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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.09.2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C(MD).No.568 of 2016

The Assistant Commissioner
of Central Excise (Legal)
Head Quarters Office,
Madurai. .. Petitioner/Respondent/Complainant

-Vs-

M.C.Nagarathinam
Partner of M/s.Anand Steel Mart,
Door No.7A-East Nappalaya Street,
Madurai. .. Respondent/Petitioner/Accused No.5

Prayer : Criminal Revision Case filed under Section 397 & 401 of the Code of Criminal Procedure, to call for the records of the impugned order dated 20.04.2016 passed by the Learned Additional Chief Judicial Magistrate, Madurai in Cr.M.P.No.195 of 2016 in C.C.No.1 of 2015 and set aside the same as illegal.

For Petitioner : Mr.C.Arul Vadivel Alias Sekar
Special Public Prosecutor for Central Excise
For Respondent : Mr.M.Kumar

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O R D E R

This Criminal Revision Case has been filed, against the order discharging the respondent from the charges.

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

The respondent herein is A-5 in a private complaint filed by the Central Excise Department. The above complaint has been filed on the ground that A-1 is the Company, manufacturing Steel Bars and rods; A-2 is the Managing Director of A-1. A-3 to A-5 were the purchasers of the goods from A-1 Company and A-1 Company suppressed the actual production of steel bars and the rods and also clandestinely removed the tools manufactured from the premises and evaded central excise duty. A-3 to A-5 were purchasers of the goods from A-1 Company without any invoice and they have also abetted A-1 & A-2 to commit the offence. Hence, a complaint has been filed for the offence under Sections 9(1)(b), 9 (1)(bb), 9(1)(bbb) and 9(1) (d) and 9(1)(i) and 9(1)(ii) of the Central Excise Act, 1944 r/w Section 109 of I.P.C against A-1 and A-3 to A-5 were implicated with the aid of Section 109 I.P.C. The

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court below also taken cognizance of the offence and issued summons to the accused. Thereafter, the respondent/accused No.5, filed a petition to discharge him from the above charges stating that he is only a partner of one Anand Steels Mart and the alleged purchase has been made by the Company and without adding the Company as accused, he alone cannot be implicated, hence, the complaint is not maintainable against him. The trial court allowed the application stating that the Company is the actual offender and without impleading the company as accused, the respondent, being a partner cannot be added as accused and on that ground, the respondent was discharged. Now, challenging the order of discharge, the Central Excise Department has filed the present revision case.

3.I have heard Mr.C.Arul Vadivel @ Sekar, learned Special Public Prosecutor for Central Excise and Mr.M.Kumar, learned counsel appearing for the respondent and perused the records carefully.

4.The learned counsel appearing for the petitioner would contend that it is not the company committed the offence and the respondent alone has purchased goods from A-1 company and the company has not involved in the purchase. Hence, there is no necessity to implead the company as an accused. Apart from that, the respondent has been implicated in the crime only with the aid of Section 109 I.P.C. In the said circumstances, even assuming that the company has purchased the goods, there is no necessity to implead the Company as an accused, and the respondent/A-5 has alone abetted A-1 Company to commit the offence.

5.The learned counsel appearing for the petitioner referred to the earlier show cause notice, issued to the respondent, wherein, it has been stated that it is only the respondent has purchased the goods from A-1 company and thereby, he abetted A-1 Company. The show-cause notice was issued only to the respondent and not to the Company. Hence, the court below, without considering the material, in proper perspective, has allowed the application and discharged the respondent.

6.Per contra, the learned counsel appearing for the respondent submitted that from the complaint filed by the complainant and other materials, it is seen that the purchase was made in favour of the company viz. Anand Steels Mart, wherein, the respondent was one of the partners. Even in the show-cause notice issued by the department, it is stated that only the company has purchased the goods from A-1. It is not the respondent in his individual capacity purchased the goods. In the said circumstances, since the company has committed the offence and without impleading the company, the complaint against this respondent cannot be maintainable. The learned counsel appearing for the respondent relied upon a decision of the Honourable

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Supreme Court in **Aneeta Hada Vs Godfather Travels and Tours Private Limited** reported in **(2012) 5 Supreme court Cases 661** in this regard.

7.The learned counsel appearing for the respondent has further submitted that the trial court, after considering the entire materials, has come to the conclusion that there is a prima facie case made out against the respondent/petitioner to discharge him. Hence, there is no illegality or irregularity in the order passed by the court below.

8.I have considered the rival submissions.

9.From the perusal of the paragraph Nos.16, 17 and 27 of the complaint filed by the complainant, it is seen that it is only the respondent has purchased the goods from A-1 Company and incidentally, it is stated that he is a partner of Anand Steels Mart. In the complaint, in paragraph No.27, it has been clearly stated as follows:

> "Mr.C.Nagarathinam, Partner of M/s.Anand Steel Mart, Madurai and the Managing Partner of other sister firms has concerned himself in purchasing and selling the excisable goods which he knew or had reason to believe were liable for confiscation under the CEA, 1944/CER 2002 and abetted in the commission of the offence by DSRM."

Apart from that, from the perusal of the show-cause notice issued by the department to the accused for evasion of excise duty, it could be seen that the notice was only issued to the respondent/5th accused, but not to the company. In the above circumstances, the contention of the learned counsel appearing for the respondent cannot be countenanced to the effect that for the purchase made by the company, a criminal case cannot be filed against the respondent. In similar circumstances, the Honourable Supreme Court in **Aneeta Hada** Case has clearly held as follows:

> "49. On a reading of both the paragraphs from Anil Hada Case, it is evincible that the two-Judge Bench expressed the view that the actual offence should have been committed by the company and then alone the other two categories of persons can also become liable for the offence and, thereafter, proceeded to state that if the company is not prosecuted due to legal snag or otherwise, the prosecuted person cannot, on that score alone, escape from the penal liability created through the legal fiction and this is envisaged in Section 141 of the Act. If both the paragraphs are appreciated in a studied manner, it can safely be stated that the

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conclusions have been arrived at regard being had to the obtaining factual matrix therein.”

10.Since the Company is not the actual offender, it is only this respondent has purchased the goods from A-1 Company, there is no necessity to implead the Company as an accused and on that score, he cannot escape from the criminal liability. Apart from that, the respondent has been implicated in the above crime with the aid of Section 109 I.P.C for abetting A-1 Company to commit the offence. In the said circumstances, the respondent is not the main accused and he is only the abettor and there is also no necessity to implead the company as an accused. The court below, without considering the materials in proper perspective, has allowed the application and discharged the petitioner. In the above circumstances, the order passed by the court below is liable to be set aside.

11.In the result, this criminal revision case is allowed. The impugned order passed by the court below is set aside. The court below is permitted to proceed with the trial against all the accused. Since the matter is pending from the year 2015 , the trial court is directed to proceed with the trial and dispose of the case in C.C.No.1 of 2015 within a period of six months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The Additional Chief Judicial Magistrate,
Madurai.

+1cc to Mr.S.RENGANATHAN Advocate in SR. No. 80202
+1cc to Mr.C.ARUL VADIVEL @ SEKAR Advocate in SR. No. 80194
VS
JS/KP/SAR.3/6.12.2017/4P-4C

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