THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL PETITION No.14417 of 2016

ORDER:

The criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.No.VIII/48/02/2015-SIIB CPC pending on the file of the Special Judge for Economic Offences, City Criminal Courts at Hyderabad, registered for the offences punishable under sections 132 and 135 of Customs Act, 1962.

2. Heard the learned counsel appearing for the petitioner/accused and the learned counsel appearing for the respondents.

3. On a complaint from South India Fresh Fruits Importers Association, Chennai that the petitioner/accused, proprietor of M/s.Asra Enterprises, Hyderabad has mis-declared the origin of appeals as Afghanistan and evaded payment of customs duty by placing fake and forged documents, said to have been issued by Afghanistan Government and conducted importing business of Apples from Afghanistan through Krishnapatnam Port during the years 2014 and 2015 and availed exemption of custom duty to the tune of approximately Rs.6.60 crores under the guise of Notification No.99/2011-Cus dated 09.11.2011 issued by the Ministry of Finance, Department of Revenue, Government of India. An enquiry was initiated by the Special Investigation and Intelligence Branch (SIIB) of the Customs Preventive Commissionerate (CPC), Vijayawada. During enquiry, the SIIB noticed 15 consignments during the period from January 2014 to January 2015 and the same were sent for verification to the Afghanistan Chamber of Commerce and Industries (ACCI) through Government channels. The Central Board of Excise and

Customs, Ministry of Finance, Government of India, vide letter dated 26.05.2015, confirmed that the said 15 certificates of country of origin were fabricated and were not issued by the Afghanistan Chamber of Commerce and Industries. The petitioner/accused has also admitted during enquiry that using fabricated certificates of country of origin, he filed bills of entry for customs clearance and claimed customs duty exemption, and hence, he is liable for punishment for the offences under Sections 132 and 135 of the Customs Act, 1962.

4. The contention of the petitioner/accused is that he is innocent and he is falsely implicated in the above case. The further contention of the petitioner/accused is that the communication received from Afghanistan Chamber of Commerce and Industries shows that the certificates of Origin have been fabricated by TAAK Company Limited and they were not issued by Afghanistan Chamber of Commerce and Industries, and hence the petitioner/accused is not personally liable for the offences alleged.

5. The petitioner is admittedly an Importer and Exporter of certain consumable goods such as fruits and vegetables. On the basis of a complaint from M/s.South India Fresh Fruits Importers Association, Chennai, that the petitioner has wrongly claimed exemption of customs duty for having imported apples from Afghanistan, the 2nd respondent registered a case in C.No.VIII/48/02/2015-SIIB CPC and during the course of investigation, effected the arrest of the petitioner on 16.06.2015 and produced him before the learned Special Judge for Economic Offences and remanded to judicial custody and subsequently released on bail.

6. The petitioner has originally filed W.P.No.34212 of 2015 under Article 226 of the Constitution of India for quashing the said crime on the

grounds enumerated therein. On 20.09.2016, this Court held that the remedy of the petitioner is to invoke Section 482 Cr.P.C., but not Article 226 of the Constitution of India and consequently directed the Registry to convert the writ petition into Criminal Petition and consequently the same has been numbered as Criminal Petition No.14417 of 2016.

7. The allegations, in brief, insofar as the petitioner concerned are that he has evaded payment of customs duty to an extent of Rs.6.60 crores on the basis of a Certificate of Origin purported to have been issued by Afghanistan Chamber of Commerce and Industries (ACCI) for the consignments numbering about 20 spread over a period of one year i.e., from February, 2014 to February, 2015. After having received the complaint from M/s.South India Fresh Fruits Importers Association, Chennai, the matter was enquired into and it was noticed that in respect of about 20 consignments, the petitioner has claimed exemption of customs duty on the basis of the Certificate of Origin purported to have been issued by ACCI which is not a genuine and fake document. On it being confirmed that ACCI has not issued the Certificates of Origin on the basis of which exemption was claimed, the investigation is taken up since if the said allegation is true according to the investigating agency it contravenes the provisions of Section 132 of the Customs Act and punishable under Section 135 of the said Act.

8. Sections 132 & 135 of the Customs Act, 1962 read as under:-

> **SECTION 132. False declaration, false documents, etc.** - Whoever makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

SECTION 135. **Evasion of duty or prohibitions. -**

"(1) Without prejudice to any action that may be taken under this Act, if any person -

(a) is in relation to any goods in any way knowingly concerned in misdeclaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods; or

(b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111 or Section 113, as the case may be; or

(c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under Section 113; or

(d) fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under this Act in connection with export of goods, he shall be punishable, -

(i) in the case of an offence relating to, -

(A) any goods the market price of which exceeds one crore of rupees; or

(B) the evasion or attempted evasion of duty exceeding thirty lakh of rupees; or

(C) such categories of prohibited goods as the Central Government may, by notification in the Official Gazette, specify; or

(D) fraudulently availing of or attempting to avail of drawback or any exemption from duty referred to in clause (d), if the amount of drawback or exemption from duty exceeds thirty lakh of rupees, with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than one year;

(ii) in any other case, with imprisonment for a term which may extend to three years, or with fine, or with both.

(2) If any person convicted of an offence under this section or under sub-section (1) of section 136 is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court such imprisonment shall not be for less than one year.

(3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than one year, namely :-

(i) the fact that the accused has been convicted for the first time for an offence under this Act;

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods which are the subject matter of such proceedings have been ordered to be

> confiscated or any other action has been taken against him for the same act which constitutes the offence;
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> (iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party to the commission of the offence;
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> (iv) the age of the accused."

9. In order to attract the offence thereunder, what is required to be seen is as to whether the petitioner has made any declaration to the Customs Authority knowing or having reason to believe that such a declaration or the document submitted is false in any material particular.

10. The petitioner is seeking quashing of the present petition on the ground that he is no doubt importing apples from Afghanistan but not for claiming any exemption on the customs duty but only for the reason that the apples from the said country are of a cheaper price and they are affordable by the poor people in the southern parts of the country. According to the petitioner, he is not aware nor is he privy to the alleged act of TAAK Co.Ltd., from whom the consignments were received who are said to furnished fabricated certificates said to have been issued by ACCI.

11. After having heard the submissions of the learned Counsel appearing for the petitioner elaborately and also that of the learned standing Counsel appearing for the respondents and having perused the voluminous material that is produced before the Court, what is noticed is that the facts not in controversy outweigh the contentious issue which lie in the narrow compass namely as to whether the petitioner could be said to have contravened the provisions of Section 132 of the Act he having submitted a document knowing or having reason to believe that such a document is false.

12. The admitted fact is that as per the notification of the Government of India, custom duty is exempted for import of apples from

Afghanistan and he has submitted the documents before the authorities and the Deputy Commissioner on being satisfied has cleared all the documents and the authority after having satisfied allowed the petitioner to avail the exemption.

13. Learned Counsel standing Counsel appearing for the respondents, on the other hand, submits that the petitioner does not deny the fact that he received the consignments and claimed the exemption from custom duty on the basis of the certificate said to have been issued by ACCI which on verification has turned out to be false. The investigating agency has forwarded the certificates of origin to ACCI for its confirmation and on behalf of the Afghanistan Chamber of Commerce and Industries its Industries & Export Promotion Director Sri Mirzaman Popal has replied as under:-

> "ACCI really appreciates your ongoing cooperation regard the Certificate of Origin and we would like to inform you that the attached certificates have not been issued by ACCI and the signature and stamp have been fabricated by the Taak Co.Ltd.
> Hereby, we kindly request you to stop custom clearance of the mentioned company.
> Do not hesitate to contact us if you need any further information."

14. In view of the above, what is required to be seen is as to whether the petitioner can be said to have had knowledge or had reason to believe that the certificate which is submitted having received from Taak Co.Ltd., and said to have been issued by ACCI is a false document.

15. The main contention of the petitioner is that he has submitted all the documents with the competent authority and only after being satisfied, the consignments were cleared and at subsequent stage the

authorities cannot be heard saying that the petitioner is not entitled to claim exemption of customs duty quantifying the same at Rs.6.60 crores.

16. *Prima facie* I see no substance in the said contention of the petitioner for the reason that merely because the authorities have originally accepted the documents submitted by the petitioner and allowed the exemption, they cannot subsequently investigate as to the genuineness or authenticity of the documents that are submitted at the time when the exemption was claimed. As already stated, during the period of one year, as many as 20 consignments were cleared and exemption was given to the petitioner and only on the basis of a complaint received from M/s.South India Fresh Fruits Importers Association, Chennai, the matter was enquired into and it turned out that the main document that is submitted by the petitioner and relied upon for claiming exemption is not the genuine document having issued by ACCI.

17. Be that as it may, the contentions that are raised by the petitioner in the present petition cannot be looked into at this stage since the matter needs to be investigated and enquired into in detail and the investigation cannot be interdicted or scuttled at the inception. The nature of the crime is such that it needs to be probed and verified thoroughly before concluding the culpability or otherwise of the petitioner in submitting the Certificate of Origin which was not actually issued by the said authority. What is required to be seen at this stage is as to whether there is a *prima facie* material to proceed against the petitioner with further investigation or whether its continuance will result in grave miscarriage of justice or unwarranted harassment to the petitioner.

18. The following parameters are particularly laid down by the Apex Court in considering such applications in *State of Haryana v. Bhajan Lal*[1], which are as under:-

> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
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> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.
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> 3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
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> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.
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> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceeding against the accused.
>
> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
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> (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

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[1] 1992 Supp.(1) SCC 335

19. The facts of the present case do not fall under any of the above guidelines. *Prime facie* I am of the opinion that it is a fit case where the matter has to be investigated to its logical conclusion for determining as to whether the petitioner had knowledge or had reason to believe that the document which is submitted to the authorities for claiming exemption is a false document. On the face of it, the document that is submitted by the petitioner to the authorities for claiming exemption has been certified by the competent authority that it is not a genuine certificate issued by it. Therefore, without going further into the merits of the allegations, I feel that it is a fit case where investigating agency is allowed to complete the investigation in accordance with law. There are no merits in the Criminal Petition and the same is liable to be dismissed.

20. In the result, the Criminal Petition is dismissed. Needless to say that neither the investigating agency nor the Court below in the event of prosecution being ultimately launched against the petitioner/accused should in any way be influenced with any of the observations made herein.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date:21st October, 2016
Dsr/Smr