

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of order : 24<sup>th</sup> January, 2008

**CRL.M.C. 541 of 2004**

M/S MEDISPHERE MARKETING LTD. .... Petitioner  
Through Mr. Arunabh Chaudhary and Mr.  
Abhishek Ray, Advocates.

versus

INSPECTOR CUSTOMS PREVENTIVE ..... Respondent  
Through Mr. Satish Aggarwala, Advocate.

**CORAM:**

**HON'BLE DR. JUSTICE S. MURALIDHAR**

- |    |                                                                       |     |
|----|-----------------------------------------------------------------------|-----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not?                                | Yes |
| 3. | Whether the judgment should be reported in Digest?                    | Yes |

**ORDER**

**Dr. S. Muralidhar, J.** (open court)

1. Seeking the quashing of Complaint Case No. 76/1 pending in the court of learned Additional Chief Metropolitan Magistrate, New Delhi ('ACMM') titled *Satnam Pal v. Medisphere Marketing Ltd. & Ors.*, the Petitioners, i.e. M/s. Medisphere Marketing Ltd., M/s. Medisource Agencies Private Limited, Mr. Rajan Bajaj, Chairman-cum-Managing Director and Ms. Renu R. Bajaj, Director, respectively of M/s. Medisphere Marketing Ltd. have filed this petition under Section 482 of the Code of Criminal Procedure 1973 (CrPC). The petition also seeks the setting aside of an order dated 19<sup>th</sup> May 1999 passed by the ACMM dismissing the application filed by the Petitioners seeking discharge.

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2.The facts leading to the filing of this petition are that the Petitioner Nos. 1 and 2 companies are engaged in the business of distribution of medicines. These Petitioners inter alia imported IV Cannulas viz. Vasculon, Neoflon, and Venflon at nil rate of customs duty against proper Bills of Entry taking benefit of the Exemption Notification No. 23/98 Cus. On 23<sup>rd</sup> August 1998 the Customs raided the godowns of Petitioners 1 and 2 and seized certain medicines all of foreign origin valued at Rs. 1,31,45,000/-. Alleging that there was a misdeclaration of the goods and therefore a fraudulent evasion of customs duty, the Customs initiated proceedings both departmentally as well as in the criminal court. A show cause notice dated 18<sup>th</sup> February 1999 was issued under Section 124 of the Customs Act, 1962 to which the Petitioners replied. Meanwhile a complaint dated 19<sup>th</sup> May 1999 was filed in the court of the learned ACMM for the offences under Sections 132 and 135(1) (a) of the Customs Act, 1962.

3.The Commissioner of Customs on 4<sup>th</sup> May 2000 disposed of the show cause notice by holding that the Petitioners were not entitled to the benefit of the exemption. Accordingly an order was passed by him inter alia imposing penalty on the Petitioners. The appeal filed by the Petitioners was allowed by the Customs, Excise Gold Control Appellate Tribunal ('CEGAT') reversing the order of the Commissioner of Customs and holding that the Petitioners were entitled to avail of the exemption. The penalty imposed on the Petitioners was consequently set aside. The Department filed Special Leave Petition ('SLP') against the orders passed by the CEGAT. On 7<sup>th</sup> February 2003 the Supreme Court dismissed the SLP. A refund order was

passed by the Department on 1<sup>st</sup> September 2003.

4. On the strength of the orders passed by the CEGAT and the Supreme Court, the Petitioners applied to the ACMM for dropping of proceedings. By the impugned order dated 22<sup>nd</sup> November 2003 the learned ACMM dismissed the applications holding that the order passed by the CEGAT was not binding on the criminal court. Thereafter the present petition was filed in February 2002. On 20<sup>th</sup> September, 2004 this Court stayed further proceedings before the trial court.

5. The contention of the learned counsel for the Petitioner is that on the strength of the recent judgments of this Court in *Surkhi Lal v. Union of India* 131 (2006) DLT 12 and *Sunil Gulati v. RK Vohra* 2007 [1] JCC 22, this Court should quash the criminal proceedings since the departmental proceedings on a lesser degree of proof on the same set of facts have already been decided in favour of the Petitioners. It is submitted that the entire basis of the criminal prosecution that the Petitioners were not entitled to the exemption has been conclusively negated by the CEGAT, and its order has been upheld by the Supreme Court. It is submitted that consequently there is no question of the Petitioners being prosecuted for the offences of misdeclaration of goods or evasion of customs duty in terms of Section 132 or 135 (1) (b) of the Act.

6. The point regarding exoneration in departmental proceedings and the consequent unsustainability in law of the criminal proceedings launched

simultaneously has been discussed extensively in earlier judgments of both the Supreme Court as well as of this Court. In *Surkhi Lal* after discussing the judgments of the Supreme Court in *The Assistant Collector of Customs, Bombay v. L.R. Melwani AIR 1970 SC 962*, *Uttam Chand v. Income Tax Officer, Central Circle, Amritsar, (1982) 2 SCC 543*, *P. Jayappan v. S.K.Perumal AIR 1984 SC 1693* and *G.L.Didwania v. Income Tax Officer 1999 (108) ELT 16 (SC)*, this Court held as under:

“The legal principles that can be evolved from the series of judgments quoted above are as under:

- (a) Departmental proceedings are different from trial and so if the departmental proceedings end in favour of the accused the criminal trial is not hit by the principle of *autre fois acquit*.
- (b) the departmental proceedings and the criminal proceedings can proceed side by side.
- (c) if the departmental proceedings end in a finding in favour of the accused in respect of the allegations which also form the basis for the criminal proceedings then the departmental adjudication will remove the very basis of the criminal proceedings and in such situation the continuance of the criminal proceedings will be a futile exercise and an abuse of the process of the Court.”

7. The above declaration of the law was reiterated by this court in *Sunil Gulati* in the following words:

“1. On the same violation alleged against a person, if adjudication proceedings as well as criminal proceedings are permissible, both can be initiated simultaneously. For initiating criminal proceedings one does not have to wait for the outcome of the adjudication proceedings as the two proceedings are independent in nature.

2. The findings in the departmental proceedings would not amount to resjudicata and initiation of criminal proceedings in these circumstances can be treated as double jeopardy as they are not in the nature of “prosecution”.

3. In case adjudication proceedings are decided against a person who is facing prosecution as well and the Tribunal has also upheld the findings of the adjudicators/assessing authority, that would have no bearing on the criminal proceedings and that criminal proceedings are to be determined on its own merits in accordance with law, uninhibited by the findings of the Tribunal. It is because of the reason that in so far as criminal action is concerned, it has to be proved as per the strict standards fixed for criminal cases before the criminal court by producing necessary evidence.

4. In case of converse situation namely where the accused persons are exonerated by the competent authorities/Tribunal in adjudication proceedings/Tribunal in adjudication proceedings, one will have to see the reasons for such exoneration to determine whether these criminal proceedings could still continue. If the exoneration in departmental adjudication is on technical ground or by giving benefit of doubt and not on merits of the adjudication proceedings were on different facts, it would have no bearing on criminal proceedings. **If, on the other hand, the exoneration in the adjudication proceedings is on merits and it is found that allegations are not substantiated at all and the concerned person(s) is/are innocent, and the criminal prosecution is also on the same set of facts and circumstances, the criminal prosecution cannot be allowed to continue. The reason is obvious criminal complaint is filed by the departmental authorities alleging violation/contravention of the provisions of the Act on the part of the accused persons. However, if the departmental authorities themselves, in adjudication proceedings, record a categorical and unambiguous finding that there is no such contravention of the provisions of the Act, it would be unjust for such departmental authorities to continue with the criminal complaint and say that there is sufficient evidence to foist the accused persons with criminal liability when it is stated in the departmental proceedings that ex-facie there is no such violation.** The yardstick would, therefore, be to see as to whether charges in the departmental proceedings as well as criminal complaint are identical and the exoneration of the concerned person in the departmental proceedings is on merits holding that there is no contravention of the provisions of any Act.” (emphasis supplied)

8. More recently this Court held likewise in *Kamal Suri v. Dy. Director, Enforcement Directorate* (CRL.M.C. 2655/2006 decided on 11<sup>th</sup> January,

2008) while quashing the criminal proceedings launched simultaneously with adjudication proceedings under the Foreign Exchange Regulations Act.

9. Mr. Satish Aggarwala, learned counsel for the department does not contest the factual position. Nevertheless he submits that in the judgment of in *Standard Chartered Bank .v. Directorate of Enforcement 2006 [1] JCC 488* the Supreme Court had held that result of the departmental adjudication proceedings were not conclusive and binding on the criminal court and that in one of the cases in the batch of matters that were decided the judgment of the High Court that had decided in a manner similar to *Surkhi Lal* and *Sunil Gulati* was set aside. He also refers to the recent judgment of the Supreme Court in *State v. M. Krishana Mohan 2007 (4) C.C.Cases (SC) 140* where it was held that the exoneration in departmental proceedings cannot automatically led to closure of the criminal case in a situation where the departmental enquiry was completed even before the investigation in the criminal case commenced.

10. In the first place it requires to be noticed that this Court in *Sunil Gulati* noted that the central issue in *Standard Chartered Bank* was whether criminal proceedings could be launched simultaneous with departmental proceedings and that question was answered in the affirmative. The question whether, after the criminal proceedings were launched simultaneously, the exoneration in the adjudication proceedings would impact the pending criminal proceedings was not answered directly in *Standard Chartered Bank* but in the earlier judgments of the Supreme Court including *Uttam CRL.M.C. 541 of 2004*

***Chand.***

11. This Court views the observations ***Standard Chartered Bank*** to the effect that the finding in adjudication proceedings are not to be viewed as binding and conclusive on the criminal proceedings, while not overruling the earlier judgments ***Uttam Chand*** and ***PS Rajya vs. State of Bihar (1996) 9 SCC 1***, as meaning this: if the Department is able to show the court that irrespective of the departmental/adjudication proceedings which have resulted in total exoneration, there is some other independent evidence, not considered in the adjudication proceedings, on the basis of which the conviction could be obtained in the criminal court, then and only then can it be said that the findings of the departmental/adjudication proceedings will not bind the criminal court. If there is no other independent evidence and on the very same material which forms the basis of the prosecution there has been an exoneration in the departmental proceedings, which has attained finality, then it will be futile to keep the criminal proceedings on the same material pending in the criminal courts.

12. The recent judgment in ***State v. M. Krishana Mohan*** does not alter this settled position. There the departmental enquiry was completed even before the investigation in the criminal case commenced. Therefore, that case is clearly distinguishable on facts. Here the criminal proceedings were launched simultaneously and departmental proceedings ended in exoneration long after the criminal proceedings commenced.

13. In that view of the matter, this Court holds that the Criminal Complaint No. 76/1 and all proceedings consequent thereto including the order dated 19<sup>th</sup> May, 1999 of the learned ACMM is unsustainable in law and hereby quashes them. The petition is allowed but in the circumstances with no order as to costs.

**S. MURALIDHAR, J**

**JANUARY 24, 2008**  
**dn**