IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.51 of 2008

M/s. IPINIT Vanaspati Ltd. & others .... ***Petitioners***

M/s. Subir Palit, D. Biswal, A.K. Mahana, A.K. Mishra, A. Mishra & H.K. Ratsingha, Advocates

-versus-

Union of India. .... ***Opposite Party***

Mr. P.K. Panda, Sr. Advocate

CORAM:
JUSTICE S. PUJAHARI

ORDER
03.02.2022

Order No.	
36.	**1.** This is an application filed under Section 482 of Cr.P.C. seeking for keeping in abeyance the further proceeding of 2(C) C.C. No.57 of 2003 pending in the court of the learned Addl. Chief Judicial Magistrate (Special Court), Cuttack till disposal of the Adjudication Proceedings under the Central Excise Act, 1944. **2.** Heard the learned counsel for the parties and perused the relevant papers on record.

3. The present petitioners have been subjected to a criminal proceeding vide Complaint Case bearing No.2(C) C.C. No.57 of 2003 filed by the present opposite party for commission of offence under Sections 9(1)(b), 9(1)(bb), 9(1)(bbb), 9(1)(d) and 9AA of the Central Excise Act, 1944. The crux of the complaint is that the accused-petitioners indulged in suppression of manufacture of Vanaspati and clandestine removal thereof in the guise of various refined oil products in contravention of different rules of Central Excise Rules, 1944 with intent to evade payment of Central Excise duty. It is further averred in the complaint that the Commissioner of Central Excise & Customs, Bhubaneswar, i.e., the Adjudicatory Authority vide his order dated 23.12.1999 passed in Proceeding No.1/9 (CE)/99 was satisfied that the evasion of the Central Excise duty was to the tune of Rs.2,46,93,445/- by way of fraud, willful suppression of facts, manipulation of documents etc. and that it was a fit case for launching of a prosecution against the petitioners under the Central Excise Act, 1944. The opposite party vide its written submission dated 07.12.2020 while reiterating the above fact has further stated that the amount involved in this case being very high, i.e., Rs.246.93 lakh, the aforesaid criminal prosecution was launched against the accused-petitioners.

4. There, however, has been a change in the circumstance in the aftermath of the filing of the complaint, inasmuch as the Customs, Excise and Service Tax Appellate Tribunal, Kolkata vide their order dated 06.08.2007 allowed the appeal preferred by the present petitioners against the order dated 23.12.1999 of the Adjudicatory Authority, and remanded the matter for fresh adjudication. The order of the said learned Tribunal is extracted here below:-

> "Needless to mention that, the learned assessing authority should not be influenced by the impugned order presently set aside by our present decision. So also any question of law, that may arise in the course of hearing may be dealt by the Learned Adjudicating Authority, reasonably. The Authority should decide

> the matter afresh in the light of our observations and rule of rationale."

In view of the aforesaid order of the Tribunal, the order of the Adjudicating Authority dated 23.12.1999 which laid the substantial basis for the complaint against the petitioners, has become non-existent.

5. It is contended by the learned counsel for the petitioners that since both the adjudication proceeding and criminal prosecutions involve the selfsame set of facts or allegations, continuance of the proceeding of the complaint case would be an abuse of the process of the Court in the event of exoneration of the petitioners from the allegations in the adjudication proceeding. His further contention is that continuance of the criminal proceeding during pendency of the departmental enquiry / adjudication proceeding is also likely to throw up an absurd and unjust result in the event the departmental proceedings culminate with quashment of the demand raised against the petitioners leading to their exoneration from the charge of contravention of the provisions of law.

6. On the other hand, the learned counsel appearing for the opposite party submits, inter-alia, that the petitioners having not been exonerated from the allegations in the adjudication proceeding which is in progress, and adjudication proceeding and criminal prosecution being two distinct proceedings, independent of each other, and there being no legal bar for continuance of both such proceedings simultaneously, there is no merit in the contention of the petitioners. He has also made a reference to Section 34-A of the Central Excise Act, 1944 to submit that confiscation of goods made or penalty imposed by the Departmental Authorities shall not prevent infliction of any other punishment under law.

7. The question involved herein is no more *res-integra*. In the case of ***Radheshyam Kejriwal vrs. State of West Bengal,*** reported in (2011) 3 SCC 581 (relied on by both the sides), the Apex Court held in paragraphs-38 and 39 as follows:-

> "38. The ratio which can be culled out from these decisions can broadly be stated as follows:-
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> (i) Adjudication proceeding and criminal prosecution can be launched simultaneously;
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> (ii) Decision in adjudication proceeding is not necessary before initiating criminal prosecution;
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> (iii) Adjudication proceeding and criminal proceeding are independent in nature to each other;
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> (iv) The finding against the person facing prosecution in the adjudication proceeding is not binding on the proceeding for criminal prosecution;
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> (v) Adjudication proceeding by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure.
>
> (vi) The finding in the adjudication proceeding in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceeding is on technical ground and not on merit, prosecution may continue; and
>
> (vii) In case of exoneration, however, on merits where allegation is found to be not sustainable at all and person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, underlying principle being the higher standard of proof in criminal cases.
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> 39. In our opinion, therefore, the yardstick would be to judge as to whether allegation in the

> adjudication proceeding as well as proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceeding is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceeding, the trial of the person concerned shall be in abuse of the process of the court."

8. In the case of ***Videocon Industries Ltd. vrs. State of Maharashtra,*** reported in (2016) 12 SCC 315, it was argued before the Apex Court that ***Radheshyam Kejirwal's case (supra)*** being contrary to the view expressed in the case of ***Standard Chartered Bank (1) vrs. Directorate of Enforcement,*** reported in (2006) 4 SCC 278, was required to be reconsidered by a larger Bench. The said argument, however, did not find favour with, and the view expressed in ***Radheshyam Kejirwal (supra)*** was concurred with by their Lordships in the case of ***Videocon Industries Ltd. (supra),*** vide paragraphs-17 and 18 of the decision as follows:-

> "17. Clarifying the position, the majority in *Radheshyam Kejriwal case* observed that the yardstick would be to judge as to whether the

> allegation in the adjudication proceedings as well as the proceeding for the prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court. On the basis of the aforesaid principles, the majority proceeded to analyse the factual matrix and analysed the finding recorded by the adjudicating authority and opined when there is a finding by the Enforcement Directorate in the adjudication proceeding that there is no contravention of any of the provisions of the Act, it would be unjust and an abuse of the process of the court to permit the Enforcement Directorate to continue with the criminal prosecution.
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> 18. We respectfully concur with the said view and do not perceive any reason to disagree with the same and refer the pronouncement in *Radheshyam Kejriwal* for reconsideration by the larger Bench."

9. Thus, as per the settled principle of law, the question which needs to be looked into is, whether the allegation in the adjudication proceeding and the proceeding for prosecution is identical ? There appears to be no dispute before this Court that the facts giving rise to the allegations are identical in both the proceedings and the documents / materials relied on by the Department / Complainant are also the same. The learned counsel for the opposite party has placed reliance on a decision of the Apex Court in the case of ***Adalat Prasad vrs. Rooplal Jindal,*** reported in (2004) 29 OCR (SC) 264 which does not apply to the fact situation of the present case. Similarly, the case of ***State of Karnataka vrs. Sir Janakusa Jeevansa Bakale,*** reported in (1999) 5 SCC 650 cited by the opposite party which affirms the legality of institution of a criminal proceeding during pendency of confiscation proceeding, is not applicable to the case at hand, inasmuch as here the challenge is not to the launching of the criminal prosecution. Regard being had to the position of law and in the facts and circumstances involved in the case at hand, this Court finds merit in the CRLMC.

10. In the result, the CRLMC stands allowed directing the further proceeding of the Complaint Case No.2(C) C.C. 57 of 2003 to be kept in abeyance pending disposal of the Department adjudication proceedings started under the Central Excise Act, 1944 and the Rules thereunder.

11. As restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout copy of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021 and Court's Office order circulated vide Memo Nos.514 & 515 dated 7th January, 2022.

(S.Pujahari)
Judge

MRS