IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.2475 OF 2017
AND
CRL.M.P.NO.1740 OF 2017

Hima Bindu ...Petitioner

Versus

1.Union of India Represented by
The Assistant Commissioner of Central Excise,
Villupuram Divison,
No.9, Solai Nagar,
Sudhakar Nagar,
Villupram-605602.

2.Arunachalam Sugar Mills Ltd.,
Melapambadi Post,
Somasipadi (Via),
Tiruvannamalai District-606611.

3.V.Kannan
4.V.Baskaran
5.J.Jeganmohan
6.A.R.Saravanan
7.P.Pugalendhi
8.Joseph Gopairaj
9.S.Ramji
10.S.Srikumar ...Respondents

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to quash the complaint against the petitioner filed by the 1st respondent/complainant arraying petitioner as accused No.5 in C.C.No.1 of 2015, pending on the file of the Chief judicial Magistrate (Economic Offences Cases) at Thiruvannamalai.

For Petitioner	:	Mr.B.Balavijayan
For R1	:	Mr.N.P.Kumar Central Govt. Standing Counsel
For R9 & R10	:	Mr.M.Palanivel

ORDER

This criminal original petition is filed to quash the private complaint against the petitioner/A5 filed by the 1st respondent/complainant in C.C.No.1 of 2015, filed under Section 9 of the Central Excise Act, 1944, pending on the file of the learned Chief judicial Magistrate (Economic Offences Cases) at Thiruvannamalail.

2. The crux of the complaint is that the first accused is a company and the second accused is the chairman of the company/A1 and A3 is the brother of A2, who is the Vice Chairman and Managing Director of the company and they have managed the affairs of the company in relation to the payment of appropriate Excise Duty for the Sugar and Molasses manufactured and clandestinely cleared the Sugar and Molasses without payment of appropriate Excise Duty with the collusion and active participation of other accused, as elaborated and this petitioner is an employee of A1 company. Apart from this petitioner, other employees have also been prosecuted on the basis of the private complaint.

3. The learned counsel appearing for the petitioner submitted that the entire allegation in the complaint attracted only against A1 to A3 and merely because the petitioner and other accused are working as employees and acted at the instruction of the employer, they cannot be prosecuted and in fact, there is no role squarely attributed against the petitioner and others. Even the complaint indicates that A2 and A3 admitted in their statement before the respondent officers that the staff carried out their instructions in removing the sugar and molasses. When such being the position, his contention is that they cannot be prosecuted.

4. The learned Central Government Standing Counsel appearing for the first respondent submitted that merely because they are employees, they cannot escape from the offence and hence opposed the prayer sought for in the quash petition.

5. Section 9 of the Central Excise Act, 1944 provides for punishment for removal of any excisable goods in contravention of any of the provisions of this Act or any rule made thereunder or in any way concerns himself with such removal. If the excise duty for the goods leviable exceeds Rs.50,00,000/-, the punishment provided may extend to 7 years and with fine and shall not be for a term less than six months on any account. In any other case, the punishment is for three years with fine or with both.

6. The entire complaint filed under Section 200 of the Cr.P.C. makes it clear that even the investigation conducted by the department and the statements recorded by them from A2 and A3 clearly indicate that only A2 and A3 were in the helm of affairs of the company and they said to have cleared Sugar and Molasses clandestinely in order to avoid excise duty. In Paragraph No.20, sub clause (v) of the complaint itself states that the statements recorded from A2 and A3 also indicate that the staff have carried out the transactions only as per their instructions. As the staff are nothing to do with the payment of excise duty and they have just carried out the instructions of the employer to allow the goods to go outside the factory, it cannot be construed that they also made an attempt or concealed the payment of excise duty. After all they are only employees and they acted in the factory as per the instructions of the employer. It is the duty cast on the employer and the manufacturer to pay the Excise Duty and not by the employees. When such being the position, merely because the other accused were employees at the given point of time, and when excise duty has been avoided by the manufacturer or employer or owner of the factory, the employees cannot be prosecuted and they cannot be forced to undergo the ordeal of the criminal trial.

7. From the allegations in the very complaint itself indicate that there was no offence made out against this petitioner except he being the employee. Avoidance of the excise Duty or removing the goods to avoid excise duty cannot be attributed against the employees, they just acted as per the instructions of the employer. Hence this court feels that this is a fit case in which this court could exercise its power under Section 482 Cr.P.C. to quash the proceedings initiated against the present petitioner.

8. Accordingly, the criminal original petition is allowed. The proceedings initiated in the private complaint against the petitioner/ Accused 5 filed by the 1st respondent/complainant in C.C.No.1 of 2015, pending on the file of the Chief judicial Magistrate (Economic Offences Cases) at Thiruvannamalai, is quashed. Consequently, the connected criminal miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

psa/asr

To

1.The Chief judicial Magistrate
(Economic Offences Cases)
Thiruvannamalai.

2.The Assistant Commissioner of Central Excise,
Union of India, Villupram Division,
No.9, Solai Nagar, Sudhakar Nagar,
Villupuram - 605 602.

+1cc to Mr.B.Balavijayan, Advocate SR.No.69721

Crl.O.P.No.2475 of 2017

EV(CO)
RVM(12/01/2021)