IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 1153 of 2011
With
TAX APPEAL No. 1116 of 2011
To
TAX APPEAL No. 1118 of 2011
With
TAX APPEAL No. 1120 of 2011
To
TAX APPEAL No. 1125 of 2011
With
TAX APPEAL No. 1127 of 2011
To
TAX APPEAL No. 1130 of 2011
With
TAX APPEAL No. 1132 of 2011
With
TAX APPEAL No. 1143 of 2011
To
TAX APPEAL No. 1147 of 2011
With
TAX APPEAL No. 1149 of 2011
With
TAX APPEAL No. 1153 of 2011
With
TAX APPEAL No. 1184 of 2011
With
TAX APPEAL No. 1364 of 2011
With
TAX APPEAL No. 1365 of 2011
With
TAX APPEAL No. 23 of 2012
To
TAX APPEAL No. 24 of 2012
With
TAX APPEAL No. 1148 of 2011
With
CIVIL APPLICATION No. 432 of 2011
In
TAX APPEAL No. 1148 of 2011
With
CIVIL APPLICATION No. 441 of 2011
In
TAX APPEAL No. 1147 of 2011
With
TAX APPEAL No. 1530 of 2011
With
CIVIL APPLICATION No. 514 of 2011
In

TAX APPEAL No. 1530 of 2011
With
TAX APPEAL No. 1415 of 2011
With
CIVIL APPLICATION No. 485 of 2011
In
TAX APPEAL No. 1415 of 2011
With
TAX APPEAL No. 285 of 2012
With
CIVIL APPLICATION No. 109 of 2012
In
TAX APPEAL No. 285 of 2012

For Approval and Signature:

HONOURABLE **THE CHIEF JUSTICE**
MR.BHASKAR BHATTACHARYA
AND
HONOURABLE **MR.JUSTICE J.B.PARDIWALA**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?`
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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PRAYAGRAJ DYEING & PRINTING MILLS PVT LTD & ORS.
Versus
UNION OF INDIA & ORS.

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Appearance :
MR DEVAN PARIKH with MR MUKESH N VAIDYA and MR PARESH DAVE, MS. DILBUR CONTRACTOR and PR NANAVATI for Appellants.
MR PS CHAMPANERI with MR RJ OZA for respondent : 2
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CORAM :	HONOURABLE THE CHIEF JUSTICE MR.BHASKAR BHATTACHARYA
	and
	HONOURABLE MR.JUSTICE J.B.PARDIWALA

Date : 28/09/2012

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE
MR.BHASKAR BHATTACHARYA)

1. These appeals under Section 35G of the Central Excise Act, 1944 [“the Act”], arising out of the common order dated January 24, 2011, passed by the Central Excise, Customs & Service Tax Appellate Tribunal, Ahmedabad [“the Tribunal”], were analogously taken up for hearing as similar questions of law are involved in these appeals. For the sake of brevity, we propose to narrate the facts from Tax Appeal No. 1153 of 2011 [M/s. Prayagraj Dyeing & Printing Mills v. Union of India & Anr.].

2. The case made out by the appellant may be epitomized thus:

2.1 The appellant is a process house, registered under Rule 9 of Central Excise Rules, 2002 [“Rules of 2002”] and holds a valid Central Excise Registration for the processing of grey fabrics received from traders/merchants on job-work basis since last several years and was enjoying the deemed credit facility for the grey fabrics received from the traders/merchants up to March 31, 2003 and was paying duty after availing deemed credit granted in accordance with the notifications issued from time to time.

2.2 The said deemed credit facility was withdrawn and actual credit facility under Cenvat Credit Rules, 2002 was introduced for the first time on textile and textile articles w.e.f. April 1, 2003 and several simplified deeming provisions were introduced by several notifications, circulars and instructions to implement the Cenvat Credit Scheme of textile and textile articles manufacturers.

2.3 Accordingly, Notification No. 20/2003-CE dated March 25, 2003 and Notifications No. 24 to 26/2003-C.E. [N.T.] were issued amending the relevant provisions of Central Excise Rules and Cenvat Credit Rules to cover the chain of Cenvat Credit Scheme on textile and textile articles.

2.4 Rule 7 of Cenvat Credit Rules, 2002 [“Rules of 2002”] provides for the documents for taking of credit on inputs used in the manufacture/processing of the goods. The said Rule, as it existed prior

to substitution by the present sub-rule (e) rule 1, and relevant for our purpose is quoted below:-

> *"7. Documents and accounts. - (1) The CENVAT credit shall be taken by the manufacturer on the basis of any of the following documents, namely :-*
>
> *(a) an invoice issued by -*
> *(i) a manufacturer for clearance of -*
> *(I) inputs or capital goods from his factory or from his depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;*
>
> *(II) inputs or capital goods as such;*
>
> *(ii) an importer,*
>
> *(iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;*
>
> *(iv) a first stage dealer or a second stage dealer,*
>
> *in terms of the provisions of Central Excise Rules, 2002;*
>
> *(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or from his depot or from the premises of the consignment agent of the said*

manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty of customs leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any willful mis-statement or suppression of facts or contravention of any provisions of the Act or of the Customs Act, 1962 or the rules made thereunder with intent to evade payment of duty.

Explanation. - For removal of doubts, it is clarified that supplementary invoice shall also include Challan or any other similar document evidencing payment of additional amount of additional duty of customs leviable under section 3 of the Customs Tariff Act;

(c) a bill of entry;
(d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office.
(e). xxx xxx xxx xxx xxx xxx xxx xxx xxx
(f) a challan, referred to in rule 8A.
(1A) CENVAT credit under rule 3 shall not be denied on the grounds that any of the documents mentioned in sub-rule [1] does not contain all the particulars required to be contained therein under these rules, if such document contains details of payment of duty, description of the goods, assessable value, name and address of the factory or warehouse:

Provided that the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of a manufacturer intending to take

CENVAT credit is satisfied that duty due on the inputs has been paid and such inputs have actually been used or are to be used in the manufacture of final products, and such Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall record the reasons for not denying the credit in each case.

(2) The manufacturer or producer taking CENVAT credit on inputs or capital goods shall take all reasonable steps to ensure that the inputs or capital goods in respect of which he has taken the CENVAT credit are goods on which the appropriate duty of excise as indicated in the documents accompanying the goods, has been paid.

Explanation. - The manufacturer or producer taking CENVAT credit on inputs or capital goods received by him shall be deemed to have taken reasonable steps if he satisfies himself about the identity and address of the manufacturer or supplier, as the case may be, issuing the documents specified in rule 7, evidencing the payment of excise duty or the additional duty of customs, as the case may be, either -

(a) from his personal knowledge; or
(b) on the strength of a certificate given by a person with whose handwriting or signature he is familiar; or
(c) on the strength of a certificate issued to the manufacturer or the supplier, as the case may be, by the Superintendent of Central Excise within whose jurisdiction such manufacturer has his factory or the supplier has his place of business,

and where the identity and address of the manufacturer or the supplier is satisfied on the strength of a certificate, the manufacturer or producer taking CENVAT credit shall retain

such certificate for production before the Central Excise Officer on demand.

(3) The CENVAT credit in respect of inputs or capital goods purchased from a first stage or second stage dealer shall be allowed only if such dealer has maintained records indicating the fact that the inputs or capital goods were supplied from the stock on which duty was paid by the producer of such inputs or capital goods and only an amount of such duty on pro rata basis has been indicated in the invoice issued by him.

(4) The manufacturer of final products shall maintain proper records for the receipt, disposal, consumption and inventory of the inputs and capital goods in which the relevant information regarding the value, duty paid, the person from whom the inputs or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer taking such credit.

(5) The manufacturer of final products shall submit within ten days from the close of each month to the Superintendent of Central Excise, a monthly return in the Form 1 annexed to these rules.

Explanation. - In respect of a manufacturer avaialing of any exemption based on the value or quantity of a clearances in a financial year, the provisions of this sub-rule shall have effect in that financial year as if for the expression "month", the expression "quarter" was substituted.

(6) A first stage or a second stage dealer, as the case may be, shall submit within fifteen days from the close of each quarter of a year to the Superintendent of a Central Excise, a return in form-2 annexed to these rules."

2.5 On introduction of the Cenvat scheme on textile and textile

articles, an amendment was made in Rule 7 of the Cenvat Credit Rules, 2002 *vide* Notification No. 28/2003-CE[NT] dated April 1, 2003 by which endorsed invoices for taking input credit were introduced. The said amended provision is quoted below:-

> *"(e) any of the documents referred to in clauses (a) to (d), issued in the name of a person,-*
>
> *(a) involved in purchase and sale of yarns or fabrics falling under Chapter 50, 51, 52, 53, 54, 55, 58 or 60, or made up textile articles falling under Chapter 63 of First Schedule to the Tariff Act; or*
> *(b) undertaking activities pertaining to manufacture of yarns or fabrics falling under Chapter 50, 51, 52, 53, 54, 55, 58 or 60, readymade garments falling under Chapter 61 or 62 or made up textile articles falling under Chapter 63 of First Schedule to the Tariff Act, which is either fully exempt from duties of excise or are chargeable to "Nil" rate of duty or the said activity not amounting to manufacture,*
>
> *being endorsed in full for the entire consignment covered under the said document by the said person to any other manufacturer, producer, first stage dealer or second stage dealer.*
>
> *Explanation:- For the removal of doubt, it is clarified that the manufacturer, producer, first stage dealer or second stage dealer, as the case may be, in whose name such endorsement has been made, shall not be denied the credit merely on the grounds that the description of the goods mentioned in such an endorsed document has undergone a change on account of such an activity been undertaken by such person, as referred to in sub clause (ii) of this clause on the said goods.';"*

2.6 The aforesaid notification was further explained by issuing a circular by the Central Board of Excise & Customs *vide* No. 713/29/2003-CX dated May 7, 2003 which is quoted below:

> *"Issue No.3 :*
>
> *The traders of textiles and textile articles have been permitted (vide Notification No.28/2003-C.E. (N.T.), dated 1-4-2003) to endorse in full, their purchase documents in favour of a manufacturer, producer or another dealer without obtaining registration. However, in case the quantity purchased under one invoice is to be sold in parts (to different persons), such a trader has to obtain dealer's registration. It has been reported that in certain cases the field formations insist upon bringing such purchased goods by the trader to his registered premises first before such subsequent sale under endorsed invoice or dealer's invoice can be made. It is clarified that there is no obligation provided under the Cenvat Credit Rules, 2002 whereunder the trader has to necessarily bring the goods to his registered premises before selling the same. In many a cases, these goods are sold even without unloading from transport or even during transit. Thus, it is clarified that there is no requirement for the traders to necessarily bring the goods to their premises before they are being sold. Such resale can take place from the transporters premises or before such goods are unloaded from the vehicle or even during the transit of the goods. The registered dealer is, however, under obligation to maintain account of all the goods purchased, sold or have under stock. He is also required to maintain the accounts regarding the credit on the goods received by him and the credit that has been passed on to the subsequent buyer."*

2.7 In view of the above clarification, the endorsed invoices, endorsed in full by persons, were permissible documents in terms of Rule 7[1] [3] of the Rules of 2002 and the said persons are deemed manufacturers for the purpose of compliance of reasonable steps enumerated in sub-rule [2] of Rule 7 of the Rules of 2002 which are deeming provisions for taking credit.

2.8 Accordingly, the appellant was receiving grey fabrics from the traders/merchants [supplier of grey fabrics] for processing on job work on the basis of endorsed invoices in full which were entered in statutory input register and duly processed fabrics were recorded in the finished goods register and cleared to the said supplier traders/merchants on payment of duty under the Central Excise invoices. The said supplier traders/merchants made payment of the process charges etc. and the said supplier traders'/merchants' names and addresses are also recorded. Accordingly, the appellant had complied with the provisions of reasonable steps prescribed under sub-rule [2] of Rule 7 of the Rules of 2002.

2.9 The Central Board of Excise and Customs issued Circular No. 713/29/2003-CX dated May 7, 2003 clarifying that when the invoices are endorsed in full, no separate registration is required and the supplier traders/merchants are deemed manufacturers.

2.10 As statutorily prescribed under the Cenvat Excise Law, the appellant was filing statutory monthly returns along with Cenvat abstract every month to the concerned Central Excise authority having jurisdiction over the unit of the appellant who had acknowledged the said monthly returns for the relevant months. Since no other information was required to be furnished except statutorily prescribed in the said monthly return form in the form of ER-1, there was no suppression of fact etc. on the part of the appellant.

2.11 The appellant was served with a show cause notice dated October 3, 2007 on the ground that during the month of June 2004 and July 2004, the credit taken by the appellant on the basis of the said endorsed invoices was not correct as the invoices issued by the grey manufacturers registered under Rule 12B/dealers were not in existence and fake, as declared in respective Alert Circulars issued after cessation of the scheme. The demand was made invoking extended period under proviso to Section 11A [1] of the Act.

2.12 The show cause notice was contested by the appellant on the ground that the input credit was correctly taken in view of the amended provisions for endorsed invoices as the supplier traders/merchants are declared as deemed manufacturers in terms of the amendment made in Rule 7[1][e] and the clarification issued *vide* CBEC's Circular No. 713/29/2003-CX dated May 7, 2003 when invoices

are endorsed in full and the grey fabrics are received under suppliers' challan along with endorsed invoices and the reasonable steps enumerated in sub-rule [2] of Rule 7 of Rules of 2002 are complied with and at the same time, the supplier traders/merchants are in existence and their names and addresses are correct as the appellant is not required to go one step behind to the said supplier traders/merchants as the appellant is job worker for grey fabrics received through the said supplier traders/merchants and the appellant is not the buyer of the grey fabrics.

2.13 The appellant also contended that there was no fault on the part of the appellant for taking credit on endorsed invoices for the grey fabrics received as the appellant disclosed all the information in the monthly returns and cenvat abstract filed every month and therefore, the extended period under proviso to Section 11A [1] was not applicable and the demand beyond the normal period of one year was time barred. Over and above, the principle laid down by this Court in the case of **Sheela Dyeing and Printing Mills Pvt. Ltd**., reported in **2008 [232] ELT 408 [Guj.]** was not applicable as the limitation was not subject-matter of the said order.

2.14 It appears that the adjudicating authority, by order dated February 26, 2008 confirmed the demand and imposed penalty and recovery of interest. Being dissatisfied with the said order, an appeal was preferred to the Commissioner [Appeals], who dismissed the

appeal *vide* order dated August 27, 2009.

2.15 Being dissatisfied with the order dated August 27, 2009, passed by the Commissioner [Appeals], the appellant preferred an appeal before the Tribunal and the appellant raised all the issues of similar nature but the Tribunal below disposed of all the appeals by common order dated January 24, 2011 and remanded the matter to the original adjudicating authority to decide the issue afresh.

Being dissatisfied with the order passed by the Tribunal, these appeals have been preferred.

3. It appears that this Bench, *vide* order dated February 29, 2012 admitted these appeals on the following substantial questions of law:

(1) Whether the Tribunal below committed substantial error of law in holding that the show cause notice issued to the appellant on the basis of Alert Circulars was valid in law when no evidence except Alert Circulars was relied upon for issuing the show cause notice.

(2) Whether the Tribunal below committed substantial error of law in holding that reasonable steps as enumerated under Rule 7(2) Cenvat Credit Rules, 2002 are not complied with by the appellant because the original manufacturer of fabrics were alleged to be fictitious though the supplier of the fabrics who directly dealt with the appellant are existing parties.

(3) Whether the Tribunal below committed substantial error of law in holding that the appellant had not taken "reasonable steps" within the meaning of the explanation to Rule 7(2) of the Cenvat Credit Rules, 2002, by totally misinterpreting the same.

(4) Whether the Tribunal below committed substantial error of law in holding that the word "supplier" takes within its fold the traders/ merchants who endorsed the invoices, as per the provisions of Rule 7(1)(e) of the Cenvat Credit Rules, 2002.

(5) Whether the Tribunal below committed substantial error of law in arriving at conclusion that the question as to whether the original manufacturer is fictitious or not is irrelevant to a case like the present one under Rule 7(1)(e) read with Rule 7(2) of the Cenvat Credit Rules, 2002.

(6) Whether the Tribunal below committed substantial error of law in not appreciating that the appellant could not be saddled with the demand in light of the provisions of Rule 12(B) which renders the dealers as the persons who are chargeable to duty on the processed fabrics.

(7) Whether the Tribunal below committed substantial error of law in relying upon the principle laid down by this Court in the case of Sheela Dyeing and Printing Mills Pvt. Ltd., reported in 2008(232) ELT 408, where the facts are totally different from the one involved in this case.

(8) Whether the Tribunal below committed substantial error of law in holding that the demand in question is not barred by limitation in the facts of the present case and that the larger

period of limitation is applicable.

4. Mr. Parikh, the learned Senior Advocate appearing on behalf of the appellant, at the outset, submitted before us that there is a basis disconnect as per the scheme of the Act and the Cenvat Rules between the actual payment of duty and taking credit. According to Mr. Parikh, the liability to pay duty is of the manufacturer and when he clears the goods, the purchaser pays full price of the goods which includes the duty element. As a result, Mr. Parikh continues, the Purchaser thereby indirectly suffers duty and in light of the aforesaid fact, he is allowed to take credit. Mr. Parikh submits that the legislature in its wisdom has provided for a disconnect between the actual payment of duty by the manufacturer on the one hand and the credit being taken by a purchaser who pays duty on the other hand. Mr. Parikh points out that the manufacturer actually pays the duty before the 5th of every succeeding month, following the month in which he makes clearances. If such a manufacturer, for whatsoever reason, is unable to pay the duty, according to Mr. Parikh, the credit is not to be disallowed to all the persons who have purchased these goods within that month. Mr. Parikh points out that the aforesaid issue is settled by a circular issued by the Board itself, being circular No. 766/82/2003-CX dated 15/12/03 and such circular is binding upon the Revenue.

4.1 Even otherwise, according to Mr. Parikh, if one looks at the

provisions of rule 7 of the Cenvat Credit Rules 2002, the credit is to be taken on the basis of the documents prescribed there under. Thus, Mr. Parikh contends, once the purchaser produces the documents prescribed in rule 7, he is entitled to avail of the credit.

4.2 Mr. Parikh further submits that the goods that are manufactured may pass through various chains of purchasers before they reach another manufacturer, who may use the same as inputs and there is no need for such subsequent manufacturer to know each and every person in this chain of transactions. According to Mr. Parikh, the law does not require the purchaser to convert himself into an intelligence officer before he can take the credit. Mr. Parikh submits that the market is flooded with goods traded by various persons and for that reason, the legislature has provided that the purchaser can avail the credit and there is no relation between taking the credit as such and the original manufacturer having not paid duty. Mr. Parikh contends that if the original manufacturer does not pay the duty, the department can always take action against him for payment of the same but for such a situation, the purchaser availing credit cannot be made to suffer.

4.3 Mr. Parikh further submits that in this case, it is not even disputed that the original manufacturer who manufactured the grey fabrics was actually registered with Central Excise and he has actually filed Returns and the purchaser is a merchant-manufacturer. Mr.

Parikh points out that the Purchaser has then sent these goods to the present appellants for carrying out the job work and it is the present appellants who have taken the credit, which is sought to be reversed by the central excise authority on the ground that the original manufacturer is not traceable.

4.4 Mr. Parikh contends that in light of the principles expounded above, the basic case of the department of seeking to recover the credit, merely because the purchaser is a non-entity, is on the face of it, not sustainable. According to Mr. Parikh, the department cannot escape their responsibility to find out the person who was originally registered with them and to pursue him for payment of the duty. Mr. Parikh points out that the goods were purchased by merchant-manufacturer officially and they have suffered duty thereof, and amount has been paid through cheques.

4.5 In the aforesaid circumstances, according to Mr. Parikh, it is ex-facie wrong to even suggest that the invoices are fake invoices. He contends that the invoices are clearly genuine, which are accounted for in Returns of the person registered with the Central Excise and merely because the manufacturer cannot be found, for that reason, the invoices cannot be described as bogus, fake or fraudulent.

4.6 Mr. Parikh further submits that the period relates to much earlier one and merely because today the original manufacturer

cannot be found, does not mean that he did not exist at the relevant of point of time. According to Mr. Parikh, the department cannot on the basis of the present investigation arrive at a finding that at the relevant point of time, such a manufacturer did not exist. In any case, according to Mr. Parikh, the present appellants or the merchant-manufacturer for whom the appellants carried out the job work has little connection with these facts.

4.7 Mr. Parikh further submits that the issue stands directly covered by judgment of this Court in the case of **COMMISSIONER OF CENTRAL EXCISE v/s D.P. SINGH** reported in **2011 (27) ELT 321**. In the said case, the original manufacturers were found to be non-existent. They had cleared the goods to one Unique Exports who sold the goods to Roman Overseas and Roman Overseas exported the goods, after taking Cenvat credit. It was the case of the Department even in that case, that the Cenvat credit was wrongly availed of as the invoices are issued by non-existent firms. In paragraphs 10 and 11 of the judgment, it was held that the purchaser purchased the goods after payment of the duty and though it is a fact that the goods were not duty-paid, the Roman Overseas was not party to any fraud, and hence, it was held that the credit could not be said to have been wrongly availed.

4.8 In similar circumstances, according to Mr. Parikh, the consistent view of the Tribunal also is that once the receipt of goods is not

disputed by a person taking credit, and necessary invoices are issued, he is entitled to take credit irrespective of whether the original manufacturer paid duty or not. In support of such contention, Mr. Parikh relies upon the following decisions of the Tribunal/High Court:-

(i) R.S. INDUSTRIES vs. COMMISSIONER OF CENTRAL EXCISE, NEW DELHI-1 reported in 2003 (153) ELT 114 [Tri-Delhi]

(ii) COMMISSIONER OF CENTRAL EXCISE vs ROCKET ENGINEERING CORPORATION LTD reported in 2008 (220) ELT 347 (Bom.) [High Court of Judicature at Bombay]

(iii) COMMISSIONER OF CENTRAL EXCISE, PONDICHERRY vs. SPIC PHARMACEUTICALS DIVISION reported in 2006 (199) ELT 686 [Tri. Chennai]

(iv) BHAIRAV EXPORTS vs. COMMISSIONER OF CENTRAL EXCISE, MUMBAI reported in 2007 (210) ELT 136 [Tri-Mumbai]

(v) BHUWALKA STEEL INDUSTRIES LTD. vs. COMMISSIONER OF CENTRAL EXICSE, THANE-1 reported in 2007 (212) ELT 63 [Tri-Mumbai].

4.9 Mr. Parikh further submits that there is a marked difference between a forged document and a document issued by fraud. According to Mr. Parikh, a forged or a bogus document is one which is concocted and created and it is, in fact, a non-existent document and it has no value in the eye of law as it does not lawfully exist at all. On the other hand, a document, issued in the context of a fraud or

misrepresentation is itself a genuine document. It is only issued or was issued in the context of a fraud or a misrepresentation, and according to the settled law, such a document is at the best a voidable one and is valid till it is set aside. Mr. Parikh submits that the transaction that takes place on the basis of such a document is a good and valid transaction and can even give a good title to holder in due course for valuable consideration without notice. Mr. Parikh further points out that in various cases, where even import licenses have been issued by practising fraud or misrepresentation, issues have arisen with regard to purchasers of such licences. The purchasers would have purchased these licences bona fide for value and without notice. They would have imported the goods only on the basis of such licenses. In all such cases, the department made out a case that as the original licence was issued on the basis of a fraud, the same was void and the imports made on that behalf, contravened the provisions of law. Mr. Parikh submits that the Supreme Court, the various High Courts and the Tribunal have consistently taken a view that a document otherwise genuine, even though issued on the basis of fraud or misrepresentation is not void but voidable and hence, the purchaser of such licence gets a good title and the imports made are valid. In support of such contention, Mr. Parikh relies upon the following decisions:

(i) EAST INDIA COMMERCIAL CO. LTD., CALCUTTA vs. COLLECTOR OF CUSTOMS, CALCUTTA reported in 1983 (13) ELT 1342 (SC)

(ii) COMMISSIONER OF CENTRAL EXCISE, VADODARA vs. STEELCO GUJARAT LTD reported in 2000 (121) ELT 577 (Tribunal) (paras 4 and 5)

(iii) HICO ENTERPRISES vs. COMMISSIONER OF CUSTOMS, MUMBAI reported in 2005 (189) ELT, 135 (Tribunal Larger Bench) (paras 29 to 32, 39 and 43)

4.10 Mr. Parikh points out that even while rendering the judgment in **D.P Singh**'s case [supra] in paragraph 13 (i), this Court distinguished the judgment of the Supreme Court in the case of **New India Assurance Company**, as being one relating to a forged document which rendered the document null and void, as being not applicable to such cases. According to Mr. Parikh, the reliance on the judgment of the Supreme Court in the case of **COMMISSIONER OF CUSTOMS (PREVENTIVE) vs. AAFLOAT TEXTILES (I) P. LTD.** reported in **2009 (235) ELT 587 (SC)** is clearly misplaced inasmuch as the case of **Aafloat** [*supra*], pertained to a forged document, as opposed to a document otherwise genuine but issued by practising fraud.

4.11 So far as the question of limitation is concerned, Mr. Parikh submits that the Tribunal below erred in holding that the demand is not barred by limitation. According to Mr. Parikh, it is the consistent view that even if the original document is issued by fraud, a holder in due course for valuable consideration, unless he is shown

to be a party to the fraud, cannot be made liable, applying the larger period of limitation. In support of such contention, Mr. Parikh relies on the decision of the Supreme Court in the case of **COMMISSIONER OF CENTRAL EXCISE, BELAPUR vs. E. MERCK INDIA LTD.** reported in **2009 (238) ELT 386 (SC)** confirming the view taken by the Tribunal in the case of **AJAY KUMAR & CO. vs. COMMISSIONER OF CUSTOMS, AMRITSAR** reported in **2006 (205) ELT 747**.

4.12 Lastly, Mr. Parikh submits that the judgment of this Court in the case of **SHEELA DYEING & PRINTING MILLS P. LTD. vs. C.C.E. & E, SURAT-1** reported in **2008 (232) ELT 408** cannot have any application to the facts of this case, because, as is clear from paragraph 2 of the said judgment, the period related to June 2003 and at that time, on an endorsed invoice, which constituted the document, the credit was taken. In the present case, according to Mr. Parikh, as per rule 7 (1) (e) of the Cenvat Rules, the rule was not on the statute books and the provision which allowed credit being taken on endorsement only existed from April 2004 to July 2004. Mr. Parikh submits that a person issuing an endorsed invoice, on the basis of which the credit can be taken, is a merchant-manufacturer and hence, it is his existence that was relevant for taking the credit. However, Mr. Parikh submits that the period with which **SHEILA DYEING** [*supra*] was concerned, was one when it was the invoice of the original manufacturer of fabric, that was the duty paying document on which credit could be taken and thus, it was one of existence of the original

manufacturer, which was relevant for taking credit. Thus, the judgment in the case of **SHEILA DYEING** [*supra*] can have no application to the period in question.

5. Mr. Oza, the learned Senior Advocate, appearing on behalf of the Central Excise authority, and Mr. P.S. Champaneri, the learned Assistant Solicitor General of India, appearing on behalf of the Union of India, have opposed the aforesaid contentions of Mr. Parikh and contended that in this appeal, no substantial question of law is involved and the Tribunal has merely passed an order remanding the case back to the original adjudicating authority in exercise of powers conferred under section 35C[1] of the Central Excise Act, 1944. According to the learned counsel for the Revenue, the Tribunal is vested with the powers to pass direction for fresh adjudication and the said power is similar to the one conferred under provisions of Order 41 Rules 23 and 23A of the Code of Civil Procedure. According to the learned counsel for the respondents, in such circumstance, we should not interfere with the decision of the Tribunal as the Tribunal has only remanded the matter clarifying that it had expressed no opinion of its own. According to Mr. Oza and Mr. Champaneri, the order of the Tribunal was not a directive one and the parties are at liberty to put forth before the adjudicating authority their specific cases.

5.1 Learned counsel for the respondents further submit that the

show-cause-notices were issued to certain parties of the Surat-I Commissionerate for wrong availment of CENVAT Credit on the basis of invoices issued by bogus / non-existent / fake firms, the name of which were circulated through Alert Circulars. According to the learned counsel, the Alert Circulars issued by the respective authorities were just the guidelines of Revenue which can also be termed as instructions under Rule 31 of the Central Excise Rules, 2002 providing for incidental and supplement matters consistent with provisions of Rule 12B of the said Rules to alert the field formations to ensure that there is no leakage of revenue. According to the learned counsel for the respondents, those are not the orders of the nature issued under section 37B of the Central Excise Act. They point out that the revenue officers entered into detailed investigation regarding the existence of premises / addresses, the owners of those disputed firms and all the legal formalities like drawal of panchnama, recording the statements of available responsible persons at the declared address by these disputed firms as well as those parties who had taken credit on the basis of invoices issued by non-existent concerns were carried out. Subsequently, the Revenue came to the conclusion that the names appearing and concluded in Alert Circular were correct on the basis of materials and evidence collected during inquiry and investigation. The notices of demand were issued for recovery of wrongly availed CENVAT under Rules 7 and 9 of the CENVAT Credit Rules, 2002/2004 read with section 11A of the Central Excise Act, 1944. According to the learned counsel for the Revenue, the

appellants were not justified in contending that the show cause notices were issued only on the basis of Alert Circular, but as a matter of record, the issue of show cause notice is on the basis of materials such as statement of the beneficiary and documentary evidences collected during the course of inquiry.

5.2 Learned counsel for the Revenue point out that the show cause notices were issued for wrongly availing CENVAT credit under Rule 12 of CENVAT Credit Rules, 2002 [now Rule 14 of the CENVAT Credit Rules, 2004] read with section 11A of Act, alleging contravention of Rule 7 of C.C. Rules, 2002 [now Rule 9 of C.C. Rules, 2004] read with section 11A(1) of the Act.

5.3 According to learned counsel for the Revenue, in the present as well as in most of the cases, the invoices in the name of manufacturer have been raised by an imaginary or non-existent or bogus firm, which has not undertaken any manufacturing activity, or the grey fabrics for which CENVAT had been availed were manufactured somewhere else, and by other than the declared manufacturer and the goods manufactured are accompanied by an invoice issued by a fake or a bogus firm. According to the learned counsel for the Revenue, such activity affects the basic legislative intent of the CENVAT credit Rules. According to them, the basic intent of CENVAT is that the goods, on which CENVAT had been availed of, must have been manufactured out of duty-paid inputs and should be accompanied by an invoice issued by a manufacturer or registered

dealer. According to them, in the present cases, this basic requirement is neither met with nor established. Learned counsel of the Revenue submit that the benefit of CENVAT on endorsed invoices for Textile & Textile articles were liberalized and extended so as to allow CENVAT on endorsed invoices so that the small traders, uneducated traders and weavers can continue their business hassle free. According to learned counsel for the respondents, no relaxation had been extended in respect of sub-clauses [a], [b] & [c] of sub-rule [2] of Rule 7 of CCR, 2002/2004, as the case may be.

5.4 By referring to section 12B inserted *vide* notification No.24/2003-CE[NT] dated 25.03.2003 for job work in textiles and textile articles, the learned counsel for the Revenue submit that the Rule has three important aspects- [i]. person, [ii]. Job-worker, and, [iii]. the agent. According to them, in the present cases, every person is the supplier of Grey fabrics under a cover of invoice or under a cover of endorsed invoice / job worker / agent, which is an independent processor who had undertaken to discharge the duty liability of the said person. In the present cases, no person is being authorized by the job worker to act as an agent on his behalf, and in all the cases, independent processors / manufacturers had an option to undertake the activities mentioned in this sub-rule as an agent or person authorized by the said person and in such case, the said job worker shall be deemed to be the said person. Thus, according to the learned counsel for the respondents, it can be concluded that an

independent processors / manufacturers, cannot escape from the rigour of the provisions of C.C. Rules, 2002 or C.C. Rules, 2004, as the case may be.

5.5 Learned counsel for the respondents further point out that in accordance with the provisions of sub-rule [6] of Rule 12B of the C.E. Rules, 2002, it was left to them not to get themselves registered, not to maintain any record evidencing the process undertaken for the sole purpose of undertaking job work under these rules unless they have exercised their option in terms of first or second proviso to sub-rule [1] of the said Rule 12B. According to the learned counsel for the Revenue, the independent processors / manufacturer / said person, were under an obligation to follow the provisions of Central Excise Rules, 2002, as well as Cenvat Credit Rules, 2002/2004.

5.6 Learned counsel for the Revenue further point out that Rule 7[2] of the CENVAT Credit Rules, 2002 [Rule 9(3) CENVAT Credit Rules, 2004] provides for taking reasonable steps to ensure that the inputs in respect of which the manufacturer or producer has taken CENVAT credit are goods on which the appropriate duty of excise as indicated in the documents accompanying the goods has been paid. They point out that in the present cases, the assessees have failed to do so and have availed and also utilized the credits of duty in question and in such circumstances, the onus lies on the appellants to establish by cogent reasons and reliable evidence that the positive steps are taken

by them in compliance of the provisions of sub-rule [2] and sub-rule [4] of Rule 7 of the erstwhile C.C. Rules, 2002 [Rule 9 CENVAT Credit Rules, 2004].

5.7 Learned counsel for the Revenue further submit that sub-rule 7[4] of C.C. Rules, 2002 [present rule 9[5] of the C.C. Rules, 2004] obliges the manufacturer of final products or the provider of output service to maintain proper records in respect of receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been produced and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit. Learned counsel for the respondent submit that the appellants have failed to discharge their mandatory obligations subject to which they were entitled to avail credit. In other words, according to learned counsel for the Revenue, in the instant cases, the benefit / utilization of CENVAT credit was availed of without fulfilling the conditions of the CENVAT Credit Rules, 2002 [Now Rules, 2004]. Thus, the assessees have contravened the provision of Rule 3[1], 3[3], 7[2] and 7[4] of the Rules, 2002 [3(1), 3(4), 9(3) and 9(5) of the CENVAT Credit Rules, 2004].

5.8 Lastly, the learned counsel for the Revenue submit that it is obligatory for the manufacturer / exporter / job-worker, discharging

duty on behalf of other, to ensure that the payment of duty as purchaser / receipt of goods were genuine evidencing proper duty paying documents and merely arguing that they have taken precautions as the manufacturer supplier is registered with Central Excise Department is not sufficient, as the CENVAT Credit / Rebate of such duty is only allowed under the Central Excise law when the duty has been discharged and credited to government account by the manufacturer.

5.9 The learned counsel for the Revenue have also tried to distinguish the decisions cited by the learned counsel for the appellants in the facts of the present case.

6. After hearing the learned counsel for the parties and after going through the materials on record, we find that the Central Excise Commissionerate, Surat-I, addressed a communication to M/s. Prayagraj Dyeing & Printing Mills Pvt. Ltd., *inter alia,* intimating that during the verification of Cenvat documents, it revealed that M/s. Prayagraj Dyeing & Printing Mills Pvt. Ltd., had availed cenvat credit on the strength of the invoices issued by M/s. Sana Textiles. In the inquiry conducted by the department, it was established that such Unit did not exist or ever existed and the documents purportedly produced were fake since the supplier of the goods itself was non-existent. Thus, according to the Revenue, a bogus document could not be considered as valid document for the purpose of availment of

cenvat credit and, therefore, the credit so availed was incorrectly received and it was intimated to reverse the same along with interest under the intimation to the office of the Superintendent of Central Excise & Customs, Range-II, Division-II, Surat-I.

7. As indicated earlier, the matter went up to the level of the Tribunal and thereafter, it has been remanded for fresh adjudication. If we look at the provision of Rule 7 of the Cenvat Credit Rules, 2002, it would appear that credit can be taken on the basis of a document prescribed thereunder. According to the existing practice, goods which are manufactured may pass through various chains of purchasers before they reach another manufacturer who may use the same as input. In these cases, it is not even in dispute that the original manufacturer who manufactured grey fabrics was actually registered with the Central Excise authority. Such manufacturer filed returns and the purchaser was a merchant-manufacturer. The purchaser, then, sent those goods to the present appellants for carrying out job work and the present appellants have taken credit which is sought to be reversed by the Central Excise on the ground that the original manufacturer cannot be found.

8. Therefore, the question that falls for determination is whether the department can escape its liability to find out a person who was registered with them and to pursue him for payment of duty. There is also no dispute in these cases that the goods were purchased by the

merchant manufacturer officially and they have suffered the duty thereon and the amounts have been paid through cheques.

9. It is also not a case where the invoices are manufactured documents not signed by the original manufacturer. The invoices which are accounted for in the Return of the person, were the invoices accounted for in the Return of the persons registered with the Central Excise. Thus, merely because the manufacturer cannot be found at the present, such fact cannot make the invoices fake or fraudulent documents in the eye of law. These are actual invoices issued by the manufacturer who is duly registered under the Central Excise Act and, therefore, those cannot be said to be forged documents. In our opinion, merely because today, the original manufacturer, who is registered with the Revenue, is not traceable, it does not mean that he did not exist at the relevant point of time. If today, a manufacturer is not available for various reasons that does not mean that at the relevant point of time, such manufacturer who was registered with the Central Excise, did not exist. In our opinion, once receipt of goods is not disputed by a person taking credit and necessary invoices are issued, he is entitled to take credit provided however that he took reasonable steps to ensure that the inputs or the capital goods in respect of which he had taken CENVAT credit are the goods on which appropriate duty of excise as indicated in the documents accompanying the goods, has been paid.

10. In this connection, we find substance in the contention of Mr. Parikh, the learned senior advocate appearing on behalf of the appellants, that there is a marked distinction between a forged document and a document issued by practising fraud. If it appears that a document is a forged one or a manufactured one, it is concocted or a created one in the eye of law and it is in the eye of law a non-existent document. On the other hand, a document issued in the context of a fraud or misrepresentation, is by itself a genuine document and according to settled law, such document is, at the most, voidable and is valid till it is set aside. A transaction that takes place on the basis of such document is good one and can even give a good title to the holder in due course for valuable consideration. At this juncture, we may profitably refer to the observations of the Supreme Court made in the case of **CCE vs. Decent Dying Co.**, reported in **1990 [45] ELT 201 = (1990) 1 SCC 180** wherein, the Supreme Court held that it would be intolerable if the purchasers were required to ascertain whether excise duty had already been paid as they had no means of knowing it. It was further pointed out that duty of excise is primarily a duty levied on a manufacturer or purchaser in respect of a commodity manufactured or produced. As pointed out by a Division Bench of this Court in the case of **Commissioner of Central Excise v/s D.P. Singh** reported in **2011 (27) ELT 321**, the judgment of the Supreme Court in the case of **New India Assurance Company** [supra], was distinguished, being one relating to a forged document which renders a document null and void, and as such, has

no application to this type of cases. Similarly, reliance over the judgment of the Supreme Court in the case of **Commissioner of Customs [Preventive] vs. Aafloat Textiles (I) P. Ltd.** reported in **2009 (235) ELT 587,** cannot be supported as Afloat case is one pertaining to a forged document but not in respect to a document otherwise genuine, issued by practising fraud. The facts stated in the case of Afloat indicated that the same was a case of a forged invoice and thus, the principles laid down therein cannot have any application to an invoice which is, otherwise, genuinely issued by a manufacturer registered with the Revenue. Justice Arijit Pasayat who delivered the judgment of the Supreme Court in the case of Afloat [supra], in a subsequent case of **Commissioner of Customs v. Ajay Kumar & Company, reported in 2009 [238] ELT 387,** clearly indicated that the same being not a case of forged document but one of issue of license by practising fraud, the Tribunal was right in holding that the transferee of the license should not be made liable. It may not be out of place to mention here that the Tribunal, in its judgment, reported in 2006 [205] ELT 747 indicated in paragraph-7 as follows:

> *" if that be so, the concept that a fraud vitiates everything would not be applicable to cases where a transaction of transfer of license is for value consideration without notice, arising out of mercantile transactions, governed by common law and not provisions of any statute."*

11. We, therefore, find no substance in the contention of the learned counsel for the Revenue that simply because the original manufacturer is now not traceable, is sufficient for reversal of cenvat credit already taken by the appellants by virtue of the original invoices. However, at the same time, we find substance in the contention of Mr. Oza and Mr. Champaneri, the learned counsel appearing on behalf of the Revenue, that in order to get the credit of CENVAT, Rule 7(2) cast a further duty upon the appellants to take all reasonable steps to ensure that the inputs or the capital goods in respect of which the Appellants had taken the credit of CENVAT are the goods on which appropriate duty of excise as indicated in the documents accompanying the goods, has been paid. The Explanation added to Rule 7(2) even describes the instances which are the reasonable steps. The Appellants in these cases, however, not having taken those steps, cannot get the benefit of the credit even though he is not party to fraud. In this connection, we fully agree with the views taken in the case of Sheila Dying (supra), and hold that the said decision supports the case of the Revenue and taking of all reasonable steps as provided in Rule 7(2) is an essential condition of availing the credit. The distinction sought to be made by Mr. Parikh that the period involved therein related to June, 2003 is not tenable because sub-rule (e) of Rule 7 was introduced even earlier with effect from April 1, 2003.

12. The next question is whether demand of reversal is barred by

the period of limitation. In our opinion, in view of our above finding that if the original document is issued even by practising fraud, a holder in due course for valuable consideration unless shown to be a party to a fraud, cannot be proceeded with by taking aid of a larger period of limitation as indicated in Section 11A(1) of the Act. It is now settled law that Section 11A (1) is applicable when there is positive evasion of duty and mere failure to pay duty does not render larger period applicable. In the case before us, it is not the case of the Revenue that the transferees were party to any fraud and therefore, the Revenue cannot rely upon a larger period of limitation. Our aforesaid view finds support from the following decisions of the Supreme Court:

[i] CCE v. Chemphar Drugs & Liniments, reported in 1989 [40] ELT 276.

[ii] Padmini Products v.Collector of Central Excise, reported in 1989 [43] ELT 195.

[iii] Lubrichem Industries Limited vs. CCE, Bombay, reported in 1994 [73] ELT 257.

[iv] Nesle [India] Limited vs. CCE, Chandigarh, reported in 2009 [235] ELT 577.

13. We thus find substance in the contention of Mr. Parikh that in the case before us, in the absence of any allegation that the appellants were parties to the fraud, the larger period of limitation cannot be applied, and thus, even if the original document was

assumed to be issued by practising fraud, the appellants being holders in due course for valuable consideration without notice, the larger period of limitation cannot be extended in the case before us. In this connection, we may profitably refer to the decision of the Supreme Court in the case of **COMMISSIONER OF CENTRAL EXCISE, BELAPUR vs. E. MERCK INDIA LTD.** reported in **2009 (238) ELT 386 (SC)** where the Supreme Court took a view that in the absence of a willful misdeclaration on the part of the respondent-assessee, there was no scope of invoking invoking Section 11.A of the Act.

14. We now propose to deal with the decisions cited by the Revenue.

14.1 In the case of **Narayanan v. Kumaram** reported in **2004 (4) SCC 26**, the question before the Supreme Court was whether the High Court was justified in going into excruciating details on facts in a Second Appeal by exceeding its jurisdiction under Section 100 of the Code of Civil Procedure by reversing a well-considered judgment of the first appellate Court on facts especially when no question of law, much less any substantial question of law, arose for consideration, and in that context it was held appeal being one under Order 43 Rule (1) clause (u) against an order of remand, the High Court should have confined itself to such facts, conclusions and decisions which have a bearing on the order of remand and cannot canvass all the findings of

facts arrived at by the lower appellate Court. The Supreme Court further held that it was quite safe to adopt that an appeal under Order 43 Rule (1) clause (u) should be heard only on the grounds enumerated in Section 100 of the Code.

14.1.1 In the case before us, as the Tribunal below committed substantial error of law in overlooking the fact that the provisions of limitation stood in the way of reopening of transaction on the ground of fraud as the appellants were not even alleged to be parties to the fraud, and this is a question which goes to the root of the jurisdiction, and thus, the error committed by the Tribunal amounted to substantial question of law. The decision relied upon by the Revenue, therefore, cannot have any application to the facts of the present case.

14.2 In the case of **Diwan Brothers vs. Union of India & Another**, a Division Bench of this Court, while disposing of **Special Civil Application No. 13931 of 2011** on 15th September 2011 ultimately came to the conclusion that three authorities below had examined the petitioner's rebate claim and found that the goods were purchased from non-existent and fictitious parties and Cenvat credit was wrongly availed. The Division Bench was of the view that the authorities had examined the cases in detail and no interference was called for because several issues of facts have been gone into, examined and conclusions had been arrived at on the basis of

evidence on record, and such conclusions are not pointed out to be perverse. The Division Bench distinguished the case of the earlier Division Bench in the case of **D.P. Singh** [supra] by holding that the petitioner cannot take shelter that it had no knowledge or claim total innocence that identity of the persons with whom they claimed to have dealt with the business were not known to them nor did they take reasonable steps. Since, the question of larger period of limitation was not the subject-matter of the said decision, the said decision cannot help the Revenue to overcome the hurdle of limitation of one year which is the main dispute now before us.

14.3 In the case of **Sandeep S. Mhamunkar vs. Union of India** reported in **2012 [275] ELT 221 [Bom]** the firm which supplied goods to the petitioner were found to be fictitious and non-existent. In such a case, the Division Bench of the Bombay High Court held that it was immaterial that merchant-exporter had received a genuine invoice from the supplier and Range Superintendent had issued a certificate of payment of duty since the supplier was found to be non-existent.

14.3.1 It, however, appears that the aforesaid judgment of the Bombay High Court consists of only three paragraphs and there is no detailed discussion on the subject nor is there any reference to any binding precedent. Moreover, the question of larger period of limitation was not involved therein. We, thus, find that the said

decision does not help the Revenue for invoking larger period of limitation.

14.4 In the case of **Commissioner of Customs [Preventive] v. Aafloat Textiles (I) Pvt. Ltd** reported in **2009 (235) ELT 586**, we have already pointed out that in that case, the document was established to be forged whereas in the cases before us, the document is not alleged to be a forged one, and therefore, we have already pointed out that the said decision cannot have any application to the facts of the present case.

14.5 In the case of **Munjal Shows Limited v. Commissioner of Customs & Central Excise (Delhi IV, Faridabad)** reported in **2009 (246) ELT 18 [P&H]**, the Punjab & Haryana High Court found that the document under which exemption was claimed was forged and in such a situation, according to the Division Bench of the said Court, the purchaser would step into the shoes of the seller and did not acquire a better title than the seller.

14.5.1 We have already pointed out that in the cases before us, the document is genuine one and the appellants were also not alleged to be a party to the fraud, and therefore, the principles laid down in the aforesaid decision cannot have any application to the facts of the present case although for not taking reasonable step as provided in Rule 7(2), the Appellants are not entitled to credit of Cenvat.

14.6 Similar are the facts in the case of **Golden Tools International v. Jt. DGFT, Ludhiana** reported in **2006 (199) ELT 213 [P&H]** where the document in question was found to be forged.

14.7 In the case of **Commissioner of Customs v. Candid Enterprises** reported in **2001 (130) ELT 404 [SC]**, the Supreme Court was dealing with a case where the respondent before the Supreme Court had claimed that 'acrylamide' was a synthetic adhesive and therefore, entitled to duty free clearance against value based advanced licences pertaining to export of leather goods. The Assistant Commissioner of Customs rejected the claim while the appellate Commissioner accepted the claim. Before those authorities, the respondent relied upon the opinion of V.M. Divate, Tanning Expert and Superintendent, Government Institute of Leather Technology, Mumbai, a certificate from Mitsubishi Chemicals, a certificate from Professor D.D. Kale, University Department of Chemical Technology, Mumbai and the opinion of the Deputy Chief Chemist. The appellate Commissioner passed the order on 14th June 1995. In November 1996, acting upon intelligence then received, the Central Intelligence Unit of the Mumbai Custom House commenced an investigation and it was then revealed that there was reason to doubt the veracity of at least some of the aforestated documents upon which the respondent had relied. The Revenue then preferred an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal and sought to condone

the delay in filing the appeal, setting out in some detail the reason for which the appeal had been filed after the period of limitation. The Tribunal declined to condone the delay relying on the judgment of the Supreme Court in the case of **Ajitsingh Thakursingh & Anr. v. State of Gujarat [(1981) 1 SCC 495]** and observing that it could not look into the nature of the grounds of appeal. In such a situation, the Supreme Court held that the Tribunal would appear to have lost sight of the cardinal principle which is enshrined in Section 17 of the Limitation Act and that fraud nullifies everything.

14.7.1 In the case before us, we have already pointed out that the Revenue has not alleged that the appellants had any role in the fraud, and if any fraud has been practised by the person registered with the Revenue, the Revenue cannot get the benefit of extended period of limitation when the appellant is not party to the fraud. In the absence of any collusion between the appellants and such registered licencees, we find that the principles laid down in the aforesaid decision cannot have any application to the facts of the present case.

14.8 Lastly, in the case of **Commissioner of Central Excise, Jalandhar v. Vardhaman India Products** reported in **2009 (236) ELT 637 [P&H]** where the Punjab & Haryana High Court was dealing with a case where extended period of limitation was claimed on the allegation of fraud levelled against the assessee besides violation of

provisions of the Act and the Rules. It was held that the party fraudulently availed of Modvat credit and the party's conduct and admission of guilt was evident from the facts of the case.

14.8.1 In the facts of that case, the principles laid down in the aforesaid decision cannot have any application to the facts of the present case where there is no allegation of fraud against the appellant and only because the original manufacturer who was registered with the Revenue was not subsequently traceable, the notice was issued.

14.9 We, thus, find that the decisions relied upon by the Revenue are of no avail to the respondents.

15. On consideration of the entire materials on record, we find that the documents, invoices in question, issued by the registered licencee being genuine and in the absence of any allegations against the appellants of fraud, the Tribunal should not have remanded the matter back as the claim was totally barred by limitation.

16. We, therefore, are of the opinion that it is a fit case of setting aside the order of the Tribunal below and we consequently hold that in the cases before us, there was no case for reopening of the transactions after the period of limitation.

17. We, however, do not find substance in the contention of Mr. Parikh that the show-cause notice was based on Alert circulars and thus, the point no. 1 framed earlier does not arise in the facts of the present cases.

18. We, consequently, answer the questions of law formulated by the division Bench in the following way.

Question No.1	-	Does not arise as the show-cause notice is not based on alert circular.
Question No.2	-	In the negative and in favour of the Revenue.
Question No.3	-	In the negative and in favour of the Revenue.
Question No.4	-	In the negative and in favour of the Revenue.
Question No.5	-	In the negative and in favour of the Revenue except on the question of larger period of limitation.
Question No.6	-	In the negative and in favour of the Revenue.
Question No.7	-	In the negative and in favour of the Revenue except the question of larger period of limitation which was not the subject matter in that case.
Question No.8	-	In the affirmative and against the Revenue.

17. The appeals are, thus, allowed in terms of the aforesaid order. We, however, make it clear that in those cases where the larger

period of limitation as prescribed in Section 11 A (1) of the Act has not been invoked, the matters can proceed in terms of the order impugned. There shall be no order as to costs.

In view of the aforesaid order passed in the appeals, the Civil Applications do not survive and the Civil Applications are disposed of accordingly.

[BHASKAR BHATTACHARYA, C.J.]

mathew **[J.B.PARDIWALA. J.]**