

## Liability to pay customs duty invocable when DEPB license is fake or forged – SC

12 October 2022



## Summary

The Supreme Court (SC) ruled that since the appellant had obtained the exemption benefit using forged/fake Duty Entitlement Pass Book (DEPB) licenses, such licenses/scrips are *void ab initio* and the Department correctly invoked the extended period of limitation. The DEPB licenses on which the appellant relied for the exemption were found to be forged, hence the exemption was no longer valid, resulting in duty liability. The SC also stated that whether the buyer was aware of the fraud or the forged/fake DEPB licenses/scrips and whether the appellant took the necessary precautions to determine the genuineness of the DEPB licenses/scrips that they purchased, would affect the imposition of the penalty but have no bearing on the duty liability. As a result, the SC directed the adjudicating authority to complete the penalty proceedings on remand as soon as possible, within six months from the date of the order.

### Facts of the case

- Munjal Showa Ltd (hereinafter referred to as appellant) imported consignments through ICD using Transfer Release Advice (TRA) issued by the Bombay Custom House.
  - Since the Revenue discovered that the TRAs issued against the DEPB licensees/scrips were forged, the appellant was required to deposit the duty with interest in lieu of the DEPB benefit.
  - The adjudicating authority confirmed the duty demand, along with interest and penalty, holding that the DEPB scrips were forged and thus *void ab initio*. As a result, the appellant's exemption was inadmissible, and the goods were subject to confiscation.
  - The Tribunal rejected the appellant's plea on the issue of duty liability but remanded the case to the original authority on the issue of penalty.
  - The appellant argued before the High Court that the Revenue could not have invoked the extended period of limitation because there were no ingredients of 'fraud' and 'intent to evade payment of duty'. However, the HC upheld the order passed by the Tribunal and held that as fraud vitiates everything, therefore, the Department was justified in invoking the extended period of limitation.
- licenses/Scrips) relied for the exemption benefit were forged and that the DEPB licenses/scrips were never issued. As a result, the exemption benefit obtained based on such forged/fake DEPB licenses/scrips would be invalid.
- **Forged DEPB licenses are void-ab-initio:** Based on the principle that fraud vitiates everything, the SC ruled that such forged/fake DEPB licenses/scrips are *void ab initio*.
  - **Extended period of limitation invocable:** When the appellant learned about the fake DEPB licences, they immediately paid the customs duty under protest. However, the fact remains that the DEPB licenses/scrips on which the appellant relied for the exemption were discovered to be forged, and thus there will be duty liability, as correctly confirmed by the Department.
  - **Penalty remanded to adjudicating authority:** The buyer's knowledge of the fraud or the forged/fake DEPB licenses/scrips, as well as whether the appellant took the necessary precautions to determine the genuineness of the DEPB licenses/scrips that they purchased, would affect the imposition of the penalty but have no bearing on the duty liability. As a result, the Supreme Court ordered that the penalty proceedings on remand be completed as soon as possible, within six months of the order's date.

### SC observations and ruling (Civil Appeal No. 2576 Of 2010 And Civil Appeal No. 5608 Of 2011 dated 23 September 2022):

- **Exemption inadmissible:** The Department discovered that the DEPB licenses/scrips on which the appellant (as buyers of the forged/fake DEPB

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## Our comments

The SC has, on many occasions, upheld the principle of *caveat emptor* which states that the buyer is solely responsible for checking or making all necessary inquiries and ascertaining all facts relating to the property/goods/documents to be purchased prior to committing in any way.

Even in the case of Aafloat Textiles India Private Limited, the SC ruled that the buyer must demonstrate that an inquiry about the authenticity of the documents was made before purchasing them and the necessary precautions were taken; otherwise, consequences must follow. When there is fraud involved, such documents do not exist in the eyes of the law, and this is sufficient to extend the period of limitation.

In line with the preceding discussion, the SC has ruled that once it is established that fraud was involved, the appellant cannot avoid duty liability regardless of whether it had knowledge of the fraud or the forged/fake DEPB licenses/scrips and whether the necessary precautions to determine the genuineness of such licenses were taken.

# Contact us

To know more, please visit [www.grantthornton.in](http://www.grantthornton.in) or contact any of our offices as mentioned below:

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## NEW DELHI

National Office,  
Outer Circle,  
L 41, Connaught Circus,  
New Delhi - 110001  
T +91 11 4278 7070

## NEW DELHI

6th Floor, Worldmark 2,  
Aerocity,  
New Delhi - 110037  
T +91 11 4952 7400

## AHMEDABAD

Unit No - 603 B, 6th Floor,  
Brigade International  
Financial Center,  
GIFT City Gandhinagar,  
Ahmedabad - 382355

## BENGALURU

5th Floor, 65/2, Block A,  
Bagmane Tridib,  
Bagmane Tech Park,  
CV Raman Nagar,  
Bengaluru - 560093  
T +91 804 243 0700

---

## CHANDIGARH

B-406A, 4th Floor,  
L&T Elante Office Building,  
Industrial Area Phase I,  
Chandigarh - 160002  
T +91 172 433 8000

## CHENNAI

9th floor, A wing, Prestige  
Polygon, 471 Anna Salai,  
Mylapore Division, Teynampet,  
Chennai - 600035  
T +91 44 4294 0000

## DEHRADUN

Suite No 2211, 2nd Floor,  
Building 2000, Michigan Avenue,  
Doon Express Business Park,  
Subhash Nagar,  
Dehradun - 248002  
T +91 135 264 6500

## GURGAON

21st Floor, DLF Square,  
Jacaranda Marg,  
DLF Phase II,  
Gurgaon - 122002  
T +91 124 462 8000

---

## HYDERABAD

Unit No - 1, 10th Floor,  
My Home Twitza, APIIC,  
Hyderabad Knowledge City,  
Hyderabad - 500081  
T +91 40 6630 8200

## KOCHI

6th Floor, Modayil Centre Point,  
Warriam Road Junction,  
MG Road  
Kochi - 682016  
T +91 484 406 4541

## KOLKATA

Unit 1603 & 1604, EcoCentre,  
Plot No 4, Street No 13,  
EM Block, Sector V,  
Bidhannagar,  
Kolkata - 700 091  
T +91 33 4444 9300

## MUMBAI

11th Floor, Tower II,  
One International Center,  
SB Marg Prabhadevi (W),  
Mumbai - 400013  
T +91 22 6626 2600

---

## MUMBAI

Kaledonia, 1st Floor,  
C Wing,  
(Opposite J&J Office),  
Sahar Road, Andheri East,  
Mumbai - 400069

## NOIDA

Plot No 19A, 2nd Floor,  
Sector - 16A,  
Noida - 201301  
T +91 120 485 5900

## PUNE

3rd Floor, Unit No 310-312,  
West Wing, Nyati Unitree,  
Nagar Road, Yerwada  
Pune - 411006  
T +91 20 6744 8800

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For more information or for any queries, write to us at [GTBharat@in.gt.com](mailto:GTBharat@in.gt.com)



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