IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.26627 of 2018
and
Crl.M.P.No.15323 of 2018

1. M/s.Srinidhi Industries Limited
   Represented by Director Naresh Kumar Rateria and others
   159, Krishna Talkies Road, Erode-638 003.
2. Naresh Kumar Rateria, S/o Shewachandri Raterai
3. Ashok Kumar Kanodia, S/o Shankaral Kanodia
4. Coimbatore Ramanathan Ganeshan,
   S/o Coimbatore Kannusamy Ramanathan
5. Raghav Kanodia, S/o Ashok Kumar Kanodia

..Petitioners/A1 to A5

Versus

The Registrar of Companies,
Tamil Nadu-Coimbatore,
2nd Floor, 683 Trichy Road,
Singanallur, Coimbatore-641 005. ..Respondent/complainant

PRAYER : Criminal Original Petition (Crl.O.P) filed under Section 482 of the Criminal Procedure Code (Cr.P.C), to call for the records and quash the Criminal Complaint in C.C.No.163 of 2018 on the file of the Judicial Magistrate No.III, Coimbatore.

For Petitioner : Mr.Arjun Suresh
for Mr.Ramaswamy Meyyappan

For Respondent : Dr.D.Simon
Central Govt. Standing Counsel

ORDER

This Crl.O.P. has been filed to quash the proceedings in C.C.No.163 of 2018 on the file of the learned Judicial Magistrate No.III, Coimbatore, as against the accused persons for the alleged offence under Section 148 of the Companies Act, 2013.

2. The crux of the allegations in the complaint is that the first petitioner-Company has not appointed Cost Auditor within the prescribed limits as contemplated under the proviso to Section 148 of the Companies Act, thereby, these petitioners are liable to be punished under Section 148 of the Companies Act.

3. The main contention of the learned counsel appearing for the petitioners is that, as per the Notification issued by the Ministry of Corporate Affairs, vide Notification, dated 31.12.2014, the Companies (Cost Records and Audit) Amendment Rules, 2014, had been passed by the Central Government, in which, in the Companies (Cost Records and Audit) Rules, 2014, Rule -3 has been substituted, relevant portion of which is as follows:

> "2. In the Companies (Cost Records and Audit) Rules, 2014,;
>
> (i) in rule 2, after clause (a), the following clause shall be inserted, namely:-
>
> "(aa) "Central Excise Tariff Act Heading" means the heading as referred to in the Additional Notes in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)
>
> (ii) for rule 3, the following rule shall be substituted, namely:-
>
> "3. Application of Cost Records - For the purpose of sub-section(1) of Section 148 of the Act, the class of companies, including foreign companies defined in clause (42) of Section 2 of the Act, engaged in the production of the goods or providing services, specified in the Table below, having an overall turnover from all its products and services of rupees thirty five crore or more during the immediately preceding financial year, shall include cost records for such products or services in their books of account, ....."

Therefore, according to the petitioners, the first petitioner-Company will not fall under the Table as amended in the above said Amendment Rules, whereas the respondent has taken overall turnover and filed a complaint. The learned counsel for the petitioners pointed out that the manufacturing cost for the financial year 2014 to 2018 shows that all the amounts are below Rs.35 Crores, which is fixed under the amended Rule 4. Therefore, even without verifying the same, the prosecution has been launched by the respondent and hence, the same is sought to be quashed.

4.The learned Central Government Standing Counsel appearing for the respondent has not disputed the amendment of the relevant Rule produced by the learned counsel for the petitioner in the typed set of papers filed along with the Crl.O.P.

5.This Court perused the entire materials available on record.

6.The relevant portion of Section 148 of the Companies Act, 2013, as referred to in the complaint filed by the respondent, under Section 148(8) of the Companies Act, 2013, against the petitioners, which finds place in the typed set of papers, reads as follows:

> "Section 148: Central Government to specify audit of items of cost in respect of certain companies:--(1) Notwithstanding anything contained in this Chapter, the Central Government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilisation of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept by that class of companies:
>
> Provided that the Central Government shall, before issuing such order in respect of any class of companies regulated under a special Act, consult the regulatory body constituted or established under such special Act.
>
> (2) If the Central Government is of the opinion, that it is necessary to do so, it may, by order, direct that the audit of cost records of class of companies, which are covered under sub-section (1) and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.
>
> (3) The audit under sub-section (2) shall be conducted by a Cost Accountant in practice who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed: ..."

7. Sub-section (2) of Section 148 of the Companies Act, 2013, makes it clear that the Central Government may direct that

the audit of cost records of class of companies which are covered under sub-section (1) and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.

8. Moreover, the amendment of Companies (Cost Records and Audit) Rules, 2014, shows that any Company engaged in the production of the goods or providing services specified in the Table therein, shall submit cost audit. Serial No.29 of the said Table as specified in the amended Rule 3 of the Companies (Cost Records and Audit) Rules, 2014, deals with the "textiles", wherein "trading" has been specifically omitted, whereas, "trading" is included in Sl.No.33 detailing as "production, import and supply or trading of following medical devices, namely.......".

9. Further, Rule 4 of the amended Companies (Cost Records and Audit) Rules, 2014, as amended by the above said Notification, reads as follows:

> "(iii) for rule 4, the following rule shall be substituted, namely:-
>
> "4. Applicability for cost audit--(1) Every company specified in item (A) of rule 3 shall get its cost records audited in accordance with these rules if the overall annual turnover of the company from all its products and services during the immediately preceding financial year is rupees fifty crore or more and the aggregate turnover of the individual product or products or service or services for which cost records are required to be maintained under rule 3 is rupees twenty five crore or more.
>
> (2) Every company specified in item (B) of rule 3 shall get its cost records audited in accordance with these rules if the overall annual turnover of the company from all its products and services during the immediately preceding financial year is rupees one hundred crore or more and the aggregate turnover of the individual product or products or service or services for which cost records are required to be maintained under rule 3 is rupees thirty five crore or more."

10.The above amendment of Rule 4(2) shows that the aggregate turnover in respect of individual product or products or service or services for which the cost records are required, be maintained under Rule 3, is Rs.35 crore or more, in respect of item (B) of Rule 3. Therefore, the said Rule makes it clear that as far as the production is concerned, if the turnover is below Rs.35 crore, the cost audit is not required.

11.The statements filed for the financial year 2014-2018 attached in the typed set of papers, which have not been disputed by the respondent, clearly show that the turnover is below Rs.35 crore.

12.Therefore, this Court is of the view that the very initiation of the prosecution itself is against the amended Rules as discussed above.

13.In such view of the matter, the criminal proceedings initiated against the petitioners are liable to be quashed. Accordingly, the same are quashed. This Crl.O.P. is allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

psa/cs

To

1. The Judicial Magistrate No.III,
   Coimbatore.

2. The Registrar of Companies,
   Tamil Nadu-Coimbatore,
   2nd Floor, 683 Trichy Road,
   Singanallur, Coimbatore-641 005.

+1cc to Mr.Ramasamy Meyyappan, Advocate, S.R.No.3547
+1cc to Dr.D.Simon, Advocate, S.R.No.3597

Crl.O.P.No.26627 of 2018

PCH(CO)
RGA(08/02/2022)