# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Criminal Miscellaneous No.28387 of 2015**

Arising Out of PS.Case No. -303 Year- 1998 Thana -GOVERNMENT OFFICIAL COMP. District- PATNA

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1. ITC Limited, Registered Office at 37, Jawaharlal Nehru Road, Kolkata – 700 071 and having its Factory at P.O. Basdeopur, P.S. Kotwali, District - Munger – 811202, through its Branch Manager and Constituted Attorney Mr. R. Shyam Krishnan

.... .... Petitioner/s

Versus

1. The Union of India.
2. The State of Bihar.
3. The Assistant Commissioner of Central Excise, Bhagalpur Division, Bhagalpur.

.... .... Opposite Party/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Rohitabh Das, Advocate<br>Mr. Pravin Kumar Sinha, Advocate |
| For the State | : | Mr. Nawal Kishore Prasad, Advocate |
| For the Union of India | : | Mr. Anshay Bahadur Mathur, Advocate |
| For the EOU | : | Mr. Akhileshwar Pd. Singh, Sr. Advocate with<br>Mr. Vijay Anand, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**
CAV JUDGMENT
**Date: 24-07-2018**

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing entire proceeding of Complaint Case No.303-C of 1998 pending before the Special Judge (Economic Offences), Patna, for the alleged commission of the offences punishable under Section 9 and 9AA of the Central Excise Act, 1944.

**2.** Basis of the present complaint case is the demand of central excise duty confirmed by the Adjudicating Authority vide order in Original Case No.03/95 dated 29.12.1995, alleging therein commission of offence under Section 9 and 9AA of the Central

Excise Act, 1944, (for short the 'Act') by this Petitioner amounting to evasion of payment of duty, removal of excisable goods in contravention of the provision of the Act and the Rules made thereunder and failure to supply the information as required by the Rules and giving false information.

**3.** In accordance with Rules, show cause notice was issued proposing recovery of central excise short duty paid and imposition of penalty. In the present case, for the period, in question, the Adjudicating Authority (Commissioner of Central Excise, Delhi) has imposed penalty amounting to Rs.7 crores against accused Company and Rs.3.15 crores against the Directors, Accused Nos.2 to 7, and the matter is, now, pending before the CEGAT in appellate stage.

**4.** It is mentioned in the complaint that as per the said scheme of the Act, in addition to the adjudicating proceedings, offence committed under Section 9 & 9AA of the Act also amounts to criminal offence, punishable with imprisonment and also fine and cognizable by the Court. The offence relates to period 1983 to 1987.

**5.** Counsel for the petitioner has submitted basis of the present case being the demand of central excise duty confirmed by the Adjudicating Authority vide order in Original Case No.03/95 dated 29.12.1995, alleging offence under Section 9 and 9AA of the

Central Excise Act, 1944, is completely eroded and effaced by the judgment and order dated 10.09.2004 of the Hon'ble Supreme Court in ***ITC Limited Vs CCE, New Delhi and anr.*** Reported in ***(2004) 7 SCC 591***. Similar complaint cases arising out of the aforesaid order in Original filed in the Courts in Bengaluru and Kolkata have been quashed by Hon'ble High Court of Karnataka at Bengaluru by its order dated 13.04.2005 and 09.01.2008 respectively and by the Hon'ble Calcutta High Court by its order dated 13.12.2013, on the basis of aforesaid judgment and order of Hon'ble Supreme Court. True copy of the aforesaid judgment and order of the Hon'ble Supreme Court, Karnataka High Court at Bengaluru and Calcutta High Court are annexed as Annexure-1 series.

**6.** Counsel for the petitioner further submits that as on date, the demand of the Department having been effaced by the judgment of Hon'ble Supreme court, continuance of the proceedings is unwarranted and even otherwise does not have sanction of law and amounts to an abuse of process of Court. Counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of ***Uttam Chand and ors. Vs. ITO*** reported in ***(1982) 2 SCC 543,*** in which it has been held that if the core allegations made against the assessee are set aside in the departmental proceedings, the criminal complaint based on the same allegations should be quashed. In another decision of the Hon'ble Supreme Court in the case of ***Radheshyam Kejriwal Vs. State of West Bengal and another*** reported in ***(2011) 3 SCC 581***, it has been held that in case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the Court. Further submission is that aforesaid principles have also been accepted by the Central Board of Excise and Customs and based on these principles it has issued a circular No.998/5/2015-CX dated 28.02.2015 directing withdrawal of prosecutions where on identical allegation the assessee had been exonerated in adjudication proceedings. Copy of the aforesaid circular has been annexed as Annexure-3. Learned counsel for the petitioner has finally submitted that the petitioner-Company or the individuals accused ought not to be made to suffer and face the rigors of criminal trial when the same cannot be sustained in the eye of law in view of conclusive findings of the Hon'ble Supreme Court.

**7.** Counsel for the Union of India was directed by order dated 26.04.2018 to seek instructions as to whether any step has been taken in the Court below for withdrawing the case or not, but no such instruction was received by the counsel for the Union of India on the date of argument in this case. Therefore, this case was heard on merit and judgment was reserved.

**8.** This Court after looking into the complaint filed by the Complainant, namely, Mr. M. K. Srivastava, Assistant Commissioner, Central Excise, Division- Bhagalpur, find that present complaint has been filed under Section 9 & 9AA of the Central Excise Act, 1944, for evasion of payment of duty, removal of excisable goods in contravention of the provision of the Act and the Rules made thereunder and failure to supply the information as required by the Rules and giving false information. In accordance with Rules, show cause notice was issued proposing recovery of central excise duty short paid and imposition of penalty. In the present case, for the period, in question, (1983 to 1987) the Adjudicating Authority (Commissioner of Central Excise, Delhi) has imposed penalty amounting to Rs.7 crores against accused-Company and Rs.3.15 crores against the Directors, Accused Nos.2 to 7, and the matter is pending before the CEGAT in appellate stage. As per said scheme of the Act, in addition to the adjudicating proceedings, offence committed under Section 9 & 9AA of the Act also amounts to criminal offence punishable with imprisonment and also fine and cognizable by the Court.

**9.** It is admitted position in this case that genesis of the present complaint is the order in Original Case No.3/95 passed by the Commissioner of Central Excise, New Delhi, dated

29.12.1995, which confirmed demands for differential excise duty made on the Petitioner-Company vide show cause notice dated 27.03.1987 and levied penalty on the Petitioner-Company and the individual accused. The said order in original dated 29.12.1995 stood set aside by the CEGAT vide its judgment dated 04.09.1998. The aforesaid order in so far as it set aside imposition of penalty on the Directors has since become final inter parties upon dismissal of Department's appeal by order of the Hon'ble Supreme Court dated 15.01.1999, and in so far as order of CEGAT remanding the matter for a fresh adjudication, the same stands set aside and all demands against the Petitioner-Company was set aside by the final judgment and order dated 10.09.2004 of the Hon'ble Supreme Court reported in ***(2004) 7 SCC 591.*** Central Board of Excise and Customs based on the principles decided by Hon'ble Supreme Court has issued a circular No.998/5/2015-CX dated 28.02.2015 directing withdrawal of prosecutions where on identical allegation the assessee had been exonerated in adjudication proceedings (Anneuxre-3).

**10.** In the instant case, Union of India was asked to seek instructions as to whether any such withdrawal petition has been filed on behalf of the Department in terms of the aforesaid circular, but no instruction has been received by the Union of India.

**11.** Counsel for the petitioner has submitted that similar complaint cases arising out of the order in Original No.03/95 dated 29.12.1995 were filed in the Courts in Bengaluru and Kolkata and have been quashed by Hon'ble High Court of Karnataka at Bengaluru by its order dated 13.04.2005 and 09.01.2008 respectively and by the Hon'ble Calcutta High Court by its order dated 13.12.2013, on the basis of aforesaid judgment and order of Hon'ble Supreme Court. The judgment passed by Hon'ble Supreme Court as well Karnataka High Court at Bengaluru and Calcutta High Court are annexed as Annexure-1 series.

**12.** This Court after looking into the judgment of the Hon'ble Supreme Court passed in the case of ***ITC Limited Vs CCE, New Delhi and anr.*** reported in ***(2004) 7 SCC 591*** finds that Hon'ble Supreme Court has set aside all the demands raised against the petitioner by the department.

**13.** Pursuant to judgment of Hon'ble Supreme Court exonerating and setting aside all demands, the individual accused in the present complaint filed discharge application under Section 245(2) Cr. P. C. before the Court of the Special Judge (Economic Offences), Patna, seeking discharge from the present complaint.

**14.** A report was called for from the Court below about the present stage of the case, which has been received. It is submitted in the report that case is pending for hearing on the petition under Section 245 (2) Cr. P. C. filed on behalf of the petitioner.

**15.** This Court finds that when in terms of aforesaid judgment the Hon'ble Supreme Court has exonerated and set aside all the demands against the Petitioner, the very foundation on which the present complaint has been filed is set at naught by the authoritative pronouncement of Hon'ble Supreme Court and no demand survives in this matter.

**16.** In such circumstances, continuance of the criminal proceeding against the Petitioner in terms of order passed in Original Case No.03/95 dated 29.12.1995 will amount to abuse of process of the Court and mere harassment to the petitioner.

**17.** Therefore, entire proceeding of Complaint Case No.303-C of 1998 pending before the Special Judge (Economic Offences), Patna, launched against the petitioner on the basis of order in Original Case No.03/95 dated 29.12.1995 is hereby quashed.

**18.** This application is, accordingly, **allowed**.

**(Sanjay Priya, J)**

***J.Alam/-***

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