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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2725 OF 2010

Santosh Krishna Talpade .....Petitioner

V/s.

The State of Maharashtra ....Respondent

Mr. Sujay Kanatawala aa/w Mr. Brijesh Pathaka & Kartik i/b Yogesh Rohira for the petitioner.
Mr. Jitendra Mishra for respondent no. 1.
Mr. Y. Y. Dabke APP for the State.

CORAM : NITIN W. SAMBRE, J.

DATE : MARCH 8, 2018.

P.C.

The petitioner who was a public servant was proceeded by the department of the Customs by issuing a show cause notice. Said proceedings which are taken before this Court by the Revenue in Customs Appeal No. 6 of 2011.

2 In view of the policy of Revenue, Revenue withdrew the appeal against the present petitioner on 10/04/2017, as a consequence

there are no departmental proceedings under the Customs Act against the petitioner as on date.

3 There are parallel criminal proceedings initiated against the petitioner seeking his prosecution based on the departmental proceedings initiated against him.

4 Said proceedings, in spite of the fact that Customs Appeal No. 6 of 2011 preferred by the Revenue was withdrawn on 10/04/2017 before the Division Bench of this Court are informed to be continued.

5 In the aforesaid factual background, the learned counsel for the petitioner would urge that in absence of any departmental proceedings, prosecution of the present petitioner cannot be continued and would draw support from the Judgment of the Apex Court in the matter of **Radheshyam Kejriwala Vs. State of W.B. [(2011) 3 Supreme Court Cases 581]** particularly findings recorded in paragraph nos. 25, 26, 29 to 31, 39 & 47.

6 According to him, as such criminal prosecution against the petitioner cannot be continued.

7 *Per contra* the learned counsel for the Revenue would urge that even if departmental proceedings are withdrawn/disposed against the petitioner, still criminal prosecution can be continued for the reason that Customs Appeal that was preferred before the Division Bench of this Court was involving a substantial question of law. Said appeal was withdrawn by the Revenue only because there was a policy of the Union of India not to proceed ahead with such appeals. He submits that independent of the departmental proceedings, prosecution can be justified.

8 Considered submissions. Factual matrix as narrated by the petitioner as regards the non pendency of the departmental proceedings against him as on date for deciding is not in dispute. Apart from above, the fact remains that criminal prosecution of the petitioner is based on some departmental proceedings which were

formed to be basis for taking out Customs Appeal before the Division Bench of this Court which already stood withdrawn upon the request of the Revenue as is apparent from the order dated 10/04/2017.

9 Once the basis for such prosecution being departmental proceedings have already come to an end in favour of the petitioner and against Revenue, the issue, in my opinion is squarely governed by the Judgment of the Apex Court in the case of **Radheshyam Kejriwal** [*Cited supra*].

10 Apart from above, I hardly notice any substance in the submissions made by the counsel for the respondent Revenue that inspite of the departmental proceedings having come to an end finally against the petitioner, still criminal prosecution against him under the Customs Act will continue.

11 In the wake of above, prosecution initiated against the petitioner in Criminal Complaint no. 43/S/2013 pending on the file

of Chief Metropolitan Magistrate, Esplanade, Mumbai needs to be quashed.

12 Present petition as such stands allowed in terms of prayer clause (a) which reads thus:

> *(a) This Hon'ble Court may be pleased to quash and set aside the Criminal Complaint No. 43/S/2003 (Exh. 'A' hereto) against the Petitioner, pending before the Ld. CMM, Esplanade, Mumbai, with consequential reliefs.*

[NITIN W. SAMBRE, J.]