CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. 4

Customs Appeal No. 50178 of 2025

[Arising out of Order-in-Appeal No. CCA/Cus/D-II/Import/ICD/TKD/494/2024-25 dated 27.12.2024 passed by the Commissioner of Customs (Appeals) New Delhi]

M/S. METLINE HOUSEWARE ....APPELLANT
Block BP 27, West
Shalimar Bagh
New Delhi
110088

Versus

COMMISSIONER OF CUSTOM(IMPORT) ....RESPONDENT
Inland Container
Depot, Tughlakabad,
New Delhi-110020

APPEARANCE:

Shri Vishal Nath and Shri S.C. Jain, Advocates for the Appellant
Shri M.K. Shukla, Authorised Representative of the Department

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51685 /2025

DATE OF HEARING: 24.09.2025
DATE OF DECISION: 07.11.2025

P. V. SUBBA RAO

This appeal has been filed by Metline Houseware[1] to assail the order dated 27.12.2024[2] passed by the Commissioner of Customs (Appeals) upholding the Order dated 26.3.2021 passed by the Joint Commissioner and rejecting the appellant's appeal. The Joint Commissioner had, in his order confirmed the demand of duty and recovery of interest under section 28AA of the Customs Act,

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1 **Appellant**
2 **Impugned order**

1962[3] and penalty under section 114A of the Customs Act.

2. The appellant is an importer of household goods and other related items. It imported goods using **Focus Product Scheme**[4] Licence No. 0510338794 dated 9.11.2012 issued by the Director General of Foreign Trade[5] which was manipulated and registered in ICD Patparganj. The manipulation was later discovered during investigation. The appellant does not dispute that the licence was manipulated and registered. Its defence is that that it had no knowledge of the manipulation. The matter was investigated and a Show Cause Notice[6] dated 21.11.2019 was issued to the appellant and to others and the proposals in the SCN were confirmed by the Joint Commissioner in his order and upheld in the impugned order. The relevant findings in the impugned order in paragraphs 5.1 to 5.9 are reproduced below:

> "5.1 I have carefully considered the facts of the case as well as submissions made by the appellant. Nothing has been represented by the Respondent Department. Accordingly, I proceed to decide the appeal as per records and submissions of the Appellant.
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> 5.2. As regards the issue of time-limitation factor in issuance/service of SCN, it is observed that Section 28(4) of the Act, provides as under:
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> (4) Where any duty has not been (levied or not paid or has been short-levied or short-paid) or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,
>
> (a) collusion; or
>
> (b) any wilful mis-statement; or

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3 **Customs Act**
4 **FPS**
5 **DGFT**
6 **SCN**

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

Relevant date has been defined in Explanation 1 to Section 28, as under: Explanation 1. For the purposes of this section, "relevant date" means, -
(a) in a case where duty is [not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;
(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;
(c) in a case where duty or interest has been erroneously refunded, the date of refund;
(d) in any other case, the date of payment of duty or interest

Thus, the relevant date for the purpose of computing five years period in the instant case would be the date on which the proper officer makes an order for the clearance of goods, that is the date on which "out of charge" order has been given. Out of charge order in the instant case has been given on 06.12.2014 and the appellant themselves claim to have received the impugned notice 3-4 days after 21.11.2019. This being the situation, the impugned notice has been timely served to the appellant. In the case of MALDHARI SALES CORPORATION Versus UNION OF INDIA [2016 (334) E.L.T. 418 (Del.)], the Hon'ble Delhi High Court has held that the relevant date in terms of clause (a) of Explanation 1 had to be calculated with reference to the date of order of clearance of the goods sought to be imported under a B/E. Thus, the submissions made by the appellant in this regard are found to be untenable.

5.3. Vide Circular No.24/2011-CUS dt.31.05.2011, CBEC (now CBIC), has provided for monetary limits of adjudication of cases by officers of various grades where SCNs are issued under section 28 of the Customs Act, 1962. Cases involving duty amount of more than Rs. 5 lakhs but upto Rs. 50 lakhs are to be adjudicated by the officers of the rank of Additional/Joint Commissioner. Hence, the impugned notice has been issued by the proper officer.

It is also observed that the contentions of the appellant

in this matter are based on an erroneous observation that the impugned notice has been issued by the Dy. Commissioner [SIIB). Dy. Commissioner [SIIB] has only endorsed the copies of impugned notice and the same has been issued by the Joint Commissioner, ICD Tughlakabad [Import], New Delhi, who is proper officer to adjudicate the case.

5.4. The main issue to be decided in the instant case is as to whether the duty is demandable in the instant case, by invoking extended period of limitation or not. It is an admitted fact that the scrips have been wrongly/fraudulently registered in the instant case and such fraudulently registered scrips have then been used by the appellant to discharge their duty liability. Nowhere in the submissions made by the appellant, it has been contended that the allegation of fraudulent registration of scrips is wrong. Thus, the charge of fraudulent registration of scrips stands uncontested.

B/E has been filed on 22.11.2014 and "out of charge" has been accorded on 06.12.2014. The appellant is said to have purchased the duty credit crip on 04.12.2014, wherein the serial number of scrip is wrongly mentioned as 051033879, instead of 0510338794. There is nothing on record to suggest as to why this wrong mentioned of scrip number has taken place in the purchase invoice. Rather this erroneous mention of scrip number points out that the same has been done deliberately to enable its fraudulent registration and leading to fraudulent utilization of credit. The documents brought on record by the appellants, thus, do not support the claim of bona fide on part of the appellant.

Demand under section 28(4) of the Act, is raised in cases of (a) collusion; or (b) any wilful mis-statement; or (c) suppression of facts by the importer or the agent or employee of the importer. In the instant case, the appellant has used ab-initio invalid and non-existent scrips for duty payment. This activity clearly amounts to mis-statement and suppression of facts on part of the appellant, for which demand has been rightly confirmed against them.

5.5. Further, it is important to note that in the case of MUNJAL SHOWA LTD. Versus COMMISSIONER OF CUS. & C. EX. (DELHI-IV) [2022 (382) E.L.T. 145 (S.C.)), the party contended that even in the case of a fraud, an inquiry was required to be made whether the appellant(s)/buyer(s) had knowledge that DEPB Scrips were forged or fake. Whereas, the Hon'ble Supreme Court held as under:

9. In that view of the matter and on the principle that fraud vitiates everything and such forged/fake DEPB licenses/Scrips are void ab initio, it cannot be said that the Department acted illegally in invoking the extended period of limitation. In the facts and circumstances, the

Department was absolutely justified in invoking the extended period of limitation.

The Hon'ble Court also observed that so far as the submission on behalf of the buyer(s) - appellant(s) relying upon the decision of this Court in the case of Aafloat
Textiles India Private Limited and Ors. (supra) is concerned, whether the buyer(s) had a knowledge about the fraud or the forged/fake DEPB licenses/Scrips and whether the appellant(s) - buyer(s) was/were to take requisite precautions to find out about the Renuineness of the DEPB licenses/Scrips which they purchased, would have a bearing on the imposition of the penalty, and has nothing to do with the duty liability.

Thus, the Hon'ble Supreme Court of India has upheld the demand of duty in such cases, by invoking extended period of limitation.

5.6. As regards penalty u/s section 114A, it is observed that penalty is imposable under section 114A, upon the person who is liable to pay duty, equal to the duty amount, where duty has not been levied or short levied by reason of collusion, or any wilful mis-statement or suppression of facts. Hence, penalty u/s 114A has been rightly imposed by the adjudicating authority and no respite from the same can be granted to the appellant. In the case of TATA MOTORS LTD VS COMMISSIONER OF CUSTOMS (IMPORT) MUMBAI [2019-TIOL-1201-CESTAT-MUM], the Hon'ble Tribunal has held that the ingredients for invoking extended period of limitation under Section 28 and for imposition of mandatory penalty under Section 114A of Customs Act, 1962 are identical. Once the extended period was held invocable under Section 28, penalty under Section 114A of Customs Act, 1962 was also imposable.

The Hon'ble Tribunal in the case of N.K. CHAUDHARI Versus COMMISSIONER OF CUSTOMS (EP), MUMBAI [2018 (363) E.L.T. 908 (Tri. Mumbai)], on the matter of penalty imposed under Section 114A of the Customs Act, 1962, held that penalty under Section 114A is inevitable particularly when there is suppression of fact and extended period was invoked under the show cause notice. The Hon'ble Supreme Court in the case of Dharamendra Textiles Processors 2008 (231) E.L.T. 3 (S.C.) has held that the mandatory penalty cannot be reduced. Therefore, the penalty under Section 114A, which is pari materia of Section 11AC of the Central Excise Act, the penalty imposed under Section 114A cannot be reduced or waived.

5.7. As regards penalty u/s 114AA, it is observed that the appellant had utilized the fraudulently registered scrips which were ab-initio and illegal for payment of duty. By way of utilizing non-existent duty scrip, by getting it fraudulently registered and mentioning the

> details of the same in the impugned bill of entry, makes the appellant liable for imposition of penalty u/s114AA as the declaration made by them in the subject B/E has been rendered as false/incorrect. In the case of S.M. TAUFEEK Versus COMMISSIONER OF CUSTOMS, CHENNAI-IV [2017 (358) E.L.T. 326 (Tri. Chennai)], the Hon'ble Tribunal has held that when the manner of causing evasion by appellant was with conscious approach defrauding Customs and the evidence aforesaid gathered by investigation could not be ruled out by appellant, his contumacious conduct was proved; that section 114AA is applicable when documents are falsified with conscious knowledge to cause evasion; that appellant's questionable modus operandi and oblique motive demonstrated its involvement in causing evasion; that therefore, penalty of Rs. 4,50,000/- (Rupees four lakh fifty thousand only) imposed under Section 114AA of Customs Act, 1962 on the appellant does not require any lenient consideration for which that is also upheld.
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> 5.8. As regards the involvement of customs officials in registration of the said scrip, it is observed that fraudulent activity in the instant case has taken place in such a manner, so as to avoid detection by the department at the first instance. That is the reason that the scrip number has been changed while re-registering the same fraudulently, from 0510338794 to 051033879.
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> 5.9 In view of the above discussion and findings, I do not find any merits in the appeal filed by the appellant."

3. Learned counsels for the appellant submitted that the scrip was obtained by the appellant in good faith for a consideration and was therefore, not in any way responsible for the manipulation and in such circumstances, the duty could not be confirmed nor interest could be levied or penalty imposed on the appellant.

4. Shri M.K. Shukla, learned authorized representative appearing for the department, however, submitted that the issue involved in these appeals has been decided by a division bench of this Tribunal in **M/s Mercedes Benz India Private Limited** vs. **Commissioner of Customs,**

Delhi[7]. Learned authorized representative, therefore, submitted that the appeals should be dismissed.

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

6. Learned authorized representative appearing for the department is correct in his submission that the issue involved in this appeal is covered by a division bench decision of this Tribunal in **Mercedes Benz**. It is seen that the appeals were dismissed for the reasons that appellants had obtained TRAs which were found to be forged. The relevant observations made by the Tribunal in this context in **Mercedes Benz** are reproduced below:

> **"24. The issue to be determined in these appeals is as to whether the appellants had validly imported the consignments duty free on the strength of the licenses involved in these appeals. It is not disputed by the appellant that these licenses were obtained in a fraudulent manner by the exporters or the importers/manipulators, but their contention is that they have purchased these licenses through various brokers on payment of consideration through banking channels and, therefore, they cannot be held responsible for any manipulation by the transferor of these licenses. As the transferee, they have taken enough precaution before purchasing these scrips from open market by verifying on the DGFT website.** They have also made payment to the brokers of license through banking channel/account payee cheques. **Regarding obtaining of TRA with the transfer license, the appellants admitted that the TRAs were also made available to them with the transfer licenses but they were not aware that these TRAs were also manipulated. In such circumstances, they pleaded that being bona fide purchasers of the licenses,**

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7. Customs Appeal No. 52009 of 2018 decided on 09.01.2020

> **they should not be penalized for any lapse committed by the exporter. On the other hand, it is contention of the Department that the entire activities of export and TRA has been manipulated by the exporters.** As these licenses have been cancelled or are in the process of cancellation, the license are void ab initio and the duty liability with interest and penalty has been rightly imposed.
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> importers purchased these licenses, which were transferrable from the license brokers. **After the purchase of license, the importers did not apply for the issue to Telegraphic Release Advice (TRA) from the port of Registration (POR) as was required to be obtained the TRAs from the brokers. Not only that, they also failed to ascertain the veracity of such TRAs from the Port of Registration. Thus, the-due diligent that was required to be exhibited by the importer was not carried out."**
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> **(emphasis supplied)**

7. It clearly transpires from the aforesaid decision of the Tribunal in **Mereceds Benz** that though a contention had been raised that the appellants were not aware that the TRAs were manipulated or forged, but this contention was not accepted and it was held that since the appellants had not applied for issue of the TRAs from the port of registration as was required to be done and they also failed to ascertain the veracity of such TRAs from the port of registration, due diligence that was required was not exhibited nor carried out. The appeals were accordingly, dismissed.

8. In view of the aforesaid decision of the Tribunal in **Mercedes Benz**, no relief can be granted to the appellant.

9. Learned counsel for the appellant also submitted that penalty under section 114A of the Customs Act could not have been imposed upon the appellant. Section 114A of the

Customs Act provides for penalty for short levy or non-levy of duties in certain cases. In the instant case, it is not in dispute that the impugned order has confirmed the demand of duty for the reason that it was not paid. In such circumstances, penalty under section 114A of the Customs Act, was correctly imposed.

10. There is, therefore, no merit in this appeal. It is accordingly, dismissed.

(Order pronounced on **07.11.2025)**

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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