(2008) 10 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Friends Trading Co. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 03-10-2008

Acts Referred:

Customs Act, 1962 — Section 12, 130
Sales of Goods Act, 1932 — Section 27

Citation : (2010) 254 ELT 652

Hon'ble Judges : Ajay Tewari, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—The assessee has preferred this appeal u/s 130 of the Customs Act, 1962 (in short, ''the Act'') against the order dated 4-4-2006 Passed by the 2006 (109) ECC 639 .

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 (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 Co. Ltd.,Calcutta and Another Vs. The Collector of Customs, Calcutta, , Collector of Customs, Bombay v. Sneha Sales Corporation 2000 (121) E.L.T. 577, Union of India and another Vs. Sampat Raj Dugar and another, and Aban Loyd Chiles

Offshore Limited and Others Vs. Commissioner of Customs, Maharashtra, , by the Bombay High Court in Taparia Overseas (P) Ltd. and Another Vs. Union of India (UOI) and Others, and K Uttamlal (Exports) Pvt. Ltd. Vs. Union of India, and by the Allahabad High Court in Coolade Beverages Ltd. Vs. Commissioner of Central Excise, and H. Guru Investment (North India) Pvt. Ltd. Vs. CEGAT, and judgments of this Court in Commissioner of Customs, Amritsar v. Vallabh Design Products 2007 (219) E.L.T. 73 and Commissioner, Customs Vs. Leader Valves, Ltd., 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 Scrip''s 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.

xxx xxx xxx xxx 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 u/s 27 of the Sales of Goods Act, 1932.

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

xxx xxx xxx xxx 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 (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, and Commissioner of Customs, Kandla Vs. Essar Oil Limited and Others, 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. Parker Industries, Jakndhar 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.

