IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2023

CORAM:

THE HON'BLE **MR.JUSTICE A.D.JAGADISH CHANDIRA**

Crl.O.P.Nos.23367, 23323 and 25224, of 2023
and
Crl.M.P.Nos.16354, 16355, 16312,
16314, 17492 and 17494 of 2023

N.Periyasamy ... Petitioner in Crl.O.P.No.23367 of 2023

V.Arunachalam ... Petitioner in Crl.O.P.No.23323 of 2023

Smt.T.M.Manorama ... Petitioner in Crl.O.P.No.25224 of 2023

Vs.

State Rep. By.,
Inspector of Police,
CBI/SPE/ACB,
2nd Floor, Shastri Bhavan,
26, Haddows Road, Chennai-600 006. ... Respondent in all the Crl.O.Ps.

Common Prayer: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records in C.C.No.1 of 1998 on the file of XIII Additional Judge for CBI Cases, City Civil Court, Chennai and quash the same.

For Petitioners in
all Crl.O.Ps. : Mr.B.Satish Sundar

For Respondent in
all Crl.O.Ps. : Mr.K.Srinivasan, Senior Advocate,
Special Public Prosecutor (CBI cases)

COMMON ORDER

These petitions have been filed seeking to quash the proceedings in C.C.No.1 of 1998, pending before the XIII Additional Judge for CBI Cases, City Civil Court, Chennai.

2. The petitioners were working as Tapal Clerks in the Refund Section of Chennai Customs Office. The petitioner in Crl.O.P.No.23367 of 2023 is Accused No.8. The petitioner in Crl.O.P.No.23323 of 2023 is Accused No.7. The petitioner in Crl.O.P.No.25224 of 2023 is Accused No.5.

3. A criminal prosecution was lodged against M/s.Ballarpur Industries Ltd., Puducherry,(hereinafter it is referred to as "BILT") and five other persons in FIR No.RC 17/A/1995 dated 06.04.1995, which was

registered based on the source information. The respondent, after completion of investigation, filed the final report on 29.12.1997 before the IX Additional Judge for CBI Cases, City Civil Court, Chennai. Based on the materials collected by the prosecution, the Trial Court has framed charges, which are self explanatory and also discloses relevant facts necessary to decide these quash petitions and thereby, the charges framed by the Trial Court are extracted here under:

> ***Firstly*** *that, during 1993-1994 at Chennai deceased Shri.N.Gopalakrishnan, the then AC Refunds in the Customs House, Chennai, by abusing his official position committed criminal misconduct and sanctioned refund knowing fully well that the claims of the M/s. Ballarpur Industries were time barred. A.1 - M/s. Ballarpur Industries (BILT), Pondicherry is a glass making unit of Thappar Group of Companies Thiru. Yogesh Bakshi, General Manager, incharge of the affairs of BILT, preferred ante dated refund claims knowing fully well that the ante dated nature of these claims and the company's ineligibility to receive the refund and enabled the company to obtain refund to the tune of Rs.2,50,37,145/-, A.2 - Thiru. M.A.Narayanan, an employee of BILT and the subordinate of Mr. Yogesh Bakshi filed the ante dated claims in the Customs Departmental knowing fully well that the ante dated nature of these claims along with A.3 - Tmt.Manorama, A.4- Thiru.N.Balasubramanian, A.5 - Thiru.Arunachalam, A.6 Thiru.Periyasamy, the then Tapal Clerks, Customs Department,*

being public servants entered into criminal conspiracy to cheat the Customs Department, entertained these ante dated refund claims and made ante dated endorsements of the claims thereby validating them to receive the refund as though the company was entitled for the said refund and deceased Thiru Ramesh Kumar, the then Appraising Officer, Audit, by abusing his official position accepted an illegal gratification of Rs.25,000/- as a motive or reward for clearing the Auditing of these claims knowing fully well that the claims had been ante dated and thereby you Al to A.6 have committed an offence punishable U/s 120-B r/w 420, 467 468 and 471 IPC and Section 7 and 13(2) r/w.13(1)(d) of P.C Act, 1988 and within my cognizance.

***Secondly**, in pursuance to the said criminal conspiracy, that A.1 M/s. Ballarpur Industries, Pondicherry is a glass making unit of Thappar Group of Companies. This unit was formed in the year 1991 for the manufacture of light weight glass bottle used for exports. Towards the erection of factory, import of goods i.e., machineries and other items were made by A.1 through Madras Customs House in various consignments, during 1992 A.1 claimed these imported goods as accessories eligible for concessional rate of duties. However, the appraising group of Customs held that the goods imported were not accessories but spares. Thus, a dispute arose with regard to importation of goods under certain Bills of entries. Finally A.1 came forward to pay the prescribed rate of duty and they cleared the goods after paying the higher rate of duty for the goods imported and the bills of entry Nos.026274 dated 31.7.92, 030346 dated 4.9.92, 030661 dated 16.9.92, 030675 dated 8.9.92, 034745 dated*

4.9.92. The items imported under the bill of entry numbers 030675, 34745, 30661 etc., for which the refund was sanctioned holding the majority of the items were accessories. All the above 5 refund claims were signed by Mr. Yogesh Bakshi, the then General Manager of BILT, purportedly on 4.3.93. As is known the date of filing of refund application is "very vital" because any claim or refund is hit by "limitations" if filed after the lapse of 6 months w/s. 27 of Customs Act, 1962. That A.1 did not file the claims on time and the responsibility letter with then General Manager Thiru. Yogesh Bakshi and he wanted to file the refund claims some how ante dating the date of submission. Thus A.I got the refund of Rs.2,50,37,145/- against its claim which was submitted only in April 1993 i.e., after completion of the time limit of six months with the connivance of A.1 to A.6 as stated above and thereby cheated the Customs Department by causing wrongful loss to the tune of Rs.2,50,37,145/- and thereby you/A.1 and A- 2 have committed an offence punishable U/s 420 IPC and within the connivance of A.1 to A.6 my cognizance

***Thirdly**, in pursuance to the said criminal conspiracy, that N.Balasubramanian, A.3 A.5 Tmt.Manorama Thiru.Arunachalam, Thiru. A.6 Thiru.Periyasamy, the then Tapal Clerks, Customs Department, being public servants, entertained these ante dated refund claims and made ante dated endorsements of the claims thereby validating receive the refund as though the company was entitled for the said refund and deceased Thiru.Ramesh Kumar, the then Appraising Officer, Audit by abusing his official position accepted an illegal gratification of Rs.25,000/- as a motive or reward* *for clearing the Auditing of these claims knowing fully well that the claims had been ante dated and thereby you/A.3 to A.6 have committed an offence punishable under Section 420, 467, 468, & 471 IPC and Section 13(2) r/w.13(1)(d) of P.C Act 1988 and within my cognizance.*

4. The crux of the charges framed against the petitioner/ accused, based on the material documents and statements of witnesses indicates the following:-

(i) The petitioners and other public servants were dishonestly and fraudulently receiving time barred re-framed claims made on behalf of the A1 company (BILT).

(ii) The refund claim are to be made within 6 months and permissible only to accessories. However, A1 and A2 presented the refund claims beyond the time limit for the goods (spares) imported, which are ineligible for refund and that the petitioners, as Tapal Clerks at the Refund Section, received the applications and affixed several seals laying over one over another, in order to screen the actual date of receipt, so as to ensure that the date of filing of the claims are not shown. Further, the Tapal Registers did not indicate the receipt of the refund claims on those particular dates.

Thereby, it was evident that the bills were not presented on 05.03.1993, but, they were projected, as if, they had been submitted on that day to cause undue favour to A1 and A2 and that the petitioners, by abusing their position as Tapal Clerks, had caused pecuniary loss to the Department and pecuniary benefit to A1 and A2, by helping them to get the tax refund for time barred claims.

5. Mr.B.Satish Sundar, learned counsel for the petitioners would submit his arguments as under:-

i) The allegations against the petitioners, who were working as Tapal Clerks at the Refund Section of Customs Office Chennai, during the period between 1993 to 1995, are that they had affixed seals on the Applications of claims of refund in an overlapping manner to screen the actual date of receipt of the Applications in order to help the claimants to bring the Applications within the period of limitation. As per Section 27 of the Customs Act, the claim for refund should be submitted within six months from the date of payment of duty. The claimants/A1 and A2 have filed the claims within the period of limitation, however, based on the assumptions and presumptions, false charges were levelled against the petitioners as if they have helped the claimants by affixing the seals one over another.

ii) In respect of the very same charges, the Customs Department had initiated departmental proceedings against the petitioners and the charges framed in the departmental proceedings and the charges framed in the criminal proceedings are one and the same. Barring the sanctioning authority, all the other witnesses in the departmental proceedings and the criminal proceedings are one and the same. In the departmental proceedings, though the inquiry officer had found that one charge was proved against the petitioners, the disciplinary authority had found that the charges against the petitioners were not proved and they were exonerated in the departmental proceedings. The said finding had also attained finality and the petitioners worked in the department and as of now, two of them namely, T.M.Manorama and N.Periasamy had attained superannuation and P.Arunachalam is still working in the Department.

iii) The refund claim submitted by A1 was rejected by the Department, against which A1 had filed an Appeal before the Custom, Excise & Gold (Control) Appellate Tribunal (CEGAT). After a full fledged inquiry, the CEGAT had held that the refund claims were made well within the period of limitation and not barred by limitation as contemplated under

Section 27 of Customs Act. The order of CEGAT with regard to the limitation issue was upheld by the Hon'ble Supreme Court.

iv) The very basis of the prosecution is that the petitioners have helped A1 to ensure that the Applications for refund were filed within the period of limitation whereas the CEGAT has held that the Applications had been filed within the period of limitation and thereby, the very basis and foundation for initiating prosecution against the petitioners goes and the petitioners are now unnecessarily made to face the prosecution. Further, the petitioners are also in no way connected with the process or decision of refund claims. Other than the general and vague allegations that the petitioners were working as Tapal Clerks during the relevant period, there is no specific allegations as to who is the person responsible for fixing the alleged date seal on the claim Applications.

v) In respect of the similarly placed accused, namely N.Balasubrananian, who has been arrayed as A4, this court had quashed the proceedings in Criminal O.P.No.5392 of 2023 dated 17.08.2023 and thereby, he would submit that further continuation of the prosecution is nothing but an abuse of process of law and would seek to quash the proceedings.

6. Mr.K.Srinivasan, learned Special Public Prosecutor for the respondents would submit that the petitions have been filed on two grounds, viz., (i) the exoneration of the petitioners in the departmental proceedings for the same set of charges and (ii) allowing of the refund claim by CEGAT, holding that the applications have been filed within the period of limitation, which had attained finality by the decision of the Hon'ble Supreme Court.

7. In respect of the first ground, the learned Special Public Prosecutor, by pointing out that while allowing the application in respect of the co-accused in Crl.O.P.No.5392 of 2023 had taken into consideration the case of ***Ashoo Surendranath Tewari -vs- Deputy Superintendent of Police, EOW, CBI reported in (2020) 9 SCC 636,*** however, in yet another case viz., ***State of N.C.T. of Delhi Vs. Ajay Kumar Tyagi ((2012) 9 Supreme Court Cases 685)*** a Full Bench of the Hon'ble Apex Court has held that exoneration of charges in departmental proceedings, *ipso facto,* would not result into quashing of the criminal prosecution in respect of the very same charges.

8. At this juncture, the learned counsel for the petitioners would submit that this Court, while allowing the Criminal O.P.No.5392 of 2023, had considered two grounds, one being exoneration of the accused in the departmental proceedings and the other being the findings rendered by the CEGAT with regard to the question of limitation in filing the claim Application, which had attained finality and he would submit that the petitioners in the present petitions are not pressing the ground in respect of the exoneration in the departmental proceedings and they are pressing only the ground of CEGAT holding that the refund Applications are filed within the period of limitation, which goes to the very basis and foundation of the prosecution case. He would further submit that in the Adjudication Proceedings, the Adjudicating Authority had held that the refund applications were not filed within the period of limitation and had dismissed the claim of BILT(A1) against which, BILT/A1 had filed Appeal Nos.313 to 315 of 1997 before the CEGAT and the said Appeals came to be allowed by an order dated 09.05.2000 holding that the refund Applications have been filed within a period of limitation and in Civil Appeal Nos.3942 to 3944 of 2001 filed by the Department, the Hon'ble Apex Court had confirmed the order of CEGAT with regard to the limitation issue while

remanding the case to the Commissioner (Appeals) for deciding the correctness of the refund made. He would reiterate that this Court has quashed the proceedings in respect of the co-accused in Crl.O.P.No.5392 of 2023 dated 17.08.2023.

9. Heard the learned counsel appearing for both sides and perused the materials available on record.

10. The charge against these petitioners are that they have affixed multiple seals one over the other on the refund applications filed by BILT/A1 to help him to bring the refund claims within the period of limitation. It is seen that BILT/A1 had earlier filed refund claims before the adjudicating authorities (Customs) and they had been rejected by the Department on the ground of limitation. Against the rejection of the claims by the adjudicating authority, BILT/A1 had filed Appeals before the CEGAT and the CEGAT had allowed the Appeals filed by the BILT. In the Appeals preferred by the Department, both the questions of limitation and merits of the claim were canvassed by the Department and the Apex Court, while remanding the case to the Commissioner (Appeals) for a decision on

the question as to whether the refund of Rs.2.50 crores was correct or any part thereof was correctly allowed on merits, has affirmed the findings of the CEGAT on the issue of limitation. The relevant portion of the order of the Apex Court dated 11.9.2001 in Civil Appeal Nos.3942 to 3944 of 2001 (***Commissioner of Customs (Sea), Chennai vs. Ballarpur Industries Ltd.*** reported in 2001(133) E.L.T. 257 (SC)) is extracted hereunder for ready reference:-

> *"**6.** The Collector of Customs (Appeals) came to the conclusion that the application for refund had not been filed within the prescribed period. It did not accept the contention of the respondent herein that the application had been filed on 5-3-1993. As it came to the conclusion that the application for refund was barred by time and therefore the refund should not have been ordered, the Commissioner (Appeals) did not give a categorical finding on the merits as to whether what was imported and in respect of which refund was allowed were spare parts or accessories.*
>
> ***7.**Against the order of the Commissioner (Appeals), the respondent filed an appeal before the*

Tribunal. <u>The Tribunal, after examining the evidence on record, came to the conclusion that the application for refund had been filed on 5-3-1993 and the same was within the period of limitation. The Tribunal, however, while allowing the appeal of the respondent, did not go into the other aspect as to whether the refund was properly allowed on merits</u>, namely, whether what was imported were accessories or spare parts. It can be noticed that the exemption notification only permitted accessories from being exempt from tax and not spares. In our opinion, the finding of fact arrived at by the Tribunal that the application for refund of duty was within <u>the period of limitation calls for no interference</u>. We are, however, informed that there is a criminal prosecution which has been launched alleging that the letter dated 5-3-1993 was a forgery. <u>That prosecution will take its own course and we have nothing to say in respect thereto. We will, however, not go into a disputed question of fact, namely, whether the</u>

<u>application for refund was filed on 5-3-1993 or not and we do not propose to disturb the finding of the Tribunal</u>."

11. Such being the view of the Apex Court on the issue, in respect of a co-accused in the matter viz., N.Balasubramanaian (A4 in the case), this court had quashed the criminal proceedings by order dated 17.8.2023 in Crl.O.P.No.5392 of 2023, the relevant portion of the order is extracted hereunder for ready reference:-

> *"19. This Court, on considering the facts that, this petitioner who received the Tapal and affixed wrong date seal cannot be held responsible for the decision of permitting refund, since limitation not applicable in case of protest. As far as the date seal affixed in the refund claim to show that it was made within time, the prosecution has to prove that the date seal dated 05.03.1993 at two places overlapping in the refund claim letter and other date seal of 07.04.1993 is to create record as if refund claim made within the expiry of six months.*

For this allegation, the Inquiry Officer has given a finding that the date stamp freely accessible and at the most, this petitioner as Tapal Clerk had failed to keep the date stamp in safe to avoid misuse. Therefore, it is a failure to maintain devotion to duty. Whereas, the Disciplinary Authority while considering this finding had said that the receipt of the Tapal at Customs House refund section and forwarded it to the Appraisal Section, the acknowledgement generated from the Computer maintained at refund Section, proves that the claims were received on 05.03.1993. The Assistant Commissioner (Refund) admits that the claim petitions were received on 05.03.1993 as per the CPU acknowledgement.

20. The Appraiser who received the refund claims scrutinised it and rejected on merits and not on the ground of limitation. The refund claim rejected by Appraiser appealed before CESTAT. In the appeal, both question of limitation as well as merit of the claim canvassed by the Department but failed. Both the grounds *were held against the Department.*

21. In view of the above reasons, the prosecution against this petitioner for receiving Tapal and forwarding to the respective Section cannot be held a crime worth prosecution. For affixing date seal in the letter he received, the material like CPU acknowledgement indicates the Tapals were received on 05.03.1993. The seals over imposed may be for several reasons. When no witness before Disciplinary Proceedings had implicated this petitioner for affixing multiple seal or such affixure was done with dishonest intention criminal prosecution on assumption is not sustainable.

22. In view of the above observation, the F.I.R registered in the year 1995, if continued further as against this petitioner, it will be the worst abuse of law. The finding of the Disciplinary Authorities as well as the finding of the CESTAT cannot be ignored since they directly touch upon the charges framed."

12. The above decision rendered in the case of the co-accused viz., A4 squarely applies to the present petitioners. In the case on hand, it is seen that the First Information Report has been registered in the year 1995 and two of the petitioners have already attained superannuation and one of the petitioners is in the verge of superannuation. Except the averments that the petitioners were Tapal Clerks during the relevant time and overlapping of seal on the refund Applications were found, there is absolutely no material to prove that they alone had affixed the multiple seals on the refund Applications only in order to assist the main accused to get the refund despite there being any delay, especially, when there is a concrete finding by the CEGAT holding that the remand Applications were submitted only on 5.3.1993, de hors the fact that the claimant/A1 had paid the tax only under protest by giving a letter dated 12.9.1992 and thereby no question of limitation itself arises as provided under Section 27 of the Customs Act and when the finding of the CEGAT with regard to the limitation issue having been affirmed by the Apex Court in the Appeals filed by the Department. Thereby, the very basis and foundation of the charge goes and it goes to the root of the prosecution case.

13. On a careful scrutiny of the materials available on record, this Court is of the view that the allegation against the petitioners is without any basis and continuation of the present criminal proceedings any longer against the present petitioners would be an abuse of process of law.

14. In such view of the matter, the proceedings in C.C.No.1 of 1998 against the present petitioners alone are quashed and the Criminal Original Petitions stand allowed. Consequently, the connected miscellaneous petitions are closed.

13.12.2023

Index : Yes / No
Internet : Yes / No
sha/raa/ssk

To
1. XIII Additional Judge
for CBI Cases,
City Civil Court, Chennai

2. Inspector of Police,
CBI/SPE/ACB,
2nd Floor, Shastri Bhavan,
26, Haddows Road, Chennai-600 006.

3. The Special Public Prosecutor(CBI Cases),
   High Court, Madras.

A.D.JAGADISH CHANDIRA, J.

sha/raa/ssk.

Crl.O.P.Nos.23367, 23323 &
25224 of 2023

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