IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **20.09.2023**

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.RC.Nos.1023, 1024 & 1025 of 2022

The Deputy Chief Controller of
Import and Export,
Shastri Bhavan, Haddows Road,
Chennai 600 006. .. Petitioner in all Cases

Vs.

1. Saroj Goenka,
   M/s. Traders Pvt. Ltd.
   Express Towers, Mumbai.
   (Now residing at)
   Express Estates, Anna Salai,
   Chennai 600 002.
   ...Respondent in Crl.RC.No.1023/2022
2. Aarthi Agarwal
   Residing at No.45-A,
   Anitha Apartments, Mount Piecent Road,
   Malabar Hills, Mumbai.
   ...Respondent in Crl.RC.No.1024 / 2022
3. M/s. Traders Pvt. Ltd.
   Represented by
   Shri Navichandra R.Mehta,
   Express Towers, Nariman Point,
   Mumbai.
   ...Respondent in Crl.RC.No.1025 / 2022

<u>Prayer in all Crl.RCs.</u>**:** Criminal Revision Petitions have been filed under sections 397 & 401 of Criminal Procedure Code against the Common Order dated 19.08.2019 passed by the Hon'ble Court of Sessions, Chennai in Crl.RC.No.42/2018, Crl.RC.No.50/2018 and Crl.RC.No.51/2018 and to call for the records to examine the legality, correctness and proprietary of the Common Order dated 19.08.2019 of the Hon'ble Court of Sessions, Chennai by discharging Saroj Goenka (A-1), Aarthi Agarwal (A-2) and M/s. Traders Pvt. Ltd. (A-3).

For Petitioner
in all Revisions : Mr.K.Srinivasan,
Special Public Prosecutor (CBI)

For Respondents
in all Revisions : Mr.S.Vijayaraghavan

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<u>COMMON ORDER</u>

These Revision Petitions are preferred by the Chief Controller of Imports and Exports being aggrieved by the common order passed by the Principal Sessions Court, Chennai allowing the revision petitions to discharge filed by the accused in the private complaint lodged by the Chief Commissioner of Import and Export and taken on file by the Economic Office Court in EOCC.No.341 of 1989.

2. The background facts of the case is that between the year 1982 – 1983, 14 off-set printing machine of M/s.Hong Hua Machinery Private Limited, Taiwan was imported by M/s.Traders Private Limited. This 14 off-set printing machine, which claimed to have capacity of 36,000 print per hour was distributed to M/s.Indian Express Group of Company located at Madurai, Chennai and Mumbai. Alleging that by claiming the capacity of the printing machine as 36,000 print per hour, which in fact not correct, the custom duty concession was drawn by the Company by misdeclaration which is an offence under Customs Act, a case was investigated by the DRI and proceeded against these petitioners and others in C.C.No.766 of 1987.

3. Simultaneously for violation of Import and Export Act. The Chief Controller of Import and Export lodged a private complaint alleging that these petitioners along with Ramnath Goenka (deceased) violated Section 5 of Imports and Exports Act was filed before the Economic Office Court at Egmore and same was taken on file as C.C.No.341 of 1989. As per the complaint, two main allegations were made against the accused persons. First, the declaration of the printing machine not inconsonance with its

performance and thereby, the Import concession order misused and violated. Second, as per the Control order, the Importer must be the end user, whereas in this case, the end user is M/s.Indian Express Group of Companies and the Importer is M/s.Traders Private Limited. Therefore, this violation in contravention of Control order attracts penalty under Section 5 of the Import and Export (Control) Act.

4. After examining 9 witnesses on the side of the complainant before framing charge, discharge petition was filed on the ground that 14 Hong Hua off-set printing machines were imported based on the brochure supplied by the manufacturer claiming that the said machine has a capacity of 36,000 print per hour. It was imported through M/s.Traders Private Limited, which is a subsidiary Company of M/s.Indian Express Group of Companies. Therefore, there is no violation or contravention of the Import and Export Control Order. This submission did not find favour with the Trial Court, so the Trial Court dismissed the discharge petition. Against the dismissal, these three petitioners preferred Revision Petition before the Principal District Court and the same numbered as Crl.RC.Nos.42 of 2018, 50 of 2018 and 51 of 2018 respectively.

5. The Sessions Court, after considering the documents, the statement of PW5 & PW9, the order passed by the Court discharging the accused in the case initiated by the DRI, arrived at the conclusion that though the private complaint of the Chief Commissioner, Import and Export is on a different provision of law, the violation alleged is one and the same and having discharged from the Criminal prosecution launched by the DRI for the same set of facts forcing these petitioners to face trial in the private complaint will lead to miscarriage of justice. Therefore, it allowed the Revision petitions filed by these three petitioners, vide order dated 19.08.2019. Being aggrieved by this order of discharge, the complainant is before this Court.

6. It is contended that these petitioners, being the family members of Late Mr.Ramnath Goenka, the Director of M/s.Traders Private Limited, had knowledge about the import of 14 web off-set print units under open general license (OGL) obtained in the name of M/s.Traders Private Limited. While obtaining the license, M/s.Traders Private Limited declared that the purpose of importing is to start a Gujarati Newspaper in Bombay. However, in contravention with the declaration and license, they sold the machinery to

Indian Express (Madurai) Private Limited and thereby, cheated the Government of India, hence, liable to be prosecuted under Section 5 of Import and Export Act, 1947. To sustain the complaint, it was also stated that the decision to import the off-set printing unit and to divert it for Indian Express Group was jointly taken by these petitioners along with Late.Ramnath Goenka and therefore, the oral evidence of PW5 and PW9 contrary to the decision of the Board consisting of these petitioners and Resolution signed by these petitioners will not sustain. The learned Principal Judge carried away by the findings of the Court in the other case as well as the stray admission of PW5 & PW9, to discharge these petitioners without subjecting them to proper trial.

7. The learned counsel appearing for the respondents submitted that it is the case of the year 1983-1984. Admittedly, M/s.Traders Private Limited and the Indian Express Group being controlled by one and the same person located at same premises and it is an 100% subsidiary Company of Indian Express Group. There is no allegation or evidence to show the sale of these machines by M/s.Traders Private Limtied or it derieved any profit out of sale

in these transactions. Therefore, the allegation that there is a violation of Import Control order that the Importer must be the end user is not factually right in this case. The alleged violation or contravention is baseless.

8. Regarding the efficiency of the machinery, the Trial Court had relied upon the brochure and also certain observations made in the similar case by the Court after verifying the records extending the benefit of doubt to the importer regarding the efficiency. The tall claim of the manufacturer found to be incorrect regarding the efficiency, however, that had come to the knowledge of the Importer only after imported when the machineries were put to use. It is not the case of DRI or the Chief Controller of Import and Export that machinery of lesser capacity being imported knowingly to avail OGL concession.

9. Heard the learned Special Public Prosecutor appearing for the petitioner and the learned counsel appearing for the respondents. Records Perused.

10. Section 5 of the Import and Export (Control) Act reads as below:-

> *"**5.Penalty -** If any person contravenes or attempts to contravene or abets a contravention of any order made or deemed to have been made under this Act or any condition of a licence granted under any such order , or any authority under which imported goods were received from or through a recognised agency, he shall without prejudice in any confiscation or penalty to which he may be liable under the provisions of the Customs Act, 1962 (52 of 1962) be punishable:-*
>
> *(a) where the value of the goods, in relation to which such contravention or attempted contravention or abetment of contravention has been made, exceeds 10 lakh rupees, with imprisonment for a term which may extend to seven years and also with fine, and*
>
> *(b) in any other case, with the imprisonment for a term which may extend to three years and also with fine."*

11. This Section is independent of any action taken under the Customs Act and the Act itself clearly indicates that without prejudice to any confiscation and penalty proceedings under the Customs Act, the Chief Controller of Import and Export can proceed against the importer for any

contravention of the Control order. The main contention by the complainant is that the Import of 14 off-set printing machine from Taiwan is in contravention of the license condition viz., importer must be the end user and the efficiency of the printing machine must be above 30,000 print per hour.

12. From the evidence of PW5 and other records, it is clear that M/s.Traders Private Limited is not an independent Company, but wholely subsidised concern of Indian Express Group. The 14 off-set printing machinery imported were not transfered by way of sale, but only relocated at various places, where Indian Express Group have its editions. This fact has been testified by the Court of law in the connected matter and finality has reached by Judicial pronouncement that M/s.Traders Private Limtied is subsidiary Company of Indian Express Group.

13. The next contention regarding the efficiency of the machinery as pointed out by the learned counsel appearing for the respondent, the purchaser has drawn by the description and capacity mentioned by the manufacturer in the brochure. The variation in the output due to various

other conditions, which is mentioned by the learned Principal Sessions Judge in the impugned order has to be taken note unless a *mala fide* or dishonest intention on the part of the importer found through the evidence. Otherwise prosecuting the respondents will be a futile exercise solely on the ground that the machinery imported, which was expected to have the efficiency of 36,000 print per hour has a lesser output. For these reasons, this Court finds no perversity in the order of the Court below to interfere exercising the power under Sections 397 & 401 Cr.P.C.

14. Accordingly, these Criminal Revision Cases are dismissed.

20.09.2023

Index : Yes/No
Speaking Order : Yes/No

NCC : Yes/No.

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To
The Sessions Court,
Chennai.

Dr.G.JAYACHANDRAN, J

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