IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2022

CORAM

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

Crl.O.P.Nos.30685 and 20689 of 2019
Crl.MP Nos.10642, 16654 and 16656 of 2019

Rev.Devashayam
... Petitioner / 2nd Accused
in Crl OP No.20689 of 2019

Dr.Rajkumari Sunder ...Respondent /Complainant
in Crl OP No.30685 of 2019

-Vs.-

The Assistant Commissioner of customs,
Prosecution (Sea)
Customs House,
Chennai 600 001 ...Respondent/Complainant
in both Crl OPs

Prayer in Crl OP No.20689 of 2019:- Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to call for the records in E.O.C.C.No.141 of 2015 on the file of the learned Additional Chief Metropolitan Magistrate for Economic offences I, Egmore, Chennai.

Prayer in Crl OP No.30685 of 2019:- Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to call for the records in E.O.C.C.No.141 of 2015 on the file of the learned Additional Chief Metropolitan Magistrate for Economic offences I, Egmore, Chennai and to setaside the same insofar as the petitioner is concerned and pass such further or other orders as this Court may deem fit and proper in the facts and circumstances of the case.

For Petitioner in Crl OP No.20689 of 2019	:	Mr.N.R.Elango Senior Counsel for M/s.Aruna Elango
in Crl OP No.30685 of 2019		Mr.M.Kempraj
For Respondents in both Crl OPs	:	Mr.N.P.Kumar Special Public Prosecutor

O R D E R

The criminal prosecution launched by the Assistant commissioner of Customs is challenged on the short ground that the medical equipments imported free of cost as donation from the foreign donor was assessed for tax by the customs department. Based on the valuation certificate, the penalty was paid and goods were taken delivery. Meanwhile, when sanction for prosecution was sought, the competent authority perusing the records held that this is not a fit case to prosecute. Further the assessment made was also challenged before CESTAT and the assessee got succeeded. The order was also passed in favour of the petitioner/ importer. Aggrieved by that, the Department preferred CMA No.2104 of 2019 before the High Court and this Court vide order dated 19.04.2022 had remanded the matter back to the Tribunal and directed to pass orders after the Hon'ble Supreme Court renders its decision in

Mangali Impex case. While the fact being so, it is contended that after refusal to grant sanction to prosecute by the then Commissioner of Customs vide his note order dated 25.10.2010 accepted by the Chief Commissioner vide his note order dated 25.01.2010 this is not a fit case for launching prosecution, suddenly, the prosecution has been launched and taken on file by the Additional Chief Metropolitan Magistrate for Economic Offences in EOCC No.141 of 2015. Contending that once a competent authority has applied his mind and held that this is not a fit case for prosecution, there cannot be a review of the order by the succeeding incumbent to launch the prosecution without affording opportunity to the assessee.

2. The learned Special Public Prosecutor representing Customs Department submitted that used medical equipments was imported by CSI hospital, Nagari at Andhra Pradesh. The goods were not accompanied with proper invoices and other documents which are required for importing used goods. Particularly, the CSI Nagari hospital had no license to import medical equipments. Under the said circumstances, Customs Department caused show cause notice and initiated proceedings. It is admitted that the then Chief Commissioner of customs thought fit that it is not a case for prosecuting the importer and satisfied with the penalty imposed which was subject matter of appeal by the assesee before the CESTAT and thereafter, by the Department in

CMA before the High Court. Dehors of the penalty proceedings now pending since there was gross violation of the Customs Act prosecution was launched under Section 135 of Customs Act.

3. The said prosecution was launched pursuant to the High Court direction in a writ petition filed by one John S Durai. CBI was entrusted to investigate the irregularity alleged in the import of used medical equipments by CSI Nagari. After a detailed investigation, CBI formulated four questions and after holding that there was no deviation of the goods imported by CSI and no materials to show misuse or abuse of power by the then Custom officials who cleared the goods. But recommended for prosecution against the importers. Based on the said recommendation, the then Commissioner of Customs reviewed the matter and granted sanction to prosecute on 01.05.2015.

4. The learned Special Public Prosecutor circulated the preliminary enquiry report submitted by CBI on 19.01.2015 which has prompted the Chief Commissioner customs to grant sanction prosecution. As stated above, pursuant to the Crl OP No.31819 of 2012 filed by John S Durai seeking direction to CBI to take up his complaint dated 03.08.2010 and investigate the matter relating to malpractices in the import of donated medical equipments from USA to CSI Hospital at Nagari. CBI has taken up preliminary investigation and this report

has been filed after detailed investigation.

5. In this report, the CBI has confirmed that their investigation reveals that the imported donated medical equipments from USA had indeed reached CSI Hospital, Nagarai in the year 2003. The value of the goods is USD 4,62,620/-. There is no evidence to doubt customs officials criminal role to obtain undue pecuniary advantage to Rev. Deva Sagayam. Rev. Deva Sagayam bishop of CSI, Rajakumar Sundar, Medical Superintendent, CSI Kalyani Hopital the petitioner in Crl. OP No.30685 of 2019, A.P Prem Kumar of Ancient Shipping Agency and NA Damodharan of India Private Limited have not committed any offence warranting action by CBI but they are certainly liable to be prosecuted by Customs Department under Section 132 and 135 of Customs Act, 1962. Based on this preliminary enquiry report and the recommendation made by the Superintendent of Police CBI, it appears that the impunged prosecution has been launched by reconsidering the earlier decision of not worth prosecuting them. The sanction to prosecute this petitioner Deva Sagayam and Dr. Rajakumari Sundar indicate that based on the recommendation of the CBI, the department has reversed the earlier decision not to prosecute and even though no new facts or evidence unearthed by CBI, but accepting the recommendation that Court has to examine the availability of evidence and decide, hence sanction of prosecution been granted on

27.03.2015.

6. This Court after perusing the record unable to countenance how the Chief Commissioner after observing that no new facts or evidence has been unearthed by the CBI had accorded sanction without independently applying his mind, purely based on the recommendation of the CBI without assigning reason that the earlier order of refusal to grant prosecution by a competent authority worth to be reviewed and if to be reviewed what are the new facts available. Without disclosing reason, prosecution has been launched in the year 2015 after the subject goods reached the destination in the year 2003.

7. For the above said reasons, the criminal complaint in E.O.C.C.No.141 of 2015 is quashed and the Criminal Original Petitions are allowed. Consequently, the connected miscellaneus petitions are closed.

30.09.2022

Speaking/Non-speaking order
Index: Yes/No
Internet : Yes/No
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To
1. The Assistant Commissioner of customs,
   Prosecution (Sea)
   Customs House,
   Chennai 600 001

2. The Public Prosecutor,
High Court, Madras.

Dr.G.JAYACHANDRAN.J.,

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