

2013 (2) ECS ( 7) (J&K-HC)

**HIGH COURT OF JAMMU AND KASHMIR AT JAMMU**

Present : Hon'ble Mr. Justice M. M Kumar – Chief Justice

Hon'ble Mr. Justice Mansoor Ahmad Mir – Judge

EXAP No. D-1/2013 CMP no. D-1/2013

**Met Trade India Ltd. 152, SICOP Industrial Area**

**Versus**

**Commissioner Central & Custom Office, Jammu**

Met Trade India Ltd. 152, SICOP Industrial Area  
Kathua (J & K) Through Authorized Signatory  
Sh. Malkhan Singh, Age 52 years S/o Sh. Shiv Ram Singh  
R/o 139 – A “O” Block Yashoda Nagar, Kanpur  
At present 152, SICOP  
Industrial Estate, Kathua

...Appellant

Versus

Commissioner Central & Custom Office,  
Jammu

...Respondent

EXAP No. D-1/2013 CMP no. D-1/2013

Date of order: 07.03.2013

**“The party mis – representing facts before the Court with the object of securing interim relief would be rendered disentitled to opportunity of hearing the matter on merit. Once the Tribunal has found that the interim order was secured by the appellant by practicing misrepresentation then no option is left with the Tribunal to non – suit the appellant on principle and precedent. It is established beyond doubt that such fraudulent misrepresentation has no place in the judicial administration.” [Para 10]**

## **M.M. Kumar CJ**

1. This is an appeal filed under Section 35 – G of the Central Excise Act, 1994 Challenging final order dated 31.08.2005 passed by the learned Customs, Excise and Service Tax Appellate Tribunal Principal Bench, New Delhi (for brevity the 'Tribunal'). The Tribunal has noticed all the false assertions made by the appellant that the demanded amount of Rs. 3,06,65,035/- confirmed against it had already been recovered. An application was filed for waiving the condition of pre – deposit of interest and penalty, which was sine qua non for hearing of the appeal. The Tribunal vide order dated 15.2.2012 waived the condition of pre-deposit of interest and penalty. The respondent – Department moved a miscellaneous application No. E/446/12 clarifying that the appellant did not deposit the entire amount of duty and sought rectification of order dated 15.2.2012. The concerned Commissioner filed an affidavit in support of the application stating that the appellant had deposited only Rs. 58,28,711/- on 27.7.2011. On the date of hearing on 27.7.2012 before the Tribunal the appellant controverted the assertion made by the Revenue and the Tribunal directed the appellant to produce proof of deposit of the whole duty demand on 31.08.2012. this factual position was accepted by counsel for the appellant. It is thus obvious that the appellant misled the Tribunal with regard to deposit of duty demand.
2. It is in the aforesaid facts and circumstances that the Tribunal proceeded to observe in para 7 as under :-

“From the above it is clear that the appellant has not deposited the duty demand confirmed against him and the appellant has obtained the stay and by practicing fraud as such stay order dated 15.02.2012 is recalled and stay application is dismissed.”
3. It is needless to observe that bare perusal of Section 35 F of the Central Excise Act, would show that when the goods which were subject matter of dispute are not under the control of Central Excise authorities, then the person keen to appeal against the impugned order is required to deposit the duty demand with the adjudicating authorities as a pre – condition of hearing of appeal unless condition of pre – deposit is dispensed with by the Tribunal.
4. The appellant did not apply for dispensing with the condition of pre – deposit of duty demand by misleading the Tribunal that the whole amount determined by the Revenue had been deposited. Accordingly, the appeal filed by the appellant

was dismissed. Feeling aggrieved the appellant has approached this Court by filing appeal under Section 35 G.

5. Notice of motion. Mr. Pyuish Gupta accepted notice on behalf of the respondents.
6. With the consent of the parties, the appeal is taken on board and the arguments have been heard.
7. Mr. Sharma, learned counsel for the appellant has not been able to show any justification for making a deliberate attempt to mis – lead the Court for the purpose of acquiring interim relief. All that has been submitted by Mr. Sharma is that there was typographical error which created wrong impression in the mind of the Tribunal. However, such a stand taken by the appellant cannot be accepted, because in paras (a) (b) & (c) of the memorandum of appeal the appellant has claimed in categorical terms that the amount of duty demand had already been paid, then there is no question of any typographical mistake and the argument in that regard cannot be accepted.
8. It is well settled that fraud vitiates all acts. In case of S.P. Chengalvaraya Naidu v Jagannath & ors (1994)1 SCC 1, Hon'ble the Supreme Court quoted Edward Coke of England who held that "fraud avoids al judicial acts, ecclesiastical or temporal". The view has been followed in the case of A.V. Papayya Sastry and ors v. Govt. of A.P. and ors (2007) 4 SCC 221 and K.D. Sharma Steel Authority of India Ltd. And ors (2008) 12 SCC 481. In para 22 of the judgment pertinent observations have been made which arm the Courts to declare any fraudulent judgment as a nullity at any time and the same reads as under :-

"22. It is thus settled proposition of law that a judgment decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of law. Such judgment decree or order – by the first court or by the final court has to be treated as nullity by every court. Superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or eve collateral proceedings.

9. In K D Sharma's case (supra) the Court summed up the definition of expression 'fraud' as under :-

"The Court defined fraud as an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one

gains at the loss and cost of another. Even the most solemn proceedings stand vitiated if they be actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam.'

10. A perusal of the aforesaid principle of law would clearly bring out that the party mis – representing facts before the Court with the object of securing interim relief would be rendered disentitled to opportunity of hearing the matter on merit. Once the Tribunal has found that the interim order was secured by the appellant by practicing misrepresentation then no option is left with the Tribunal to non – suit the appellant on principle and precedent. It is established beyond doubt that such fraudulent misrepresentation has no place in the judicial administration. There is no substantial question of law within the meaning of Section 35 G of the Act, which may warrant admission of the appeal.
11. Accordingly, appeal fails and the same is dismissed.