IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.07.2017
PRONOUNCED ON : 25.07.2017

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.1381 of 2011
and MP.No.1 of 2011

1. J.R.Smelters
   Rep.by its Managing Director,
   M.Ramachandra Singh
2. M.Ramachandra Singh
3. R.Narayan Singh
4. R.Pramod Singh
5. M/s.Indo Steel Re-rollers
   Rep by its Partner,
   M.Ramachandra Singh ..Petitioners/A1 to 5

Vs.

State by Inspector of Police,
CBI/SCB/Chennai. ..Respondent/Complainant

PRAYER : Criminal Revision is filed under Section 397 r/w.401 of the Criminal Procedure Code, to set aside the order of the Additional Chief Metropolitan Magistrate, Egmore, Chennai in Crl.MP.No.11 of 2011 dated 16.09.2011 in CC.No.4471 of 2010 and to discharge the petitioners/accused 1 to 5.

For petitioners: Mr.B.Kumar, SC
for Mr.P.Solomon Francis.
For respondent : Mr.K.Srinivasan,
Spl.Public Prosecutor for CBI Cases.

ORDER

This Criminal revision is directed against the order passed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai made in Crl.MP.No.11 of 2011 in CC.No.4471 of 2010 dated 16.09.2011.

2. The case of the prosecution is that based on the reliable source information a case in RC 09(S)/2009 was registered in Central Bureau of Investigation (CBI), Special Crime Branch, Chennai on 16.11.2009 for the offences under Sections 120B r/w.420, 467, 468, 471 IPC; Section 9(1) (b) & 9AA of Central Excise Act, 1944 and Section 13(2) r/w.13(1)(d) of PC Act 1988

against the petitioners/Accused. M/s.J.R.Smelters Pvt Ltd., (A1) and others alleging that the petitioners/accused 1 and 5 companies and others in connivance with unknown public servants of Central Excise and Tamil Nadu Electricity Board (herein after referred to as 'TNEB') had cheated and caused wrongful loss to the Government of India to the tune of Rs.83.99lakhs by evading the Central Excise duty on the strength of false invoice/bills while supplying materials to the TNEB and used forged document to commit the offence.

3. The petitioners/accused companies M/s.J.R.Smelters Pvt Ltd (A1) and M/s.Indo Steel Re-rollers (A5) represented by M.Ramahchandra Singh (A2)/Managing Director of A1 company and partner of A5 company. R.Naryan Singh (A3) and R.Pramod Singh (A4) Directors of A1 company obtained supply orders from TNEB during the period from 2005 to 2008 for supplying various Iron and Steel materials i.e, M.S.Angels and M.S.Flats etc., as a manufacturer of the materials. As per the terms and conditions of the purchase order, the supplier should submit pre-authenticated invoices showing the details of address of the Central Excise Office, range, date and time of removal of foods, PLA/RG 23 entry number, Basic Central Excise Duty on the assessable value etc at the time of supply of materials to TNEB for claiming the reimbursement of Central Excise Duty remitted at the time of removal of goods. The petitioner companies are supposed to abide by the terms and conditions of the tender and purchase order placed on them.

4. A2 to A4 conspired together with each other and with another accused A6 to cheat Government of India by evading Central Excise duty and also by claiming fase reimbursement claim of Central Excise duty from TNEB without actually paying the duty. In addition to the said criminal conspiracy, the accused persons with malafide intention prepared two sets of invoices with same serial numbers while supplying materials to TNEB in order to evade Central Excise Duty. One set of invoices contained all the details pertaining to Central Excise Duty such as break-up of Central Excise duty, education cess etc and the other set of invoices was prepared without details of central excise duty related columns. The petitioners intimated the serial number of the first set of invoices having particulars of Central Excise Duty (Excise invoices) to the Central Excise Department and used these invoices for those supplies for which Central Excise Duty were credited. In the other set of invoices (commercial invoices) the amount of Central Excise Duty without paying the Central Excise Duty to Central Excise Department and by claiming the reimbursement from TNEB with the help of these commercial invoices was neither credited in the CENVAT accounts nor remitted to the Central Excise Department Account.

5. In the investigation it is revealed that the accused A2 to A4 prepared forged Chartered Accountant Certificates using the letter head of two Chartered Accountants viz., Omprakash &

Co and B.Kandaswamy Aravind through another accused A.Sardhar (A6) and with the help of their employees viz., Vijay Shanker, Subash Sharma and one A.Mani. The A3, A4 and A6 prepared the rubber stamps of the above mentioned Chartered Accountants through Vijay Shanker and Subash Sharma from a printing press in Ernavoor and used these rubber stamps in the certificates forged by them. The petitioners used the fabricated Chartered Accountant certificates as genuine and submitted the same to TNEB as a proof for remittance of Central Excise Duty in spite of the fact that they did not remit the Central Excise Duty to the Central Excise Department. The petitioners made false reimbursement of Central Excise Duty from TNEB on six instances amounting to Rs.48.38lakhs without actually paying Central Excise Duty to Central Excise Department by producing the above said false invoices and forged chartered Accountant certificates.

6. During the course of investigation no evidence has been put-forth suggesting the role of any public servants of Central Excise Department and TNEB in the commission of the offence. Hence, the offences punishable under Sections 13(2) r/w.13(1)(d) of Prevention of Corruption Act 1988 was dropped.

7. The offences alleged to have committed by the accused persons including the petitioners/accused punishable under Sections 120B r/w.420, 467, 468, 471 IPC Section 9(1)(b) and 9 (AA) of Central Excise Act, 1944. A final report under Section 173 Cr.PC was filed before the Additional Chief Metropolitan Magistrate, Egmore, Chennai on 26.10.2010 in CC.No.4471 of 2010 against the petitioners/accused companies M/s.J.R.Smelters Pvt Ltd (A1) and M/s.Indo Steel Re-rollers (A5) represented by M.Ramachandra Singh (A2)/Managing Director of A1 company and partner of A5 company. R.Naryan Singh (A3) and R.Pramod Singh (A4) Directors of A1 company and A.Sardhar(A6). During the pendency of the CC.No.4471 of 2010, the petitioners filed Crl.MP.No.11 of 2011 under Section 239 Cr.PC for discharging them from the case. The trial Court after considering the materials placed before it, dismissed the petition filed for discharge by an order dated 16.09.2011. Aggrieved against the said order of dismissal, the petitioners are before this Court by way of present revision.

8. The learned counsel for the petitioners would submit that the accused during the years 2005 - 2008, A2, A3, A4 and A6 submitted commercial invoices without showing break up of excise duty, with the criminal intention to cheat Central Excise and TNEB and further pursuant to the above act the petitioners have claimed reimbursement of Excise duty by producing fake certificates of the Chartered Accountants. The company and the partnership firms are registered under the Central Excise Act. The company and the partnership firms are engaged in manufacturing steel products. They were successful bidders for supply of steel viz., angles and flat to TNEB. They successfully supplied the goods and completed the tender. The supply of

steel was done by A1 (JR Smelters) during the year 2007-08 and by A5 (Indo Steel Re Rollers) during the year 2005-2006. As per prosecution that the company had supplied steel products to TNEB under two sets of invoices containing excise duty on the products supplied. The other commercial invoice did not contain the excise duty.

9. The charge sheet is misconceived and wrong for the following facts and circumstances : -

No complaint of excise duty evasion was lodged by the authorities or by the TNEB against the petitioners. Further, the excise authorities after registration of the case and filing of charge sheet by the respondent have not issued any demand or show cause notice to the petitioners demanding the evaded excise duty. The charge sheet proceeds on the footing that A1 and A5/Company and the partnership firm had evaded excise duty. The Central Excise Act provides for self assessment and the duty should be paid on or before the 6th of every succeeding month. Section 14A of the Act provides for a Special Audit. The petitioners viz., A1/JR Smelters and A5/Indo Steel Re Rollers have been audited by the excise department and they have been issued NIL returns for the periods 2004-2011. A perusal of the audit report shows that the assesses have maintained all the documents correctly and no amount is due by way of any excise duty. The documents produced by the accused company and firm show that no excise amount is due during the relevant period as stated in the charge sheet, therefore, there is no question of causing wrongful gain to the accused does not arise herein and hence the prosecution is misconceived. The only charge lies on the basis of evasion of excise duty, when no evasion of any duty is either detected or found by the excise authorities under the Act. The CBI cannot determine if any excise amount is due or evaded, because CENVAT credit has to be given and adjusted. Nor can the trial Court assume the powers of an excise authority to arrive at evasion of excise duty. In the event of any violation in the excise duty, the Central Excise Act provides for compounding and settlement, the respondent registering a case and circumventing the right of the petitioner is a violation of the petitioner's rights guaranteed under Article 14 of the Constitution of India. Without determination of arrears of excise duty and finding thereon by the excise authorities under the Excise Act there can never be a prosecution by the CBI on the allegation of evasion of no payment of excise duty. The learned Magistrate cannot determine as to what is due by way of excise duty. The CBI is also not entitled to determine as to what is the duty, as this duty is assigned to an officer under the Excise Act, and the CBI are not empowered under the Excise Act.

10. The respondent CBI is incompetent to register the case and to file a final report for the following reasons :

The CBI has no jurisdiction to investigate the offence under section 9A of the Central Excise Act makes it not cognizable. The charges a wrongful loss due to non payment of excise duty is less than 50lakhs. No permission to investigate has been obtained under Section 155(2) of Cr.P.C and therefore the charges are vitiated. The CBI cannot be permitted to investigate an alleged contravention of the Central Excise Act since they are not empowered as central excise officers under Section 2(b) of the Act. The CBI has no jurisdiction to register the above case as the charge is only under Sections 420, 467, 468 and 471 of IPC and no official of the excise department has been made as an accused in the above case. If so, the consent of the State Government is a prerequisite for registering the present case, the respondent have not obtained any consent. Therefore, the charge sheet is vitiated.

11. The allegation in the charge sheet that the accused have created two sets of invoices is wrong for the following reasons:

The petitioner have manufactured 90% of the material that were supplied by them to the TNEB and therefore they have mentioned the excise duty in those invoices. On the other hand the petitioners had purchased 10% of the materials from other dealers and have supplied them to TNEB, and the same is the reason that the petitioner did not mention the excise duty in those invoices. It is basic knowledge that only manufactured goods attract excise duty and not materials purchased from dealers and supplied to TNEB, the same can only be termed as a second sale and the same will not attract excise duty. The respondents without understanding this common fact has come to the conclusion that the petitioners have maintained two sets of invoices. The petitioners have produced both the invoices in which the accused supplied steel that were manufactured by them and steel that were purchased and supplied.

12. The entire final report is based on the theory that there was evasion of excise duty, the CBI ever say that there was evasion of excise duty. If there is evasion of excise duty, thereafter, the CBI can enquire if there is false documents, forgery which facilitated the evasion of excise duty. Section 11(a) of the Act is not invoked and Section 11(4) of the Act is also not invoked even after laying of the charge sheet.

13. The learned senior counsel appearing for the petitioners in support of his contentions relied on the decisions of the Apex Court, this Court and other High Court as follows :-

1. Dr.Vimala V. The Delhi Administration - AIR 1963 SCC 1572 -
2. Union of India and others V. Madhumilan Syntex Pvt Ltd and another - 1988 (3) SCC 348.
3. Central Bureau of Investigation V. State of Rajasthan and others - 1996 (1) SCC (crl.) 1090.

4. Keshav Lal Thakur V. State of Bihar – (1996) 11 SCC 557.
5. Commissioner of Customs V. Sayed Ali and another – 2011 (3) SCC 537.
6. Radheshyam Kejriwal V. State of West Bengal and another – 2011 (3) SCC 581.
7. Vishwajit P.Rane V. State of Goa and others - 2011 Crl.LJ 1289.
8. Unreported judgment of this Court dated 06.11.2015 made in Crl.RC.Nos.1238 and 1263 of 2010.

14. The learned Special Public Prosecutor for CBI cases would submit that the FIR in this case was registered on the basis of the reliable source information, prima facie reveals the commission of offence by the accused persons including the petitioners. The investigating authority establishes the offences committed by the petitioners which includes grave offences such as forgery/fabrication of documents etc., for the purpose of cheating the Government of India by evading Central Excise duty and by claiming false reimbursement of Central Excise duty. The commission of offence is established by the prosecution beyond reasonable doubt with documentary and oral evidences submitted along with the charge sheet. The charge sheet filed by the prosecution would discloses the commission of offence in this case on the strength of false invoice/bills while supplying materials to the TNEB.

15. During the course of investigation, opinions from the hand writing experts was also obtained, which further strengthened the evidences against the petitioners and other accused.

16. As per the final report, the TNEB awarded supply order to the petitioner companies, being the manufacturer of various iron and steel materials, the investigation further disclose that M/s.Sree Kumaran Traders is one of the company owned by the petitioners themselves and used the said company's name as cover up for evading Central Excise Duty. Neither the accused nor M/s.Sree Kumaran Traders paid Central Excise Duty for the items shown delivered under the 6 instances in question. Moreover, as per the Central Excise Rules related to the invoices, if any manufacturer uses invoices with out the mandatory criteria; it is the violation of the Rule 11 Central Excise Rules. If any manufacturer is doing any trading activity by raising commercial invoices, the commercial invoices so raised should be supported with the purchase invoice. In order to determine whether the Central Excise Duty has been paid during purchase of the goods, the sales invoice of the firm should have the details about the duties collected by them. If the purchase invoice is not having the details about the Central Excise Duty, then the commercial invoices are not in proper order. In this case, the purchase invoice of M/s.Sree Kumaran Trading Company, which is one of the

companies of the accused did not contain any particulars about payment of Central Excise Duty by M/s.Sree Kumaran Trading Company. Moreover, investigation revealed that neither M/s.Sree Kumaran Trading Company nor the accused companied paid any Central Excise Duty for the items shown in the Commercial invoices, which was used in the false reimbursement claims. This clearly proves the evasion of Central Excise Duty and false claim made by the accused with the support of false invoices.

17. Nevertheless, the petitioner's furnished forged/false Chartered Accountant certificates falsely showing that they have remitted the Central Excise Duty to Central Excise Department and used the same as genuine. Thus, the fraudulent act on the part of the petitioner's established their dishonest intention to cheat the Government of India and TNEB by evading Central Excise Duty and by claiming false reimbursement claim of Central Excise Duty causing wrongful loss to Government of India to the tune of Rs.48.38lakhs and corresponding wrongful gain to themselves.

18. During the course of investigation it reveals that some of the units of TNEB raised query on the second set of invoices without the break up of Central Excise Duty components when the petitioners submitted their false claim for reimbursement of Central Excise Duty without actually paying Central Excise Duty. In order to overcome this problem the petitioners prepared forged Chartered Accountant Certificates using the letter head of two Chartered Accounts viz.,. Omparakash & Co and B.Kandaswamy Aravind through their Co-accused A.Sardar(A6) and with the help of their employees viz., Vijay Shanker (LW18), Subash Sharma(LW19) and one A.Mani(LW20). Further, A3, A4 and A6 prepared the rubber stamps of the above mentioned Chartered Accountants through Vijay Shanker and Subash Sharma from a printing press in Ernavoor and used these rubber stamps in the certificates forged by them. The petitioners used the fabricated Chartered Accountant certificates as genuine and submitted the same to TNEB as a proof for remittance of Central Excise Duty in spite of the fact that they did not remit the Central Excise Duty to the Central Excise Department.

19. After completion of investigation charge sheet was filed against the petitioners under Section 120B r/w.420, 467, 468 and 471 IPC and Section 9(1)(b) and 9AA of Central Excise Act, 1944. The punishment for Section 467 IPC is imprisonment for life or with imprisonment of either description for a term which may extend to 10 years, in the event of conviction, there is no limitation as per law to investigate and to file charge sheet in this case by the respondent/complainant and question of limitation will not arise herein.

20. Thus, the petitioners herein entered into criminal conspiracy with the other accused person and in pursuance of the said criminal conspiracy they manipulated the records with

dishonest intention by preparing two sets of invoices with same serial numbers and submitted false reimbursement claims to TNEB supported by false documents for claiming reimbursement of Central Excise duty knowing fully aware that they did not actually pay the Central Excise Duty to the Central Excise Department. Furthermore, in the criminal conspiracy the accused forged the Chartered Accountants Certificates through their co-accused A.Sardar(A6) with the help of their Accountants falsely showing payment of Central Excise Duty and used forged and fabricated certificates as genuine for claiming false reimbursement claims. The above pervert act of the petitioners would clearly proves their dishonest intention to cheat Government of India by evading Central Excise duty by falsely claiming Central Excise Duty from TNEB without actually remitting Central Excise Duty to Central Excise Department.

21. The prosecution has made out a prima facie case against the petitioners. The petitioners have not made out the case in this revision petition. The trial Court after carefully considering all the materials placed before it, rightly dismissed the discharge petition filed by the petitioners, there is no perversity or infirmity in the order passed by the trial Court in Crl.MP No.11 of 2011 in CC.No.4471 of 2010 dated 16.09.2011 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai. Hence, the learned Special Public Prosecutor for CBI Cases, prays for dismissal of the revision petition filed by the petitioners.

22. Heard the rival submissions made on both sides and perused the records, such as final report filed before the trial Court, discharge petition filed by the petitioners before the trial Court, counter filed by the respondent and the order passed by the trial Court and the grounds raised in this revision petition and the oral and written submissions made by the learned counsel for either side.

23. On perusal of records, based on the reliable source information a case in RC 09(S)/2009 was registered in Central Bureau of Investigation (CBI), Special Crime Branch, Chennai on 16.11.2009. After the investigation, since no public servants are involved in the offence under Section 13(2), 13(1)(d) of Prevention of Corruption Act, 1988 was dropped and the charge sheet was filed against the petitioners and other accused for the commission of offences under Sections 120(b) r/w.420, 467, 468 and 471 of IPC and Section 9(1)(b) and 9(AA) of Central Excise Act, 1944.

24. According to the prosecution as per the final report filed under Section 173 of Cr.P.C, the TNEB awarded supply order to the petitioners company being the manufacturer of various iron and steel items. M/s.Sree Kumaran Traders is one of the Company owned by the petitioners and used the said companies name as cover up for evading the Central Excise Duty. The main

allegation raised against this petitioners is that the second set of invoice without break up of Central Excise duty components were submitted to TNEB for reimbursement of Central Excise duty, some of the units of TNEB raised query and returned the invoices. At that time, the petitioner furnished forged or false Chartered Accountants certificate falsely showing that they have remitted the Central excise duty to Central Excise Department and used the same as genuine one.

25. The learned Special Public Prosecutor of CBI Cases would further state that contentions of the learned Senior Counsel regards there was no relevance on the Chartered Accountant Certificate and there was no necessity to create a forged one are not acceptable. Even assuming that it is not mandate to the petitioners to file Chartered Accountant Certificate, but on perusal of the documents would reveals that the documents furnished by the petitioners are forged and fabricated for the purpose of remitting central excise duty knowing fully aware that they have not remitted the Central Excise duty to the Central Excise department and used the same as genuine. Therefore, whether it is forged or not and the necessity of the same can be decided only by the trial Court, that too after recording of the evidences. At this stage, this Court cannot say as to whether the petitioners have falsely created the forged certificates and furnished the same for evading Central Excise duty, the same can be decided only after completion of the trial.

26. As far as the question of law raised by the learned Senior Counsel for the petitioners is concerned there is no quarrel in the provision of law and also the proposition laid down in th referred cases. As far as provision of law is concerned, in the normal course of circumstances, if any evasion is found there is enabling provisions are available in the Central Excise Act and action can be taken within the Act itself. But, whereas in the present case prima facie there is an allegation for commission of offence. Considering the serious nature of the allegation the submissions made by the learned senior counsel for the petitioners is not acceptable. As far as the decisions cited by the learned senior counsel for the petitioners, this Court has no quarrel with the proposition of law laid down by the Apex Court and the facts and circumstances of the case in hand is entirely different from the decisions cited supra and at this stage, the same is not be applicable to the present case in hand.

27. The learned Special Public Prosecutor for CBI cases would submit that Sections 120(b) and 420 IPC are grave offences and no public servants are involved in this case and the charge under Section 13(2) r/w.13(1)(d) of Prevention of Corruption Act was already dropped, therefore, the objections regarding the question of competency and the limitation are not acceptable one.

28. On perusal of the records there is an allegation against these petitioners and also the final report filed by the respondent disclose the commission of the offence and prima facie case is made out against these petitioners and there are incriminating materials are available against these petitioners. In this regard, time and again the Hon'ble Apex Court and also this Court in various decisions have held that there cannot be any rowing enquiry and the probative value of the materials cannot be looked into. Further, at the time of framing of charges, the trial Court has to look into the materials viz., final report filed by the prosecution under Section 173 Cr.P.C, wherein if any incriminating materials are available against the accused to proceed further, then the Court can frame the charges against that accused so as to necessarily face a trial. Admittedly, in this case as already stated there are enough materials available in the final report filed by the prosecution. However, whatever points are raised by the petitioners in this revision petition, the same can be agitated before the trial Court in the trial.

29. On perusal of the records and the order passed by the trial Court, this Court finds no illegality, infirmity or perversity in the order passed by the Additional Chief Metropolitan Magistrate, Egmore, Chennai in dismissing the discharge petition filed by the petitioners in Crl.MP.No.11 of 2011 and the same does not warrant any interference.

30. In the result, the criminal revision stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Chief Metropolitan Magistrate, Egmore, Chennai.

2. The Inspector of Police, CBI/SCB/ Chennai.

3. The Special Public Prosecutor, CBI Cases, High Court, Madras.

+ 1 cc to M/s. P. Solomon Francis, Advocate Sr.52667

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