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

Date of Decision: August 18, 2015

+ **CRL.M.C. 3317/2015 & CrI.M.As.11834-35/2015**

M/S VISHNU & CO PVT LTD & ANR Petitioners
Through: Dr. Seema Jain, Mr. Ajay Kumar
Jain and Mr Dushyant K. Mahant,
Advocates

versus

SUPERINTENDENT CENTRAL EXCISE Respondent
Through: Nemo

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

% **JUDGMENT
(ORAL)**

Quashing of FIR No.79/1/2007 under Sections 9/9AA of the Central Excise Act, 1944 titled *Sandeep Jain v. M/s. Vishnu and Co. Pvt. Ltd. & Anr.* is sought in this petition on the ground that the demand of duty has been set aside by *the Custom Excise and Service Tax Appellate Tribunal (CESTAT)* and so, the continuance of proceedings arising out of the complaint in question is an exercise in futility.

Learned counsel for petitioners submits that petitioners have appeared before the trial court and pre-charge evidence is in progress and the next date of hearing is 2nd December, 2015. It is also stated that the order setting aside the demand for duty is *sub judice* before a Division Bench of this Court. Reliance was placed by learned counsel for

petitioners upon decisions in *Biharaj MFG. Co. P. Ltd. v. Commissioner of Central Excise* 2007 (94) DRJ 705, *Anil Mahajan & Anr. v. Union of India & Anr.* 2008 (101) DRJ 473 and *Radheyshyam Kejriwal v. State of West Bengal and Anr.* [2011] 4 S.C.R. 889.

Since petitioners have an alternate and efficacious remedy to seek discharge from trial court by urging the pleas taken herein, therefore, this Court is not inclined to exercise its inherent jurisdiction under Section 482 of Cr.P.C.

Such a course is being adopted in view of dictum of Apex Court in *Padal Venkata Rama Reddy Alias Ramu v. Kovvuri Satyanarayana Reddy & Ors.* (2011) 12 SCC 437, which is as under: -

"It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide Kavita v. State and B.S.Joshi v. State of Haryana). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specifically when the applicant may not have availed of that remedy."

Applying the dictum of the Apex Court in *Padal Venkata Rama Reddy (supra)* as referred to hereinabove, this petition is disposed of with liberty to petitioners to urge the pleas taken herein before the trial court at the stage of hearing on the point of charge and if it is so done, then trial court shall deal with the pleas raised herein by passing a speaking and reasoned order.

If the trial court finds that no case is made out against petitioners,

then this order will not stand in the way of trial court to discharge petitioners. Needless to say, if trial court chooses to frame charges against petitioners, then petitioners shall be at liberty to avail of the remedy as available in law, if so advised. It is made clear that this Court has not considered the merits of this case and it is left open for the trial court to do so after considering the pleas raised in this petition and decisions relied upon by petitioners.

This petition and the applications are accordingly disposed of while refraining to comment upon merits, lest it may prejudice petitioners before trial court.

(SUNIL GAUR)
JUDGE

AUGUST 18, 2015

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