

COMMNR. OF CUSTOMS (PREVENTIVE) V. M/S AAFLOAT 491
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penalty imposed were cancelled by the Tribunal. Hence the appeal by the Revenue. A

Allowing the appeal, the Court

HELD: 1.1 "Fraud" means an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include and any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. [Para 9] [496-H; 497-A, B] B C D

1.2 A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. [Para 10] [497-D, E] E

1.3 Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. [Para 11] [497-G, H; 498-A] F

1.4 It was for the buyer to establish that he had no knowledge about the genuineness or otherwise of the SIL in question. [Para 19] [501-G, H] G

A (5) SCC 550; *S.P. Changalvaraya Naidu v. Jagannath*
 1994 (1) SCC 1; *Ram Chandra Singh v. Savitri Devi and*
Ors. 2003 (8) SCC 319; *Shrisht Dhawan (Smt.) v. M/s.*
Shaw Brothers, 1992 (1) SCC 534; *Roshan Deen v. Preeti*
 B *Lal* 2002 (1) SCC 100; *Ram Preeti Yadav v. U.P. Board*
of High School and Intermediate Education 2003 (8)
 SCC 311; *Ashok Leyland Ltd. v. State of T.N. and Another*
 2004 (3) SCC 1; *Gowrishankar v. Joshi Amba Shankar*
Family Trust 1996 (3) SCC 310; *State of Andhra Pradesh*
and Anr. v. T. Suryachandr Rao 2005 (5) SCALE 621
 C *and Bhaurao Dagdu Paralkar v. State of Maharashtra*
and Ors. 2005 (7) SCC 605 – relied on.

Derry and Ors. v. Peek (1886-90) All ER 1; *Khawaja v.*
Secretary of State for Home Deptt. (1983) 1 All ER 765;
Wallis v. Russell (1902) 21 R 585, 615; *Bottomley v.*
 D *Bannister*, (1932) 1 KB 458; *Ward v. Hobbs*, 4 App Cas
 13 and *Lazarus Estate Ltd. v. Beasley* (1956) 1 QB 702
 – referred to.

**2. Whether the buyer had made any enquiry as to
 the genuineness of the license is within his special
 E knowledge. He has to establish that he made enquiry and
 took requisite precautions to find out about the
 genuineness of the SIL which he was purchasing. If he
 has not done that consequences have to follow. These
 F aspects do not appear to have been considered by the
 CESTAT in coming to the abrupt conclusion that even if
 one or all the respondents had knowledge that the SIL
 was forged or fake that was not sufficient to hold that there
 was no omission or commission on his part so as to
 render silver or gold liable for confiscation. SILs were not
 G genuine documents and were forged. Since fraud was
 involved, in the eye of law such documents had no
 existence. Since the documents have been established
 to be forged or fake, obviously fraud was involved and
 that was sufficient to extend the period of limitation. [Paras
 H 27, 28] [503-C, D, E]**

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Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edn. A
2005 page 721; William R. Anson: Principles of the Law of
Contract 245 (Arthur L. Corbin Ed.3d. Am. ed.1919) and "Let
a purchaser beware; who ought not to be ignorant that he is
purchasing the rights of another. Hob. 99; Broom; Co., Litl. 102
a: 3 Taunt. 439 – referred to. B

Case Law Reference

1963 Supp. 2 SCR 585	relied on	Para 9	
1996 (5) SCC 550	relied on	Para 9	
1994 (1) SCC 1	relied on	Para 10	C
2003 (8) SCC 319	relied on	Para 11	
1992 (1) SCC 534	relied on	Para 12	
(1886-90) All ER 1	referred to	Para 12	D
(1983) 1 All ER 765	referred to	Para 12	
2002 (1) SCC 100	relied on	Para 14	
2003 (8) SCC 311	relied on	Para 14	E
2004 (3) SCC 1	relied on	Para 14	
1996 (3) SCC 310	relied on	Para 15	
(1956) 1 QB 702	referred to	Para 17	
2005 (5) SCALE 621	relied on	Para 18	F
2005 (7) SCC 605	relied on	Para 18	
(1902) 21 R 585, 615	referred to	Para 21	
(1932) 1 KB 458	referred to	Para 25	G
4 App Cas 13	referred to	Para 25	

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 2447
of 2007

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A From the Judgement and Order dated 05.01.2006 of the Customs Excise Service Tax Appellant Tribunal, West Zonal Bench at Mumbai in Appeals Nos. C / 997, 998, 810, 999. 846, 845 of 2002.

B P.V. Shetty, Arvind K. Shukla, S.N. Terdol, P. Narasimhan, B. Krishna Prasad, B.V. Balaram Das, for the Appellant.

C S. Ganesh, S.K. Bagaria, V.M. Doiphode, Rajesh Kumar, Tarun Gulati, Jaiveer Shergill, Kishore Kunal, Rony John, Praveen Kumar, M.P. Devnath, Kumar Rajesh Singh, Manish Panda, Praveen Kumar, Himanshu Shekhar, Arunabh Chowdhury, Arijit Bhaumik, Ruby Singh Ahuja, Anupam Lal Das for the Petitioner.

D The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

E 1. Challenge in this appeal is to the order passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai (in short the 'CESTAT'). Challenge before the CESTAT was to the order of Commissioner of Customs who confirmed the duty demand of Rs.6,69,40,149/- on 9 consignments of gold and silver imported by M/s Aafloat Textiles (India) Ltd. (Formerly known as M/s Akai Impex Ltd.) under F Section 28 alongwith appropriate interest under Section 28AB of the Customs Act, 1962 (in short the 'Act'). The benefit of exemption in terms of Notification No.117/94-Cus. Dated 27.4.1997 was denied and liability of the goods to confiscation under Section 111(d) and (o) of the Act was upheld. But since G the goods were not available, confiscation was not ordered. Penalty equal to duty amount on the importer under Section 114A of the Act was imposed and Rs.50 lakhs was imposed on Shri Mahendra Shah and Rs.25 lakhs each on four other appellants before the CESTAT.

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2. Case of the department that the Special Import License (in short 'SIL') purchased by the importer from brokers for clearance of gold and silver was forged and, therefore, was not valid for the consignments in question. A

3. Background facts as emerging from the Commissioner's order are that the office premises of one M/s. Gazebo and M/s. Mahavir Corporation, were searched by officers of DRI and copy of SIL No.3536539 dated 6.8.1997 issued to M/s. Track Industries, Kanpur, was recovered. The Joint Director General of Foreign Trade, Kanpur informed that no such licence had been issued and that the signature and security seal of their Foreign Trade Development Officer had been forged. The proprietor of M/s Gazebo, Shri R.T. Shah stated on 19.1.1998 that he had purchased the above bogus SIL from one Shri Sushil Kumar Lohia who, in turn admitted that the SIL was given to him by one Shri Manoj Kumar Jain and that he had obtained several bogus SILs from one Naresh Sheth and Shri Dinesh Buchasia, whose residential premises were searched and certain documents were recovered and his statement was recorded, wherein he stated that he had only dealt in 7 SILs which he bought at low premium from one Rajesh Chopra and that the SILs were forged. Shri Shinivas Pannalal Kalantri, General Manager of the importer company stated that gold/silver had been imported under SIL during the year 1996-97 and 1997-98, that one M/s. Lalbhai Trading Co. and two others were the clearing agents; that Shri Prakash Mohta of Finance Department looked after the purchase of SILs. The Chairman of the importer company stated that he looked after negotiation and purchase of bullion and sale of bullion; that Shri Prakash Mohta looked after purchase of licences, clearance of goods, delivery, payment to supplier etc. and that licence brokers through whom SILs were purchased and whom he knew, were Mr. Pachisia and Mr. Ketan Shah. The statement of Shri Prakash Mohta, was also recorded in which he confirmed that he was looking after purchase of SILs for import of bullion and subsequently selling them in the local market. Shri Mahendra B
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- A Shah stated that he had sold bogus SILs to the importer company. Shri Rasiklal Mehta stated that he and one Atul Garodia met one Shri D.R. Gulati in Bombay who told that he could provide bogus SIL for which he would charge 3% to 4% premium, that Shri Gulati used to provide bogus SILs and Shri Garodia used to
B sell them in market and give them a premium of 3%.

4. The demand was confirmed under the proviso to Section 28(1) of the Act. The stand of the revenue that since the licenses were forged and were void, the buyer cannot have better title than the seller. CESTAT in appeal was of the view that the appeal
C could be disposed only on the ground of limitation without going into the merits of the matter. It was observed that there was no evidence to show that the importer had knowledge about the SIL being non-genuine.

D 5. It was also stated that the period of limitation is not to be reckoned from the date of discovery of the forgery. Accordingly, the demands including the penalty imposed were cancelled.

E 6. In support of the appeal, learned counsel for the appellant submitted that since the SIL involved was established to be forged there was no question of denying the extended period of limitation.

F 7. Learned counsel for the respondents on the other hand submitted that the department has not established that the buyer had knowledge about the forgery. The mens rea being one of the ingredients to avail extended period of limitation the CESTAT was justified in its conclusions.

G 8. As noted above, the CESTAT has not gone into the question whether the SIL involved was genuine or not. It was of the view that the department has not established that buyer had knowledge that there was any forgery involved.

H 9. "fraud" means an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived.

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Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always call loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. (See Dr. Vimla v. Delhi Administration (1963 Supp. 2 SCR 585) and Indian Bank v. Satyam Febres (India) Pvt. Ltd. (1996 (5) SCC 550).

10. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See S.P. Changalvaraya Naidu v. Jagannath (1994 (1) SCC 1).

11. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable

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A doctrine including *res judicata*. (See Ram Chandra Singh v. Savitri Devi and Ors. (2003 (8) SCC 319).

12. "Fraud" and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary "fraud" in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, "fraud" is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as *criminal deception*, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Indian Contract Act, 1872 defines "fraud" as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. In a leading English case i.e. Derry and Ors. v. Peek (1886-90) All ER 1 what constitutes "fraud" was described thus: (All ER p. 22 B-C) "fraud" is proved when it is shown that a false representation has been

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made (i) knowingly, or (ii) without belief in its truth, or (iii) A
recklessly, careless whether it be true or false". But "fraud" in
public law is not the same as "fraud" in private law. Nor can the
ingredients, which establish "fraud" in commercial transaction,
be of assistance in determining fraud in Administrative Law. It
has been aptly observed by Lord Bridge in Khawaja v. Secretary B
of State for Home Deptt. (1983) 1 All ER 765, that it is dangerous
to introduce maxims of common law as to effect of fraud while
determining fraud in relation of statutory law. "Fraud" in relation
to statute must be a colourable transaction to evade the
provisions of a statute. "If a statute has been passed for some C
one particular purpose, a court of law will not countenance any
attempt which may be made to extend the operation of the Act
to something else which is quite foreign to its object and beyond
its scope. Present day concept of fraud on statute has veered D
round abuse of power or mala fide exercise of power. It may
arise due to overstepping the limits of power or defeating the
provision of statute by adopting subterfuge or the power may
be exercised for extraneous or irrelevant considerations. The
colour of fraud in public law or administration law, as it is E
developing, is assuming different shades. It arises from a
deception committed by disclosure of incorrect facts knowingly
and deliberately to invoke exercise of power and procure an
order from an authority or tribunal. It must result in exercise of
jurisdiction which otherwise would not have been exercised. The F
misrepresentation must be in relation to the conditions provided
in a section on existence or non-existence of which the power
can be exercised. But non-disclosure of a fact not required by a
statute to be disclosed may not amount to fraud. Even in
commercial transactions non-disclosure of every fact does not
vitiate the agreement. "In a contract every person must look for G
himself and ensures that he acquires the information necessary
to avoid bad bargain. In public law the duty is not to deceive.
(See Shrisht Dhawan (Smt.) v. M/s. Shaw Brothers, (1992 (1)
SCC 534).

13. In that case it was observed as follows :

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A "Fraud and collusion vitiate even the most solemn
proceedings in any civilized system of jurisprudence. It is
a concept descriptive of human conduct. Michael Levi likens
a fraudster to Milton's sorcerer, Comus, who exulted in his
ability to, 'wing me into the easy-hearted man and trap
him into snares'. It has been defined as an act of trickery
or deceit. In Webster's Third New International Dictionary
fraud in equity has been defined as an act or omission to
act or concealment by which one person obtains an
advantage against conscience over another or which equity
or public policy forbids as being prejudicial to another. In
Black's Legal Dictionary, fraud is defined as an intentional
perversion of truth for the purpose of inducing another in
reliance upon it to part with some valuable thing belonging
to him or surrender a legal right; a false representation of
a matter of fact whether by words or by conduct, by false
or misleading allegations, or by concealment of that which
should have been disclosed, which deceives and is
intended to deceive another so that he shall act upon it to
his legal injury. In Concise Oxford Dictionary, it has been
defined as criminal deception, use of false representation
to gain unjust advantage; dishonest artifice or trick.
According to Halsbury's Laws of England, a representation
is deemed to have been false, and therefore a
misrepresentation, if it was at the material date false in
substance and in fact. Section 17 of the Contract Act
defines fraud as act committed by a party to a contract
with intent to deceive another. From dictionary meaning
or even otherwise fraud arises out of deliberate active
role of representator about a fact which he knows to be
untrue yet he succeeds in misleading the representee by
making him believe it to be true. The representation to
become fraudulent must be of the fact with knowledge that
it was false. In a leading English case Derry v. Peek [(1886-
90) ALL ER Rep 1: (1889) 14 AC 337 (HL)] what
constitutes fraud was described thus: (All Er p. 22 B-C)

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'Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false'.

14. This aspect of the matter has been considered by this Court in Roshan Deen v. Preeti Lal (2002 (1) SCC 100) Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education (2003 (8) SCC 311), Ram Chandra Singh's case (supra) and Ashok Leyland Ltd. v. State of T.N. and Another (2004 (3) SCC 1).

15. Suppression of a material document would also amount to a fraud on the court. (see Gowrishankar v. Joshi Amba Shankar Family Trust (1996 (3) SCC 310) and S.P. Chengalvaraya Naidu's case (supra).

16. "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in Ram Preeti Yadav's case (supra).

17. In Lazarus Estate Ltd. v. Beasley (1956) 1 QB 702, Lord Denning observed at pages 712 & 713, "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything." In the same judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. (page 722)

18. These aspects were highlighted in the State of Andhra Pradesh and Anr. v. T. Suryachandr Rao (2005 (5) SCALE 621) and Bhaurao Dagdu Paralkar v. State of Maharashtra and Ors. (2005 (7) SCC 605)

19. It was for the buyer to establish that he had no knowledge about the genuineness or otherwise of the SIL in question.

A 20. The maxim *caveat emptor* is clearly applicable to a
case of this nature. As per Advanced Law Lexicon by P.
Ramanatha Aiyar, 3rd Edn. 2005 at page 721: *Caveat emptor*
B means "Let the purchaser beware." It is one of the settled
maxims, applying to a purchaser who is bound by actual as well
as constructive knowledge of any defect in the thing purchased,
which is obvious, or which might have been known by proper
diligence.

21. "*Caveat emptor* does not mean either in law or in Latin
that the buyer must take chances. It means that the buyer must
C take care." (See *Wallis v. Russell* (1902) 21 R 585, 615).

22. "*Caveat emptor* is the ordinary rule in contract. A vendor
is under no duty to communicate the existence even of latent
defects in his wares unless by act or implication he represents
such defects not to exist." (See William R. Anson, Principles of
D the Law of Contract 245 (Arthur L. Corbin Ed.3d. Am. ed.1919)
Applying the maxim, it was held that it is the bounden duty of the
purchaser to make all such necessary enquiries and to ascertain
all the facts relating to the property to be purchased prior to
committing in any manner.

E 23. *Caveat emptor, qui ignorare non debuit quod jus
alienum emit*. A maxim meaning "Let a purchaser beware; who
ought not to be ignorant that he is purchasing the rights of
another. *Hob. 99; Broom; Co., Litt. 102 a: 3 Taunt. 439*.

F 24. As the maxim applies, with certain specific restrictions,
not only to the quality of, but also to the title to, land which is
sold, the purchaser is generally bound to view the land and to
enquire after and inspect the title-deeds; at his peril if he does
not.

G 25. Upon a sale of goods the general rule with regard to
their nature or quality is *caveat emptor*, so that in the absence
of fraud, the buyer has no remedy against the seller for any defect
in the goods not covered by some condition or warranty,
expressed or implied. It is beyond all doubt that, by the general
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rules of law there is no warranty of quality arising from the bare contract of sale of goods, and that where there has been no fraud, a buyer who has not obtained an express warranty, takes all risk of defect in the goods, unless there are circumstances beyond the mere fact of sale from which a warranty may be implied. (*Bottomley v. Bannister*, [1932] 1 KB 458 : *Ward v. Hobbs*, 4 App Cas 13}. (*Latin for Lawyers*)

26. No one ought in ignorance to buy that which is the right of another. The buyer according to the maxim has to be cautious, as the risk is his and not that of the seller.

27. Whether the buyer had made any enquiry as to the genuineness of the license within his special knowledge. He has to establish that he made enquiry and took requisite precautions to find out about the genuineness of the SIL which he was purchasing. If he has not done that consequences have to follow. These aspects do not appear to have been considered by the CESTAT in coming to the abrupt conclusion that even if one or all the respondents had knowledge that the SIL was forged or fake that was not sufficient to hold that there was no omission or commission on his part so as to render silver or gold liable for confiscation.

28. As noted above, SILs were not genuine documents and were forged. Since fraud was involved, in the eye of law such documents had no existence. Since the documents have been established to be forged or fake, obviously fraud was involved and that was sufficient to extend the period of limitation.

29. In view of this finding the other issues raised by the respondent are of academic interest.

30. The appeal is allowed. There shall be no order as to costs.

G.N.

Appeal allowed.