IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED .07.2017

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON :07.07.2017

PRONOUNCED ON :.......08.2017

CRL.RC. No.174 of 2011
and
M.P.No.1 of 2011

Alok P.Gupta
Director,
M/s.Sujatha Data Products Ltd.,
Plot No.18&19, Anrich Industrial Estate,
Bollaram, Hyderabad,
Narasapur Taluk Medak District,
Andhra Pradesh - 500 872 .. Petitioner

..Vs..

State By:
The Assistant Commissioner of Customs,
Prosecution, Custom House,
Chennai. .. Respondent

Prayer:- Criminal Revision Petition filed under Section 397 and 401 Cr.P.C., to call for the records and set aside the order dated 22.01.2011 made in Crl.M.P.No.2800 of 2010 in E.O.C.C.No.62 of 2006 on the file of the Learned Additional Chief Metropolitan Magistrate, (E.O.1), Egmore, Chennai.

For Petitioner :Mr.A.Nagarajan
for M/s.Gita Asokan
For Respondent :Mr.M.Venkateswaran,
Special Public Prosecutor for customs

ORDER

This Criminal Revision Petition has been filed under Section 397 and 401 Cr.P.C., to call for the records and set aside the order dated 22.01.2011 made in Crl.M.P.No.2800 of 2010 in E.O.C.C.No.62 of 2006 on the file of the Additional Chief Metropolitan Magistrate, (E.O.1), Egmore, Chennai.

2. The third accused in E.O.C.C.No.62 of 2006 is the Revision Petitioner. This Criminal Revision Petition is filed against the dismissal of discharge petition in Crl.M.P.No.2800 of 2010 in E.O.C.C.No.62 of 2006 on the file of the Additional Chief Metropolitan Magistrate (E.O.1), Egmore, Chennai.

3. The petitioner herein is the originally arrayed as 4th accused in the above calender case and after split-up, he is now re-ranked as accused No.3.

4. The short summary of the case is that the respondent/department had filed a complaint against the petitioner and three others for alleged offence u/s.120-B IPC R/W.135(1)(A) of the Customs Act and Section 4 of Foreign Trade (Development and Regulation) Act r/w.clause 3(3) of Export (Control) Order, 1988 as amended u/s.135(1)(a) of the

Customs Act r/w. section 76(1)(a) and Rule 11 of Customs and Central Excise Duty Drawback Rules, 1971 punishable u/s.135(1)(a)(ii) of the Customs Act and U/s.135(1)(a) of Customs Act r/w Section 18(1)(i) of FERA,1973 and Rule 7(2)(b)(1) of Foreign Exchange Regulation Rules,1974 punishable u/s.135(1)(a)(ii) of the Customs Act.

5. The revision petitioner submits that the respondent/department had examined P.W.1 to P.W.18 and has marked Ex.P1 to Ex.P50 to prove their case. The allegation in the complaint is that shipping bill bearing No.15665 dated 13.03.1995 had been filed with the respondent for export of 4000 numbers of floppy disc drives and central excise duty drawback in favour of consignee M/s.Arvee International Ltd.,Mascow the goods value were declared as Rs.1,02,42,113/- in the said shipping bill. A.2 is the manufacturer and A.1 is the exporter. Though the goods were inspected by Central Excise Officials at Bolarai,Hyderabad IV Division after the necessary inspection report and endorsements have been made and the container has been sealed by them and however, the customs officials, Chennai, on suspicion, opened the container and found that the consignment were not present as per declaration. The respondent had examined P.W.1 to P.W.18 and had marked Ex.P.1 to P.50. Most of the witnesses are customs officials at Chennai apart from them P.W.13 and P.W.18 are the Central Excise Officials who had given the clearance and P.W.11 is belongs the container service company.

6. The main allegation against the Revision Petitioner is that an inferior quality of Floppy Disc have been packed for export and mis-declaration of the description the product was made by supplies and manufacture for the purpose of claiming, illegal and unlawful, excise duty drawn back.

7. The contention of the revision petitioner in brief is that in case of export, the invoice declaration of goods are manufactured as per the requirement of the importer and in the above case, no oral or documentary evidence is available on record to show that, there is a violation or deviation in this specification and hence, the prosecution has failed to prove a case against the Revision Petitioner through necessary documents and prayed for discharge before the trial Court.

8. After contest, by an order dated 22.01.2011, the learned Additional Chief Metropolitan Magistrate (E.O.1) dismissed the petition and hence, the Criminal Revision Petition.

9. The learned counsel for the Revision Petitioner has stated that the reason assigned by the trial Court at para 9 does not disclose any commission of the offence and hence, prayed for setting aside of the order

and to discharge of the petitioner from the main case.

10. Per contra, the learned Government Advocate (Crl.side) appearing for the department contended that there are necessary averments in the complaint inculpating the action of the accused herein and drawn the attention of this Court to the averment made in paragraph 18,20,21,22,25 of the complaint and also draw to the oral evidence of the P.W.5,P.W.10 and also made a submission that the documentary evidence viz Ex.P20 voluntary statement and Ex.P34 reply given by the petitioner herein are sufficient to hold that the petitioner is to be prosecuted and supplementary submission are made relating to proceedings under Section 114 of Customs Act wherein Departmental proceedings have been initiated for violation of the Provision of the Act and the same is ended against petitioner herein and penalty has been imposed and submitted that the decision is reported in 2000(123) E.L.T.808 (Tribunal).

11. At this juncture, it is relevant to note that as against the penalty imposed upon both manufacturer and exporter in connection with the very same commission of the act of the petitioner as referred above in the above referred decision, an appeal filed by the Ratan Exports & Industries Ltd Vs. Commissioner, the bench consisting of Hon'ble Mr.Justice Sujata V.Manohar and Hon'ble Mr.Justice D.P.Mohapatra and Hon'ble Mr.Justice R.C. Lahoti has dismissed the criminal appeal No.255 of 1999 filed by the Sujatha

Data Products Limited against the CEGAT order as referred above wherein, the Hon'ble Supreme Court has upheld that there was active and willful collusion between Ratan Exports and Sujatha Data Products Ltd., and their main personnel and further held that the charge of collusion is sustainable on the basis of preponderance of probability as collusion is sustainable.

12. The sum and substance of the prosecution case is that the petitioner herein has been charged for mis-declaration of goods attempted to be exported found as junk and does not confirm to description or value declared in the export documents and the plea of the manufacturer not being exporter as defined under Section 2 of the Customs Act is not acceptable when the manufacturer knowingly mis declared the goods in AR-4 Form and having full knowledge that the those could be exported and accordingly, launched the prosecution as stated above.

13. After perusing the complaint and various averment pleaded in paragraph 18,20,21,22,25 and after going through the evidence of P.W.5, dated 22.01.2008 goes to show that the said witness have recorded the statement of Alop Gupta on 16.05.1995 and same is marked as Ex.P20. The Ex.P20 dated 16.05.1995 filed before the trial Court has been filed under the Additional typed set No.II. It is a statement made by the Alop Gupta/Revision Petitioner herein to the witness P.W.5 on 16.05.1995 and Ex.P34 is the reply given by him to the show cause notice after going through the same, I do not

find on merit in the contention of revision petitioner.

14. This Court is considered of the view that the respondent-department have placed necessary documents before the trial Court which is sufficient to presume that the accused have committed the offcence with which they are alleged in the complaint. Necessary averments relating to the role played by the accused and various act committed by the accused in connection with the commission as alleged in the complaint are present.

15. Considering the scope of the Criminal Revision Petition in the matter of the discharge petition, this Court imposes a self-imposed restruction upon itself in not commenting upon the aforesaid statements found in the above referred documents except to state that there is sufficient material available on record for the active role played by the accused in alleged commission of crime and for the modus operation in committing the crime.

16. This Court is satisfied with the materials placed before this Court under Ex.P1 to P15 and the statement recorded by the various officer in the different ranks in the Custom Department which have been recorded as P.W.1 to P.W.18, this Court is of the considered view that the order of the trial Court cannot be interfered with and hence, this Criminal Revision is devoid of merits and liable to be dismissed.

17. Accordingly, this Criminal Revision is dismissed and the order dated 22.01.2011 made in Crl.M.P.No.2800 of 2000 in E.O.C.C.No.62 of 2006 on the file of the Additional Chief Metropolitan Magistrate, (E.O.1), Egmore, Chennai is hereby confirmed. Consequently, connected Miscellaneous Petition is closed.

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To

1.The Additional Chief Metropolitan Magistrate, (E.O.1),
Egmore, Chennai.

2.The Public Prosecutor,
High Court, Madras.

RMT.TEEKAA RAMAN,J.,

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Pre-Delivery Judgment in
CRL.RC. No.174 of 2011and
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