BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
04.10.2018	12.10.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C(MD)Nos.494 and 495 of 2018
and
Crl.M.P.(MD)Nos.6734 and 6735 of 2018

Crl.R.C(MD)No.494 of 2018

Assistant Commissioner of Customs
(Prosecution)
Office of the Commissioner of Customs
Customs House,
New harbour Estate,
Tuticorin-628 004. : Petitioner/Respondent/Complainant

Vs.

1.Shri Job Jacob
S/o.Shiri C.C.Jacob
Insepctor of Customs,
St.John ICD, Tuticorin
(Now Inspector of Central Excise,
Central Excise Additional Commissionerate,
Tirunelveli)

2.Shri.R.Chinnadurai
S/o.Shri. Ramasamy,
Inspector of Customs,
St.John ICD, Tuticorin,
(Now Customs Preventive Commissionerate,
Trichirapalli) :Respondents/Petitioners/
Accused 2 and 3

PRAYER: Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records of the impugned order dated 12.07.2017 passed by the learned Additional Chief Judicial Magistrate, Madurai in Cr.M.P.No.913 of 2016 in C.C.No.7 of 2015 and set aside the same as illegal.

For Petitioner : Mr.C.Arulvadivel @ Sekar,
Special Public Prosecutor.

For Respondents : S.Ravi

Crl.R.C(MD)No.495 of 2018

Assistant Commissioner of Customs
(Prosecution)
Office of the Commissioner of Customs
Customs House,
New harbour Estate,
Tuticorin-628 004. : Petitioner/Respondent/Complainant

Vs.

Shri N.Bennet
S/o. Shri N.Nelson,
Superintendent of Customs(Retd.,) ,
St.John ICD, Tuticorin,
:Respondent/Petitioner/Accused No.1

PRAYER: Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records of the impugned order dated 12.07.2017 passed by the learned Additional Chief Judicial Magistrate, Madurai in Cr.M.P.No.1161 of 2016 in C.C.No.7 of 2015 and set aside the same as illegal.

For Petitioner : Mr.C.Arulvadivel @ Sekar,
Special Public Prosecutor.

For Respondent : Mr.M.Subash Babu

COMMON ORDER

These two criminal revision cases have been preferred by the State, aggrieved by the common order passed in Cr.M.P.Nos.1161 and 913 of 2016, dated 12.07.2017, on the file of the learned Additional Chief Judicial Magistrate, Madurai.

2.The order which is impugned before this Court through two criminal revisions is to the effect that the trial against the accused persons, who are officer of the Customs Department asked to face trial for the offence under Sections 132, 135, 135-A and 136 of the Customs Act, 1962 were discharged on the ground that without issuance of notice under Section 155(2) of Customs Act after limitation period no proceedings can be initiated.

3.The contention of the State in this revision petitions is that the respondents herein along with certain private persons collided together and under the garb of exporting cotton knitted garments through Tuticorin Port, red sanders logs were stuffed. The respondents herein have cleared the shipping bills mentioning mis-declared goods and in fact prohibited goods, under the guise of exporting 100% cotton knitted garments out of India through the port of Tuticorin. These Customs Officers have facilitated the private persons (Exporters) to get duty drawback. The documents placed by the exporters with mis-declaration (description of the goods and valuation of goods), knowingly cleared by these customs officials 11.380 Mts of red sanders valued at Rs.1.14 crore, was seized by the Commissionerate of Customs, Tuticorin. Leading to a probe into the the matter. It has culminated in the complaint against these respondents who are Officers of Customs department and private individuals, totally 11 accused persons for serious violation of Customs Act in respect of declaration, admitted to export prohibited goods fraudulently and admitted to claim duty drawback by over valuation of the goods.

4.The complaint filed by the State through Assistant Commissioner of Customs (Prosecution) concludes with specific overact of each of the respondents in clearing the respective shipping bills presented by the exporters, namely, M/s.Sree Ragav Exports, Pachampalayam and M/s.Excel Kings Exports, Anthiyur as if the cargo covered under the said shipping bills were inspected. They have issued let export order as if the containers carrying the garments with FOB value of Rs.26,88,000/-. Further they have permitted the exporters to avail duty drawback facility to the tune of Rs.10,89,585. Even if the goods were properly declared and the value shown in the FBO is correct, as per the Customs Rules, the exporter is entitled for duty drawback only to the tune of Rs.2,01,600/- . Though these Officers are responsible for anti-smuggling activities and combating duty evasion, they themselves have facilitated the smuggling of red sanders logs and besides fraudulently and dishonestly enabled the exporters to avail duty drawback. Knowingly and in connivance of others, the respondents have fraudulently issued let export order for the goods which are not supposed to be exported namely red sanders logs.

5.The respondents/accused who are arrayed as A1, A2 and A3 filed an application to discharge citing that no proceedings can be initiated against them without following the procedure contemplated under Section 155 of the Customs Act and without the time prescribed. The Court below relied upon the judgment of Hon'ble Supreme Court in a case in Public Prosecutor Vs. R.Raju reported in (1972) 2 SCC 410 has discharged the accused persons.

6.The point for consideration as canvassed by the learned Special Public Prosecutor is that the judgment relied by the trial Court is in respect of the Central Excise and Salt Act, 1944 which is not in pari-materia to the Customs Act Section 155 as amended and hence, the trial Court ought not to have applied the principle laid down in R.Raju's case.

7.Besides, the learned Special Public Prosecutor would submit that subsequently in Customs Act cases, when the accused persons tried to rely upon the Raju's case, this Court as well as the High Court of Rajasthan, have distinguished the same in the light of the amendment to the Statute and has held that unless the act done by the officials is in good faith and done in course of discharge the duty, neither Sub Section (1) of Section 155 or Sub Section (2) of Section 155 is applicable.

8.This Court had gone through the complaint lodged by the State. The complaint runs to around 80 pages, which had descriptively narrated the role of each of these accused persons as Officers of the Customs in facilitating the export of prohibited red sanders by clearing the customs bills containing false information.

9.In these facts scenario, it is to be tested whether the protection given to the Government Servant of Central or State or local authority for anything done or purporting to be done in pursuance of this Act, is available to the respondents who are A-1 to A-3.

9.Section 155 of the Customs Act reads as under:

> “(1) No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of the Government or a local authority for anything which is done, or intended to be done in good faith, in pursuance of this Act or the Rules or regulations.
>
> (2)No proceeding other than a suit shall be commenced against the Central Government or any officer of the Government or a local authority for anything purporting to be done in pursuance of this Act without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding an of the cause thereof, or after the expiration of three months form the accrual of such cause”

10.Section 155 reads that no suit, prosecution or other legal proceeding shall lie against the Government servants of either Government or local authority for anything which is done, or intended to be done in good faith, in pursuance of this Act or the Rules or regulations.

11.Whereas the specific allegation against the respondents is that they have done certain act which is contrary to the Customs Act and the Rules framed there under. It is also specifically alleged against them that the act done by these accused persons are not done with dishonest intention. Thus the scope of differing good faith gets excluded.

12.In the said circumstances, the protection given under the Act which is available to Servants of either Government/ local authority who have done any act in good faith and in pursuance to the provision of Customs, Act is not applicable to the respondents.

13.The second limb of the provision is regarding proceeding other than the suit. The act bars commencement of action without affording one month previous notice in writing or after expire of three months from the date of cause. This protection is not in respect of the suit, since the provision started with "no proceeding other than a suit".

14.The contention of the learned counsel for the respondents is that the words "no proceeding" includes criminal proceeding/prosecution. An incised scrutiny of Section 155 of the Customs Act and different words employed by the legislators in Sub Sections (1) and (2) of the Section 155 will clearly show that the submission made by the respondents and accepted by the trial Court, is totally erroneous. It is untenable to say that any person who is employed in the Government or local authority cannot be prosecuted for his misdeed, without putting him on one month notice and can proceed not after lapse of three months. The Court below has failed to note that when protection is given to Government servant for from prosecution under Sub Section (1) of Section 155, the word prosecution is consciously not mentioned in Sub Section (2). Also the words other legal proceedings is Conspicuously absent in Sub Section (2). The word employed in Sub Section (2) is only proceedings and not other legal proceedings.

15.The statute says that no proceeding other than a suit can be initiated without previous notice with one month time and not after expiration of three months from the accrual of such cause. Thus on applying the principle of golden Rule of interpretation, the word proceedings should be given only limited and restricting meaning.

16.In a similar context, after considering the R.Raju's judgment and the provisions of Customs Act vis-a-vis the provision of IPC, Cr.P.C and the Constitution and in the light of the judgment render by Rajesthan High Court, in a case of Ravindra Kumar Vs. Union of India observed as below:-

> "16.The Words "no proceeding" appearing in Sub-section (2) of Section 155 of the Customs Act, in my humble opinion, do not include criminal prosecution, as for the protection pertaining to prosecution, there is specific provision under Sub Section (1) of Sections 155 of the Customs Act. Sub-Section(2) of section 40 of the Central Excises and Salt Act, which has been dealt with by the Hon'ble Apex Court in Public Prosecutor, Madras Vs. R.Raju & Anr (Supra) is not pari materia with Sub-Section (2) of Section 155 of the Customs Act\, and therefore, the bar as provided under sub-section (2) of Section 40 of the Central Excises and Salt Act cannot be made applicable to Section 155(2) of the Customs Act."

17.Following the judgment of the Rajasthan High Court, this Court in Crl.O.P.No.2388 of 2018 (Thirumurthy Vs. Inspector of Police) dated 30.01.2018 has observed:-

> "17.If one accept the fallacious interpretation given in this judgment and venture to bisect Sub Section (1) and (2)

of Section 155 of the Customs Act and read Sub-Section (2) disjointly and independent of subsection(1) without its aid, then on the expiry of three months from the date of cause of action, it will be providing immunity from all proceedings except civil proceedings to a person who purport to act under the Customs Act. This interpretation is perse ignorable since it will have over riding effect on all other acts such as Indian Penal Code, All special Acts, with penal consequences and Chapter XXXVI(Limitation of taking cognizance of certain offences) of Code of Criminal procedure. Also, if this interpretation is accepted, then offenders will enjoy larger protection than the limited and restricted immunity provided to constitutional authorities such as President and governors under Article 361 of the Indian Constitution."

18.The same interpretation and analogy said above if applied, in this case, it will be clear as crystal the trial Court has erred in allowing the discharge petition filed by the accused which is per se illegal, improper and perverse without proper consideration of the provision of law.

19.In this result, these Criminal Revision Cases are allowed and the order dated 12.07.2017 passed in Cr.M.P.Nos.1161 and 913 of 2016 on the file of the learned Additional Chief Judicial Magistrate, Madurai is set aside. The trial Court is directed to complete the trial within a period of eight months from this date. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(AD-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To
1.The Additional Chief Judicial Magistrate, Madurai.

2.The Assistant Commissioner of Customs (Prosecution)
Office of the Commissioner of Customs
Customs House, New harbour Estate,Tuticorin-628 004.

3. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.**(2 Copies)**

+2CC to Mr.C.Arulvadivel @ Sekar, Advocate, SR.Nos.90549,90550
+1CC to Mr.S.Ravi, Advocate, SR.No.90659

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Crl.M.P.(MD)Nos.6734 and 6735 of 2018
12.10.2018

CP
ES/PM/SAR 3/08.11.2018/6P/8C