

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/1843 - 1844/2009 – SM [BR]

Date 22/09/2011

Assistant Registrar
C.E.S.T.A.T, New Delhi

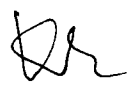
To :
M/S METAL ALLOYS,
OLD GRAIN MARKET, JAGADHARI.
M/S METAL ALLOYS,

Appellant

Vs
Respondent

C.C.E. PANCHKULA

I am directed to transmit herewith a certified copy of **Final order No. 625 – 626 / 2011-SM[BR]** dated 13.9.2011
passed by the Tribunal under **Section 35-C(1) of Central Excises Act, 1944**


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. PANCHKULA
SCO NO. 407 AND 408, SECTOR 8,
PANCHKULA (HARYANA) 134119.

2. Adv. / Consult

MR.NAVEEN MULLICK
B-388, MERA BAGH, NEW DELHI-63.

3. C.D.R

4. Bar association. CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New

6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -

7. Company Law Institute of India Pvt Ltd., No.2 (Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -

9. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road,
Ahmedabad-15

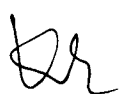
10. LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Haryana)

11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070

12. Office Copy

13. Guard file

[2] **M/S SARASWATI IMPEX,**
BILASPUR ROAD, JARODA GATE, JAGADHRI.


Assistant Registrar
(SM Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram,
NEW DELHI**

COURT-II

Central Excise appeal No. 1843-844 of 2009-SM

Date of hearing/decision: 13th September, 2011

M/s. Metal Alloys,
M/s. Saraswati Impex

Appellants
Reptd. By Shri Naveen Mullick, Advocate

Versus

CCE, Panchkula

Respondent
Rept. By Shri S.K. Bhaskar, SDR

Coram: Hon'ble Shri D.N. Panda, Judicial Member;

FINAL ORDER NO.

DATED

625-626/2011 SM (Br)

Per D.N. Panda:

Shri Naveen Mullick, learned Counsel submits that M/s. Metal Alloys was not beneficiary of fraudulent transaction, if any made by seller of goods M/s. Saraswati Impex, Jagadhari. When the department failed to establish its case without showing that the appellant has joined hands with Sulabh Implex no case can be made out against these two appellants. The authorities did not verify the record about procurement of goods which has suffered duty and used by the appellant in manufacture and trade respectively. In such circumstances these two appellants should not face consequence of adjudication.

2. Learned D.R. on the other hand brings out that the Appellate Authority has rightly held against the appellant when fraud was noticed.

3. Heard both sides and perused the record.

4. Para 7 of appellate order is self explanatory to hold that these appellants are beneficiary of fraudulent transaction made by Sulabh Impex. When Sulabh Impex issued invoices on fake bill of entry which could be ascertained from ICD, Tuglakhabad as is apparent from Para 16 of adjudication order there is no scope to hold these two appellants to be innocent. If the appellant's prayer is allowed that shall amount ^{to perpetuating} illegality and shall be ^{contrary} to ^{settled} principles of law. Finding that the Appellate Authority had brought out the fact of the fraud, these two appellants should not be permitted to enjoy the fruit thereof. Accordingly both the appeals are dismissed. Such decision has been taken following the decision of Hon'ble Punjab & Haryana High Court in the case of Friends Trading Co. vs. UOI - 2011 (267) ELT 33 (P&H) upheld by the Hon'ble Apex Court by dismissal of SLP filed by Friends Trading Co. So also to hold that appeal should be dismissed ^{when} Hon'ble Calcutta High Court in the case of ICI Ltd. has laid down the ratio ~~to hold~~ that fraudulent cases shall not get any immunity on the plea of limitation as ^{has been} laid down by Apex Court in the case of Candid Enterprises - 2001 (130) ELT 404 (S.C.).

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK