Form J(2)

In The High Court at Calcutta

Special Jurisdiction
(Original Side)

Coram: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
And
THE HON'BLE JUSTICE SUDIP DEB

Reserved on : 02.09.2026.
Pronounced on : 15.09.2026

CUSTA 7 of 2016

Comet Overseas Pvt. Ltd. ...*Appellant*

-Vs-

Union of India ...*Respondent*

Present:-

Mr. Agnibesh Sengupta, Adv.
Mr. Sanjay Baid, Adv.
...*for the appellant*

Mr. Uday Shankar Bhattacharya, Adv.
..... *for the Customs Authority*

Rajarshi Bharadwaj, J:

1. The instant appeal, preferred under the Customs Act, 1962, is directed against the order dated 22.12.2015 passed by the Customs, Excise and Service

Tax Appellate Tribunal ("CESTAT"), whereby the Learned Tribunal partly allowed the appellant's appeal against the Order-in-Original dated 28.02.2014, setting aside the penalty of Rs.10,00,000/- imposed under Section 112 of the Customs Act, 1962, but affirming the demand of duty of Rs.22,87,654.95/- with interest and the redemption fine of Rs.15,00,000/- imposed under Section 125 of the said Act. The appeal was admitted by this Court on 19.09.2019.

2. The appellant, M/s. Comet Overseas Pvt. Ltd., is engaged in export-import bulk commodity trading and is a subsequent purchaser and transferee of DFIA Licence No. 0210100847 dated 16.05.2007. The said licence was one of 23 Duty Free Import Authorisation licences obtained by M/s. Gemini Overseas Ltd. from the Director General of Foreign Trade during 2007-08 and 2008-09, under Notification No. 40/2006-Cus dated 01.05.2006, for duty-free import of Mulberry Raw Silk of any grade, Dupion Silk Yarn, and Reeled Tassar Yarn. Of the 23 licences, 3 were endorsed transferable by the Regional Authority upon certification of fulfilment of export obligation by Gemini Overseas; Licence No. 0210100847 was one such licence, and was purchased by the appellant for Rs.14,51,795/-, paid through proper banking channels, through Customs House Agent M/s. S.K. Saha & Co.

3. Acting on the said licence, the appellant imported Mulberry Raw Silk Yarn duty-free vide Bill of Entry No. 437910 dated 22.10.2008 at Kolkata Port, the assessable value being Rs.74,03,414.08/- and the duty foregone being Rs. 22,87,654.95/-.

4. Subsequently, intelligence gathered by the Directorate of Revenue Intelligence indicated that Gemini Overseas had, for the purpose of discharging its export obligation, exported fabric made of Noil Yarn while falsely declaring the same as Natural Silk Fabric predominantly of Mulberry Raw Silk. Consignments were intercepted at N.S. Dock, Kolkata on 12-13.11.2008 and at the factory of Eastern Silk Industries Ltd., Falta SEZ, on 15.11.2008; test reports of the Central Silk Board on samples drawn from both interceptions confirmed the fabric to be Noil Yarn mixed with cotton. By letter dated 02.01.2009, Gemini Overseas admitted that the description of goods in its export documents was incorrect, that it stood to avail benefits not due to it, and expressed willingness to pay the duty foregone on utilisation of the three transferable licences, including the licence in question.

5. A Show Cause Notice dated 11.05.2012 was thereafter issued jointly to the appellant, Gemini Overseas Ltd., Sri Shyam Sundar Lath (Director, Gemini Overseas) and Shri Shyam Sundar Shah (CMD, Eastern Silk Industries Ltd.), calling upon them to show cause why duty of Rs.22,87,654.95/- should not be recovered under the erstwhile proviso to Section 28(1) read with Section 28(4) of the Customs Act, 1962, with interest; why the goods should not be confiscated under Section 111(o); and why penalty should not be imposed under Section 112. It is significant, and a matter placed on the record before this Court, that the Show Cause Notice, insofar as it concerns the appellant specifically contains no allegation of collusion, wilful mis-statement, or suppression of facts on the part of the appellant.

6. The Order-in-Original dated 28.02.2014 confirmed the duty demand, the redemption fine of Rs.15,00,000/- under Section 125, and a penalty of Rs.10,00,000/- under Section 112. On appeal, CESTAT, by the impugned order dated 22.12.2015, set aside the penalty on the finding that the appellant had no knowledge of the nature of the goods used and exported by Gemini Overseas/Eastern Silk Industries, but upheld the demand of duty, interest, and the redemption fine. It is undisputed that the DFIA licence in question has not, on the record before this Court, been cancelled by the DGFT or the Regional Authority to date.

7. This Court, at the stage of admission on 19.09.2019, framed one substantial question of law for consideration, which is reproduced verbatim: "Whether a bona fide purchaser of duty-free import licence for value can be required to pay duty, interest and redemption fine in respect of his import, when he has no notice of any irregularity on the part of the exporter who had obtained such licence and the licence is not cancelled by the authorities?" No question relating to limitation was framed at the admission stage, nor was any such question sought to be framed by the appellant at that stage.

8. Learned Counsel appearing for the appellant submits that the DFIA licence was validly issued by the DGFT, and that any fraud or mis-declaration occurred subsequently, at the stage of certification of fulfilment of export obligation by Gemini Overseas — an event distinct from and subsequent to issuance. Relying on **East India Commercial Co. Ltd., Calcutta v. Collector of Customs, Calcutta [1962 AIR 1893; 1983 (13) E.L.T. 1342 (S.C.)]** and **Collector of Customs, Bombay v. Sneha Sales Corporation [2000 (121) E.L.T. 577 (S.C.)]**, counsel submits that a licence obtained by fraud is at best voidable, not void, remains good and effective until avoided in the manner prescribed by law, and — since the licence has, on this record, never been cancelled by the issuing authority — remained a valid and subsisting instrument at the time of import.

9. Learned Counsel for the appellant further submits, relying on **Taparia Overseas (P) Ltd. v. Union of India [2003 (161) E.L.T. 47 (Bom.)**, SLP dismissed], that a transferee who purchases a duty-free licence for valuable consideration, through proper banking channels, without notice of any fraud on the part of the original licence-holder, is protected from being fastened with duty, interest, and redemption fine liability, and that the maxim "fraud vitiates everything" does not extend to defeat the rights of such an innocent transferee for value.

10. Learned Counsel for the appellant submits that the Show Cause Notice, insofar as it concerns the appellant contains no allegation of collusion, wilful mis-statement, or suppression of facts by the appellant, which is the statutory precondition under the proviso to Section 28(1)/28(4) of the Customs Act, 1962, as it stood at the relevant time, for invocation of the extended period of limitation; in the absence of such allegation or finding against the appellant specifically, the extended period could not validly have been invoked against it.

11. Learned Counsel for the appellant submits that **Tata Iron and Steel Co. Ltd. v. Commissioner of Customs, Mumbai [2015 (319) E.L.T. 546 (S.C.)]**, relied upon by the Revenue for the proposition that extended limitation may operate against a transferee for suppression committed by the original licence-holder, is a bare, short-form order rather than a reasoned judgment, discloses no discernible ratio decidendi, and does not make clear whether it even involved a bona fide transferee for value; it ought not, therefore, to be treated as laying down a binding proposition on the facts of the present case.

12. Learned Counsel for the appellant submits that **ICI India Ltd. v. Commissioner of Customs (Port), Calcutta [2005 (184) E.L.T. 339 (Cal.)**, SLP dismissed] and **Munjal Showa Ltd. v. Commissioner of Customs & Central Excise (Delhi-IV) [2022 (382) E.L.T. 145 (S.C.)]**, both relied upon by the Revenue, are factually distinguishable, since both concerned DEPB scrips/licences found to be forged and never issued by the competent authority at all — non-est instruments ab initio — whereas the DFIA licence here was genuinely issued by the DGFT and validly endorsed transferable by the Regional Authority; further, unlike a forged scrip whose status could have been verified on the DGFT portal, no verification available to the appellant could have revealed the fraud alleged to have occurred at the export-obligation stage.

13. Learned Counsel for the appellant submits, in opposition to the Revenue's threshold objection, that the question of limitation is a legitimate ground open to be urged in support of the appeal notwithstanding that no separate question was framed on it at admission, since it bears directly upon the validity of the very demand which the framed question puts in issue.

14. Learned Counsel appearing for the respondent submits that the fraud practised by Gemini Overseas went to the very foundation of the licence — the false declaration of the nature of goods exported in discharge of the export obligation — and that, relying on ICI India and Munjal Showa, a duty-free instrument tainted by fraud, whether by forgery or by material misrepresentation in procuring the certification necessary for its transferability, is rendered incapable in law of conferring exemption on any subsequent holder, irrespective of that holder's personal innocence.

15. Learned Counsel for the respondent submits that the absence of formal cancellation of the licence by the DGFT or the Regional Authority at the time of import is merely an administrative circumstance reflecting the information available to those authorities at that time, and cannot operate to validate a licence subsequently shown to rest on a fraudulent foundation.

16. Learned Counsel for the respondent submits that the appellant's bona fides, while relevant to and already given effect to in respect of personal penal liability, reflected in CESTAT's setting aside of the Section 112 penalty, cannot operate to resurrect an exemption which the underlying instrument was, on the Revenue's case, never in law capable of conferring.

17. Learned Counsel for the respondent submits, relying on Tata Iron and Steel, that the Department's want of knowledge of Gemini Overseas's fraud at the time of original clearance is itself sufficient to attract the extended period of limitation under Section 28, and that the personal innocence of a transferee does not defeat the Department's entitlement to invoke that provision where the underlying exemption was procured through fraud further up the chain.

18. Learned Counsel for the respondent submits, as a threshold objection, that no substantial question of law touching limitation was framed at the stage of admission of the appeal, nor did the appellant seek to have any such question framed at that stage; the scope of a statutory appeal under Section 130 of the Customs Act, 1962 being ordinarily confined to the question(s) formulated at admission, the appellant cannot be permitted to enlarge the scope of the appeal at the stage of final hearing.

19. Learned Counsel for the respondent submits, relying on **Commissioner of Customs, Hyderabad v. Pennar Industries Ltd. [2015 (322) E.L.T. 402 (S.C.)**; **(2015) 10 SCC 581]**, that an endorsement or amendment to a licence does not dispense with the requirement of satisfying the conditions of the underlying exemption notification, and that where those conditions are shown not to have been fulfilled, duty liability follows notwithstanding the formal existence of the licence.

20. Having heard Learned Counsel for the parties and perused the materials on record, this Court is of the view that the appeal calls for consideration principally on the footing of the sole substantial question of law framed at admission, the threshold objection concerning limitation being addressed as a preliminary matter before that question is reached.

21. On the threshold objection: it is well settled that an appeal of this nature is ordinarily confined to the substantial question(s) of law formulated at the stage of admission, though the Court retains discretion, in an appropriate case, to frame or permit argument on an additional question where satisfied that one genuinely arises from the record. In the present case, it is not disputed that no question touching limitation was framed at admission, and nothing on record suggests that the appellant made any application, at any stage after admission and before final hearing, to have such a question additionally framed. In these circumstances, this Court is not persuaded to treat limitation as an independent ground available to be urged for the first time at final hearing, and declines to determine it as a substantive basis for disposal of this appeal. This Court records, however, and as a matter bearing on the overall assessment of the record rather than as a separate finding on limitation, that the Show Cause Notice, insofar as it concerns the appellant, is silent as to any allegation of collusion, wilful mis-statement, or suppression of facts against the appellant, a feature of the record not addressed by the respondent's submission, and one this Court takes into account in weighing the equities attending the framed question, without thereby adjudicating limitation as an independent issue.

22. Turning to the substantial question of law framed at admission, the resolution of this appeal turns substantially on whether the fraud committed by Gemini Overseas, at the stage of certifying fulfilment of its export obligation, rendered DFIA Licence No. 0210100847 void and non-est from inception, as the respondent contends, or merely voidable, valid and effective until avoided by the competent authority, as the appellant contends. It is well settled, per the binding authority of the Supreme Court in East India Commercial Co. Ltd. and Sneha Sales Corporation, that a licence obtained by fraud or misrepresentation is not thereby rendered non-est; it remains good and effective in law unless and until avoided in the manner prescribed. On the present record, it is undisputed that the licence has, to date, never been cancelled by the DGFT or the Regional Authority, a fact this Court regards as material and unrebutted, and one which weighs in favour of treating the licence as having remained a subsisting, valid instrument at the time of the appellant's import.

23. The respondent's reliance on ICI India and Munjal Showa for the broader proposition that "fraud vitiates everything," so as to defeat even an innocent transferee's rights, does not squarely engage the factual distinction pressed by the appellant: both of those decisions concerned instruments, a DEPB scrip and Transfer Release Advices respectively, found to be forged and never issued by the competent authority at all, a distinct category from a licence genuinely issued by the DGFT and validly endorsed transferable by the Regional Authority, later found to rest on a fraudulent certification by a third party. No decision of this Court, nor any binding Supreme Court authority placed before it, squarely addresses this particular factual configuration, a genuinely issued and validly endorsed instrument subsequently shown to be founded on fraud at the export-obligation stage, as opposed to a forged instrument. In the absence of authority directly on point, this Court's resolution of the question necessarily turns on an extension, by analogy, of the void/voidable principle articulated in East India Commercial and Sneha Sales, rather than on settled precedent addressing this precise fact pattern.

24. On that footing, the appellant's status as a bona fide purchaser for value without notice assumes significance. It is undisputed that the appellant purchased the licence for consideration of Rs.14,51,795/- through proper banking channels, and CESTAT itself found, in setting aside the Section 112 penalty, that the appellant had no knowledge of the nature of the goods used and exported by Gemini Overseas or Eastern Silk Industries, a finding which stands unchallenged by the respondent in the present appeal. Applying the principle recognised in Taparia Overseas, a bona fide transferee for value without notice of the original fraud stands on a different footing from the party who perpetrated or was complicit in that fraud, and the general maxim that fraud vitiates everything does not, without more, extend to defeat the rights of such a transferee.

25. This Court does not consider the respondent's reliance on Pennar Industries to displace the foregoing analysis. Pennar Industrie (Supra) s concerned the original importer's own failure to fulfil the conditions of an exemption notification; it did not involve any question of a subsequent bona fide transferee's liability, and the general conditionality principle it states that fulfilment of exemption conditions cannot be dispensed with merely because a licence formally subsists does not, on its own terms, resolve the distinct question of whose default is to be visited upon whom where the default was committed by a third party upstream of an innocent transferee.

26. Nor does this Court consider Tata Iron and Steel to alter the above conclusion. As submitted by the appellant, and as this Court accepts on examination, the reported decision is in the nature of a brief order rather than an elaborated judgment, and does not disclose with clarity whether the transferee in that case stood in the same position, a bona fide purchaser for value without notice, as the appellant here. Its precedential weight on the present facts is, accordingly, limited, and this Court does not treat it as displacing the more considered and squarely applicable reasoning in East India Commercial, Sneha Sales, and Taparia Overseas.

27. For the foregoing reasons, this Court is of the view that DFIA Licence No. 0210100847, not having been cancelled by the DGFT or the Regional Authority, and the fraud attributed to Gemini Overseas having arisen at the stage of certification of export obligation rather than at issuance, must be treated, on this record, as voidable rather than void, and as having remained a valid and subsisting instrument at the time of the appellant's import; and that the appellant, being an unimpeached bona fide purchaser for value without notice of the irregularity, cannot be fastened with liability for duty, interest, and redemption fine arising from the fraud of a third party of which it had no knowledge.

28. For the foregoing reasons, this Court answers the substantial question of law formulated for consideration as follows:

> A bona fide purchaser of a duty-free import licence for value, who had no notice of any irregularity on the part of the exporter/original licence-holder who obtained the licence, and where the licence has not been cancelled by the issuing authority, cannot, on the facts and circumstances of the present case, be required to pay duty, interest, and redemption fine in respect of an import made using that licence. The question is answered in favour of the appellant and against the respondent.

29. In light of the above, the appeal is allowed. The order dated 22.12.2015 passed by CESTAT is set aside insofar as it upholds the demand of duty of Rs.22,87,654.95/-, interest thereon, and the redemption fine of Rs.15,00,000/- against the appellant; the said demand, interest, and redemption fine are quashed. The setting aside of the Section 112 penalty by CESTAT, not having been assailed by the respondent, remains undisturbed.

30. There shall be no order as to costs.

31. Urgent certified copy of this order, if applied for, be supplied to the parties upon compliance with requisite formalities.

(RAJARSHI BHARADWAJ, J)

(SUDIP DEB, J)

Kolkata
15.09.2026
PA(BS)