IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON 06.08.2021	ORDERS PRONOUNCED ON 04.10.2021

CORAM
THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.494 of 2017
and
Crl.M.P.No.4373 of 2017

1. M/s.Savera Industries,
   Rep. by its Proprietor,
   Shri. A.C.Rajasekaran

2. A.C.Rajasekaran,
   Proprietor of M/s.Savera Industries.
   .. Petitioners/Accused

.. Vs ..

The Deputy Commissioner of Central Excise (Prosecution)
Chennai-II Commissionerate,
MHU Complex, 692, Anna Salai,
Nandanam, Chennai - 600 035. .. Respondent/Complainant

PRAYER : Petition filed under Section 397 r/w. 401 of the Criminal Procedure Code, against the order dated 15.02.2017 passed by the learned Additional Chief Metropolitan Magistrate (EO-II), Egmore, Chennai, in Crl.M.P.No.2157 of 2012 in C.C.No.117 of 2012.

For Petitioners: Mr.S.Thirumavalavan
For Respondent : Mr.N.P.Kumar,
Special Public Prosecutor

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ORDER

The matter is heard through "Video Conference".

This Criminal Revision Case has been preferred by the petitioners/Accused against the dismissal order dated 15.02.2017 passed by the learned Additional Chief Metropolitan Magistrate (E.O.II), Egmore, Chennai, in Crl.M.P.No.2157 of 2012 in C.C.No.117 of 2012.

2. The respondent/Deputy Commissioner of Central Exercise (prosecution) has filed a complaint in C.C.No.117 of 2012 before the learned Additional Chief Metropolitan Magistrate, [E.O.II], Egmore, Chennai, alleging commission of offences under Sections 9(1) (b), 9(1) (bb) & 9(1) (bbb) of Central Excise of 1944 and punishable under Sections 9(1) (a) (I), 9 (I) (b) (I), 9(1) (bb) (I) and 9(I) (bbb) (I) r/w. Section 9AA of Central Excise Act, 1944 as amended and the same was posted for further proceedings.

3. When the matter is pending for framing of charge, the accused have filed a petition in Crl.M.P.No.2157 of 2012 under Section 245(2) of Cr.P.C, seeking for discharge on the ground that the revision petitioners/accused do not come under the purview of Section 2(f) of the Central Exercise Act, 1944. The definition of "Manufacturer" as contained in Section 2(f) of the Central Excise Act, 1944, is not specified in relation to the goods specified in third Schedule involving packing and re-packing etc., and hence, the case of the revision petitioners/Accused is that they do not fall under the category 2(f) of the Central Excise Act, 1944.

4. Counter affidavit has been filed wherein, the nature of the activity carried on by the revision petitioners, as per the department, has been enumerated. In support of the complainant, before the trial Court, P.W.1 was examined and documents Exs.P.1 to P.12 were marked. Exs.P.3, P.4 and P.5 series are Labour Bills of Savera Industries for the years 2004-05, 2005-06 and 2006-07 respectively; Ex.P.6 series are Sales bills of Savera Industries for the year 2006-07; Exs.P.7 and P.8 series are Sales bills of S.R.S. Engineering for the years 2004-05 and 2005-06 respectively; Ex.P.9 series are Sales Invoices of S.R.S. Engineering for the year 2006-07 and Ex.P.11 series are the Order in Original No.02/2009, dated 27.02.2009.

5. The revision petitioners/accused challenges the prosecution case by taking a plea that they are not Manufacturer and therefore, the Court has to decide as to whether the revision petitioners/accused are 'Manufacturer' or 'Fabricator of the material' and further build up their case that the consequence thereof, the revision petitioners do not evade from payment of central exercise duty.

6. The point for determination, in trial is, whether there is evasion of central exercise duty or not?,

7. Both sides were relied upon various judgments with regard to the question of Manufacturer.

8. Whether the process undertaken by the revision petitioners resulted into emergency of manufactured goods will depend upon the test laid down by the Hon'ble Apex Court in the case of South Bihar Sugar Mills Ltd., and another etc.,

Vs. Union of India and another etc., reported in 1978 (2) ELTJ 336 (SC) and in the case of Delhi Cloth and General Mills Co. Ltd., reported in 1977 (1) 199 (SC).

9. As to the interpretation of the said provision with the guidelines as prescribed by the Hon'ble Apex Court can be gone into only at the time of trial and hence, it is always open to the revision petitioners/accused to confront and challenge the department witness during the cross-examination.

10. It appears from the records that the petition has been filed after chief examination of P.W.1 and marking of the above said documents and therefore, the learned Additional Chief Metropolitan Magistrate (E.O.II), Egmore, Chennai, has rightly observed that the premature case has to be determined by the prosecution, as to whether the petitioners herein are 'manufacturer' or 'fabricator' and accordingly, dismissed the case for want of material stick proof.

11. Considering the nature of dispute that has to be decided by the Hon'ble Apex Court and the stage of the trial, the trial Court has rightly passed an order dismissing the discharge petition filed by the petitioners and the same does not suffer from any perversity in finding and hence, the point is that the revision petitioners are tax evaders or not depends upon the fact that they are the manufacturer or fabricator and hence, the factual position has to be determined by the accused during the cross-examination of department witness and hence, the same cannot be determined at this stage. Therefore, the order of dismissal of discharge petition is confirmed.

12. In the result, this Criminal Revision Case is dismissed and the dismissal order dated 15.02.2017 passed by the learned Additional Chief Metropolitan Magistrate (E.O.II), Egmore, Chennai, in Crl.M.P.No.2157 of 2012 in C.C.No.117 of 2012, is confirmed. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Jrl
To

1. The Additional Chief Metropolitan Magistrate (EO-II), Egmore.

2. The Deputy Commissioner of Central Excise (Prosecution)
   Chennai-II Commissionerate,
   MHU Complex, 692, Anna Salai,
   Nandanam, Chennai - 600 035.

3. The Special Public Prosecutor,
   High Court, Madras.

+1 cc to Mr.S.Thirumavalavan, Advocate Sr.NO. 51622

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SSV(CO)
A.SK(02.12.2021)