IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.19897 of 2017
and
Crl.M.P.Nos.11987 and 11988 of 2017

1. M/s Agni Steels Private Limited,
   represented by its Chairman M.Chinnasamy
   Kavandanur Road,
   Ingur Village,
   Perundurai Taluk,
   Erode District.

2. M.Chinnasamy
3. R.Krishnamurthy
4. K.Thangavelu ...Petitioners

-Vs-

Assistant Commissioner of Central Excise,
Erode-I Division,
Erode. ...Respondent

Prayer : Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, 1973, to call for the records in C.C.No.64 of 2016 on the file of the learned Chief Judicial Magistrate, Erode and quash the same.

For Petitioners : Mr.M.Guruprasad

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.64 of 2016 on the file of the learned Chief Judicial Magistrate, Erode.

2. Heard the learned counsel for the petitioners and the learned Special Public Prosecutor for the respondent and perused the materials available on record.

3. The respondent lodged a complaint under Section 190 (1) (a) read with Section 200 (A) of Cr.P.C read with Section 120 of IPC. The crux of the complaint is that the accused are holders of Central Excise Registration Certificate. They are engaged in manufacture and clearance of "Agni" Brand MS Bars and Rods falling under Chapter 72 of the schedule to Central Excise Tariff Act, 1985. They are also engaged with the manufacturers of Sponge Iron. Both manufactures are under two different Central Excise Registration Certificates. In the year 2006, the respondent inspected the premises and seized documents through Mahazer. It revealed that they had willfully evaded the central excise duty by indulging in unaccounted purchase of raw materials, suppression of production of sponge iron, MS ingots and bars and clandestine removal of bars and rods and by-products without accounting for the same in

the daily stock account and in the ERI return filed with the respondent department, without issue of invoices and without payment of Central Excise duty to the tune of Rs.12,84,81,532/-. Therefore, the petitioners were issued notice dated 07.05.2007. After due enquiry, the Commissioner of Central Excise, Salem passed an order dated 12.12.2007, thereby confirming the duty and penalty against the accused. However, on appeal, the Appellate Tribunal had set aside the order passed by the Commissioner of Central Excise, Salem on 12.01.2009 vide Final Order Nos.55 to 60 of 2009 and remanded the matter back to the Commissioner for fresh adjudication. In the de-nova adjudication, the demand was reduced to Rs.1,92,88,482/- along with interest besides with imposition of equal amount of penalty.

4. Therefore, for the contravention of the above non payment of central excise duty, the respondent filed a private complaint for the following contravention of provisions of the Central Excise Act, 1944 and the relevant rules framed are as follows:-

> *" (i) Rule 4 and 8 of Central Excise Rules, 2002 in as much as they have manufactured and removed the excisable goods viz: bars and rods and by-products without payment of duty;*
>
> *(ii) Rule 6 of Central Excise Rules, 2002 in as much as they have manufactured and removed the excisable goods without properly assessing the duty payable on the said goods;*

(iii) Rule 10 of the Central Excise Rules, 2002 in as much as they have not properly accounted the actual quantity of goods manufactured and removed in the daily stock account;

(iv) Rule 11 of the Central Excise Rules, 2002 in as much as they have removed the excisable goods without the cover of proper invoices;

(v) Rule 12 of the Central Excise Rules, 2002 in as much as they have not filed proper returns disclosing the actual production and clearances from the factory."

5. The learned counsel for the petitioners would submit that aggrieved by the order passed by the Commissioner of Central Excise, filed appeals before the CESTAT, South Zonal Bench. By an order dated 31.01.2019, allowed the appeals and set aside the order of assessment. The present impugned complaint has been lodged in pursuant to the earlier assessment order passed by the Commissioner of GST and Central Excise. Now, the entire contravention allegedly committed by the petitioners was set aside. However, aggrieved by the said order, the respondent filed appeals before this Court in C.M.A.Nos.3013 and 3014 of 2021 and both are pending. Even then, the basis for initiation of complaint for prosecution, now has been set aside.

6. If at all, the respondent succeeds in C.M.A.Nos.3013 and 3014 of 2021, filed before this Court, the respondent can launch prosecution afresh, on

the strength of the order passed by this Court.

7. In view of the above, the impugned complaint cannot be sustained as against the petitioners and it is liable to be quashed. Accordingly, the proceedings in C.C.No.64 of 2016 on the file of the learned Chief Judicial Magistrate, Erode, is hereby quashed. This Criminal Original Petition is allowed. Consequently, connected Miscellaneous petitions are closed.

20.11.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
mn

G.K.ILANTHIRAIYAN. J,

mn

To

1. The Chief Judicial Magistrate, Erode.

2. The Assistant Commissioner of Central Excise,
   Erode-I Division,
   Erode.

3. The Public Prosecutor,
   High Court, Madras.

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