

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.6469 of 2017

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.132 of 2017 on the file of Special Judge for Economic Offences at Hyderabad, registered for the offence punishable under Section 9 of the Central Excise Act, 1944.

The petitioners are the accused and the respondent is the complainant before the Court below.

The respondent filed complaint against the petitioners under Section 9 of the Central Excise Act alleging that the officials of Directorate General of Central Excise Intelligence (DGCEI) visited the factory of the petitioners on 25.03.2008 and seized the records and other files under cover the panchanama. They also seized 14.054 tonnes of Copper scrap available in the factory as it was not accounted in the Raw Materials Receipt Register – FORM IV. They also seized Brass pipes, copper nickel pipes on the ground that the goods were not accounted in RG 1. Thereupon, a show-cause notice was issued for adjudication. The appeals are pending before Customs Excise and Service Tax Appellate Tribunal (for short "CESTAT").

The respondent based its claim on eligibility of "Cenvat credit", initiated proceedings in the context of the same visit and enquiries. The authorities scrutinized records, documents and found that the petitioners availed "Cenvat credit" fraudulently on the imported goods (copper ingots/wire bars) which according to

authorities did not seem to have been received by the petitioners into their factory, as they could not have been received in the facts and circumstances of the petitioner No.1 – factory.

On the assumption, the Commissioner issued show cause notice bearing No.66/2009 dated 08.12.2009 calling for explanation as to why “Cenvat credit” amounting to Rs.1,81,09,125/- inclusive of Duty of Rs.1,77,54,048/- and Education Cess of Rs.3,55,077/-, fraudulently availed by them without actual receipt of inputs/raw material as detailed in Annexure E enclosed to the notice, should not be recovered from them under Rule 14 of the Cenvat credit Rules, 2004 read with sub-section (1) of Section 11-A of the Central Excise Act, 1944 and proviso thereto; interest, as applicable, on the amount under various heads mentioned above, should not be paid by them as provided under Rule 14 of Cenvat credit Rules, 2004 read with 11 AB of the Central Excise Act, 1944 and Penalty equal to the amount of “Cenvat credit” demanded above, should not be paid by them as provided under Rule 15 (2) of the “Cenvat credit” Rules, 2004 read with Section 11 AC of the Central Excise Act, 1944 and penalty as per Rule 25 of Central Excise Rules, 2002 should not be imposed on them for their acts of omissions and commissions.

On receipt of explanation to the show-cause notice, the Commissioner adjudicated the case by order No.04/2011-CE-Commr dated 31.01.2011 confirming the proposal in the notice and demanded Rs.1,81,09,125/- as wrongfully availed “Cenvat credit” and also imposed equal amount of penalty of Rs.1,81,09,125/- under Rule 15 (2) and interest under Section 11AB of the Act.

The Authorities have alleged that the petitioners, who are the Managing Director, two Chief Executives, Executive Director indulged in commission of fraud and imposed penalties under Rule 26 of the Central Excise Rules against each individual i.e. Rs.20,00,000/- on P.R.Bhandari-petitioner No.2, Managing Director, Rs.20,00,000/- on U.M.Bhandari-petitioner No.3, Executive Director, Rs.10,00,000/- on Virendra Bhandari – petitioner No.5, Chief Executive and Rs.10,00,000/- on Surendra Bhandari- petitioner No.4, Chief Executive.

The petitioners preferred appeals against the Order-in-Original passed by the Commissioner and the said appeals were registered. The CESTAT admitted the appeals and ordered to pay Rs.72,00,000/- towards admission and for granting stay on recovery. Likewise, deposits were also ordered in respect of the co-appellants. In pursuance of the direction of the CESTAT, petitioner No.1 – M/s Cubex Tubings Limited deposited Rs.72,00,000/-, petitioner No.2-Pushpraj Bhandari deposited Rs.4,00,000/-, petitioner No.3 – U.M.Bhandari deposited Rs.2,00,000/-, petitioner No.5 – Virendra Bhandari deposited Rs.2,00,000/-, petitioner No.4 – Surendra Prakash Bhandari deposited Rs.4,00,000/-.

Despite pendency of the appeals, respondent filed complaint under Section 9 of the Central Excise Act, 1944, which is registered as C.C.No.132 of 2017 before the Special Judge for Economic Offences, Hyderabad on the basis of the order-in-Original No.04/2011 dated 31.01.2011 passed by the Commissioner, which is the subject matter of appeals before CESTAT.

The main ground urged before this Court by the petitioners is that when the appeals are pending against the order passed by the Commissioner, and CESTAT granted stay subject to deposit of certain amount by each appellant, the proceedings before the Court below cannot be continued since the guilt of the petitioners would depend upon the findings recorded by the CESTAT in the appeal pending before it. The petitioners also raised several other contentions, which are not germane to decide the real controversy between the parties.

During hearing Sri Ch.Pushyam Kiran, learned counsel for the petitioners mainly contended that when appeals are pending before CESTAT against the Order-in-Original No.04 of 2011 dated 31.01.2011 passed by the Commissioner, the prosecution before the Special Judge for Economic Offences cannot be continued and the same is liable to be quashed for the reason that the findings recorded by the Commissioner are the basis for initiating prosecution against the petitioners and if for any reason, the CESTAT reversed the findings and concluded that the petitioners did commit no fraud, it will have its own impact on the trial of the C.C.No.132 of 2017 and if for any reason the trial is concluded before the Special Judge for Economic Offences earlier to the disposal of appeal before the CESTAT, it would lead to irreparable consequences, therefore, the prosecution against the petitioners cannot be continued in C.C.No.132 of 2017 on the file of Special Judge for Economic Offences at Hyderabad and prayed to quash the proceedings against these petitioners for the offence punishable under Section 9 of the Central Excise Act, 1944.

In support of his contentions, he placed reliance on the

judgment of Apex Court rendered in “**Commissioner of Income Tax, Mumbai v. Bhupen Champak Lal Dalal**”¹, judgment of this Court rendered in “**Prabhava Organics P.Ltd. v. Deputy Commissioner of Income Tax**”² and judgment of the High Court of Patna rendered in “**Choubey Sugandith Tambaku Company through Chhedi Lal Sharma v. The Union of India**”³

Per contra, learned Standing Counsel for Central Excise would contend that the prosecution was initiated only on the ground that the petitioners committed fraud in availing “Cenvat credit” amounting to more than one crore and the appeals are only against assessment but not challenging the alleged fraud committed by the petitioners in availing “Cenvat credit”, therefore, the prosecution before the Special Judge for trial of Economic Cases, cannot be quashed or stayed. In support of his contentions, he placed reliance on the judgment of the judgment of Apex Court rendered in “**P.Jayappan v. S.K.Perumal, First Income-tax Officer, Tuticorin**”⁴, judgment of this Court rendered in “**Rockwool (India) Limited Company, Medak District v. Deputy Commissioner (Legal) Central Excise Hyderabad – 1 and another**”⁵ and Judgment of High Court of Punjab and Haryana rendered in “**Rajendera Pal Mangal v. Asstt. Collr. Cus & C EX DIV, Ludhiana**”⁶ and requested this Court to dismiss the petition since the proceedings pending before the CESTAT and Special Judge for trial of Economic Offences at Hyderabad are independent and the result of prosecution in

¹ AIR 2001 SC 1096

² 2007 (2) ALD (Crl.) 254

³ 2013 (288) ELT 342 (Pat.)

⁴ AIR 1984 Supreme Court 1693

⁵ 2002 (1) ALD (Crl.) 637 (AP)

⁶ 2012 (276) ELT 479

C.C.No.132 of 2017 would not depend upon the findings recorded by CESTAT.

Considering rival contentions and perusing the material available on record, the point that arises for consideration is:

Whether the pendency of appeals before CESTAT debars the respondent from prosecuting the petitioners for the offence punishable under Section 9 of the Central Excise Act, 1944, if so, whether the proceedings in C.C.No.132 of 2017 on the file of Special Judge for Economic offences, Hyderabad are liable to be quashed?

P O I N T:

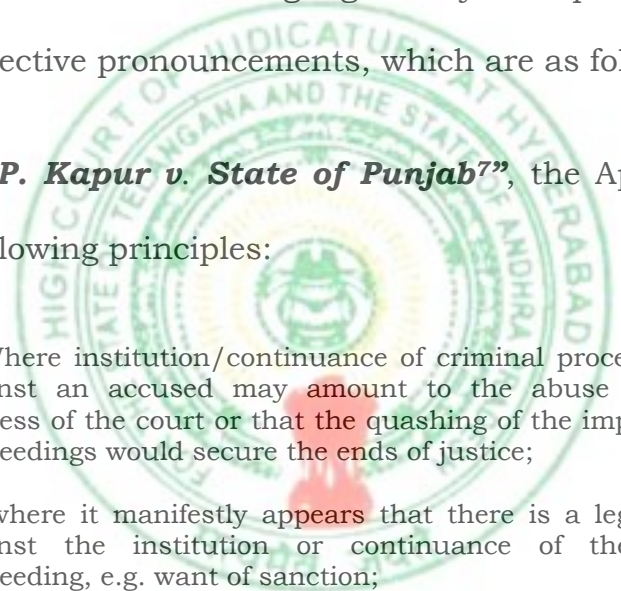
The undisputed facts are that the Commissioner of Central Excise levied duty, penalty as stated above, for availing “Cenvat credit” fraudulently. The order passed by the Commissioner of Central Excise is the subject matter of appeals before CESTAT in the appeal Nos.E/1212/2011, E/1241/2011, E/1240/2011, E/1239/2011, E/1238/2011. While the appeals are pending, the respondent initiated prosecution against these petitioners for the offence punishable under Section 9 of the Central Excise Act for availing “Cenvat Credit” fraudulently.

The contention of the petitioners before this Court is that when the availment of “Cenvat Credit” credit, levy of duty and penalty is the subject matter of appeal before CESTAT, the proceedings before the Criminal Court are liable to be quashed for the reason that in case the CESTAT reversed the order passed by the Commissioner, the prosecution would not sustain legally and liable to be quashed for the offence punishable under Section 9 of the Central Excise Act.

The scope of jurisdiction of this Court under Section 482 of Cr.P.C. is limited and this Court at this stage cannot appreciate the facts on record, but verify and conclude that if the allegations made in the complaint *prima facie* constitutes any cognizable offence, the Court shall not quash the proceedings since the powers of this Court are limited to give effect to the orders passed under the Code, to prevent abuse of process of Court or to meet the ends of justice.

Time and again, the scope of powers of this Court under Section 482 of Cr.P.C. were highlighted by the Apex Court in long line of perspective pronouncements, which are as follows:

In “**R.P. Kapur v. State of Punjab**”⁷, the Apex Court laid down the following principles:

- 
- (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
 - (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
 - (iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and
 - (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent power to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations

⁷ AIR 1960 SC 866

set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious. In that event there would be no justification for interference by the High Court as held by the Apex Court in ***“Mrs.Dhanalakshmi v. R.Prasanna Kumar⁸”***

In ***“State of Haryana v. Bhajan Lal⁹”*** the Apex Court considered in detail the powers of High Court under Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by

⁸ AIR 1990 SC 494

⁹ 1992 Supp (1) SCC 335

police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an **express** legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

In view of the law declared by the Apex Court, the scope of the jurisdiction of this Court under Section 482 of Cr.P.C. is limited. Keeping in mind, the law declared by the Apex Court in

the above decisions, I would like to advert to the allegations made in the complaint to find out whether the petitioners *prima facie* committed any offence punishable under Section 9 of the Central Excise Act.

A bare look at the allegations made in the complaint would disclose that these petitioners have availed "Cenvat Credit" fraudulently creating fictitious documents without actual receipts of inputs against such documents and incorporation of those goods in manufacturing of Copper Nickel Pipes etc. by the petitioner No.1 – company. Thus, the petitioner Nos.2 to 5 being the Managing Director, Executive Director and Chief Executive allegedly availed "Cenvat Credit" on the strength of the bills of entry related to imported re-melted Copper Ingots/Wire Bars of Sri Lankan origin shown to have been purchased on high sea sale basis from two Delhi based Importers – M/s. Dinesh International Ltd and M/s.Vipin Enterprises, without actual receipt of said re-melted copper ingots/wire bars into their factory, on the strength of fabricated transport documents/transactions. These consignments of re-melted copper ingots/wire bars, which are of Sri Lankan Origin, allegedly purchased on high sea sale basis, were shipped from Sri Lanka to JNPT, Nhava Sheva, Mumbai and then the same were transported to ICD, Tughlaquabad, Delhi by train. After the customs clearance at ICD, Tughlaquabad, Delhi, it was shown in the records that the goods were transported through M/s.Time and Space Haulers from New Delhi to the factory premises of Cubex, the petitioner No.1 herein.

The said consignments of re-melted copper ingots/wire bars were shipped from Sri Lanka to JNPT, Nhava Sheva, Mumbai. In

normal course, to minimize the cost of transportation, Cubex-petitioner No.1 herein could have opted for customs clearance at JNPT, Nhava Sheva, Mumbai and could have transported the goods directly from Nhava Sheva, Mumbai to their factory located at Patancheru, Medak District, Andhra Pradesh. But the instant case, the goods after reaching JNPT, Nhava Sheva, Mumbai, were further transported to ICD, Tughlaquabad, Delhi by M/s. CONCOR through Train. After the customs clearance at ICD, Tughlaquabad, Delhi, the 'imported consignments of Copper' were shown as transported in trucks to the factory of Cubex through M/s. Time and Space Haulers. Thus, such imported consignments of Copper traveled an additional distance of around 2150 Kms by adopting the route viz. Nhava Sheva – Delhi – Hyderabad (2900 Kms) (Customs clearance made at ICD Tughlaquabad, Delhi) as compared to the distance via normal route viz. Nhava Sheva – Hyderabad (750 Kms) (assuming the Customs clearance at Nhava Sheva). No manufacturer will incur additional transportation expenses specially when imported goods arrive at Nhava Sheva, Mumbai and could have been cleared from Nhava Sheva Port itself, if Cubex genuinely intend to bring the "Imported consignments of Copper" to their factory.

The Ahmedabad Zonal Unit, during the course of investigation have recovered 146 fake Consignment Notes issued by M/s. Time and Space Haulers to ten manufactures of Andhra Pradesh and Cubex - petitioner No.1 is one of them. As per the list, out of said 146 Consignment Notes, 79 Consignment Notes were issued in the name of Cubex – petitioner No.1 herein. As per list, out of said 146 Consignment Notes, 79 Consignment Notes

were issued in the name of Cubex – petitioner No.1 herein and the notice pertains to 70 consignment notes, where there is a prima facie evidence, which were issued showing transportation of material imported vide 26 Bills of Entry. On perusal of the said Consignment Notes, it was observed that M/s. Time and Space Haulers have issued 70 Consignment Notes showing transportation of a Quantity of 698.375 M.T. of Remelted Copoper Wire Bars/Ingots covering 26 Bills of Entry. M/s. Time and Space Haulers, vide their letter dated 12.06.2008 have submitted ledger extract of Cubex – petitioner No.1 herein in the accounts of M/s. Time and Space Haulers. Cubex – petitioner No.1 herein vide their letter dated 27.06.2008 submitted Ledger printouts of M/s. Time and Space Haulers as available in the accounts of Cubex – petitioner No.1. Sri Praveen Agarwal, Partner of M/s. Time and Space Haulers, Ahmedabad vide his letter dated 19.02.2009, addressed to the Additional Director, DGCEI, Ahmedabad, submitted revised ledger account of Cubex along with relevant bills. On perusal of the revised Ledger Account of Cubex along with relevant copies of Bills submitted by Sri Praveen Agarwal, Time and Space Haulers, Ahmedabad vide his letter dated 19.02.2009 and also True Copies of Consignment Notes submitted by Sri Praveen Agarwal vide his letter dated 26.05.2009, got confirmed that M/s. Time and Space Haulers issued 70 Consignment Notes showing the transport of 698.375 M.T. of Remelted Copper Wire Bars/Ingots imported vide 26 Bills of Entry. Further basing on the said 70 Consignment Notes issued and bills raised by M/s. Time & Space Haulers, “Cenvat Credit” of Rs.1,81,09,125/- was availed by Cubex – petitioner No.1 herein

against 26 Bills of Entry.

The respondent further made investigation and got confirmed that the petitioners by fabricating bills of entry and bills and availed "Cenvat credit" fraudulently. Therefore, proceedings were initiated for levying duty and penalty. Accordingly, after following necessary procedure, Commissioner passed an order levying duty of Rs.1,77,54,048/- and Education Cess of Rs.3,55,077/- besides imposing penalty under various provisions stated above against each petitioners.

The material produced along with the complaint filed before the Special Judge for Economic Offences would disclose *prima facie* the petitioners committed offence punishable under Section 9 of Central Excise Act. If the allegations made in the complaint are accepted on their face value, they would constitute offence punishable under Section 9 of the Central Excise Act.

Section 9 (1) (c) of Central Excise Act deals with punishment for availment of "Cenvat Credit" fraudulent.

The main endeavour of the learned counsel for the petitioners is that when appeals are pending against the orders passed by the Commissioner, the Criminal Proceedings cannot be continued and liable to be quashed since the finding of the CESTAT will have its own bearing on the criminal prosecution, if for any reason CESTAT concluded that these petitioners did not avail "Cenvat Credit" on the alleged fake bills, then the prosecution is liable to be ended in favour of the petitioners. Therefore, the criminal prosecution during pendency of appeals, against the petitioners is nothing but abuse of process of Court as

an arm twisting method to collect penalty and duty levied as per the order passed by the Commissioner.

In support of his contentions, the learned counsel for the petitioners would draw the attention of this Court to the judgment of the Apex Court rendered in “**Commissioner of Income Tax, Mumbai v. Bhupen Champak Lal Dalal**” (referred supra). In the facts of the above case when an appeal is filed against the assessment order, the appellate authority granted interim order staying the proceedings. The Apex Court held that the prosecution in criminal law and proceedings arising under the Act are undoubtedly independent proceedings and, therefore, there is no impediment in law for the criminal proceedings to proceed even during the pendency of the proceedings under the Act. Moreover, the Apex Court relied on “**P.Jayappan vs. S.K.Perumal, First Income-Tax Officer, Tuticorin**” (referred supra) on which the respondent relied on, wherein the Apex Court held that the pendency of the reassessment proceedings cannot act as a bar to the institution of the criminal prosecution for offences punishable under Section 276 C or Section 277 of the Act or Sections 193 and 196 of the Penal Code. The institution of the criminal proceedings cannot in the circumstances also amount to an abuse of the process of the Court. Thus, the law laid down by the Apex Court is consistent that pendency of appeals against the order passed by the primary authority would not debar the authorities to prosecute the individual for the offences punishable under penal provisions i.e. in the present case under Section 9 of the Central Excise Act.

When a criminal prosecution is launched during pendency

of appeals, in the criminal case all the ingredients of the offence in question have to be established in order to secure the conviction of the accused. The criminal court no doubt has to give due regard to the result of any proceeding under the Act having a bearing on the question in issue and in an appropriate case it may drop the proceedings in the light of an order passed under the Act. It does not, however, mean that the result of a proceeding under the Act would be binding on the criminal court. The criminal court has to judge the case independently on the evidence placed before it. Otherwise there is a danger of a contention being advanced that whenever the assessee or any other person liable under the Act has failed to convince the authorities in the proceedings under the Act that he has not deliberately made any false statement or that he has not fabricated any material evidence, the conviction of such person should invariably follow in the criminal court. An identical contention was raised before the Apex Court in “**P.Jayappan vs. S.K.Perumal, First Income-Tax Officer, Tuticorin**” (referred supra), but the Apex Court did not accept the said contention.

In identical situation, this Court in “**Rockwool (India) Limited Company, Medak District v. Deputy Commissioner (Legal) Central Excise Hyderabad – 1 and another**” (referred supra), declined to quash the proceedings and held as follows:

“Before considering the merits of the contentions raised by the counsel for parties, it is necessary to have a look at Section 9(1) of the Central Excise Act, which lays down that failing to supply information or furnishing false information in relation to an information required by Rules made under the Excise Act is an offence punishable as mentioned therein. Therefore, it is clear that as per Section 9(1)(c) supplying false information and evading payment of duty penalty under the Act, are

offences punishable under the Central Excise Act. If the offence alleged against the petitioner is that it is evading to pay the duty levied by the Commissioner in his order, which was stayed by the CEGAT, there is any amount of force in the contention of the learned counsel for the petitioner that the prosecution is premature and so is liable to be stayed till the final disposal of the proceedings before the CEGAT. In the complaint in this case there is a specific allegation that the petitioner created fictitious supplies of fly ash and misdeclared Andesite as fly ash and steel, to cover non-usage of fly ash and misdeclared Andesite Steel slag, and hence he is liable for punishment under Section 9(1)(c) of the Central Excise Act. The question as to whether the petitioner created fictitious supply of fly ash and misdeclared Andesite as fly ash and slag, to cover up non-usage of fly ash and Steel Slag is not the subject matter of determination by the CEGAT. The prosecution is not launched merely on the ground that the petitioner failed to pay the amount of duty as determined by the Commissioner, whose order is stayed by the CEGAT. Therefore, I am unable to agree with the contention of the learned counsel for the petitioner that the issue before the CEGAT and the issue to be decided by the criminal Court are the same.”

Later in “**Prabhava Organics P.Ltd. v. Deputy Commissioner of Income Tax**” (referred supra) a similar situation came up before the Single Judge of this Court for consideration for quashment of the criminal proceedings, but the Single Judge of this Court held that the proceedings against the petitioners pending on the file of Special Judge are not liable to be quashed during the pendency of the appeal before the Income Tax Appellate Tribunal, however, granted stay of prosecution proceedings till a decision is rendered by the Income Tax Appellate Tribunal in the matter.

The single Judge of High Court of Punjab; and Haryana in “**Rajendera Pal Mangal v. Asstt. Collr. Cus & C EX DIV, Ludhiana**” (referred supra) had considered the similar contention and negated the relief of quashment of proceedings on account of pendency of the appeals before the Appellate Authority. Moreover, learned counsel for the petitioners would draw the attention of

this Court to the judgment of High Court of Patna rendered in “**Choubey Sugandith Tambaku Company through Chhedi Lal Sharma v. The Union of India**” (referred supra). The Patna High Court on considering the similar contention based on the earlier judgment of Apex Court rendered in “**Commissioner of Income Tax, Mumbai v. Bhupen Champak Lal Dalal**” (referred supra) observed that the High court and the Supreme court merely exercised as an advisory or consultative jurisdiction while appeals are kept pending before the Tribunal and nothing should be employed as detracting from jurisdiction of the Tribunal and in view of the aforesaid decision, it is abundantly clear that the appeals filed by the petitioners are still pending before the Hon'ble Tribunal and admittedly, in the aforesaid appeals, this question is also involved as to whether petitioners had clandestinely removed the goods in question or not. Hence, to avoid the contradictory decisions of the court, further proceedings of Complaint case No. 378C/2008 should be stayed till final decision of the reference application pending before the Hon'ble High Court, Calcutta.

But the principle in the above judgment and the judgment of Single Judge of this Court in “**Prabhava Organics P.Ltd. v. Deputy Commissioner of Income Tax**” (referred supra) are not applicable to the present facts of the case since the Full Bench Judgment of Supreme Court rendered in “**P.Jayappan v. S.K.Perumal, First Income-tax Officer, Tuticorin**” (referred supra) is clear that mere pendency of the appeal would not debar the Court from entertaining a complaint for the offence punishable under Penal provisions or under special enactment and the Court can proceed to try the accused for the offences

referred above. Even otherwise, if for any reason, the criminal prosecution is quashed and the CESTAT did not agree with the contention of the petitioners in the appeal pending before it, by the time the criminal prosecution would be barred by limitation. Therefore, the Court need wait to take cognizance of any offence against the petitioners till disposal of the appeals before CESTAT. On the other hand, if for any reason the Criminal proceedings are stayed till disposal of the appeals, such order would clog the pendency in the criminal court. Therefore, to avoid such contingency, I am of the considered view that it is a fit case to stay pronouncement of judgment in C.C.No.132 of 2017 while permitting the Special Judge for Economic Offences at Hyderabad to try the accused for the offence punishable under Section 9 of the Central Excise Act. As I am sure that the CESTAT will decide the appeal Nos. E/1212/2011, E/1241/2011, E/1240/2011, E/1239/2011, E/1238/2011 pending before it as expeditiously as possible to enable the Special Court for Economic Offences at Hyderabad to decide the C.C.No.132 of 2017 pending before it as early as possible.

In view of my foregoing discussion, I find no ground to quash the proceedings in C.C.No.132 of 2017 on the file of Special Judge for Economic Offences at Hyderabad, since I find *prima facie* material against these petitioners to constitute offence punishable under Section 9 of Central Excise Act and that initiating criminal prosecution against these petitioners during pendency of appeals before CESTAT does not amount to abuse of process of Court as held by the Apex Court in “**P.Jayappan v. S.K.Perumal, First Income-tax Officer, Tuticorin**” (referred

supra)

In the result, the petition is dismissed while permitting the Special Judge for Economic Offences at Hyderabad to try the accused in C.C.No.132 of 2017 in accordance with law, but the pronouncement of judgment in C.C.No.132 of 2017 is hereby stayed till the disposal of the appeal Nos.E/1212/2011, E/1241/2011, E/1240/2011, E/1239/2011, E/1238/2011 pending before the CESTAT. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

15.02.2018
Ksp

JUSTICE M. SATYANARAYANA MURTHY

