IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.1035 of 2010

1.D.Srinivasa Rao
Partner of M/s.Rare Crafts
Overseas, No.46/2, T.C.Palya Gate,
Old Madras Road,
Bangalore – 49.

2.A.M.Jamaludeen
Partner of M/s.Rare Crafts
Overseas, No.46/2, T.C.Palya Gate,
Old Madras Road,
Bangalore - 49. ... Petitioners

vs

The Assistant Commissioner of Customs,
Prosecution Unit (Sea),
Custom House, Chennai 600 001. ... Respondent

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure against the order of learned Additional Chief Metropolitan Magistrate (E.O-I) Court, Egmore, Chennai – 8 passed in M.P.No.814 of 2010 in E.O.C.C.No.24 of 2008 on 13.07.2010.

For Petitioners : Mr.B.Kumar, senior counsel
for Mr.B.Satish Sundar

For Respondent : Mr.N.P.Kumar,
Special Public Prosecutor [customs]

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ORDER

This revision arises against the order of learned Additional Chief Metropolitan Magistrate (E.O-I) Court, Egmore, Chennai, passed in M.P.No.814 of 2010 in E.O.C.C.No.24 of 2008 on 13.07.2010.

2. Petitioners face prosecution for offences u/s.132 and 135(1)(a),(b) and (c) of the Customs Act, 1962 r/w Foreign Trade (Development and Regulation) Act, 1962 r/w Schedule-1 of the Wild Life (Protection) Act, 1972, in case being tried in E.O.C.C.No.24 of 2008 on the file of learned Additional Chief Metropolitan Magistrate (E.O.I.), Egmore, Chennai. Prosecution case is that petitioners sought to illegally export red sanders in artifact form. Petitioners moved M.P.No.814 of 2010 in E.O.C.C.No.24 of 2008 seeking discharge, which came to be dismissed under the impugned order. Hence, this revision.

3. Heard learned counsel for petitioners and learned Special Public Prosecutor [Customs].

4. This revision is to be allowed on the primary contention of learned senior counsel for petitioners to the effect that while petitioners/A1 and A2,

partners of the firm, involved in the alleged illegal export, have been arrayed as accused, the firm has not.

5. Section 140 of the Customs Act, 1962, reads as follows:

'***140.Offences by companies.*** *- (1) If the person committing an offence under this Chapter is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*

Provided that nothing contained in this sub-section shall render any such person liable to such punishment provided in this Chapter if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section(1), where an offence under this Chapter has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purposes of this section, -

(a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.'

6. On a plain reading of the above section, it becomes apparent that only where a company, which as per the explanation includes also a firm, was found guilty of an offence would those in charge of and responsible to it in the conduct of its affairs, be liable. As in the instant case, the firm M/s.Rare Crafts, of which petitioners are partners has not been arrayed as an accused, no liability could be fastened to petitioners. Learned senior counsel further submitted that sanction for prosecution accorded by Commissioner of Customs (Seaport-Import), Customs House, Chennai, is invalid and the prosecution case would fail also on such ground.

7. As this Court finds itself in agreement with learned senior counsel for petitioners on his first submission and in the event of respondent/complainant deciding to launch prosecution afresh (as the Customs Act also stands included in the schedule to the Economic Offences (Inapplicability of Limitation) Act, 1974), this Court finds it unnecessary to consider such submission particularly since in any event it becomes necessary to accord sanction afresh both for petitioners as also the firm of which they are partners.

The Criminal Revision Case shall stand allowed. The order of learned Additional Chief Metropolitan Magistrate (E.O-I) Court, Egmore, Chennai, passed in M.P.No.814 of 2010 in E.O.C.C.No.24 of 2008 on 13.07.2010 shall stand set aside. Petitioners shall stand discharged in such case.

06.09.2017

Note to office:

Issue order copy by 21.09.2017

Index:yes/no

Internet:yes/no

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To

The Additional Chief Metropolitan
Magistrate (E.O-I) Court,
Egmore, Chennai – 8

C.T.SELVAM, J

gm

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