

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.12.2014

Date of decision: 12.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

Criminal R.C. Nos.1020 of 2002, 202 of 2011
Criminal O.P.No.20249 of 2003 and CrI.M.P.No.5710 of 2003
Criminal O.P.No.26880 of 2009, 3307 of 2011 and M.P.No.1 of 2011
and
Criminal O.P.No.25095 of 2007 and M.P.No.1 of 2007

CrI.R.C.No.1020 of 2002

1.N.Balasubramanian
2.V.Arunachalam

...Petitioners

vs.

Inspector of Police,
Central Bureau of Investigation,
SPE/Anti-Corruption Branch,
Shastri Bhavan,
Chennai - 600 034.

...Respondent

CrI.R.C.No.202 of 2011

M/s.Ballarpur Industries Ltd.,
rep. by its constituted attorney,
Mr.Jai Krishnan,
Wescare Towers,
No.16, Cenotaph Road,
Teynampet, Chennai - 600 018.

...Petitioner

vs.

State
rep.by the Inspector of Police,
CBI/ACB, Chennai.

.. Respondent

Criminal O.P.No.20249 of 2003

Yogesh Bakshi

.. Petitioner

vs.

State by Inspector of Police,
CBI/SPE/ACB/Chennai.

.. Respondent

Criminal O.P.No.26880 of 2009

Ramesh Kumar

.. Petitioner

vs.

State represented by
Inspector of Police,
Special Police Establishment
Central Bureau of Investigation,
Anti-Corruption Branch,
Shastri Bhavan, III Floor,
Haddows Road, Nungambakkam,
Chennai - 600 006.
Respondent

..

Criminal O.P.No.3307 of 2011

T.M.Manorama

.. Petitioner

vs.

State : represented by
Inspector of Police,
CBI SPE ACB,
Sastri Bhavan, III Floor,
Haddows Road,
Chennai - 6.

.. Respondent

Criminal O.P.No.25095 of 2007

Yogesh Bakshi

.. Petitioner

vs.

Inspector of Police,
CBI/SPE/ACB/Chennai

.. Respondent

PRAYER :- Criminal Revision Case No.1020 of 2002 filed under Sections 397 and 401 of the Code of Criminal Procedure praying to call for the records pending in C.C.No.1 of 1998 on the file of the Principal Special Judge for CBI Cases (IX Additional City Civil Court, Chennai) and set aside the order passed in M.P.Nos.207 and 208 of 1999.

Criminal Revision Case No.202 of 2011 filed under Sections 397 and 401 of the Code of Criminal Procedure praying to call for the records in CrI.M.P.No.711 of 2009 in C.C. No.1 of 1998 ending with the order dated 29.1.2011 on the file of the learned XIII Additional Special Judge for CBI Cases, City Civil Court, Chennai and set aside the same.

Criminal O.P.No.20249 of 2003 filed under section 482 of the Cr.P.C., praying to call for the records pending in C.C.No.27 of 2001 on the file of the IX Additional Principal Sessions Judge for CBI Cases, City Civil Court, Chennai and quash the same.

Criminal O.P.No.26880 of 2009 filed under section 482 of the Cr.P.C., praying to call for the entire records pending in C.C.No.1 of 1998 on the file of the Principal Special Judge for CBI Cases, Chennai and quash the same.

Criminal O.P.No.3307 of 2011 filed under section 482 of the Cr.P.C., praying to call for the records and quash the proceedings in C.C.No.1 of 1998 pending on the file of XIII Additional Sessions Judge, Chennai and quash the same.

Criminal O.P.No.25095 of 2007 filed under section 482 of the Cr.P.C., praying to call for the records in C.C.No.27 of 2001 on the file of the Principal Special Judge (CBI Cases), IX Additional City Civil Court, Chennai and quash the order of proclamation and consequential proceedings thereto.

Mr.C.Manishankar : For petitioners in
CrI.R.C. Nos.1020 of 2002
and 202 of 2011

Mr.Habibullah Basha, : For petitioner in CrI.O.P
Senior Counsel for Nos.20249 of 2003 and
Mr.C.Manishankar 25095 of 2007

Mr.A.V.Somasundaram for : For petitioner in CrI.O.P.
M/s.Lakshmi Priya No.26880 of 2009
Associates

No appearance : For petitioner in CrI.O.P.
No.3307 of 2011

Mr.K.Srinivasan, Special : For respondent in all the
Public Prosecutor for CBI matters
CASES

COMMON ORDER

These revisions and petitions are filed either to quash the charge sheet filed in C.C.No.1 of 1998 on the file of the XIII Additional Special Judge for CBI Cases, and also charge sheet filed in C.C.No.27 of 2001, which was split charge from C.C.No.1 of 1998 and also to allow the discharge petition filed by A.6, A.2 and A.7.

Criminal R.C.No.1020 of 2002 was filed by A.6 in C.C.No.1 of 1998 challenging the order passed in Crl.M.P.No.207 of 1999 in C.C.No.1 of 1998 whereby the discharge application filed by the revision petitioner was dismissed.

Criminal R.C.No.202 of 2011 was filed by A.2 challenging the dismissal of the discharge application filed by the revision petitioner in Crl.M.P.No.711 of 2009 in C.C.No.1 of 1998 on the file of the XIII Additional Special Judge for CBI Cases, Chennai.

Criminal O.P.No.20249 of 2003 was filed by A.3 to quash the charge in C.C.No.27 of 2001 on the file of the IX Additional Principal Sessions Judge for CBI Cases.

Criminal O.P.No.26880 of 2009 was filed by A.9 in C.C.No.1 of 1998 to quash the proceedings in C.C.No.1 of 1998.

Criminal O.P.No.25095 of 2007 was filed by A.1 in C.C.No.27 of 2001 to quash the order of proclamation dated 27.05.2003 and consequential proceedings thereto.

2. As the facts relating to all these revisions and original petitions are one and the same and the revision petitioners and the petitioners filed these revisions and original petitions to quash the charge sheet or to discharge them, all of them were heard together and common order is passed.

3. The respondents filed charge sheet against 9 accused namely, (1) N.Gopalakrishnan, (2) M/s.Ballarpur Industries, (3) Yogesh Bakshi, (4) M.N.Narayanan, (5) Smt.T.M.Manorama, (6) N.Balasubramanian, (7) V.Arunachalam, (8) N.Periasamy, (9) Ramesh Kumar. A.1, A.5 to A.9 were working in the Customs House in Chennai during 1993-94. A.2 is the Company. A.3 was the General Manager of that company (2). A.4 was the staff of A.2. The respondent filed the charge sheet against the aforesaid 9 persons for offences punishable under sections 120 (b), r/w 420, 467, 468 and 471 IPC and sections 7, 13(2) r/w 13(1)(d) of the P.C.Act and further stated that A.1 has committed specific offences punishable under section 420 IPC, 13(2) r/w 13(1)(d) of P.C.Act. A.2, A.3 and A.4 have committed the specific offences punishable under section 420 IPC. A.5 to A.8 have committed specific offences punishable under section 420, 467, 468, 471 IPC and section 13(2) r/w 13(1)(d) of P.C.Act, 1988 and A.9 has committed specific offences punishable under section 420 IPC, section 7, 13(2)

r/w 13(1)(d) of the Prevention of Corruption Act, 1988. As stated supra, A.2, A.3 and A.6 and A.9 filed these petitions.

4. The gravamen of the charge insofar as these accused are concerned is as follows:-

A.2 Mrs. Ballarpur Industries Limited, hereinafter referred to as "BILT" is a glass making unit. They imported goods, namely, machinery and other items through Madras Customs House during 1992 and claimed imported goods as accessories eligible for concessional rate of duties and that was disputed by the customs and a dispute arose with regard to importation of goods under certain Bill of Entries. Finally, "BILT" came forward to pay the prescribed rate of duty and cleared the goods after paying the higher rate of duty for the goods imported under the Bills of Entry No.026274 dated 31.07.1992, 030346 dated 4.9.1992, 030661 dated 16.9.1992, 030675 dated 8.9.1992, 034745 dated 4.9.1992. After clearing the items imported during the month of October, 1992, "BILT" filed refund claim in respect of 5 imports made under 5 Bill of Entries as stated above. All the 5 refund claims were signed by the third accused, who was the General Manager of "BILT" purportedly on 4.3.1993. All the refund claims uniformly bore 3 stamps on the face of it denoting receipt of the Customs House. It is stated in the charge sheet that a stamp of appraising refund section with date 7.4.1993 was first placed and thereafter, a stamp of the same section dated 5.3.1993 was placed over it. Apart from this, another stamp Appraising Main Section was placed by the side of it with date as 5.3.1993. A number purporting to that of serial number of the Inward Tapal Register relating to Appraising Main Section was written and an initial like writing was made in the stamp for the Appraising Main Section. The Appraising Refund Section stamp also bore an initial like writing in the centre of it. The same pattern was followed in all the 5 refund application. These refund applications though bore the stamp of Appraising Main Section apparently dated 5.3.1993 with a purported serial number of the tapal register with initials purporting to that of AC Appraising Main Section etc., they were not received in fact by the Appraising Main Section on the said date as evidenced from the Tapal Register. There was no such receipt or retransmission of such refund claims from the Appraising Main Section to the Refund Section. The refund claims were forwarded from the Refund section, on dates such as 5.3.1993, 9.3.1993, 15.3.1993 etc., but these 5 impugned refund claims though purportedly stamped as received on 5.3.1993, do not find entry in the refund section inward entry register (CPU Register). On the contrary, these claims found entry in the register under the date 15.4.1993 and the next batch of refund claim were forwarded to computer unit only on 29.4.1994. A.5 - Manorama Tapal Clerk prepared first sheet of these impugned claim applications and opened the file denoting the date of receipt of these claims as 7.4.1993 whereas 7.4.1993 was a holiday, namely, Sunday. In respect of claim No.75300611, the date of receipt was mentioned as 5.3.1993 and A.5 Tapal Clerk who prepared the first sheet left this particular column unfilled and without entering as to whether the claims were on

time or within 6 months from the date of payment of duty. The duties were paid in October, 1992 and six months period lapsed as on 31.3.1993 and the claims would be valid only if they were filed latest by 31.3.1993 and if the claims were filed after 31.3.1993, the whole claim will be barred by limitation and the company will not be eligible for refund. Therefore, the prosecution alleged that to make it appear that the refund claims were filed within the period of six months, stamps were affixed as if those refund claims were received on 5.3.1993 but as a matter of fact, those refund claims were received after the period of limitation and all the accused conspired and forged the documents and caused wrongful loss to the Government. Therefore, the accused had committed the various offences as stated above.

5. As stated supra, though there were 9 accused in C.C.No.1 of 1998, due to absconding of A.3, he was split up from C.C.No.1 of 1998 and separate charge sheet in C.C.No.27 of 2001 was filed against him and A.3 in C.C.No.1 of 1998 who is the first accused in C.C.No.27 of 2001 filed Criminal O.P.No.20249 of 2003 to quash the charge sheet. N.Balasubramanian accused in C.C.No.1 of 1998 filed CrI.M.P.No.207 of 1999 for discharge along with A.1, A.2, A.3, A.5 and A.7 and by common order dated 11.2.2002, that Application was dismissed and aggrieved by the same, he filed CrI.R.C.No.1020 of 2002. Similarly, Ballarpur Industries Ltd., filed CrI.M.P.No.711 of 2009 in C.C.No.1 of 1998 to discharge and that was dismissed by order dated 29.1.2011. Aggrieved by the same, CrI.R.C.No.202 of 2001 was filed. CrI.O.P.No.26880 of 2009 was filed by Ramesh Kumar to quash the proceedings in C.C.No.1 of 1998 insofar as it is against him.

6. To appreciate the facts, contents and to understand the facts, it is worthwhile to state the facts of the case in brief:-

(a) The appellants had been granted import license dated 13.12.91 under EPCG scheme for import of Plants and machinery for their glass manufacturing plant at Pondicherry. These were cleared by the Madras Customs on payment of concessional rate of duty under Customs Notification No. 169/90 available for import under EPCG scheme. At the time of import, they contended that they had not placed any order nor had they imported accessories and spares. Therefore, they subsequently placed orders for supply of accessories and spares for the said Plants from the suppliers. At the time of clearance of the said spares under the three impugned Bills of entry, the proper officer denied them the concessional rate of duty under the said Notification available under the said scheme and assessed the imported goods on higher rate of customs duty. The said assessment was made by the proper officer upon direction of the SIB, Madras who gave specific direction to the concerned group to treat the imported goods as spare parts and are not accessories. The appellants, therefore, paid excess duty of Rs. 2,50,37,145 on 1.10.92 in view of the urgent need for the use in the plants and machinery. While doing so, they had sent a letter of protest dated 12.9.92 to

the Assistant Collector (SIB) Customs House, Madras indicating clearly to him that there was an urgent need to clear the goods to meet the export shipment dead line and therefore, they were paying duty at the rate assessed by him under protest.

(b) Thereafter, the appellants filed refund claim for the said sum paid by them vide their refund claim dated 5.3.93 with a covering letter dated 4.3.93 which was well within six months from the date of payment made on 1.10.92. The said refund application was received by the main appraising Section of the Madras Customs by putting their seal.

(c) On 1.10.93 Assistant Collector (Appraising) Refund Section, called for particulars with regard to refund claim dated 5.3.93. That the appellants filed detailed reply dated 14.1.93 with regard to the details and furnished documentary evidence and write-up of the accessories imported establishing their claim. They also supported their claim with a certificate dated 10.12.93 issued by the Chartered Accountant. The Assistant Collector of Customs granted personal hearing on 20.1.94 and thereafter along with an independent Chartered Engineer visited the factory in Pondicherry to ascertain as to whether the accessories cleared were actually used in the plants and machinery or they were stored as spares. Thereafter, on 11.2.94 he passed a detailed considered Order-in-Original granting refund of the claims setting out the reasons for the same. The order was a detailed one. However, he had in the said order rejected refund claims in respect of some of the items of the value of Rs. 18,74,670 and granted refund in respect of the impugned three Bills of entry. Appellants did not contest this by filing any appeal before the Collector (Appeals) in respect of the rejected claim. Collector of Customs did not file any appeal against the said order passed by the Assistant Collector in terms of Section 128 of the Customs Act, 1962. However, Collector of Customs under Section 129D(2) of the Customs, Act, 1962 called for examination of the proceedings of the Assistant Collector and filed review petition before the Collector (Appeals) for determining the points raised by him against the Order-in-Original of the Assistant Collector under the provisions of Section 28.

7. The Collector of Customs (Appeals) held that the Application for refund were not filed within the prescribed period and consequently held that the Application for refund was barred by time and therefore, refund should not have been ordered. This order of Collector of Customs (Appeals) was challenged by the company, namely, "BILT" before the CEGAT, South Zone Bench, Chennai and the Appeals filed by the company before the CEGAT, South Zone Bench, Chennai, was allowed and the order of the Collector of Customs House was set aside. Aggrieved by the same, the Commissioner of Customs filed Civil Appeals 3942 to 3944 of 2001 before the Hon'ble Supreme Court and the Hon'ble Supreme Court allowed those Appeals and set aside the

order of the Tribunal as well as Commissioner of Appeals and remanded the case to the Commissioner of Appeals for a decision on the question as to whether the refund of 2.50 crores was correct or any part thereof was correctly allowed on merits.

8. While allowing the Appeals filed by the company challenging the Collector of Customs (Appeals) in Appeal Nos.C/R 313 to 315 of 1997, CEGAT framed the following questions for consideration:-

(a) Whether the review application filed by the Collector of Customs under Section 129D of the Customs Act is maintainable in view of the specific provisions for initiation of proceedings for recovery of refund in terms of the provisions of Section 28 of the Customs Act, 1962.

(b) Whether on the above points, the issue is covered in appellants' favour in terms of the large catena of judgments.

(c) If not whether the order is sustainable in view of the fact that the appellants had filed refund application within the stipulated period of six months in terms of Section 27 of the Act and also duty had been paid under protest in terms of their letter dated 12.9.92 addressed to the Assistant Collector of Customs (SIB) Customs House, Madras by which they have stated that the duty will be paid under protest.

(d) Whether the findings of the Collector in terms of the reference application that the refund claim was time barred and that the refund claim was not filed on 5.3.93 in terms of the endorsement and seal on the refund application dated 7.4.93 which seal is superimposed separately on another seal dated 5.3.93 is correct?

9. We are not concerned with queries of (a) and (b) and while answering query "c", it was held that refund application were filed within a period of six months and those were in time and there was a clear rubber stamp dated 5.3.93 of the Assistant Collector of Customs House Madras (Appraising Main Section) which sent it to another section which embossed another seal dated 7.4.93 over the seal dated 5.3.93 adjacent to the seal dated 5.3.93. There is no allegation that seal of dated 5.3.93 was not genuine and the seal had come to be affixed by the appellants on their own. There was no enquiry concerning the same and at the time of granting refund nor was there any enquiry thereafter for issue of notice alleging forgery as concluded by the Collector (Appeals) on his understanding of the

enquiry which was not proper in law. The Tribunal while answering question 2(d) held that the finding arrived at by the Collector of Customs (Appeals) that the refund Application was time barred was not correct and Duty was paid under protest and the refund claim had been lodged within time and there was no forgery or super embossing of seal by the appellants. When the order of the Tribunal was challenged before the Hon'ble Supreme Court, the Hon'ble Supreme Court held as follows:-

"In our opinion, the finding of fact arrived at by the Tribunal that the application for refund of duty was within the period of limitation calls for no interference. We are, however, informed that there is a criminal prosecution which has been launched alleging that the letter dated 5.3.1993 was a forgery. That prosecution will take its own course and we have nothing to say in respect thereto. We will, however, not go into a disputed question of fact, namely, whether the application for refund was filed on 5.3.1993 or not and we do not propose to disturb the finding of the Tribunal."

10. In this background, petitions were filed to discharge the accused in the criminal case and also to quash the proceedings.

11. It is contended by the learned Senior Counsel, Mr.Habibullah Basha, ably assisted by Mr.C.Manishankar that the petitioner was entitled to claim refund if the duty was paid under protest and the Applications were filed within the period of six months and there was no dispute that the duty was paid under protest and therefore, as per section 27 of the Customs Act, when the duty was paid under protest, there was no question of limitation for claiming refund and therefore, there was no necessity for the officials of the company to forge the seals of the department or ante-date the refund applications so as to make them within the period of six months period and these aspects were not properly appreciated by the Court below while dismissing the discharge application or while framing the charge against the company and its officials. The learned Senior Counsel further submitted that the Hon'ble Supreme Court also upheld the finding of the Tribunal that the refund Applications were filed within the time, namely, on or before 31.3.1993 and therefore, even assuming that the duty was not paid under protest, the fact that the Appeal was filed within the period of six months which was proved by the seal dated 5.3.1993. The prosecution cannot be allowed to stand as there was no finding of forgery of the seal and the seal dated 5.3.1993 was found to be the seal of the Customs Department and therefore, it cannot be stated that the petitioner and others have committed various offences as stated in the charge sheet. The learned Senior Counsel therefore submitted that as per the judgment of the Hon'ble Supreme Court, the refund claims were made within the

stipulated period of six months time and the Tribunal also accepted that the seals were not proved to be forged seals and the seals found on the refund applications, namely 5.3.1993 were the genuine seals of the Customs Department and there was no necessity for the petitioners to forge the seal as duty was paid under protest which was not disputed and the Hon'ble Supreme Court also upheld that the finding of the Tribunal that the refund applications were filed within the time accepting that the seals found on the refund applications, namely, 5.3.1993 as genuine. Therefore, there is no basis for proceeding further in this case. Therefore, the charge against the company as well as the first accused in C.C.No.27 of 2001, Mr.Yogesh Bakshi, who was originally arrayed as A.3 in C.C.No.1 of 1998 is liable to be quashed.

12. Mr.A.V.Somasundaram, learned counsel appearing for A.9 in CrI.O.P.No.26880 of 2009 submitted that the charge is liable to be quashed on the ground of long delay and admittedly, charge was framed in the year 1998 and even after 10 years, there was no progress and the need of the hour is about speedy trial and relied upon the judgments of the Hon'ble Supreme Court reported in (2002) 4 Supreme Court Cases 578 in the matter of P.Ramachandra Rao Vs. State of Karnataka, (2008) 16 Supreme Court Cases 117 in the matter of Pankaj Kumar Vs. State of Maharashtra and others and submitted that it is a clear abuse of process of law and the charge sheet is liable to be quashed.

13. Mr.K.Srinivasan, learned Special Public Prosecutor for the CBI Cases, appearing for the respondent reiterated various averments made in the counter and submitted that the finding given by the CEGAT Tribunal is not binding on the Criminal Court and the Tribunal proceeded on the basis that the seals bearing date 5.3.1993 were genuine seals and on that basis, presumed that the relevant claims were made within the time but the prosecution case is that on 5.3.1993, refund claims were not filed and they were filed only on 7.4.1993 only after the period of limitation and gave details for arriving at the conclusion in the charge sheet itself and therefore, submitted that the finding of the Tribunal cannot be held against the prosecution. He further submitted that the Hon'ble Supreme Court also made it clear that criminal prosecution was initiated alleging that the date 5.3.1993 was a forgery and that the prosecution would take its own course and they would not go into the disputed questions of fact, namely, whether the Application for refund was filed on 5.3.1993 or not and they did not propose to disturb the finding of the Tribunal and also held that the finding of the Tribunal that the Application for refund of duty was filed within the period of limitation does not call for any interference. He therefore submitted having regard to the order pronounced by the Hon'ble Supreme Court, the prosecution has to be allowed to proceed and already, the petitioners have stalled the proceedings for the past 17 years and by reason of forgery committed by the accused in ante-dating the refund applications with the connivance of the customs

officials, they caused loss to the Government and the company gained wrongful gain and therefore, the offences were made out and hence, it cannot be stated that no offence has been made out against the petitioners.

14. It is seen from the arguments of the learned Senior Counsel and the learned counsel appearing for the petitioners and the learned Special Public Prosecutor that having regard to the order passed by the Tribunal CEGAT in Appeal Nos.C/R 313 to 315 of 1997 dated 9.5.2000 and the order passed by the Hon'ble Supreme Court in Civil Appeal Nos.3942 to 3944 of 2001, whether the petitions can be allowed?

15. As stated supra, the main contention of the learned Senior Counsel and the counsel appearing for the petitioners is that the duty was paid under protest and there was no dispute regarding the same and once the duty was paid under protest under section 27 of the Customs Act, there was no period of limitation. Therefore, there was no necessity for the accused to forge the seal as if the refund claims were filed on 5.3.1993 to bring it within the period of six months. Therefore, an inference has to be drawn that the applications for refund were made within the period of limitation and that was also accepted by the Tribunal and that part of the order of the Tribunal was also upheld by the Hon'ble Supreme Court. Another contention is that the Tribunal gave a specific finding that the claims were made within the period of limitation and seal dated 5.3.1993 was a genuine seal and it was not a forged seal and therefore, no offence has been committed.

16. To appreciate the said contention, we will have to see the order passed by the Tribunal CEGAT in the above Appeals and also order passed by the Supreme Court. Before going to that, a reading of Section 27 of the Customs Act makes it clear that refund claim has to be made within a period of six months from the date of payment of duty and there is no period of limitation where the duty was paid under protest.

17. As stated supra, while disposing of the Appeals, the Hon'ble Tribunal framed four points for consideration and held in Paragraph 18 that there was a clear rubber stamp dated 5.3.1993 of the Assistant Collector of Customs House, Madras (Appraising Main Section), which sent it to another section which embossed another seal dated 7.4.1993 over the seal dated 5.3.1993 adjacent to the seal dated 5.3.1993 and there was no allegation that the seal dated 5.3.1993 was not a genuine and the seal came to be affixed by the appellants on their own and there was no enquiry concerning the same at the time of granting refund nor was there any enquiry thereafter for issuance of notice alleging forgery as concluded by the Collector of Customs (Appeals). It was also held that after going through the evidence, the pleas raised by the appellants that they had claimed refund within the stipulated time of six months from the payment of duty in terms of section 27 of the Customs Act, 1962 has to be upheld

and also gave a finding that refund applications were filed within the time and they were not time barred.

18. According to me, the Tribunal proceeded on the basis that the refund Applications were filed within the period of six months and that was evidenced by the seal dated 5.3.1993 found on the applications only on the ground that there was no dispute regarding the seal dated 5.3.1993 found on those Applications and it was not the case of the prosecution or the Customs that the Seal dated 5.3.1993 was a forged one. But, it is not the case of the prosecution as seen from the charge sheet that the seal dated 5.3.1993 was not that of the Customs Department and it is the specific case of the prosecution that with the connivance of the Customs officials and in conspiracy with them, though the refund claims were made after the period of limitation, the Customs seal dated 5.3.1993 was put to make it appear that the Applications were filed within the time. A reading of the charge sheet will make it clear and for better appreciation, the relevant portion in the charge sheet is re-produced as hereunder.

"... After clearing the items imported during the month of October 1992, the BILT filed refund the claims in respect of 5 imports made under the 5 bills of entry mentioned above claiming refunds as mentioned below:

- | | | | |
|----|-------------------------|-------------------|----|
| 1. | 030675, dated 8.9.1992 | Rs.2,74,89,317.00 | 2. |
| | 030346, dated 4.9.1992 | Rs.1,18,77,905.00 | 3. |
| | dated 31.7.1992 | Rs. 12,61,306.00 | |
| 4. | 034745, dated 4.9.1992 | Rs. 49,75,801.00 | 5. |
| | 030661, dated 16.9.1992 | Rs. 10,27,382.00 | |

All the above 5 refund claims were signed by the then General Manager of BILT Shri Yogesh Bakshi purportedly on 4.3.1993.1 All the refund claims uniformly bore 3 stamps on the face of it denoting receipt of the Customs House. A stamp of Appraising refund section with date 7th April 1993 was first placed and thereafter, a stamp of the same section dated 5th March 1993 was placed over it. Apart from this, another stamp of Appraising Main Section was placed by the side of it with date as 5th March 1993. A number purporting to that of the serial number of the Inward Tapal Register relating to Appraising Main Section was written and an initial like writing was made in the stamp of the Appraising Main Section. The Appraising Refund Section Stamp also bore an initial like writing in the centre of it. The same pattern was followed in all the 5 refund applications on the very face of its with multiple stamps denoting the date of receipt of the claim in the refund application is "very vital" because any claim of refund is hit by "limitations" if filed after the lapse of 6 months u/s. 27 of Customs Act 1962.

These refund applications though bearing the stamp of

Appraising Main Section apparently dated 5.3.1993 with a purported serial number of the tapal register with initials purporting to that of AC Appraising Main Section etc, were not received in fact at the Appraising Main section in the said date as evidenced from the Tapal Register. The correspondence meant for other sections in the Appraising side used to be received at the Appraising Main Section and retransmitted sometimes. There was no such receipt or retransmission of such refund claims from the Appraising Main Section to the Refund Section. Further the various serial numbers purporting to be that of the tapal register serial number for the dated 5.3.1993 in fact relates to some other correspondences received in the Appraising Main Section. Thjese were dealt by the AB Shri N.Periasamy, the Tapal Clerk of that Section. However, the stamp of Appraising Main Section with 5.3.1993 was placed in these impugned refund applications. The so-called initial purporting to be that of the AC Appraising Main Section was not that of him.

Though there are 2 Appraising refund section stamps with dates 7.4.1993 and 5th March 1993, the later super inforced over the former, there is no entry in the Refund Section Register in respect of these refund claims on 5.3.1993 i.e. the purported date of filing of refund claims. It is seen the refund section was maintaining the refunds claims register (CPU Register) in which the refund claims used to be registered and forwarded to the computer centre (CPU) for feeding into the computer.

The refund claims were forwarded from the Refund section, on dates such as 5.3.93, 9.3.93, 15.3.93, 19.3.93, 20.3.93, 29.3.93, 31.3.93, 2.4.93 etc.,. But these 5 impugned refund claims though purportedly stamped as received on 5.3.93 do not find entry in the refund section inward entry register (CPU Register) above said under any of the above said dates. On the contrary, these claims find entry in the register under the date 15.4.93 and the next batch of the refund claim were forwarded to computer unit only on 29.4.94. These refund applications were entered in the said register by the Tapal Clerk who was working in the Refund Section Smt.Manorama, LDC (A5). Smt.Manorama being the LDC concerned has forwarded these applications to be computer unit. After being entered into the computer, the applications as per procedure with the computer number etc., used to be returned to the Refund Section. Smt.Manorama being the Tapal Clerk prepared the 'first sheet' for these impugned claim applications and opened the file denoting the date of receipt of these claims as

7.4.93 whereas 7.4.93 was holiday i.e. Sunday. In respect of the claim number 75300611 (File No.611) the date of receipt was mentioned as 5.3.93. This is incidentally a claim for a huge amount of more than 2.75 Crores. The first sheet contains a column to state whether the claim was "on time" or not. The tapal clerk Manorama who prepared the first sheet left this particular column unfilled and without entering as to where the claims were on time or within 6 months from the date of payment of duty. As stated earlier, the duties were paid in October, 1992 and hence the 6 months period lapsed as on 31.3.93 and the claims would be valid only if they were filed latest by 31.3.1993 and if the claims were filed after this day at any time, the whole claim will be barred by limitation and the company will not be eligible for any refund."

19. Therefore, the specific case of the prosecution as seen from the charge sheet and also as seen from the statement of witnesses, there was no corresponding entry on 5.3.1993 in the other register for having received refund Applications on 5.3.1993 as alleged by the accused. The prosecution proceeded on the basis that with the connivance and in conspiracy with the Customs officials, seal dated 5.3.1993 was affixed on the refund claims which were received later.

20. As stated supra, the Tribunal proceeded on the basis that the seals were genuine and there was a clear rubber stamp dated 5.3.1993 and there was no allegation that the seal dated 5.3.1993 was not a genuine one nor the seals were affixed by the appellants on their own and as the seals were genuine, it was concluded that the Applications were filed within the period of limitation. The Tribunal did not go into the allegation of forgery, namely, whether the seal dated 5.3.1993 was affixed on the refund claims on 5.3.1993 or later as contended by the prosecution. In other words, the Tribunal proceeded on the basis that the seals were genuine and it bore the date 5.3.1993 and therefore, Applications were filed within the period of limitation. The Hon'ble Supreme Court also held that the criminal prosecution was launched alleging that the letter dated 5.3.1993 was a forgery, that prosecution will take its own course, they have nothing to say in respect of thereto and they also did not want to go into the disputed question of fact, namely, refund Applications were filed on 5.3.1993 or not. However, the Hon'ble Supreme Court also held that the finding of fact arrived by the Tribunal that the Applications for refund of duty was filed within the period of limitation calls for no interference.

21. According to me, having regard to the finding given by the Hon'ble Supreme Court that they did not want to go into the disputed question of fact whether the Applications for refund were find on 5.3.1993 or not, which is the crux of the prosecution that the Applications were not filed on 5.3.1993 and they were filed later,

and seal dated 5.3.1993 was affixed on the Applications later and gave materials to the effect that there was no corresponding entries in the other sections of the department, if the Applications were received on 5.3.1993, it cannot be presumed that the Hon'ble Supreme Court held that the refund Applications were filed on 5.3.1993 as contended by the accused and the Hon'ble Supreme Court left that question open and it is for the prosecution to prove the same and if the prosecution is not able to prove the charge, the accused are entitled to acquittal. Therefore, it is a matter of evidence and the prosecution has to prove that though the refund Applications bore date 5.3.1993, they were not filed on that date. Therefore, I am unable to accept the contention of the learned Senior Counsel appearing for some of the petitioners that the Tribunal gave a finding that the Applications were filed within the period of limitation and that was also accepted by the Hon'ble Supreme Court.

22. The contention of the learned Senior Counsel that when the duty was paid under protect, there was no period of limitation for making refund claims and therefore, there was no necessity for the accused to affix the seal date 5.3.1993 in respect of the Applications filed later. I am not inclined to answer that issue and we cannot go by presumptions and conjectures. If the prosecution is able to establish that the Seal date 5.3.1993 on the refund Applications was not affixed on 5.3.1993 and it was affixed later, the prosecution will succeed.

23. In this case, we are concerned with the forgery alleged to have been committed by the accused in affixing the seal of the customs at a later point of time to make it appear that the Applications were filed within the period of limitation and that question was left open by the Hon'ble Supreme Court. Hence, it is not open to the petitioners to contend that the Hon'ble Supreme Court upheld the finding of the Tribunal that the Applications were filed within the period of limitation and therefore, seal date 5.3.1993 ought to have been affixed on the date on which it was filed. According to me, these aspects were properly considered by the lower Court while dismissing the applications for discharge. Hence, I do not find any material to interfere with the finding of the lower Court.

24. The learned counsel, Mr.A.V.Somasundaram, appearing for the petitioner in Crl.O.P.No.26880 of 2009 raised a plea that fair trial is the essence of criminal jurisprudence and the accused were denied fair trial and cited various judgments. According to me, having regard to the pendency of these cases, at the instance of the accused, it cannot be stated that trial was delayed by the prosecution. Hence, there is no question of prejudice caused to the accused by reason of delay and according to me, the accused are to be blamed for the delay and therefore, the prosecution cannot be quashed on that ground.

25. Criminal O.P.No.25095 of 2007 was filed to quash the order of proclamation passed against the petitioner therein. Having regard to the findings given above, I do not want to go into the legality of the order of proclamation which is challenged in this petition. Suffice it to say that proclamation order is set aside by directing the petitioner to file an affidavit of undertaking to appear before the Court on all hearings. With the above observation, the Criminal O.P.No.25095 of 2007 is disposed of.

26. In the result, Criminal RC.Nos.1020 of 2002, 202 of 2011, Criminal O.P.Nos.20249 of 2003 and 26880 of 2009 are dismissed and Criminal O.P.No.3307 of 2011 is dismissed for non-prosecution. Consequently, the connected Miscellaneous Petitions are closed.

27. Considering the fact that the cases were pending for more than 10 years, the lower Court is directed to dispose of the cases within a period of six months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

asvm

To

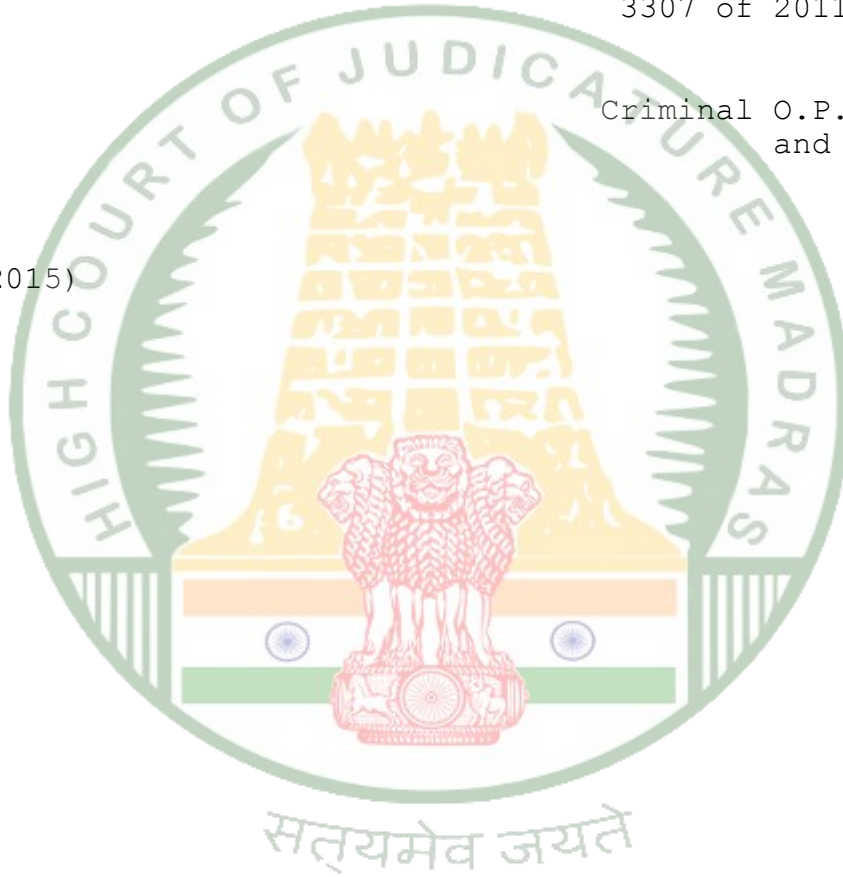
1. The Principal Special Judge for CBI Cases
IX Additional City Civil Court, Chennai.
2. The XIII Additional Special Judge for CBI Cases,
City Civil Court, Chennai.
3. The IX Additional Principal Sessions Judge for CBI Cases,
City Civil Court, Chennai.
4. Inspector of Police,
Central Bureau of Investigation,
SPE/Anti-Corruption Branch,
Shastri Bhavan,
Chennai - 600 034.
5. The Special Public Prosecutor for CBI Cases,
Madras High Court, Chennai.

+3ccs to Mr.C. Manishankar, Advocate, S.R.No.29155

+3ccs to Mr.V.S. Venkatesh, Advocate, S.R.No.29156 & 28525

Criminal R.C. Nos.1020 of
2002, 202 of 2011
Criminal O.P.No.20249 of 2003
and CrI.M.P.No.5710 of 2003
Criminal O.P.No.26880 of 2009,
3307 of 2011 and M.P.No.1 of
2011
and
Criminal O.P.No.25095 of 2007
and M.P.No.1 of 2007

KU (CO)
EU (25/06/2015)



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