IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.06.2018
DELIVERED ON: 24.07.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.8500 of 2011
and
Crl.M.P.Nos.1 of 2011

1. M/s Vijay Aqua Pipes (P) Ltd.
Rep. by R.Thiagarajan,
Managing Director.

2. R.Thiagarajan, Managing Director,
M/s Vijay Aqua Pipes (P) Ltd.

3. S.Nainar, Director,
M/s Vijay Aqua Pipes (P) Ltd,
All at No.F-37, SIPCOT Industrial Estates,
Gummidipoondi 601 201. ... Petitioners

//vs//

The Assistant Commissioner of Central Excise,
Chennai-II Prosecution Section, MHU Complex,
392 Anna Salai, Nandanam,
Chennai 600 034. ... Respondent

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in EOCC No.1 of 2010 on the file of Additional Chief Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioners: Mr. T.Ramesh
For Respondent: Mr.N.S.Kumar
Special Public Prosecutor

ORDER

The petitioners are arrayed as accused No.1 to 3 in E.O.C.C.No.1 of 2010 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai.

2. The Assistant Commissioner of Central Excise, Prosecution Section, office of the Commissioner of Central Excise, Annasalai, Nandanam, Chennai had filed a private

complaint under Section 200 of the Code of Criminal Procedure against the present petitioners/accused in E.O.C.C. No.1 of 2010 before the Additional Chief Metropolitan Magistrate, Egmore, Chennai. The case of the respondent/complainant in nutshell is as follows. On 24.02.1999, the officer attached to the Head Quarters of Preventive Unit, during surveillance, inspected a truck bearing registration No. TN-72-5238 in front of M/s Madras Lamps (P) Ltd., Gummidipoondi, carrying PVC Pipes. On interrogation, it was found that the driver of the vehicle carried 1000 PVC Pipes loaded at M/s Mathura Polymers (P) Ltd., Gummidipoondi (MPPL) in his truck with an instruction to unload the same at M/s Vijay Aqua Pipes (P) Limited, the first accused company. The officer after recording the statement of Mr.G.Govindaraj, driver of the truck, proceeded to M/s Mathura Polymers (pvt) Limited, Gummidipoondi and verified the physical stock of finished goods i.e. PVC pipes and also recovered some incriminating documents namely chits showing clearance of PVC pipes made to the first accused company. There was also a shortage of 2000 nos. of PVC pipes and it was admitted that, on the same day, two lorry loads of PVC pipes each containing 1000 nos. of consignments were sent to the first accused company, without any documents. Thereafter, mahazars were prepared and summons were also issued to the accused. The officers of the Central Excise Department undertook a thorough search in the registered office of the first accused company at New No.1, Old No.62, First Link Street, Raghavan Colony, Jaffarkhanpet, Chennai-83 and recovered two files containing invoices for the supply of the PVC pipes to the first accused. According to the respondent, they had identical numbers and all the invoices were in respect of dispatch of PVC pipes to the consignees and that the PVC pipes mentioned in the invoices were clandestinely manufactured and supplied to the consignee, without accounting the same in the statutory records. A summons dated 11.03.1993 was issued to R.Thiagarajan (2nd accused), Managing Director of the first accused company and his statement was also recorded, wherein, he admitted of having manufactured goods namely Rigid PVC pipes without payment of duty and without accounting for the same in the Central Excise Records. The records seized from the premises of the first accused also showed that the TWAD Board is their major customer and have placed orders during the year 1996-97, 1997-98 and 1998-99 and that the first accused have shown fictitious debit entires in the invoices and they have also manufactured and cleared such excisable goods namely PVC pipes, without payment of duty and without following the Central Excise Procedures.

3. The complainant in his complaint has further averred that the first accused have availed modvat credit on the input/raw materials purchased by them and have cleared certain inputs to job work under Rule 57F(4) of the Central Excise Act, 1944 , that they have cleared certain inputs under their own

private challans, without following the procedures, as set out under 57 F(4) of the Central Excise Rules, 1944 for conversion into PVC pipes, to M/s Mathura Polymers (Pvt) Limited and that they have received back the finished PVC pipes on chits prepared by M/s Mathura Polymer (Pvt) Limited and have not accounted the said receipts of the finished goods in any statutory records of the first accused company. It is further averred in the complaint that the first accused company have raised Central Excise invoices with fictitious debit entires regarding payment of excise duty on such clearance and have cleared the goods without sufficient balance either in their RG 23-A part-II/PLA with an intention to evade payment of duty. According to the complainant, the first accused have manufactured and cleared clandestinely finished excisable goods namely, Rigid PVC pipes to TWAD Board divisions located at various places, without payment of appropriate duty due on the said goods and without following the Central Excise Procedures. It is also their contention that the first accused represented by the 2nd and 3rd accused had contravened the provisions of Rule 9(1), 52A, 53, 57 F(4), 173F, 173G of Central Excise Rules, 1944 and therefore, liable to pay a sum of Rs.66,89, 021/- minus Rs.5,95,721/- being the duty involved on the clandestine removal of excisable goods under proviso to Section 11 A(1) of the Central Excise Act, 1944 read with Rule 9(2) of Central Excise Rule,1944. Thereafter, a show cause notice No.58/99 dated 3.9.1999 was issued to the accused 1 to 3 with a demand to deposit the sum of Rs.66,89,021 minus Rs.5,95,721/- being the duty involved in the clandestine removal of excisable goods under Section 11 A(1) of the Central Excise Act 1944 read with Rule 9(2) of the Central Excise Rules, 1944. The accused received the said notice and sent their reply dated 24.02.2000 and 28.02.2000, denying all the allegations of the respondent/complainant. The specific contention of the respondent/complainant is that the accused have manufactured dutiable excisable goods and removed the same without Central Excise License/Registration Certificate in contravention of Rule 174 of the Central Excise Rules, 1944 read with Section 6 of the Central Excise Act, 1944 and have removed such dutiable goods without payment of appropriate duty payable thereon in contravention of Rule 9(1) of the Central Excise Rules, 1944 and without raising Gate Passes/invoices in contravention of Rule 52 A of the Central Excise Rules, 1944. According to them the accused did not maintain proper accounts and also not observe other Central Excise procedures in contravention of Rule 53 read with Rule 173 and have not filed required documents/ declaration concerning the classification and the valuation of the products as required under the law in contravention to Rule 173 (B) and 173(C) of Central Excise Rules, 1944.

4. In the present petition, the petitioners have contended that since the private complaint in E.O.C.C.No.1 of 2010 was lodged without any authorization or any authority, the same is liable to be quashed. According to them, for launching

any prosecution, under the Central Excise Act and the Central Excuse Rules, the Central Board of Customs and Excise, which is common Board for both Central Excise and Customs Department has periodically prescribed the guidelines in this regard and that the Central Board of Excise and Customs also issued a circular under Section 37B of Central Excise Act vide circular No.35/35/94-CS dated 29.04.1994 (Form F No.208/22/93-CX.6) mentioning that the Principal Collector/Principal Commissioner should approve/sanction for launching any prosecution on the basis of the adjudication passed under the Central Excise Act.

5. Mr.T.Ramesh, learned counsel appearing for the petitioners relied on the decision in Union of India Vs. Greavs Limited reported in 2002 (139) ELT Page-34 (MAD) and contended that prior approval for launching prosecution under Central Excise Act is a condition precedent and that -since the present complaint is filed without obtaining prior approval from the competent authority, the entire proceedings is liable to be quashed. He drew the attention of this court to para No.36 of the complaint in E.O.C.C.No.1 of 2010 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai, wherein, it has been mentioned that " there is no provision under this Act, which requires any authority to grant any statutory sanction for prosecution "

6. Per contra, Mr.N.S.Kumar, Special Public Prosecutor, appearing for the respondent would contend that in the instant case, prior approval for launching prosecution against the present petitioners was obtained and that the Chief Commissioner, Central Excise has given his administrative approval vide his letter in C.No.IV/16/30/2007 CZO dated 24.05.2009 for prosecution against 1. M/s Vijaya Aqua Pipes Pvt. Ltd., 2. Shri R.Thiagarajan, Managing Director and 3. Shri S.Nainar, Director of the company.

7. A perusal of the entire complaint shows that the complaint was launched with approval / sanction and the said sanction/approval order given by the Chief Commissioner has been filed along with the complaint as document No.11. Therefore, the argument advanced by the learned counsel appearing for the petitioners that the prosecution has been launched without any approval/sanction from the concerned authority cannot be accepted. Whether the said sanction/approval is in accordance with Central Excise Act and Rules is a matter for trial, which cannot be decided in the instant petition filed under Section 482 of the Code of Criminal Procedure.

8. Another contention of the learned counsel for the petitioners is that the complaint has been filed before the Additional Chief Metropolitan Magistrate, Egmore, Chennai, when the factory of the first respondent is located at Gummidipoondi. This contention of the learned counsel for the petitioners cannot be accepted for the simple reason that the

respondent/complainant had visited the registered office of the first accused company situated at New No.1, Old No.62, First Link Street, Raghavan Colony, Jaffarkhanpet, Chennai-83 and conducted a search on 24.02.1999 and also recovered certain incriminating documents, leading to issue of summons to the accused and also to launch a criminal complaint against them. Therefore, it cannot be said that the Additional Chief Metropolitan Magistrate, Egmore, Chennai does not have any jurisdiction to entertain the complaint. In the circumstances, I do not see any reason to quash the proceedings in EOCC No.1 of 2010 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai.

9. In the result, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

mst

To

1. The Additional Chief Metropolitan Magistrate,
   Egmore, Chennai.

2. The Assistant Commissioner of Central Excise,
   Chennai-II Prosecution Section, MHU Complex,
   392 Anna Salai, Nandanam,
   Chennai 600 034.

3. The Public Prosecutor,
   Madras High Court.

+1 CC to Mr.T. Ramesh, Advocate sr 49470.

Cr.O.P.No.8500 of 2011

SP(06/08/2018)