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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.M.C. 4188/2014 and Crl. M.A. no. 14424/2014

AMBEECEE CONSOLIDATED
ENTERPRISES INDIA PVT LTD & ORS ..... Petitioners

Through Mr. Shailender Kumar, Adv.

versus

THE STATE & ANR ..... Respondents

Through Ms. Manjeet Arya, APP for respondent no. 1
Mr. Satish Aggarwala, Sr. Standing Counsel with Mr. Akshay Saxena, Adv. for respondent no. 2

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

<u>O R D E R</u>

% 25.02.2019

Petitioner no. 1 is a company registered under the Companies Act, 2013. Petitioner nos. 2 to 4 are its Directors. Respondent no. 2 (Central Excise Department) raided the premises of petitioner no. 1 on 22nd July, 1996 and verified the stock of finished excisable goods as also the relevant books of accounts of petitioner no.1. On verification, officials of respondent no. 2 found that petitioner no. 1 had not reflected the production of S.S. Ingots in a proper manner in the statutory records and had removed the S.S. Ingots without showing the same in proper invoices to evade central excise duty and thus, had cleared the goods without payment of central excise duty leviable on the said excisable goods by recording mis-statement of facts in their relevant books. Adjudication proceedings were carried out by the Adjudicating Authority. Vide order dated 31st December, 2003 a central excise duty to the tune of ₹84,92,243/- was levied on petitioners. Penalties were also imposed.

It was further decided to file a criminal complaint against the petitioners for having committed the offence under Sections 9 and 9AA of the Central Excise Act, 1944 ("the Act", for short). Petitioner nos. 2 to 4, were impleaded as accused in view of Section 9AA of the Act. Accordingly, criminal complaint was filed. Vide order dated 4th April, 2012, learned Additional Chief Metropolitan Magistrate – 01 summoned the petitioners.

That is how petitioners are before this court by way of present petition under Section 482 Cr.P.C. for quashing of the criminal proceedings launched by the respondent no. 2.

Learned counsel for the petitioners submits that adjudication proceedings were challenged by the petitioner before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT). Petitioners succeeded before the CESTAT and adjudication proceedings were quashed.

Respondent no. 2 filed an appeal in this Court being CEAC No. 2/2015, which was dismissed by a Division Bench of this Court on 13th April, 2015. In para 8 it has been held as under:-

> "8. It is quite evident from the factual narrative that what the Revenue is aggrieved by in these proceedings concerns only factual findings based upon appreciation of evidence. It is not disputed that with respect to clandestine removal and the liability sought to be imposed upon the assessee, the evidence between the two units i.e. the assessee and D.P. Industries was common. The second aspect which this Court notices facially in the impugned order is that what triggered the show cause notice was the inspection which took place on 22.07.1996. That irregularity or underreporting of the material found have

> stood concluded in the application made by the assessee under the "kar vivad samadhan scheme", which was accepted without reservation by the Revenue. Having regard to these circumstances, as to whether the cross examination of one witness was offered and whether the inference drawn by the CESTAT in this particular case was sustainable, cannot in the opinion of this Court constitute a substantial question of law requiring adjudication. The appeal is consequently dismissed being bereft of any merit."

Since adjudication proceedings have been quashed on merits by CESTAT after scrutinizing the material produced in appeal before them, inasmuch said order having become final in view of the dismissal of appeal by the Division Bench of this Court, I am of the view that it stands established that there was no evasion of central excise duty.

During the course of hearing, learned counsel for the respondent no. 2 has placed on record a letter of the department stating therein that department had decided not to file SLP in the present case as no substantial question of law was involved and the issue was related only to appreciation of evidence.

For the foregoing reasons, I am of the opinion that continuation of the criminal complaint will result in abuse of process of court. As regards findings of fact that there was no evasion of duty cannot be ignored even at this stage. Accordingly, Criminal Complaint Case no. 2/1/2012 is quashed.

Petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous. Dasti.

A.K. PATHAK, J.

FEBRUARY 25, 2019/*r.bararia*