



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.62 of 2009
and

Crl.A.(MD)Nos.4, 31, 32 and 307 of 2008

Asst.Commissioner of Central Excise
Office of the Commissioner of Central Excise,
Central Revenue Building , Madurai

... Petitioner/ Complainant in CRL A(MD). 62/ 2009

The Deputy Commissioner Of Central Excise,
Legal Section,O/o.The Commissioner of Central Excise,
Central Revenue Building,Madurai.

... Petitioner/ Complainant in CRL A(MD). 4/ 2008

Asst Commissioner of Central Excise,
(Legal Section)Office of the Commissioner of Central Excise
Central Revenue Building, Madurai.

... Petitioner/ Complainant in CRL A(MD). 31/ 2008

Deputy Commiss ioner of Central Excise,
Office of the Commissioner of Central Excise
Central Revenue Building, Madurai.

... Petitioner/ Complainant in CRL A(MD). 32/ 2008

Asst.Commissioner Of central Excise,
Central Excise, Madurai.

... Petitioner/ Complainant in CRL A(MD). 307/ 2008

- Vs. -

1. M/s.C.P.Spinning Mills Private Ltd,
New Dharapuram Road, Puliampatti Post,
Palani-624617.
2. Shri. P.Balakrishnan
Managing Director, M/s. C.P.Spinning Mills Private Ltd,
New Dharapuram Road, Puliampatti Post, Palani-624617.
3. Shri.K.Vasu
Manager-Authorised Signatory,
M/s.C.P.Spinning Mills Private Ltd,
New Dharapuram Road, Puliampatti Post, Palani-624617
... Respondents/ Accused No.1 to 3 in CRL A(MD)62/ 2009



1. Sri Skanda Spinners,
Thalaiyuthu, Palani.
2. Shri.D.D.Jayaraman,
Director, Race Course Mansion,
No.8/1-M Race Course, Coimbatore.

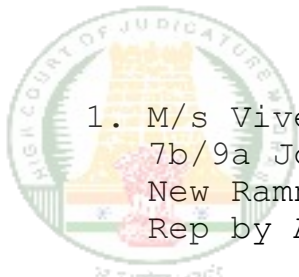
... Respondents/Accused in CRL A(MD). 4/ 2008

1. M/s. Goodwill Textile Pvt.Ltd.,
Minukkampatti Post, Vedasandur-624 711.
2. Sri P. Subramaniam
Managing Director
M/s. Goodwill Textile Private Limited
Minukkampatti Post
Vedasandur-624 711.
3. Sri. R. Rajendran
Director, M/s.Goodwill Textile Private Ltd &
M/s. Raju Rajammal Textiles Private Ltd
No.43, Sengundapuram 6th Cross
Karur-639 002.
4. Sri R. Balakrishnan, Director
M/s. Goodwill Textile Private Ltd &
M/s.Raju Rajammal Textiles Private Limited,
No.43, Sengundapuram 6th Cross
Karur-639 002.
5. Sri R. Thiruvassagam Director
M/s. Goodwill Textile Private Ltd &
M/s. Raju Rajammal Textiles Private
Limited,
No.43, Sengundapuram 6th Cross
Karur-639 002.

... Respondents/Accused in CRL A(MD). 31/ 2008

1. M.S Govardhan Spinners Ltd
Pannaipatti Chinalapatti-624301
Dindigul District.
2. K.Narayanan Director Plot No 12
Bharani Colony (Upstairs)
Saligramam Chennai -600093.
3. K.Ramachandran Director
Devaki Illam Soundram Nagar
Ambathurai
Dindigul District.

... Respondents/Accused in CRL A(MD). 32/ 2008



1. M/s Vivekananda Industries
7b/9a Johnson Building
New Ramnad Road, Madurai-9.
Rep by A2 Shri.R.D.Pandiyan Managing Partner.

2. Shri.R.D.Pandian Partner
M/s Vivekananda Industries
7b/9a Johnson Building
New Ramnad Road Madurai-9.

3. Sri Venkateswara Industries
7b/9a Johnson Building
New Ramnad Road, Madurai-9.

4. Shri.P.Jawahar Proprietor
M/s Vinayaga Industries
7b/9a Johnson Building
New Ramnad Road Madurai-9.

5. Shri.P.Janahar Proprietor
M/s Manipandian Industries
7b/9a Johnson Building New
Ramnad Road, Madurai-9

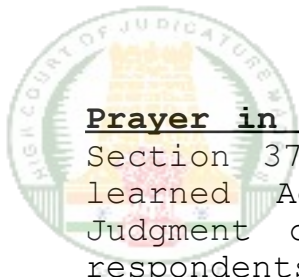
... Respondents/Accused 1,2,3,5 & 6 in CRL A(MD)307/2008

Prayer in Crl.A.(MD)No.62 of 2009: Criminal Appeal is filed under Section 374 of Cr.P.C., to enhance the sentence awarded by the learned Additional Chief Judicial Magistrate, Madurai in the Judgment dated 10.12.2008 in C.C.No.2 of 2007 and punish the respondents / accused with maximum sentence.

Prayer in Crl.A.(MD)No.4 of 2008: Criminal Appeal is filed under Section 374 of Cr.P.C., to enhance the sentence awarded by the learned Additional Chief Judicial Magistrate, Madurai in the Judgment dated 21.11.2007 in C.C.No.3 of 2005 and punish the respondents / accused with maximum sentence.

Prayer in Crl.A.(MD)No.31 of 2008: Criminal Appeal is filed under Section 374 of Cr.P.C., to enhance the sentence awarded by the learned Additional Chief Judicial Magistrate, Madurai in the Judgment dated 20.09.2006 in C.C.No.1 of 2006 and punish the respondents / accused with maximum sentence.

Prayer in Crl.A.(MD)No.32 of 2008: Criminal Appeal is filed under Section 374 of Cr.P.C., to enhance the sentence awarded by the learned Additional Chief Judicial Magistrate, Madurai in the Judgment dated 12.11.2007 in C.C.No.4 of 2005 and punish the respondents / accused with maximum sentence.



Prayer in Crl.A.(MD)No.307 of 2008: Criminal Appeal is filed under Section 374 of Cr.P.C., to enhance the sentence awarded by the learned Additional Chief Judicial Magistrate, Madurai in the Judgment dated 03.03.2008 in C.C.No.43 of 1990 and punish the respondents / accused with maximum sentence.

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For Appellant : Mr.C.Arul Vadivel @ Sekar
(in all Crl.As.) Special Public Prosecutor

For Respondents : Mr.N.Dilipkumar
(in Crl.A.(MD)No.62,
of 2009 and Crl.A.(MD)Nos.4, 31 and 32 of 2008)

For R3 : No appearance
(in Crl.A.(MD)No.62 of 2009)

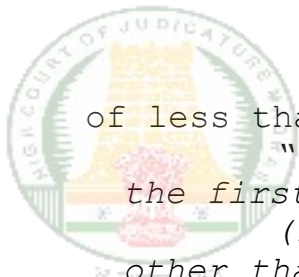
For Respondents : Mr.C.Ramesh
(in Crl.A.(MD)No.307 of 2008)

COMMON JUDGMENT

The Company in Crl.A.(MD)No.307 of 2008 is an Iron Grill Manufacturing Company. In all other cases, the companies are Spinning Mills. The allegation against them is that they indulged in central excise duty evasion. Therefore, prosecution was launched against the companies and also the Directors who were in-charge of the affairs of the companies. After the complaints filed by the Excise Department through its Authorised Officer were taken on file, summons were issued to the accused to enter appearance. After they entered appearance, the accused pleaded guilty. The learned trial Magistrate accepted the plea of guilt, but, instead of sentencing them to undergo minimum term of imprisonment, chose to sentence them to undergo till the rising of the Court. A nominal fine amount alone was imposed. Challenging the same, this appeal has been filed.

2.Heard the learned Special Public Prosecutor appearing for the Excise Department as well as the learned counsel for the convicted accused.

3.Section 9 of the Central Excise Act, 1944, sets out the offences and penalties. The respondent, in this case, had admitted and they were also found guilty of the offence set out under Section 9(1) of the Central Excise Act. Proviso to Section 9(1) of the Central Excise Act, 1944, prescribes a minimum term of six months imprisonment. Of-course, if there are special and adequate reasons, it is open to the trial Court to sentence the accused for a term of less than six months. Section 9(3) of the Central Excise Act states that the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term



of less than six months. They are as follow:

"(I) the fact that the accused has been convicted for the first time for an offence under the Act;

(II) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods in relation to such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence'

(III) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party in the commission of the offence;

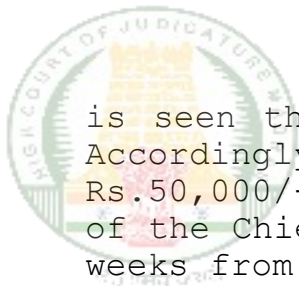
(IV) the age of the accused."

4.The learned Special Public Prosecutor appearing for the Department would contend that the reasons assigned by the Court below cannot be called as special and adequate reasons within the meaning of proviso to Section 9 of the Act. I am in substantial agreement with the submission of the learned Special Public Prosecutor. But then, the question that arises for consideration is whether I should still interfere in the matter.

5.As rightly pointed out by the learned counsel appearing for the respondents in Criminal Appeal (MD)No.307 of 2008, the cause of action dates back to the year 1983-1987. In other cases, the events date back to the year 1999 to 2001. Thus, it cannot be in dispute that there has been a very substantial lapse of time. It is not in dispute that all the accused are certainly in their late 70's. Though the age of the accused is an irrelevant factor, this Court cannot lose sight of the fact that they are all suffering from ailments. Medical grounds can certainly be taken note of by this Court. It is seen that even before the Court below, the accused have filed medical certificates to establish their medical condition.

6.The learned counsel appearing for the respondents/accused in Crl.A.(MD)No.307 of 2008 would submit that without prejudice their contention in the pending appeal before the Hon'ble High Court, they would pay a further sum of Rs.1,00,000/-. It is seen that the Court below had levied only a sum of Rs.1,500/-. Accordingly, R2-R.D.Pandian, R4-P.Jawahar and R5-P.Janahar are directed to pay a further sum of Rs.33,300/- each as fine to the credit of C.C.No.43 of 1990 on the file of the Chief Judicial Magistrate, Madurai, within a period of twelve weeks from the date of receipt of a copy of this order.

7.The learned counsel appearing for the respondent/accused in Crl.A.(MD)No.62 of 2009 would submit that without prejudice their contention in the pending appeal before the Hon'ble High Court, R2-P.Bala Krishnan undertakes to pay a further sum of Rs.50,000/-. It



is seen that the Court below had levied only a sum of Rs.2,000/-. Accordingly, R2-P.Bala Krishnan is directed to pay a further sum of Rs.50,000/- as fine to the credit of C.C.No.2 of 2007, on the file of the Chief Judicial Magistrate, Madurai, within a period of twelve weeks from the date of receipt of a copy of this order.

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8.The learned counsel appearing for the respondents/accused in Crl.A.(MD)No.31 of 2008 would submit that the second respondent-P.Subramaniam is no more. Therefore, this appeal has to be dismissed as far as R2 is concerned. He further submitted that without prejudice their contention in the pending appeal before the Hon'ble High Court, they would pay a further sum of Rs.1,00,000/-. It is seen that the Court below had levied only a sum of Rs.1,000/-. Accordingly, R3-R.Rajendran, R4-R.Balakrishnan and R5-R.Thiruvassagam are directed to pay a further sum of Rs.33,300/- each as fine to the credit of C.C.No.1 of 2006 on the file of the Chief Judicial Magistrate, Madurai, within a period of twelve weeks from the date of receipt of a copy of this order.

9.The learned counsel appearing for the respondents/accused in Crl.A.(MD)No.32 of 2008 would submit that without prejudice their contention in the pending appeal before the Hon'ble High Court, they would pay a further sum of Rs.1,00,000/-. Accordingly, R2-K.Narayana and R3-K.Ramachandran are directed to pay a further sum of Rs.50,000/- each as fine to the credit of C.C.No.4 of 2005 on the file of the Chief Judicial Magistrate, Madurai, within a period of twelve weeks from the date of receipt of a copy of this order.

10.The learned counsel appearing for the respondents/accused in Crl.A.(MD)No.4 of 2008 would submit that without prejudice their contention in the pending appeal before the Hon'ble High Court, he would pay a further sum of Rs.50,000/-. Accordingly, R2-D.D.Jayaraman is directed to pay a further sum of Rs.50,000/- as fine to the credit of C.C.No.3 of 2005 on the file of the Chief Judicial Magistrate, Madurai, within a period of twelve weeks from the date of receipt of a copy of this order.

11.Upon such deposit, the amount now directed to be paid will be disbursed to the complainant. It is made clear that this deposit of fine amount will be without prejudice to their contentions in the pending appeal. But then, it is made clear that even if the respondents herein succeed in their pending appeal, this fine amount will not be refunded. For the reasons set out above and in view of the enhancement of the fine amount imposed on the accused, this criminal appeals stand partly allowed.

Sd/-

Assistant Registrar (CO)

/True Copy/



To

The Additional Chief Judicial Magistrate, Madurai.

COPY TO:

The Section Officer, Criminal Section/ Records,
Madurai Bench Of Madras High Court, Madurai.(2 copies)

+1CC TO Mr.C.ARUL VADIVEL @ SEKAR, Advocate, sr No.77327

+4 CC to M/s.N.DILIPKUMAR, Advocate, Sr Nos.77592 to 77595

+1CC TO Mr.C.RAMESH, Advocate, SR No.77494

Crl.A(MD)No.62 of 2009

and

Crl.A.(MD)Nos.4, 31, 32 and 307 of 2008

24.07.2019

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