***HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ **WRIT PETITION Nos.11432, 11438 and 11457 of 2015**

WRIT PETITION Nos.11432 of 2015

%27.04.2015

Chokkalingam Muruganandam

..... Petitioner

And

The Registrar, Customs Excise and Service Tax Appellate Tribunal, Bangalore and 2 others.

.....Respondents

! Counsel for the Petitioner: Sri B. Jaya Prabhakara Rao

^ Counsel for respondents: Sri Gopal Krishna Gokhale, Standing Counsel for Customs Department.

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> Head Note:

Cases referred:

[1] AIR 1998 Supreme Court 128
2. 2001 Law Suit (Guj) 31
3.1987 Law Suit (Guj) 161
4.(1984) 150 ITR 0128
5, 1995 Law Suit (MP) 22
6. 1991 Supp (1) Supreme court Cases 335
7. (1984) 149 ITR 696 (SC)
8. (1997) 227 ITR 665 (AP)
9. 1991 (52) ELT 168 (Mad.)

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos.11432, 11438 and 11457 of 2015

COMMON ORDER:

These three writ petitions are filed by the petitioners seeking a writ of mandamus directing the respondents 2 and 3 not to proceed with the Criminal Cases instituted against them in C.C.Nos.3, 4 and 5 of 2015, respectively, on the file of the Special Judge for Economic Offences, Red Hills, Nampally. The subject matter of these writ petitions being similar, they are being disposed of by this common order.

2. The case of the petitioners as set out in the writ affidavits is that they came to be confronted at the airport while they were returning from Singapore as they were carrying certain amount of Gold, that they came to be arrested and departmental proceedings were also initiated against them. So far as the merits of the matter is concerned, after issuing show cause notice, an adjudication order was passed confiscating the seized goods apart from levying penalty. So far as the adjudication order is concerned, the petitioners preferred appeals before the 1st respondent-Registrar, Customs Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore (for short, 'the Tribunal'), in C.Nos.21874, 21875 and 21873 of 2014, respectively, under the provisions of the Customs Act, 1962 (for short, 'the Act'), and the same is pending. Simultaneously, the department also had initiated proceedings by filing Criminal Cases against the petitioners for the offences punishable under Section 135 of the Act. The said criminal cases are coming up for trial.

3. It is submitted by the learned counsel for the petitioners that in the event of succeeding in the appeals filed before the Tribunal, there would be no cause of action for prosecuting the petitioners in the criminal cases as the result in the cases pending before the Tribunal would have bearing on the criminal prosecution. In those circumstances, learned counsel for the petitioners submits that till such

time the Tribunal disposes of the appeals filed by the petitioners, this Court may consider restraining the learned Special Judge for Economic Offences, from further proceeding in the criminal cases, pending before him.

4. On the other hand, Sri Gopal Krishna Gokhale, learned Standing Counsel appearing for the Customs Department raised objections with regard to the Court's jurisdiction to consider such application, apart from making submissions on the merits of the matter.

5. Learned counsel for the petitioners placed reliance on the following judgments.

1. M/s. Pepsi Foods Ltd., and another v. Special Judicial Magistrate and others[1]
2. Lakme Limited vs. State of Gujarat[2]
3. Digvijay Cement Co Ltd. Vs. State of Gujarat[3]
4. Balaji Oil Traders v. Income-tax Officer[4]
5. D & H Secheron Electrodes Pvt Ltd vs. Asstt. Collector of Central Excise[5]
6. State of Haryana and others vs. Bhajan Lal and others[6]

The Hon'ble Supreme Court in **P. Jayappan v. S.K. Perumal, First Income-Tax Officer, Tuticorin**[7] had held:

> "That the possibility of success before the Tribunal in the Departmental proceedings cannot be a ground for interdicting the criminal prosecution as both are independent. However, it has also been said that in appropriate cases, the Criminal Court may adjourn / postpone the hearing of the criminal case in exercise of the discretionary power under Section 309 Cr.P.C."

The law laid down by the Supreme Court in **P. Jayappan** case (6 supra) has been subsequently followed in **G.L.Didwania** case (2 supra). While dealing with the same contention, the learned single judge of this Court in the case of **M.A. Quddus vs. Income Tax Officer**[8], while rejecting to quash the proceedings before a Criminal Court, had directed stay of all further proceedings before that Criminal Court till disposal of the appeal filed before the Income Tax Appellate Tribunal. Further in the case of **Plasticraft Industries vs. Assistant Collector of Central Excise**[9], the Madras High Court also held that the stay of criminal proceedings could be ordered.

In the present cases, petitioners invoking the discretionary jurisdiction under Article 226 of the Constitution of India, filed these writ petitions. As held by the Supreme Court, it is the ultimate discretion of the Criminal Court to consider all these aspects while exercising powers under Section 309 Cr.P.C. In that view of the matter, it is appropriate for the petitioners to approach the Court of Special Judge for Economic Offences and submit applications setting out the facts as to why and in what circumstances there is a justification for staying temporarily the proceedings before the Criminal Court; apart from submitting all the possibilities of success before the Tribunal and that the result of the Tribunal proceedings would have bearing on the criminal proceedings also could be canvassed before the Court below.

Accordingly, all the three writ petitions are disposed of giving liberty to the petitioners to approach the Special Judge for Economic Offences Court, Nampally, and submit the respective applications, under Section 309 Cr.P.C. seeking appropriate relief. As and when such an applications are filed, the learned Special Judge, shall consider the same on merits and pass appropriate orders in accordance with law.

Miscellaneous Petitions, if any pending in this writ petition shall stand closed. No order as to costs.

CHALLA KODANDA RAM,J

Date:27.04.2015.

Note:

L.R. copy to be marked.

B/o.

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HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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