

Reserved on : 25.07.2017  
Delivered on : 11.08.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2017

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.210 of 2016 and  
1W.M.P.Nos.113 and 114 of 2016

Sanjay Kakkar ... Petitioner

Vs.

1.Commissioner of Customs,  
Sea-Import, Customs House,  
Rajaji Salai, Chennai - 1.

2.Additional Superintendent of Police (ACB),  
Central Bureau of Investigation,  
Shastri Bhavan, Haddows Road,  
Nungambakkam, Chennai - 600 006. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorari calling for the Sanction Order of the 1<sup>st</sup> respondent dated 31.10.2013 and to quash the same.

For Petitioner : Mr.V.T.Gopalan, Senior Counsel  
for Mr.J.Srinivasa Mohan

For Respondents: Mr.G.Rajagopalan,  
Additional Solicitor General  
for Mr.S.R.Sundar, Standing Counsel (R1)

No appearance - R2

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O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorari calling for the records pertaining to the Sanction Order of the 1<sup>st</sup> respondent dated 31.10.2013 and to quash the same.

2.The brief case of the petitioner is as follows:

(i)According to the petitioner, he is working with the Customs Department since 1992 and presently holding the office of Appraising Officer in the Customs Department. According to the petitioner, each action of the Appraising Officer, in-charge of the assessment must be endorsed or ratified by his

immediate superior viz., the Assistant Commissioner of Customs. Even if the Appraising Officer of assessment intends to seek a clarification about any aspect pertaining to assessment, permission of the Assistant Commissioner for seeking such clarification is mandatory.

(ii) The work of the Appraising Officer is invariably under the complete control and scrutiny of his immediate superior viz., the Assistant Commissioner and the assessment is considered complete only after the Bill of Entry leaves the screen of the Assistant Commissioner. The entire process is online screen assessment as per the instructions in the Customs Manual and the Departmental Circulars, no original documents are taken at the stage of assessment and these are verified and docketed only at the time of examination by the Examination Shed Officers. Thus, an Appraising Officer discharges his duty only on the computer with the given affirmed declarations and is not required to verify any document, which verification is done only at the time of examination by the designated Customs Officers posted in the Customs Freight Station, vis-a-vis physical goods.

(iii) The basic function of the Assessing Officer is to determine the duty payable on imported goods based on the note of exemption benefits claimed by the importer under different schemes. He is also required to verify the compliance of the import policy angle for any restriction, license, prohibition, etc. The entire job is done in the EDI system and the cargo declaration is transferred electronically. The calculations are done by the system itself, which also applies the applicable rate of notified foreign exchange. It is basically a job of application of import policy and computation of duty on the declared goods and is invariably subject to the verification of the description of declared description by the Examination Shed Officers. After assessment, a copy of the Bill of Entry is printed in the EDI service centre.

(iv) According to the petitioner, he as an Appraising Officer in-charge of assessment of imported goods, in the year 2011, one of the import consignments that he had appraised was under the Bill of Entry dated 02.09.2011, which was filed electronically by the importer and the declared description of the goods made it abundantly clear with brand name, model number and specifications that it consisted of an item viz., indoor units of Air-conditioners that was not un-understandable in any way and was regularly imported across the country, including Chennai Port for years. The complete description hardly left any scope for any doubt on his part in understanding the declaration, obviating the need for seeking any clarification from the importer. The details, duly affirmed by the importer had been transferred electronically as per the procedure and assessment done was also under the EDI system. Later, based on an investigation initiated by the Directorate of Intelligence, Chennai (DRI) in respect of another import under another Bill of Entry, a large scale

racket of alleged smuggling involving mis-declaration for import of Sony TVs in the guise of Air-conditioners and parts was unearthed with the recovery of a pen drive from the premises of the importer, which contained data for 84 import shipments. The show cause notice in respect of the 84 import shipments is yet to be adjudicated by the Adjudicating Authority.

(v) The 2<sup>nd</sup> respondent, later alleged that what was imported in the Bill of Entry assessed by the petitioner were Air-conditioners and not indoor units of Air-conditioners as declared by the importer in the Bill of Entry under reference. The said single import assessed by the petitioner was completely as per the procedure based on a comprehensive affirmed declaration of the importer, much prior to even the initiation of investigation by the DRI. It was also known to the 2<sup>nd</sup> respondent that the practice had continued and had occurred in at least 83 other imports and 6 FIRs were filed by the 2<sup>nd</sup> respondent covering the above mentioned 84 import shipment, which are the same as referred by the DRI in its show cause notice.

(vi) According to the petitioner, he had assessed the declared goods under the said Bill of Entry under the Customs Tariff Heading (CTH) 84151090. The 2<sup>nd</sup> respondent claimed that only Air-conditioners fall under CTH 84151090 and it was alleged by the 2<sup>nd</sup> respondent that it is a part of wrong doing and that the petitioner must have sought for clarification. The complaint proceeded on the fundamental premise that CTH 84151090 is for Air-conditioners only and indoor units would not come under this heading. However, as per the relevant Schedule of the Customs Tariff Act, CTH 84151090 refers to entry as "others" only and not any specific goods. However, the 2<sup>nd</sup> respondent has not pointed out the entry in which the declared goods should have been classified. The 2<sup>nd</sup> respondent claimed that the petitioner should have entertained a doubt and raised a query and has initiated prosecution proceedings against him on this sole ground. Since the petitioner was convinced with the completeness of the declared description, which was declared under affirmation, un-editable, he had no reason to doubt the truth or accuracy of the affirmed declaration and hence, there was no need to seek any clarification by raising any query.

(vii) According to the petitioner, as a matter of fact, there are thousands of identical Bill of Entry for import of identical goods, both by the same importer as well as by others have been accepted and assessed by various empowered authorities, all over India, in the very same manner under the very same CTH. Based on the pen drive recovered by the DRI, citing the sole reason of the interpretation of the classification adopted by the petitioner, the 2<sup>nd</sup> respondent took a stand that there was criminal conspiracy in the



referred single import assessed by him. However, later, realizing that it was a purely interpretative and highly technical matter of classification of the goods, similar lack of suspicion based on classification of the petitioner's predecessors (investigated under 5 different FIRs) were referred to the 1<sup>st</sup> respondent by the 2<sup>nd</sup> respondent for necessary further action, without invoking criminal culpability on the part of any of his predecessors. In respect of import of identical goods under 83 other Bills of Entry investigated by the 2<sup>nd</sup> respondent, including those by the same importer under the same CTH, from the same port and emanating from the same investigation, under identical circumstances, the 2<sup>nd</sup> respondent opted not to prosecute against the other officers, though 6 FIRs were registered. The classification purported to be adopted by the 2<sup>nd</sup> respondent, without explicitly specifying the same, does not have any revenue implications and the revenue implication, if any, arose only because of the mis-declaration of the goods, to ascertain which is beyond the purview of the role and powers assigned to the petitioner.

(viii) According to the petitioner, the duty was collected at peak rate and he had denied exemption notification claimed by the importer, thus, enhancing the duty by Rs.3 lakhs. Under the Customs Act and the procedures prescribed under the Rules, the petitioner is neither authorized nor have an occasion to physically examine the goods. Only the Customs Examination Shed Officers can examine the goods and it is therefore their duty to revert the Bill of Entry to the Assessing Officers, if the goods declared is found to be different from the declared description.

(ix) According to the petitioner, there is no substance in the complaint of the 2<sup>nd</sup> respondent even at its face value, as the alleged loss of revenue cannot be attributed to him on any count. The 2<sup>nd</sup> respondent sought sanction from the 1<sup>st</sup> respondent on 14.05.2013 to proceed against the petitioner for prosecution in a Court of Law. The 1<sup>st</sup> respondent, being the Competent Disciplinary/Sanctioning Authority had considered the issue in detail and after calling for certain documents pertaining to the investigation from the 2<sup>nd</sup> respondent, had come to a conclusion that no case was made out by the 2<sup>nd</sup> respondent and the same did not warrant prosecution of the petitioner in a Court of Law. The 1<sup>st</sup> respondent, being the Competent Disciplinary/Sanctioning Authority, by her letter dated 13.08.2013, after a detailed and reasoned scrutiny of records, refused to grant sanction to the 2<sup>nd</sup> respondent stating specifically that she had gone through the documents and the statements forwarded. While denying the sanction for prosecution to the 2<sup>nd</sup> respondent, citing the requirement of the Vigilance Manual, the 1<sup>st</sup> respondent forwarded the matter to the Director General of Vigilance, CBEC, New Delhi for necessary further action. The 1<sup>st</sup> respondent, being the Competent Disciplinary/Sanctioning Authority also sent a detailed justification to the Director General of Vigilance,

by letter dated 13.08.2013 for this being an unfit case for grant of sanction for prosecution of the petitioner.

(x) According to the petitioner, the Central Vigilance Commission, without relying upon the report of the Competent Disciplinary/Sanctioning Authority, advised the prosecution by its letter dated 30.08.2013. While the matter was still under consideration with the 1<sup>st</sup> respondent, through a letter dated 25.10.2013, the Director General of Vigilance, CBEC, sought for status of sanction against the petitioner to enable compliance with CVC advice. Immediately after the receipt of the said letter, the 1<sup>st</sup> respondent, after referring to the advice of the CVC, having refused to sanction prosecution earlier, granted the same under Section 19 of the Prevention of Corruption Act on 31.10.2013. The criminal case is pending before the VIII Additional City Civil Court, Chennai in C.C.No.1/2014 and the petitioner has been arrayed as A2 in the said case. The Sanction Order passed by the 1<sup>st</sup> respondent is verbatim the report of the CBI, which she herself over-looked and rejected on a point by point basis, additionally detailing the Customs Procedure involved in the assessment of the imported goods as well as the duties and responsibilities of an Appraising Officer in the process. Aggrieved by the Sanction Order, at the instance of the CVC, after having refused the same earlier on merits, the petitioner has filed the above Writ Petition.

3. The brief case of the 1<sup>st</sup> respondent is as follows:

(i) According to the 1<sup>st</sup> respondent, the Director General of Vigilance, Customs and Central Excise, New Delhi vide their note U.O. to the State CVC has given the comments on the Disciplinary Authority along with certain additional inputs, based on which the CVC gave its stage advise on 30.08.2013, which was received from CVO, CBEC, New Delhi. The Sanctioning Authority, after going through the additional inputs observed that furnishing of documents based upon the CVC advice and has come to the conclusion that there is lapse on the part of the petitioner and prima facie there is case for sanction for prosecution of the petitioner on 31.10.2013.

(ii) In the U.O. note it is observed that the importer is a Trader and the supplier is not the manufacturer. 1498 pieces of indoor units have been declared to be imported. A Trader will not require only indoor units and only 5 container loads of indoor units are being imported. The Declaration of Tariff levy CTH 84151090 applicable to the complete Air-conditioners, for goods described as parts of Air-conditioners should also arise suspicion to the officer to seek a query on the importer as to why only indoor units were being imported and Bill of Entry should have been given a first check to ascertain whether only indoor units is declared to be imported.

S.O.23/2006 which states that officers assessing the Bill of Entry shall carefully read each instruction and arrive at a decision to tackle the risk. Para-7.1.1 of U.O. note states that the officer failed to seek revenue centric details from the importer. Had this basic clarification on this unusually large number of indoor units been sought, it would have shed light that the items actually imported were not parts as declared, but complete Air-conditioners, resulting in applying the correct classification to complete Air-conditioners and seek a licence for importation of Air-conditioners.

(iv) It is also observed that the petitioner caused revenue loss of Rs.42,05,597/-. The lapse on the part of the petitioner does not appear prima facie to be bonafide, warranting protection under Section 155 of the Customs Act and prima facie there is a case for sanction for prosecution under Section 120 B read with Sections 420, 468 and 481 IPC read with Section 13(2)(1)(d) of the Prevention of Corruption Act, 1988 and in view of the above, sanction for prosecution was granted.

(v) The additional materials were considered while granting sanction and the Disciplinary Authority independently applied its mind, which is also evident. In these circumstances, the 1<sup>st</sup> respondent prayed for dismissal of the Writ Petition.

4. Heard Mr.V.T.Gopalan, learned Senior Counsel appearing for the petitioner and Mr.G.Rajagopalan, learned Additional Solicitor General appearing for the 1<sup>st</sup> respondent.

5. Mr.V.T.Gopalan, learned senior counsel appearing for the petitioner submitted that when the sanction was refused at the first point, sanction was later granted without any fresh material from the Investigating Agency, solely at the behest of the CVC. According to the learned senior counsel, the materials referred by CBEC to CVC, which the respondent now terms as new material, are mere instructions already known to the Competent Authority and also elaborately discussed while rejecting sanction. Further, the learned senior counsel submitted that the Department dropped the charges against the petitioner and held that he discharged his duties in good faith, which in turn grants him protection under Section 155 of the Customs Act referred to in the order denying sanction.

5.1. In support of his contentions, the learned senior counsel relied upon the following judgments:

(i) (2010) 14 Supreme Court Cases 527 [State of Himachal Pradesh Vs. Nishant Sareen] wherein the Apex Court held as follows:

"...

4. The Principal Secretary (Health), on the basis of the material placed before her and on



examination of the case, found no justification in granting sanction to prosecute the respondent. In the Order dated 27-11-2007 whereby sanction was refused, it was observed as under :

"Therefore, after thorough examination of the case taking all the aspects into consideration and scrutiny of the service records it has been concluded that Shri Sareen in the course of his duties and responsibilities and impartial discharge of his duties (sic). It appears that the complainant has registered a case which appears to be frivolous and has resulted in unnecessary harassment and hindrance in the working of the Drug Inspector. In view of this, there appears to be no justification for launching prosecution against Shri Nishant Sareen, Drug Inspector as it appears to be a case of personal enmity."

5. It appears that the Vigilance Department took up the matter again with the Principal Secretary (Health) for grant of sanction as in their opinion sufficient evidence existed to prosecute the respondent. The competent authority, thus, reconsidered the matter and granted sanction to prosecute the respondent vide its Order dated 15-3-2008. In the sanction Order dated 15-3-2008, it was observed thus:

"I agree with the contention of the Vigilance Department that in evaluating the evidence of criminal misconduct, his general conduct and behaviour as perceived by his superiors cannot secure precedence. I have been through the case file and facts of the case in detail. I find that the said Drug Inspector Shri Nishant Sareen has been caught red-handed, with a bribe of Rs.5000/-. There is nothing on record to show that this incident did not occur. The facts do not support the contention that Shri Nishant Sareen was falsely implicated. In the circumstances, I am of the opinion that the prosecution sanction be granted in the instant case and accordingly do so."

...  
12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or

follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise.

13. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course.

14. Insofar as the present case is concerned, it is not even the case of the appellant that fresh materials were collected by the investigating agency and placed before the sanctioning authority for reconsideration and/or for review of the earlier order refusing to grant sanction. As a matter of fact, from the perusal of the subsequent Order dated 15-3-2008 it is clear that on the same materials, the sanctioning authority has changed its opinion and ordered sanction to prosecute the respondent which, in our opinion, is clearly impermissible.

15. By way of footnote, we may observe that the investigating agency might have had legitimate grievance about the Order dated 27-11-2007 refusing to grant sanction, and if that were so and no fresh materials were necessary, it ought to have challenged the order of the sanctioning authority but that was not done. The power of the sanctioning authority being not of continuing character could have been exercised only once on the same materials."



The Chairman and Managing Director, Indian Overseas Bank, Chennai and others] wherein a Division Bench of this Court held as follows:

"...

11. The main grounds on which the appeal has been filed are that:

(i) There is no power of review to the Sanctioning Authority, especially, when the same Sanctioning Authority, on earlier two occasions namely, on 30.12.2008 and 18.05.2009 on the basis of the same materials, has come to a conclusion that there was no ground for granting sanction and in the impugned order nothing new has been stated in respect of the materials, which are relied upon.

(ii) The impugned sanction order has been passed at the instance of the Central Bureau Investigation and Central Vigilance Commission, who have furnished their views to the Sanctioning Authority and due to that extraneous considerations, the Bank being the Sanctioning Authority had to change its earlier stand and therefore, it cannot be said to be an independent view based on fresh materials.

(iii) Even in the impugned order, the Sanctioning Authority has not chosen to state anything about the previous orders declining sanction of prosecution dated 30.12.2008 and 18.05.2009 and that shows the non application of mind on the part of the Sanctioning Authority.

(iv) There is nothing about the new materials stated to have been brought to the notice of the Sanctioning Authority, which were not available earlier on 30.12.2008 and 18.05.2009.

(v) The reliance placed by the learned Judge on the letter dated 03.09.2009 and the decision arrived at by the learned Judge based on such letter, which is inter-departmental in nature and has not been revealed to the appellant, is a denial of the principles of natural justice to the appellant and the same is unfair.

"...

26. Therefore, legally it is settled that the power of review is possible only when there is an express provision enabling the Authority to review the earlier stand. It is equally settled that in respect of the grant of sanction to prosecute, when once on certain materials the Sanctioning Authority decides not to grant sanction, certainly on the same materials, the Sanctioning Authority cannot change its opinion.

"...

The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion

to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution.

...

32. ... While the law is thus well settled, on the facts of the present case, we have no hesitation to hold that the impugned sanction has been given by the authority on the same material, which was available before the Authority on the earlier two occasions when the refusal was made.

...

35. It is unfortunate that in spite of the alleged grave nature of the offences stated to have been committed by the appellant as well as the petitioner, the employer, being the Sanctioning Authority, having taken a lenient view earlier of declining to grant sanction has changed its opinion due to the pressure from the extraneous sources, which is certainly not expected of the Sanctioning Authority in the light of the well settled principles of law. Unfortunately, the learned Judge has not taken note of the said relevant fact, which in our view vitiates the impugned sanction order. It cannot be said that the impugned sanction order has been passed based on the new materials. Even though the learned Judge has referred to the judgment in Ramanad Chaudhary V. State of Bihar and others in (2002) 1 SCC 153 wherein the Hon'ble Supreme Court has reiterated that the Sanctioning Authority has no jurisdiction to review the order and grant sanction on the same materials, she has chosen to come to a conclusion that there are new materials available. On fact, we do not see any new materials which were either placed by the CBI or CVC before the Sanctioning Authority for the purpose of enabling the Sanctioning Authority to come to a different conclusion.

36. In respect of the alleged conduct during the year 2001-2002, the impugned sanction order came to be passed in the year 2005 and there has been a substantial delay of three years and in such circumstance, we do not want to fasten the responsibility on the petitioner for belatedly approaching this Court by filing the writ petition in the year 2010.

37. For all these reasons, the order of the

learned single Judge stands set aside. Consequently, the orders of the Sanctioning Authority, which are impugned in the writ petitions, are quashed and resultantly, the writ petition as well as the writ appeal stand allowed. No costs. Consequently, the connected miscellaneous petitions are closed."

6. Countering the submissions made by the learned senior counsel for the petitioner, Mr. G. Rajagopalan, learned Additional Solicitor General appearing for the 1<sup>st</sup> respondent submitted that the 1<sup>st</sup> respondent has given the sanction for prosecution based on fresh materials produced before her and therefore, the petitioner cannot find fault with the order of sanction dated 31.10.2013. Further, the learned Additional Solicitor General submitted that the exoneration of disciplinary proceedings have no relevance for quashing the sanction. The learned Additional Solicitor General also submitted that the Writ Petition is not maintainable when the disputed question of facts are involved.

6.1. In support of his contentions, the learned Additional Solicitor General relied upon the following judgments:

(i) (2017) 1 Supreme Court Cases 69 [Vivek Batra Vs. Union of India and others] wherein the Hon'ble Supreme Court held as follows:

"....

8. Before further discussion, we think it just and proper to quote relevant part of Government of India (Allocation of Business) Rules, 1961. Sub-rules (3) and (4) of Rule 3 of the Rules read as under: -

"3.(3) Where sanction for the prosecution of any person for any offence is required to be accorded -

(a) If he is a Government servant, by the Department which is the Cadre Controlling authority for the service of which he is a member, and in any other case, by the Department in which he was working at the time of commission of the alleged offence;

(b) If he is a public servant other than a Government servant, appointed by the Central Government, by the Department administratively concerned with the organization in which he was working at the time of commission of the alleged offence; and

(c) In any other case, by the Department which administers the Act under which the alleged offence is committed;

Provided that where, for offences alleged to have been committed, sanction is required under



more than one Act, it shall be competent for the Department which administers any of such Acts to accord sanction under all such Acts.

(4) Notwithstanding anything contained in sub-rule (3), the President may, by general or special order, direct that in any case or class of case, the sanction shall be by the Department of Personnel and Training."

9. There is no dispute that for an IRS officer Cadre Controlling Authority is the Finance Minister of the Government of India. In *Bachhittar Singh v. The State of Punjab*, 1962 Supp (3) SCR 713 : SIR 1963 SC 395, the Constitution Bench of this Court has held that the business of the State is a complicated one and has necessarily to be conducted through the agency of large number of officials and authorities.

10. In *Jasbir Singh Chhabra v. State of Punjab*, (2010) 4 SCC 192, this Court held as under: -

"35. It must always be remembered that in a democratic polity like ours, the functions of the Government are carried out by different individuals at different levels. The issues and policy matters which are required to be decided by the Government are dealt with by several functionaries some of whom may record notings on the files favouring a particular person or group of persons. Someone may suggest a particular line of action, which may not be conducive to public interest and others may suggest adoption of a different mode in larger public interest. However, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The notings recorded in the files cannot be made basis for recording a finding that the ultimate decision taken by the Government is tainted by mala fides or is influenced by extraneous considerations."

11. In *Sethi Auto Service Station v. DDA*, (2009) 1 SCC 180 this Court observed as under: -

"14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order,

affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned."

12. In view of the law laid down by this Court, as above, we are of the opinion that the sanction cannot be held invalid only for the reason that in the administrative notings different authorities have opined differently before the competent authority took the decision in the matter. It is not a case where the Finance Minister was not the competent authority to grant the sanction. What is required under Section 19 of the Prevention of Corruption Act, 1988 is that for taking the cognizance of an offence, punishable under Sections 7, 10, 11, 13 and 15 of the Act committed by the public servant, is necessary by the Central Government or the State Government, as the case may be, and in the case of a public servant, who is neither employed in connection with affairs of the Union or the State, from the authority competent to remove him. Sub-section (2) of Section 19 of the Act provides that:

"19.(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction, as required under sub-section (1) should be given by the Central Government or the State Government or any authority, such sanction shall be given by that Government or authority which could have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed."

13. Sub-section (3) of Section 19 of the Prevention of Corruption Act, 1988 provides as under: -

"19.(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that

such error, omission or irregularity has resulted in a failure of justice;

(c)no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings."

14.Having gone through the copy of note-sheets relating to sanction in question placed before us as part of rejoinder affidavit, it is evident that there had been proper application of mind on the part of the competent authority before the sanction was accorded. Our perusal of the said record does not indicate that any decision was taken by the competent authority, at any point of time, not to grant sanction so as to give the decision to grant sanction the colour of a review of any such earlier order, as has been contended before us. The opinion of CVC, which was reaffirmed and ultimately prevailed in according the sanction, cannot be said to be irrelevant for the reason that clause (g) of Section 8 (1) of the Central Vigilance Commission Act, 2003 provides that it is one of the functions of the CVC to tender advice to the Central Government on such matters as may be referred to it by the Government.

15.For the reasons, as discussed above, we find no reason to interfere with the impugned order passed by the High Court dismissing the writ petition. Accordingly, the appeal is dismissed. The interim order dated 25.11.2014, passed by this Court, is hereby vacated. The trial court is directed to conclude the trial expeditiously. However, we clarify that we have not given any opinion as to the merits of the case. There shall be no order as to costs."

(ii) (2009) 17 Supreme Court Cases 92 [State of Punjab and another Vs. Mohammed Iqbal Bhatti] wherein the Apex Court held as follows:

"...

6.Although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. It is, however, beyond any cavil that while passing an order for grant of sanction, serious application of mind on the part of the



concerned authority is imperative. The legality and/or validity of the order granting sanction would be subject to review by the criminal courts. An order refusing to grant sanction may attract judicial review by the Superior Courts.

7. Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidences must be considered by it. The sanctioning authority must apply its mind on such material facts and evidences collected during the investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidences may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. It is also well settled that the Superior Courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered."

(iii) (2010) 14 Supreme Court Cases 527 [State of Himachal Pradesh Vs. Nishant Sareen] wherein the Apex Court held as follows:

"...  
12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise."

13. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course.

(iv) 1995-1-L.W. 525 [Dr. J. Jayalalitha Vs. Dr. M. Channa Reddy, Governor of Tamil Nadu, Madras-22 and others] wherein the Division Bench of this Court held as follows:

"...

30. Major part of the arguments advanced by learned senior counsel for the petitioner was an attack on the validity of the order of the first respondent on different grounds. We do not propose to consider any of them here, in the view we have taken on the maintainability of the writ petition. Suffice it to point out that the petitioner has ample opportunity to raise all those contentions in the proceedings under the Act, if initiated pursuant to the sanction granted by the first respondent. As at present, this petition is premature and not maintainable. We do not accept the contention that the writ petition could be admitted in order that the court mould the relief ultimately, as the fundamental rights of the petitioner are affected. We have already found that the order of sanction does not in any manner affect any of the fundamental rights of the petitioner."

(v) 2012 (2) MWN (Cr.) 141 [Ravikumar and another Vs. State, rep by the Deputy Superintendent of Police, SPE/CBI/ACB/Chennai] wherein this Court held as follows:

"...

17. In the decision cited supra, the Honourable Supreme Court has held that the order either refusing or granting sanction is an order passed under statutory power. But at the same time, it is held that even the power once exercised can be excised once again, but while reconsidering the matter, fresh materials must have been collected by the investigating agency subsequent to the earlier order and it should have been placed before the Sanctioning Authority. In the decision cited supra, the earlier decision of the Honourable Supreme Court reported in *Gopikant Choudhary Vs. State of Bihar and others*, 2000 (9) SCC 53, is referred. As per the

facts of the said case, initially the concerned Minister refused to accord sanction to prosecute the Public Servant, but subsequently the Chief Minister granted the sanction for prosecution, but the said order was set aside by the Honourable Supreme Court on the ground that the investigating agency has not collected any fresh materials requiring a fresh look at the earlier order. One another decision of the Honourable Supreme Court reported in State of Punjab and another Vs. Mohammed Iqbal Bhatti, 2010 (4) CTC 458 (SC) : 2010 AIR SCW 1186, also is referred in the decision cited supra. As per the facts available in the said case, originally the Honourable Minister refused to grant sanction by order dated 15.12.2003, but subsequently after change of Government after more than nine months, the Vigilance Department again approached the Government. The Governor of Punjab had passed an order of sanction dated 14.09.2004. The Honourable High Court of Punjab and Haryana set aside the order of sanction observing that State had no power of review. While the State challenged the order of the Honourable High Court, the Honourable Supreme Court observed that in paragraphs-22 & 23 as follows:

"22.It was, therefore, not a case where fresh materials were placed before the Sanctioning Authority. No case, therefore, was made out that the Sanctioning Authority had failed to take into consideration a relevant fact or took into consideration an irrelevant fact. If the clarification sought for by the Hon'ble Minister had been supplied, as has been contended before us, the same should have formed a ground for reconsideration of the order. It is stated before us that the Government sent nine letters for obtaining the clarifications which were not replied to.

23.The High Court in its Judgment has clearly held, upon perusing the entire records, that no fresh material was produced. There is also nothing to show as to why reconsideration became necessary. On what premise such a procedure was adopted is not known. Application of mind is also absent to show the necessity for reconsideration or review of the earlier order on the basis of the materials placed before the Sanctioning Authority or otherwise."

...

19.It is also made clear by this Court that any order granting sanction cannot be subjected to judicial review by the High Court under Article 226 of the Constitution of India, since such an order of sanction can be tested at the time of trial, but at the same time, an order of the Competent Authority



declining to grant sanction for prosecution, since it puts an end to the proceedings, can be subjected to judicial review by the High Court under Article 226 of the Constitution of India. But in this case, unfortunately, the Central Bureau of Investigation instead of challenging the order of the Competent Authority declining to grant sanction has travelled in a wrong direction to approach different authority to get the sanction order based on the same materials. This Court is of the view that there was non-application of mind on the part of the Chief Commissioner of Income Tax (CCA), Chennai, who accorded sanction by order dated 06.09.2010, and the said sanction order is also illegal and invalid for the reasons stated above."

7. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side and also the judgments relied upon by the learned counsel on either side, it could be seen that based on an investigation initiated by the DRI, Chennai in respect of another importer under another Bill of Entry, large scale racket of smuggling with fraudulent Bills were unearthed. During that drive, one Bill passed by the petitioner was also included in the investigation. The 2<sup>nd</sup> respondent claimed criminal conspiracy as full Air-conditioners were imported instead of indoor units. The petitioner has assessed the goods imported and electronically declared as indoor units. The petitioner has levied duty as per the recorded customs data of previous imports and denied the notification benefit claimed by the importer. As per procedure and rules, the petitioner has ordered that random check of goods by Customs Examination officials prior to the grant of "out of charge" order. This order of the petitioner was approved by the immediate superior of the petitioner, who is the proper officer of the customs for the purpose of assessment. However, the Examination Officials have failed to examine the goods and passed out the goods, making a record that the actual imported goods are full Air-conditioners and not indoor units as declared. The 2<sup>nd</sup> respondent sought sanction for prosecution vide letter dated 13.08.2013 before the 1<sup>st</sup> respondent and the sanction for prosecution was held to be unwarranted by the Competent Statutory Authority. The Competent Statutory Authority also intended to grant protection to the petitioner under Section 155 of the Customs Act for discharge of duties in good faith. The stand of the Competent Authority was communicated to the 2<sup>nd</sup> respondent by letter dated 13.08.2013. After holding that there was no case for sanction, the report was forwarded to CVO of CBEC. The report of the Competent Authority dated 13.08.2013 holding that prosecution was not warranted was sent to the CVO, CBEC on 14.08.2013. However, the CVO had prepared a report for CVC even one day prior to the date of despatch. In other words, the report of the CVO was signed on 13.08.2013 itself, when the report of the Competent Authority was

despatched to the CVO only on 14.08.2013. This is evident from the report of the CVO that has been enclosed at page-95 in the typed set of papers filed by the petitioner. The CVO had prepared the report even without receiving the report of the Competent Authority. The CVC, in turn, had advised grant of sanction for prosecution and in view of the advise of the higher authority, the same Competent Statutory Authority, without rebutting any of her own findings in the earlier report dated 13.08.2013 and without any fresh investigative materials on the issue, granted sanction.

8.It is brought to the notice of this Court that the disciplinary proceedings initiated against the petitioner has resulted in a final order dated 08.06.2017 passed by the Competent Statutory Authority dropping the charges against the petitioner.

9.With regard to the contention of the learned Additional Solicitor General that sanction was accorded based on fresh materials is concerned, the fresh materials in the form of RMS instructions cannot be considered as "fresh materials" for the reason that the said instructions were already known to the Competent Disciplinary Authority and even had taken the same into consideration while refusing to sanction for prosecution on 13.08.2013. While denying sanction for prosecution on 13.08.2013, the Disciplinary Authority had discussed about the RMS instructions, which are advisory guidelines for assessment. The RMS instructions cannot be considered as fresh materials for reversing the decision taken earlier by the Competent Disciplinary Authority. The Disciplinary Authority already took into consideration the CVD and MRP while denying the sanction for prosecution in its order dated 13.08.2013. Therefore, the CVD and MRP referred to in the sanction order cannot be considered as fresh materials for reversing the earlier order.

10.As rightly contended by the learned senior counsel Mr.V.T.Gopalan appearing for the petitioner, the petitioner is not challenging the order of sanction on merits and what has been challenged in the Writ Petition is the action of the Competent Authority in reviewing her own order due to external pressure from CVC and not based on any new materials subsequently unearthed by the Investigating Agency.

11.It is legally settled that the power of review is possible only when there is an express provision enabling the Authority to review the earlier stand. It is equally settled that in respect of the grant of sanction to prosecute, when once on certain materials the Sanctioning Authority decides not to grant sanction, certainly, on the same materials, the Sanctioning Authority cannot change its opinion. By a catena of decisions, it has been held that the authority entitled to

grant sanction must apply its mind to the facts of the case, evidence collected and other incidental facts before according sanction. A grant of sanction is not an idle formality but a solemn and sacrosanct act, which removes the umbrella of protection of Government servants against frivolous prosecutions and the aforesaid requirements must, therefore, be strictly complied with before any prosecution could be launched against public servants. The mind of the Sanctioning Authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration.

12. While law is thus settled, on the facts of the present case, the impugned sanction that has been given by the authority on the same material, which was available before the authority on the earlier occasion, when the refusal was made, cannot stand. The Sanctioning Authority having taken a lenient view earlier of declining to grant sanction has changed its opinion without any fresh materials and granted sanction, which cannot be allowed to stand. It is not permissible for the Sanctioning Authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise. Per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction.

13. The judgments relied upon by the learned senior counsel appearing for the petitioner squarely applies to the facts and circumstances of the present case. The judgments relied upon by the learned Additional Solicitor General differs from the case on hand and hence, the ratio laid down in those judgments are not applicable to the present case.

14. In these circumstances, for the reasons stated above, the impugned order of the 1<sup>st</sup> respondent dated 31.10.2013 is set aside. The Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//



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To

1.The Commissioner of Customs,  
Sea-Import, Customs House,  
Rajaji Salai, Chennai - 1.

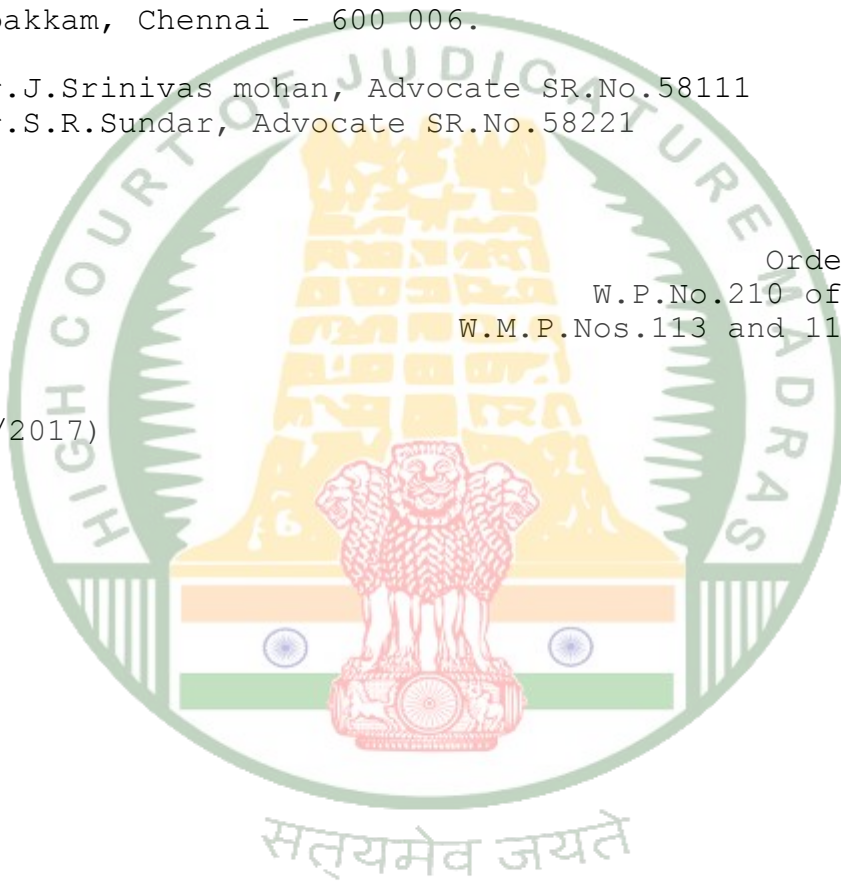
2.The Additional Superintendent of Police (ACB),  
Central Bureau of Investigation,  
Shastri Bhavan, Haddows Road,  
Nungambakkam, Chennai - 600 006.

+2cc to Mr.J.Srinivas mohan, Advocate SR.No.58111

+1cc to Mr.S.R.Sundar, Advocate SR.No.58221

Order made in  
W.P.No.210 of 2016 and  
W.M.P.Nos.113 and 114 of 2016

GR (CO)  
GN(17/08/2017)



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