

**Fertichem India Vs. C.C.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Jun-16-2006

**Reported in :** (2006)(110)ECC663

**Judge :** M Ravindran

**Appellant :** Fertichem India

**Respondent :** C.C.

**Judgement :**

1. This stay application is directed against demand of duty on imports made by the applicant against DEPB scrips.
2. The issue involved in this case is covered by the decision of the Larger Bench of the Tribunal. Hence, waiver of pre-deposit of duty is granted and appeal itself is taken up for disposal with the consent of both sides.
3. Considered the submissions made by both sides and perused the record. I find that the appellants have purchased DEPB Scrips from M/s.

ATM International. Later on investigation it was found that M/s. ATM International have obtained/procured these DEPB Scrips fraudulently i.e. by submitting forged bank realization certificate. The appellant imported consignment against these DEPB Scrips on 3.2.2000 and they were issued show cause notice in June, 2002. I find that the issue involved in this case is regarding demand of duty foregone by the Revenue in respect of DEPB Scrips produced by the appellants. The

transferee was not aware that DEPB Scrip which is purchased by him were obtained by the transferor by submitting forged bank realization certificate. An identical issue was before the Larger Bench of the Tribunal in the case of Hico Enterprises v. C.C., Mumbai 2005 (71) RLT 225 (CESTAT-LB) wherein at paragraphs 32 and 33 it was held as under: 32. The issue referred to the Larger Bench is covered by the decision of Bombay High Court in Taparia Overseas - (a) The very issue has been decided by the Bombay High Court in Taparia Overseas (P) Ltd. 2003 (161) ELT 47 (Bom.) After referring to various decisions and the book titled 'Keer on Law of Fraud of Mistake', it is held as under: It is thus no doubt true that as a general rule, if a transaction has been originally founded on fraud, the original vice will continue to taint it, and not only is the person who has committed fraud is precluded from deriving any benefit under it, but an innocent person is so likewise, unless there has been some consideration moving from himself. In the cases at hand, it is not in dispute that all the petitioners had obtained licences for valuation consideration without any notice of the fraud alleged to have been committed by the original licence holders while obtaining licences. If that be so, the concept that fraud vitiates everything would not be applicable to the cases where the transaction of transfer of licence is for value without notice arising out of mercantile transactions, governed by common law and not by provisions of any statute.

(b) This decision was followed by the Bombay High Court itself in Sanjay Sanwormal Agarwal v. UOI 2004 (61) RLT 967 (Bom) : 2004 (169) ELI 261 (Bom.). In this case, it has been held in respect of advance licence under EXIM Policy. The licence of the transferee was suspended by the Licensing Authority on the ground of initiation of enquiry by customs authorities against the transferor and imported goods of the transferee were seized. The licence was transferred on completion of export obligation and after audit of DEC books by customs authorities. IN such circumstances, it is observed that the customs authorities were wrong in not accepting the licence and goods were not liable to duty entitling the petitioner to claim refund of duty paid under protest.

33. Where transfer has been effected without notice to the transferee of alleged fraud, the concept of fraud vitiates everything is not applicable as licence was

transferred for value arising out of importable transaction governed by any law.

4. The decision of the Larger Bench squarely covers the issue in the present case before me. Accordingly, impugned order is liable to set aside, and I do so. Appeal is allowed with consequential relief, if any.

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