Apar Industries** observed:

> "**4.** To encourage export of goods with the objective of earning foreign exchange, the Government of India issues various export incentive schemes from time to time, encouraging the exporters to export the goods at internationally competitive price. In terms of the schemes, on the basis of the achievement of export turnover, the exporters are entitled for the benefit of various scrips/licenses issued by the Directorate General of Foreign Trade (DGFT). The said scrips/licenses can be used by the exporters, by themselves for importation of duty-free goods and are also transferable by way of trading in the open market, for a consideration. In other words, by purchasing the scrip/ license from the exporter to whom it was issued, any importer can import the goods duty free in lieu of such scrip/license. **As long as the scrip/license issued by the licensing authority is valid, being not cancelled, even if the same had been obtained by fraudulent means, the beneficiary of such document cannot be denied with the benefit of duty-free import of goods, as long as such scrip/license is valid. In the case in hand, the appellants had purchased the scrips/licenses from the persons, who were recognized by the licensing authorities as the exporter of the goods and upon subjective verification, the same were issued in their favour by the competent authorities. Thus, under such circumstances, even if the said documents were obtained by the main**

> **beneficiary by adopting to the fraudulent means or practices, it cannot be questioned at the stage of the ultimate beneficiary, who had purchased such document duly issued by the competent authority and utilized the same for duty free importation of goods.**
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> 5. We find that the issue arising out of the present dispute is no more res integra, in view of the order passed by the Co-ordinate Bench of the Tribunal in the case of Apar Industries Limited Vs. Commissioner of Customs (Export Promotion), Mumbai – (2026) 38 Centax 39(Tri.-Bom.).”
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> **(emphasis supplied)**

15. In view of the aforesaid discussion, the Commissioner (Appeals) was not justified in placing reliance on judgment of the Punjab & Haryana High Court in **Friends Trading Co.**, as that was a case where the scrips were found to be not genuine.

16. The scrips were valid when they were utilized by the appellant. Subsequent cancellation would have no impact.

17. The inevitable conclusion that follows is that the impugned order dated 29.04.2016 passed by the Commissioner (Appeals) cannot be sustained and has to be set aside. Accordingly, the impugned order is set aside and appeal is allowed.

(Order Dictated and Pronounced in open court on)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Sinha, Shreya