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2010 (254) E.L.T. 652 (P&H.) [03-10-2008]

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH
Adarsh Kumar Goel and Ajay Tewari, JJ.

FRIENDS TRADING CO.

Versus

UNION OF INDIA

Customs Appeal No. 2 of 2008, decided on 3-10-2008

DEPB fraud - Cancellation of scrip - DEPB scrips found as obtained by producing forged documents and cancelled by competent authority - Duty demand on goods imported without duty using such scrip - Impugned order holding concession availed based on forged documents not retainable - View taken in impugned orders judicially approved as per High Court judgments - Impugned order sustainable - Question of law not arises - Appeal dismissed - Section 28 of Customs Act, 1962. [paras 2, 3, 5, 6, 7]

Appeal dismissed

CASES CITED

Aban Loyd Chiles Offshore Ltd. v. Commissioner — 2006 (200) E.L.T. 370 (S.C.) — *Relied on* [Para 3]
Collector v. Sneha Sales Corporation — 2000 (121) E.L.T. 577 (S.C.) — *Relied on*..... [Para 3]
Commissioner v. Essar Oil Ltd. — 2004 (172) E.L.T. 433 (S.C.) — **Noted**..... [Para 4]
Commissioner v. Leader Valves Ltd. — 2007 (218) E.L.T. 349 (P & H) — *Relied on*..... [Para 3]
Commissioner v. Parker Industries — 2007 (207) E.L.T. 658 (P & H) — **Noted**..... [Para 4]
Commissioner v. Vallabh Design Products — 2007 (219) E.L.T. 73 (P & H) — *Relied on*... [Para 3]
Coolade Beverages Ltd. v. Commissioner — 2004 (172) E.L.T. 451 (All.) — *Relied on*..... [Para 3]
East India Commercial Co. Ltd. v. Collector — 1983 (13) E.L.T. 1342 (S.C.) — *Relied on*.. [Para 3]
Golden Tools International v. Joint Director General of Foreign Trade — 2006 (199) E.L.T. 213 (P & H) — **Noted** [Para 4]
H. Guru Investment (North India) Pvt. Ltd. v. CEGAT — 1998 (104) E.L.T. 8 (All.) — *Relied on* [Para 3]
K. Uttamlal (Exports) Pvt. Ltd. v. Union of India — 1990 (46) E.L.T. 527 (Bom.) — *Relied on* [Para 3]
Munjal Showa Limited v. Commissioner — 2009 (246) E.L.T. 18 (P & H) — *Relied on*..... [Para 3]
S.P. Chengalvaraya Naidu v. Jagannath — AIR 1994 SC 853 — **Noted**..... [Para 4]
Taparia Overseas Pvt. Ltd. v. Union of India — 2003 (161) E.L.T. 47 (Bom.) — *Relied on*. [Para 3]
Union of India v. Sampat Raj Dugar — 1992 (58) E.L.T. 163 (S.C.) — *Relied on*..... [Para 3]

REPRESENTED BY : None, for the Appellant.

Shri Sanjeev Kaushik, Advocate, for the Respondent.

[Order per : Adarsh Kumar Goel, J.] - The assessee has preferred this appeal under section 130 of the Customs Act, 1962 (in short, 'the Act') against the order dated 4-4-2006 Passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi [2006 (202) E.L.T. 611 (Tribunal)].

2. The assessee imported goods against DEPB Scrips without payment of duty. It was later found that DEPB Scrips were obtained by producing forged bank certificate of export and realization. The DEPB Scrips were cancelled by the competent authority. Accordingly, demand of duty was confirmed after notice. The assessee purchased DEPB Scrips from M/s. Vivek Impex Private Limited who purchased the same from M/s. Shyam International who had purchased the same from M/s. Parker Industries. The Commissioner of Customs held that any concession availed of on the basis of DEPB Scrips obtained by producing forged documents could not be retained. This view has been affirmed by the Tribunal.

3. We examined an identical issue in our recent order dated 1-9-2007 in CUSAP No. 27 of 2008 (*M/s. Munjal Showa Limited v. Commissioner of Customs and Central Excise (Delhi (IV), Faridabad)* [2009 (246) E.L.T. 18(P & H)]. After considering the observations of the Hon'ble Supreme Court in *East India Commercial Company limited v. Collector - 1983 (13) E.L.T. 1342 (S.C.) = AIR 1962 SC 1893, Collector of Customs, Bombay v. Sneha Sales Corporation - 2000 (121) E.L.T. 577, Sampat Raj Dugar - 1992 (58) E.L.T. 163* and *Aban Loyd Chiles*

Onshore Ltd. and others v. Commissioner of Customs, Maharashtra - 2006 (200) E.L.T. 370 (S.C.) = (2006) 6 SCC 482, by the Bombay High Court in *Taparia Overseas (P) Limited v. UOI* - 2003 (161) E.L.T. 47 and *K. Uttamlal (Exports) Pvt. Limited v. UOI* - 1990 (46) E.L.T. 527 and by the Allahabad High Court in *Coolade Beverages Limited v. Commissioner of Central Excise, Meerut* - 2004 (172) E.L.T. 451 and *H. Guru Investment (North India) Pvt. Limited v. CEGAT, New Delhi*, 1998 (104) E.L.T. 8 and judgments of this Court in *Commissioner of Customs, Amritsar v. Vallabh Design Products* - 2007 (219) E.L.T. 73 and *Commissioner of Customs v. Leader Valves Ltd.* - 2007 (218) E.L.T. 349, it was held as under :-

"12. We do not find any applicability of the above judgment to the facts of the present case. In the present case, DEPB Scrips were forged, which has been admitted even by the appellant before the Tribunal. Benefit of a forged document cannot be allowed to be retained. The judgment relied upon does not in any manner lay down that benefit of a forged document could be allowed to be retained. The principle laid down in the judgment relied upon which has been followed in other judgments cannot, thus, apply to the case of the present nature where benefit has been taken on the basis of a forged document.

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19. It is settled principle of common law that a purchaser steps into the shoes of the seller and does not acquire better title than the seller. This principle has also been recognized under Section 27 of the Sales of Goods Act, 1932.

20. The charge of duty is on the goods under Section 12 of the Act unless a case of exemption is made out, irrespective of intention of any person.

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24. For the purpose of duty, the Tribunal has clearly held that the documents being forged, the appellant could not be allowed to take advantage of exemption. The Tribunal noticed that the firm with whom the appellant entered into the transaction was not traceable. The appellant itself had come to the conclusion that the documents were forged. In these circumstances, if further opportunity has been given to the appellant on its own asking and for its own benefit, we do not find any error in the course adopted by the Tribunal so as to give rise to substantial question of law sought to be raised."

4. We also made a reference to judgments of the Hon'ble Supreme Court in *S.P. Chengalvaraya Naidu v. Jagannath*, AIR 1994 SC 853 and *Commissioner of Customs v. Essar Oil Ltd.* - 2004 (172) E.L.T. 433 (S.C.) = (2004) 11 SCC 364 and judgments of this Court in *Golden Tools International v. Joint DGFT, Ludhiana* - 2006 (199) E.L.T. 213 and *The Commissioner of Customs, Commissionerate, The Mall, Amritsar v. M/s. Parker Industries, Jalandhar* - 2007 (207) E.L.T. 658.

5. In view of above, we do not find any ground to interfere with the order upholding demand of duty on goods in respect of which exemption had been availed of on the basis of DEPB Scrips obtained against forged documents.

6. No substantial question of law arises.

7. The appeal is dismissed.
