**HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

**CRIMINAL PETITION No.629 OF 2017**

**ORDER**:

This Criminal Petition, under Section 482 of Cr.P.C., is filed by the petitioner seeking to stay all further proceedings in C.C. No.62 of 2016 on the file of the Special Judge for Economic Offences at Red Hills, Nampally, Hyderabad, till disposal of unnumbered appeal filed on 13.01.2017 before the Customs, Excise, Service Tax Appellate Tribunal, Regional Bench, Hyderabad, which is filed against the order passed in Appeal No.C/19/2016 dated 31.12.2016 on the file of the Commissioner of Customs, Central Excise and Service Tax, Hyderabad.

2. Heard Sri B. Venu Kumar, learned counsel for the petitioner, and Sri Anil Prasad Tiwari, learned Public Prosecutor appearing for the respondent, apart from perusing the material available on record.

3. Learned counsel for the petitioner would submit that the Directorate of Revenue Intelligence Officials registered a case against the petitioner vide F.N.DRI/CZU/48B/ ENQ-1 (INT-02)/2014 dated 29.05.2014 on the charge of smuggling of 55 pieces of gold bullion totally weighing 6415-200 grams valued at Rs.1,97,58,816/- on 12.03.2014 at Rajiv Gandhi International Airport, Hyderabad, and the petitioner was arrested and produced before the Special Judge for Economic Offences, Hyderabad and later he was released on bail; the case was handed over to the Customs Department for departmental proceedings and the Customs Officials sent a show cause notice to the petitioner vide No.67/2015-Adjn-cus (ADC) for explanation and the petitioner approached before the Customs Authorities along with his counsel, after that the Customs Officials passed an order dated 30.07.2015 in Original

No.67/2015/-Adjn.Cs. (ADC); assailing the correctness of the said order dated 30.07.2015, the petitioner filed appeal vide Appeal No. HYD-CUS-000-APP-123-16-17, and the same was dismissed on 30.12.2016 on the ground that the said appeal is filed with a delay of 60 days; the petitioner preferred an appeal aggrieved by the Order passed by the Commissioner of Customs vide Appeal No.HYD-CUS-000-APP-123-16-17; the Customs Department also filed a criminal case vide C.C. No.62 of 2016 against the petitioner on the file of the Special Judge for Economic Offences at Red Hills, Nampally, Hyderabad, for smuggling of gold under Section 135 of the Customs Act, 1962, which is coming up for framing of charges; once the appeal filed by the petitioner is allowed, the petitioner is having chance to file compounding petition before the Department which enables him to close the criminal proceedings against him; ultimately, prayed to stay all the proceedings in C.C. No.62 of 2016 on the file of the Special Judge for Economic Offences, Red Hills, Nampally, Hyderabad, till disposal of Appeal filed by the petitioner on 13.01.2017 before the Customs, Excise, Service Tax Appellate Tribunal, Regional Bench, Hyderabad.

4. On the other hand, learned Public Prosecutor appearing for the respondent would submit that that the petitioner had filed Criminal Petition No.45 of 2017 before this Court stating that their appeal against the Order-in-Original is pending before the Commissioner (Appeals); when the said Criminal Petition is pending before this Court, the present Criminal Petition is filed stating that the Commissioner (Appeals) has dismissed their appeal by order dated 30.12.2016 on the ground of delay and they have filed an appeal against the said Order-in-Appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) on 13.01.2017; there is no statutory bar under the Customs Act, 1962, prohibiting the Department from launching the prosecution during the

pendency of the appeal against the Original Order; since the petitioner has on his own motion to withdraw the application for compounding the offences, the present Criminal Petition is devoid of any merit and it is liable to be dismissed.

5. In view of the rival submissions, the point for determination is whether the proceedings in C.C. No.62 of 2016 on the file of the Special Judge for Economic Offences at Red Hills, Nampally, Hyderabad, can be stayed till disposal of unnumbered appeal filed on 13.01.2017 before the Customs, Excise, Service Tax Appellate Tribunal, Regional Bench, Hyderabad?

6. **POINT**: There are allegations of smuggling of 55 pieces of gold bullion weighing 6,415-200 grams and its value is Rs.1,97,58,816/-. On 12.03.2014, the alleged offence was detected at Rajiv Gandhi International Airport, Hyderabad. The petitioner is being prosecuted for the offence under Section 135 of the Customs Act, 1962. The calender case is coming for framing of charges. There is also record to show that the Customs Authorities passed order dated 30.07.2015 in Original No.67/2015/-Adjn.Cs. (ADC). The appeal filed by the petitioner vide Appeal No.HYD-CUS-000-APP-123-16-17 was dismissed on 30.12.2016, as it was filed with a delay of 60 days. As per the provisions of the Customs Act, there is no statutory bar to launch prosecution in C.C. No.62 of 2016. The proceedings before the Customs Authorities and the proceedings before the Special Judge for Economic Offences are distinct. The State has power to maintain two proceedings against the petitioner. To seek the relief as prayed for, the petitioner has to establish that the continuation of the criminal proceedings in C.C. No.62 of 2016 is against law and procedure. There is nothing to take such a view. The contention of the petitioner is that in the event of compounding the offence, he is

entitled to be discharged from the calendar case. It is brought to the notice of the Court, in the course of arguments, that the petitioner filed an application to compound the offence and later he has withdrawn the same. Further at present, there is no reference to his taking any step to compound the offence in question. The continuation of proceedings in the calendar case would not in any way jeopardize the interest of the petitioner. In the event of his compounding the offence, the petitioner has remedy available under law to seek appropriate relief in the calendar case. Under these circumstances, this petition is devoid of merits. There are no circumstances to interfere with the pendency of the calendar case. This point is answered accordingly.

7. In the result, the Criminal Petition is dismissed.

8. As a sequel, miscellaneous petitions, if any, pending in this Criminal Petition shall also stand dismissed.

**Dr. SHAMEEM AKTHER, J**

Date: 03-11-2017.
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**HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

**<u>Crl.P. No. 629 OF 2017</u>**

Date. 03-11-2017

**siva**