



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.11.2020
PRONOUNCED ON : 05.06.2020

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.348 of 2019 and
Crl.M.P.No.4842 of 2019

1. M/s.ORJ Electronics Oxides Ltd.,
By its Managing Director
O.R.J.Jaffar Batcha and
Director V.Sundaram
No.76-F/2, Arulananda Nagar,
2nd Main Road, Perungalur,
Pudukottai.
2. O.R.J.Jaffar Batcha,
S/o.O.R.Jamal Mohammed,
Managing Director,
M/s.O.R.J Electronic Oxides Ltd.,
11th Cross Arulanandam Nagar,
No.40/84, Priyadarshini Illam,
Thanjavur.
3. Sundaram,
S/o.T.S.Velu Chettiyar,
Director,
M/s.O.R.J Electronic Oxides Ltd.,
No.60, Kulanthaiammal Nagar,
Thanjavur

... Petitioners

Vs.

State by Inspector of Police,
SPE, CBI, Economic Offence Wing,
Chennai.

... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records and set aside the order passed by the learned Additional Chief Metropolitan Magistrate (EO.I), FAC, Egmore, Chennai-600 008 made in Crl.M.P.No.136 of 2019 in EOCC.No.5 of 2004 dated 19.03.2019 in dismissing the petitioner by the petitioners herein for discharge.



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For Petitioners : Mr.B.Kumar, Senior Counsel for
Mr.S.Ramachandran
For Respondent : Mr.K.Srinivasan
Special Public Prosecutor
for CBI Cases

ORDER

This Criminal Revision Petition is filed by the petitioners/A6 to A8 against the dismissal of their discharge petition filed under section 239 Cr.P.C vide order dated 19.03.2019 in CrI.M.P.No.136 of 2019 in E.O.C.C.No.5 of 2004 on the file of the Additional Chief Metropolitan Magistrate (E.O.I) FAC, Egmore.

2.The case of the prosecution is as follows:

(i)According to the prosecution, there was a conspiracy among A1, A3, A7, A8, A9 and A11 with A12 to A17 during 1995-1997 at Chennai, Ranipet, Tuticorin and other places in Tamilnadu to cheat the Government of India, by way of exporting substandard capital goods/machinery to Singapore by falsely declaring the item exported as Capital Goods, by over invoicing the value of the same by submitting fabricated documents to Chennai Customs authorities, suppressing goods/machinery imported back to India through Tuticorin Port under 100% Export Oriented Unit (100% EOU) scheme for manufacture of Iron Oxide of electronic grade without paying custom duty by falsely declaring the capital goods as imported from USA instead of furnishing the real description and nature of machinery to Tuticorin Customs by further over invoicing the said capital goods and also evaded customs duty and thereby caused wrongful loss to the Government of India to the tune of Rs.31.10 crores approximately. Who file dthe complaint. Therefore, the Director General of the Directorate of Revenue Intelligence, New Delhi filed a complaint before the respondent. On the basis of the said complaint, the respondent registered a case in RC No.6(E)2000/CBI/EOW/Chennai. The respondent, after completion of investigation filed charge sheet before the learned Additional Chief Metropolitan Magistrate (E.O.I) FAC, Chennai, who took cognizance in E.O.C.C.No.5 of 2004 for the offences under Sections 120-B r/w 420, 467, 468 and 471 IPC and Sections 132 and 135 of the Customs Act, 1962.

(ii)After filing charge sheet, the petitioners/Accused filed a discharge petition in CrI.M.P.No.2001/2015 before the lower Court, which was dismissed by the lower Court on 03.10.2018 on a wrong premise that the case was instituted otherwise than the police report. Aggrieved by the same, the petitioners preferred CrI.R.C.No.1190/2018, in which this Court by order dated



09.11.2008 set aside the order of the lower Court, giving liberty to the petitioners to file a fresh discharge petition before the trial Court. Accordingly, the petitioners filed a discharge petition in CrI.M.P.No.136 of 2019 before the Additional (E.O.I)/FAC, Egmore, Chennai. The learned Judge after considering the oral and documentary evidence produced before it, dismissed the said petition vide order dated 19.03.2019. Aggrieved over the same, the petitioners have filed the present criminal revision.

3.The learned senior counsel appearing for the petitioner would submit that the order of the learned Judge is liable to be set aside only on account of non application of mind and that the judgments referred by the learned Judge are not relevant to the facts of this case. The learned Judge in his order merely extracted some portion of the Sanction for prosecution under the Customs Act given by the Commissioner of Customs and by enlisting list of witnesses and documents. The petitioners are importers of the machinery. The petitioners had formed 100% EOU which exempts it from payment of any custom's duty, hence the question of any loss having been caused does not arise. The petitioners bonafidely believed the representations of the first accused (deceased) and fell victim to the fraud committed by him. On the basis of the representation of deceased A1, the petitioners put up a factory at Pudukkottai and also installed the imported machinery with a view to manufacture Iron Oxide. But on the very next day the machines did not function, but it exploded causing grave damages. He further stated that this Court quashed the complaint as regards the officials of Bank of Madura and Sundaram finance who as lessor dealt with the entire foreign exchange transaction involved in the acquisition of the plant and machinery. M/s.IPTE, USA received the said amount of US \$ 7.2 million on 22.05.1997.

4.In this case, A1 was the main person employed in this scheme to import substandard machinery. A1, A2 and A3 are no more and case is abated as against them. For the other accused cases are being splitted. This Court had discharged some of the accused and now there could be no inference in what manner there was conspiracy between ORJ company and its two directors with the other accused. The trial Court without considering all these aspects, mechanically dismissed the discharge petition by extracting some portion from charge sheet, enlisting the witnesses and documents. Hence, the order of the lower Court warrants interference of this Court and hence, he prayed for setting aside the order of the trial Court. In support of his contention, he relied upon the following decision of the Hon'ble Apex Court and this Court:-

1.Akhil Ali Jehangir Ali Sayyed Versus State of Maharashtra



reported in (2003) 2 Supreme Court Cases 708, in which it is held that "when a benefit was granted in another appeal to any of the other co-accused, the same benefit shall be extended."

2. Dr. Lakshmana Prakash Versus the State, rep. by the Inspector of Police (L & O), G-3 Kilpauk Police Station, Chennai reported in 1999 SCC Online Mad 208, wherein this Court held as follows:-

"33. Therefore under these circumstances, the materials on record collected by the respondent-police placed before the trial Court are, in my view, would not be sufficient to fix the criminal liability with reference to the criminal negligence as against the petitioner (A3). Consequently, the proceedings as against the petitioner (A3) are liable to be quashed."

5. The learned Special Public Prosecutor appearing for the State/respondent filed counter affidavit and submitted that the order passed by the trial Court is supported by cogent and sustainable grounds/evidence and it is sustainable under law. The investigation revealed that A3, A4, A6 and A7 entered into an agreement for supply of equipment and transfer of technology for manufacture of Iron Oxide in India. As per the agreement, A4 agreed to supply goods worth US \$ 7.2 million to A6 and on the very same day, collaboration agreement and buy back agreement were signed by A4 and A6 and they entered into a supplementary agreement to include Government of India's approval vide No. FC 18 (96) EOB (828) 95 dated 08.02.1996 and vide No. PER 32 (1996) EOB/828/95 as part of original agreement.

6. He further submitted that on the basis of the application of A7, the Industry Ministry, Secretariat for Industrial approval, EOU section accorded permission dated 08.02.1996 to A6 to import capital goods worth US \$ 7.2 million for manufacturing electronic oxides with annual capacity of 5000 M.Ts. A6 also issued foreign technical collaboration approval by SIA, New Delhi vide letter dated 08.02.1996 to transact the business with A4 Company. As per the said Bond, customs duty was to be levied with interest @ 18% on the imported capital goods from the date of import. If the company fails to comply with the export obligation, the same was recoverable in accordance with provisions of Section 142 of Customs Act, 1962, which is clearly established by the evidence of L.W.3.

7. He further submitted that as per the application dated 07.03.1996 filed by A6, the Assistant Development Commissioner, MEPZ, Chennai gave the required attestation on 13.03.1996 to import capital goods for Rs.2304 lakhs. A7 submitted letter



dated 06.05.1996 to RBI Exchange Control Department, Chennai for maintaining approval for NRI equity participation of Rs.141.70 lakhs and foreign equity participation to the tune of Rs.288.40 lakhs. A6 instead of filing relevant documents and the remittance to their authorized dealer Standard Chartered Bank had made all transactions through the Bank of Madura Ltd. Without obtaining any permission from RBI, A1 approached Bank of Madura to arrange lease finance for the capital goods to be imported by A6. The total cost of the project was Rs.4820/- lakhs towards land, building, plant and machineries etc. A12, A13 and A14 had discussions with A1 and as per the instructions of A1, A7 on behalf of A6 company, submitted all documents to Bank of Madurai Ltd., for arranging lease finance. The allegations in the charge sheet are specific and there were sufficient evidence with regard to the criminal conspiracy between the petitioners/accused and the other accused for misappropriation of foreign funds and there are sufficient oral and documentary evidence to prove the offences and hence, he prayed for dismissal of the revision petition.

8.This Court considered the rival submissions and perused the materials available on records.

9.The undisputed fact is that there are totally 17 accused in this case, in which the 1st petitioner is the company viz., M/s.ORJ Electronics Oxides Limited, represented by its Manager/2nd petitioner and the 3rd petitioner is the Director of the 1st petitioner company. They have been arrayed as A6, A7 & A8 in E.O.C.C.No.5 of 2004. In this case out of 17 accused, A1 died on 17.02.2006, A3 died on 10.04.2014 and A12 died on 15.06.2007. The 2nd accused company viz., M/s.ETK International Ferrites Limites represented by A1/Dr.N.M.Parthasarathy, Managing Director and hence, the case against A2 abated. Since A4 and A5 got dissolved the case against them stands abated. Earlier, this Court by common order dated 17.10.2012 in CrI.O.P.Nos.22976 of 2004, 24250 of 2007 & 25986 of 2012 had quashed the proceedings against A13, A14, A15 and A17 of which A13 and A14 are officials of Bank of Madura and A16 and A17 are concerned with M/s.Sundaram Finance Limited/A15.

10.The crux of the case is that all the accused had conspired together with dishonest and fraudulent intention to cheat the Government of India by way of exporting sub standard capital goods/machinery to Singapore by falsely declaring the item exported as Capital goods, by over invoicing the value of the same by submitting fabricated documents to Chennai customs authorities, thereby suppressing the real fact and importing the same capital goods/machinery back to India via Tuticorin Port under 100% Export Oriented Unit (100% EOU) Scheme for



manufacture of Iron Oxide of electronic grade without paying customs Duty, by falsely declaring the capital goods as imported from USA instead of furnishing the real description and nature of machinery to Tuticorin Customs by further over invoicing the said capital goods and also evaded Customs Duty and thereby caused wrongful loss to the Government of India to the tune of Rs.31.10 Crores approximately and thereby committed offences punishable under Sections 120-B r/w 420, 467, 468 and 471 IPC and 132 and 135 of the Customs Act, 1962.

11.The case against the petitioners is that M/s.ORJ Electronics Oxides Limited in conspiracy with A3 Dr.K.Raghunathan and A4 M/s.IPTE Company entered into an agreement for supply of equipment and transfer of technology for manufacture of Iron Oxide in India on 19.11.1995. On the very same day, the Technical Collaboration Agreement and Buy Back Agreement were also signed by them. As per the Buy Back Agreement, A4/M/s.IPTE Company had to buy back 75% of the product of the total actual production of electronic oxides manufactured by A6/M/s.ORJ Electronics Oxides Limited. Thereafter, M/s.ORJ Jaffer Batcha/A7 executed a bond with Development Commissioner of Madras Export Processing Zone on 07.03.1996 for setting up 100% EOU. The bond for customs duty was executed for the import of capital goods in accordance with the provisions of Section 142 of Customs Act, 1962 and under Section 11 of the Central Excise and Salt Act, 1944. The Assistant Development Commissioner, MEPZ, Chennai had given required attestation on 13.03.1996 to import capital goods. After obtaining attestation, the 2nd petitioner submitted a letter dated 06.05.1996 to Reserve Bank of India, Exchange Control Department (ECD), Chennai seeking approval for NRI Equity Participation.

12.Pursuant to this, RBI granted permission with terms and conditions. The 1st petitioner company instead of filing relevant documents and the remittance to their authorized dealer i.e., Standard Chartered Bank, Royapettah High Road, Chennai had conducted all transactions through the Bank of Madura Limited without obtaining any permission from RBI. On 27.06.1996, the Assistant Development Commissioner MEPZ allotted IE CE code to 1st petitioner for carrying out the import and export. In furtherance to the conspiracy, A1 Dr.N.M.Parthasarathy approached Bank of Madura to arrange Lease Finance for the capital goods to be imported by the 1st petitioner company. On 29.10.1996 through a broker M/s.Allsec Financial Limited, Chennai was engaged by A1 through whom all the documents to Bank of Madura for arranging finance was submitted. The Bank of Madura sanctioned lease finance to the 1st petitioner/M/s.ORJ Electronics Oxides Limited. The Bank of Madura offered to



purchase the machinery and to let on lease to the lesser for their use. The goods are to be imported from the supplier IPTE Inc. (A4).

13. On 11.02.1997, the Bank of Madura Limited intimated the Assistant Development Commissioner, MEPZ about the execution of lease agreement dated 11.02.1997 with the 1st petitioner M/s. ORJ Electronics Oxides Limited and requested Capital Goods attestation in favour of Bank of Madura (Lessor). On 09.04.1997 A1 Dr. N.M. Parthasarathy and M/s. ETK International Ferrites Limited A2 exported goods declared as Venturi Scrubber, Wet Air-Oxidation Equipment, Solar Modules, valued to the tune of US Dollars 1.71 to the consignee M/s. IPTE INC., USA through Chennai port. The above said goods were manufactured in India by A2 company and the same carried a stencil mark which reads "IPTE Inc USA No.1 Woodlake Drive New Jersey, USA". The goods were exported through container. The container was shipped in vessel Kotaria Voy 188 port of discharge of Singapore. On 22.04.1997, the consignment was shipped from Singapore to Tuticorin to the consignee Bank of Madura, Cathedral Road Branch, Madras-6 on account of M/s. ORJ Electronic Oxides Limited/A6. Dr. K. Ragunathan/A3, President of M/s. IPTE Inc., USA, issued invoice No. 1450 dated 16.02.1997 for CIF value of US \$ 7.2 million for the above goods shipped from Singapore to Tuticorin to the consignee M/s. Bank of Madura Limited on the account of M/s. ORJ Electronic Oxides Limited. Dr. N.M. Parthasarathy A1 had instructed Bank of Madura by letter dated 13.05.1997 in the letter head of A5 company to apportion the amount as mentioned therein.

14. The petitioners herein executed a demand promissory note and letter of Guarantee towards the Lease Finance. On 27.05.1997, the Bank of Madura (importer bank) filed a Bill of Entry No. 346 dated 27.05.1997 through their Custom House Agent for clearing the imported consignments of the CIF value of US \$ 7.2 million and cleared the goods without payment of customs duty as per the license for EOU. It was later found by the Directorate of Revenue Intelligence (DRI) who conducted search at the factory premises of M/s. ORJ Electronic Oxides Limited/A6 on 20.05.1999 that a large scale abuse of benefits given to the company under 100% EOU scheme and evasion of custom duty by the petitioner and the modes apprehendi had been adopted by A3 with A9, A10, A11. For the consignment ought to have been dealt through, the authorized bank, State Bank of India. Instead it was dealt through M/s. Sundaram Finance, who entered into a lease and finance. The transaction which was routed through Bank of Madura.

15. In this case the conspiracy link has been cut. The prime conspirator and the beneficiaries have been relieved from the



case, either the case against them got abated or quashed by this Court. The offences alleged against the petitioners is a chain of events and they cannot be prosecuted for isolated incident when the chain link at the beginning and the end have been snapped. This Court while quashing the proceedings against some of the accused by order dated 17.10.2012 in CrI.O.P.Nos.22976 of 2004, 24250 of 2007 & 25986 of 2012 observed that "It is only 1st accused who is the brain behind in the act of cheating and he is no more and the documents showing inflated value of imported machineries under the bills of entry is said to be have been filed by M/s.ORJ Electronics Oxides Limited and M/s.ETK Softech Private Limited."

16.As narrated above, the petitioners never benefited with commission, Bank of Madura claimed 100% benefits on import of Capital goods, all the documents have been handed over to Bank of Madura for lease. The Bank of Madura had involved itself and received entire foreign exchange transaction. The control of funds as well as all the accounts were maintained by Bank of Madura and the petitioner had no access to operate the funds. The petitioners did not claim any depreciation on the machinery and the rentals to M/s.Bank of Madura were debited from the petitioner's account. Neither Bank of Madura Limited did loose sight on control of the funds as well accounts which were maintained in the own bank,nor did it depose itself the power to operate the funds.

17.The Income Tax Department by order dated 29.03.2006 had dropped the proceedings initiated against the 2nd petitioner/O.R.J.Jaffar Batcha. It would be beneficial to extract the order:-

"For the assessment year 1998-1999, notice under Section 148 of the Income Tax Act, 1961 was issued on the ground that the assessee had taken on lease of imported capital goods for a total value of US \$ 7200000 from Bank of Madura making bogus claim for depreciation on lease hold assets, the price of which was highly inflated.

On examination of books produced and other documents by the assessee, it was noticed that the Managing Director of the assessee Sri.O.R.J.Jaffar Batcha was approached by one Shri.N.M.Parthasarathy for starting the manufacture of iron oxide.

The project report, technical specifications of the machinery, identification of the exporter of the concerned machinery, agreements with the assessee, price determinations of the machinery and import of



the same were all carried out by the same Shri.N.M.Parthasarathy.

Lease finance was also arranged by Shri.N.M.Parthasarathy with M/s.Bank of Madura Ltd.

The concerned plant and machinery which was said to be imported were fabricated by ETK, Ranipet which is proprietary concern of one Shri.N.M.Parthasarathy and the goods were supposedly exported India by IPTE, USA of which Shri.N.M.Parthasarathy is the mandate holder. Sale proceeds of relevant of the relevant machinery were deposited by IPTE, USA into the account of ETKIF, America inc. USA held in M/s.Bank of Madura Ltd. Shri.N.M.Parthasarathy is the vice-president of ETKIF, America inc. USA. Consideration for the alleged supply of software pertaining to online support of the production process was paid by to ETK Export Consultant, Chennai of which the same Shri.N.M.Parthasarathy is the proprietor. The capital goods imported by M/s.Bank of Madura vide bill of entry No.346 on 27.05.1997 at Tutitcorin port and given on these two O.R.J Electronics Oxides Limited, Pudukottai.

(i)One fludised bed with the Titaniam stabilized body ASTM 430 Micro Processor and Programme Controller, Venturi Scrubber code VSI valued at US \$ 765000

(ii)One Wet air auxiliation equipments (observer) for recovery of chemical (HCL) and heat code No.A1-2000 LPH valued at US \$ 435000

(iii)Twenty four concentrating solar collectors for concentrating Fe C12 liquors valued at US \$ 600000

Total CIF value of plant & machinery imported US \$ 7200000

These capital goods were fabricated by the capital ETK International Ferries Limited Ranipet. The cost of fabricating the scrubber and obserber was Rs.2.8 Lakhs and each Solar collector cost Rs.5000/-. There being 24 collectors the total cost came to Rs.12 Lakhs. Thus the total cost of fabrication of the entire capital goods amounts to



approximately Rs.4,00,000/-

After fabrication the concerned capital goods were exported by ETK, Ranipet from Chennai port to International Product and Technology Exchange INC., USA (IPTE USA) c/o Travindo Trading Pvt. Ltd. Singapore, The goods were exported to Singapore vide shipping bill No.1516 dated 09.04.1997 at a FOB value of US \$ 171300 (Rs.59,95,500/-).

The same goods were imported by M/s.Bank of Madura from singapore to Tuticorin Port in India vide bill of entry dated 27.05.1997 for CIF value of US \$ 7200000 (Indian Rs.25,78,32,000/-). No value addition to the concerned goods were made at Singapore during the period when the subject goods were in Singapore and the same goods were shipped back to Tuticorin port as such. In fact, the goods came back from Singapore in the same container and the customs seal affixed on the container at the time of export from Chennai port was found to be in tact at that time of landing at Tuticorin port. M/s.Bank of Madura Ltd employed the alleged imported assets in its purported business of lease financing. However, the leasee, ORJ Electronic Oxide Ltd never used the asset for any commercial production. M/s.Bank of Madura Ltd. the lessor itself dealt with the entire foreign exchange transactions involved with the collective arrangement for the acquisition of the concerned plant and machinery. IPTE, USA received the said amount of US \$ 7.2 million on 22.05.1997 and paid the same into the account of ETKIF America Inc., USA held in M/s.Bank of Madura Ltd. From this account a sum of Rs. US \$210000 was remitted to Summit Bank, New Jersey, USA, the beneficiary of IPTE, USA. Another sum of US \$ 1202000 was credited to the account of M/s.ORJ Electronics Oxide Ltd, Pudukottai as payment towards equity participation in M/s.ORJ Electronics Oxide Ltd, Pudukottai by ETKIF, America Inc, USA. FCNR deposit in M/s.Bank of Madura Ltd. was created from the balance of US \$ 5788000 in the name of IPTE, USA (US \$ 2000000), ETK Export Consultant, Chennai (US \$ 600000) and further transfer from this FCNR deposit account were to M/s.ORJ Electronics Oxide Ltd, Pudukottai (US \$ 2389000). Thus, as can be seen the US \$ 7200000 paid by M/s.Bank of Madurai Ltd. towards sale consideration for imported plant and machinery was distributed as follows:



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To IPTE, USA US \$ 410,000

To ETK Export Consultant, Chennai US \$ 600,000

To M/s.ORJ Electronics Oxide Ltd, Pudukottai

US \$ 3,591,000

Balance FCNR deposit in the name of ETKIF, America Inc, USA along with interest thereon US \$ 3,125,000

Thus M/s.Bank of Madura Ltd. did not lose sight on control of the funds as all accounts were maintained in its own bank, nor did it dispossess itself the power to operate the funds.

The transfer of foreign exchange to the account of M/s.ORJ Electronics Oxide Ltd, Pudukottai (US \$ 3,591,000) were to be used by the lessor to meet its liability of payment of lease rentals payable to the lessor bank. Another sum of US \$ 3,125,000 available in FCNR deposit in the name of ETKIF, America Inc, USA along with interest thereon is also under lien of the lessor bank (as security for payment of lease rentals payable by M/s.ORJ Electronics Oxide Ltd, Pudukottai). Thus, the lessor bank ensured that its own investment was secured in spite of the whole range of dubious transactions.

With regard to receipt of US \$ 3,591,000 by M/s.ORJ Electronics Oxide Ltd., towards equity participation of ETKIF, America Inc, USA in the assessee company, no shares were ever transferred to ETKIF, America Inc, USA and the amount was treated as advance payment for purchase of iron oxide to be produced by the assessee. Since iron oxide could not be manufactured using imported machinery, to avoid further loss, the assessee has to request IPTE, USA to waive the advance received because IPTE, USA had made false claims and charged US \$ 7.2 million for the unusable machinery.

From the facts narrated in pages ante, it is evidence that the assessee company did not import the machinery. The said capital goods were installed at the factory of ORJ Electronic Oxides Ltd., Pudukottai in Sept. 1997 the machinery submitted for



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orders, brought back did not function properly and was able to produce less than 50 kgs. of iron oxide power (as against 35 annual capacity of 5000 Mt.tonnes). Thereafter the oil tank exploded and a worker died in the explosion and no further attempt was even made to the manufacture anything using the machinery.

The specification of the plant and machinery are not in conformity with the specifications given by the alleged supplier (IPTE, USA) in the relevant invoice and documents. The concerned plant & machinery was supposed to have been mad of special proprietary mental alloy capable of working in highly corrosive conditions. But the materials used were found at the time of inspection to be of absolutely poor quality and had in fact started rusting even without regular dues. The plant & machinery available and inspect were not even designed for regular production and thus incapable of producing electronic grade iron oxide (the started purpose of the concerned machinery).

The capital goods actually imported by M/s.Bank of Madura given on lease to ORJ and available in their factory have no correspondence to the nature of plant & machinery specified in the purchase invoice and the relevant import documents. The concerned capital goods were actually of Indian origin though declared as of US origin.

The assessee did not claim depreciation on the machinery and also the rentals to M/s.Bank of Madura Ltd were debited to the deposit made by M/s.Bank of Madura Ltd itself to the assessee account. Further, during the year of account relevant to the assessment year 1998-1999, the assessee did not commence business production other than trial production which met miserable exploding accident of the machinery. Therefore, the proceedings initiated under Section 147 of the Income Tax Act, 1961 for the assessment year 1998-1999 is hereby quashed."

18.Further in the collateral proceedings the Customs, Excise of Service Tax Appellate tribunal in Appeal Nos.C/516/2006 & C/31/2007 has held as follows:-

"17.We have considered arguments from both sides

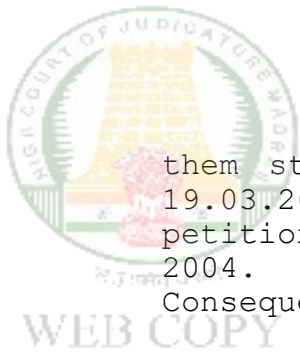


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on this issue. We are of the view that the impugned orders cannot be called vague in terms of fixing the duty liability in respect of both the importers in each case. Further, we find nothing wrong in fixing the duty liability jointly and severally on two persons, who are jointly the importers in the eyes of the Customs law. M/s.SFL and M/s.ICICI Bank have to be considered as importers and liable to pay duty as they were the owners of the goods having retained such ownership during import as well as afterwards till repayment of such amounts. In the eyes of the customs law, bring owners, they were importers and under the income tax law bring owners, they along were eligible for claiming depreciation in respect of the impugned imported machinery. They cannot be considered as owners only when it comes to getting some benefits and they cannot be held to have given up the ownership when it comes to discharging the duty liability. It makes no difference to the legal position that in respect of one Bill of entry, the financing institution had signed the Bill of Entry and in the other case, the bank had not signed it, since in both the case, the Bills of Entry were filed in the joint name, the ownership was retained with SFL/Bank, the purchase order was placed by SFL/Bank, the Bill of Lading was in the name of SFL/Bank and the commercial invoice was also in the name of SFL/Bank. We take note of the submission of the learned Special Counsel that the department is not seeking to recover double the amount of duty while confirming the adjudicating Commissioner's order fixing duty liability jointly and severally in both the cases."

19.The Income Tax Department after analyzing all official transaction and on perusal of the document, books of account found that the petitioner did not import the machinery and did not make any claim for depreciation. Likewise the CESTAT has held M/s.Sundaram Finance Limited (SFL) and M/s.ICICI Bank (erstwhile Bank of Madras) are its importers, owners of the goods and liable to pay duty. Further, in view of the live connect of conspiracy being snapped at both end, this Court finds that the continuation of the proceedings against the petitioners would be an exercise in futility.

20.In view of the subsequent development that it has become inherently improbable to reach a just conclusion that there is sufficient ground to proceed against the petitioners/A6 to A8 and further considering that the case is pending from the year 2004 without any progress and also most of the accused/A1 to A5, A12, A13 to A17 in this case were relieved either case against



them stands abated or quashed, the trial Court's order dated 19.03.2019 in CrI.M.P.No.136 of 2019 is hereby set-aside, the petitioners are discharged from the case in E.O.C.C.No.5 of 2004. Accordingly, this Criminal Revision is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vv2

To

1. The Additional Chief Metropolitan Magistrate (EO.I) FAC,
Egmore.
2. The Inspector of Police,
SPE, CBI, Economic Offence Wing,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

PRE-DELIVERY ORDER IN
CrI.R.C.No.348 of 2019

KS (CO)
GS(08/07/2020)