IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2025

CORAM:

THE HON'BLE MR.JUSTICE N. SATHISH KUMAR

Crl.O.P.No.17519 of 2025
and Crl.M.P.Nos.11185 & 11186 of 2025

1.Jurassic Refiners & Jewels Private Ltd
Rep by its Director Mr.Ashish Kumar
305, 3rd Floor, 4834/24, Kiran Mansion
Ansari Road, Darya Ganj, New Delhi – 110 002

2.Ashish Gupta ... Petitioners

Vs.

The Assistant Commissioner of Customs
Prosecution-AIR, Air Cargo Complex
New Customs House, Meenambakkam
Chennai – 600 027 ... Respondent

PRAYER : Criminal Original Petition is filed under Section 528 of BNSS, to call for the records in C.C.No.30 of 2025 on the file of the learned Judicial Magistrate Customs Court at Alandur and quash the same.

For Petitioners	:	M/s.S.Akila
For Respondent	:	Mr.P.Vishnu Special Public Prosecutor

ORDER

Prosecution initiated under the Customs Act for the offences under Section 132 & 135(1)(a), 135(1)(b), 135(1)(c) and 135(1)(d) of the Customs Act, 1962 read with Section 120B of IPC is sought to be quashed on the ground that the notice which resulted in filing private complaint is found to be false.

2. Brief background in filing this petition is as follows:

2.a. The petitioner is engaged in the business of manufacture and export of gold jewellery and for this purpose, procured gold bars duty free from nominated agencies like Diamond India Ltd ("DIL" in short) under replenishment scheme as provided under foreign trade policy. Investigation was initiated by DRI, Hyderabad Zonal Unit on the allegation that the petitioner has obtained duty free gold bar from DIL under replenishment scheme against the export of jewellery resorting to mis-declaration of description of export goods, value addition in the export documents without complying with the norms specified in FTP thereby evaded payment of applicable customs duty obtained from DIL under replenishment scheme. After investigation, a Show-cause notice dated 26.09.2018 was issued to the petitioner alleging they have wrongly claimed the benefit under replenishment scheme and duty was demanded from DIL for not fulfiling the conditions of the exemption notification No.57/2000-Cus.

2.b. Based on the show cause notice, prosecution was initiated by way of private complaint. In the meanwhile, the show cause notice was adjudicated by the adjudicating authority confirming the allegations in the show cause notice. The petitioner filed appeal before the CESTAT, Hyderabad, by order dated 08.02.2024, the appeal was allowed setting aside the order of the adjudicating authority. Challenging the order of CESTAT, appeal was filed by the Department before the High Court of Telangana and the said appeal was dismissed vide order dated 22.11.2024 holding that there is not infirmity in the order passed by the CESTAT, Hyderabad. That order has not been challenged. Though it is stated by the learned counsel for the respondents that Department has not taken steps to file appeal, however, as on today, there is no materials whatsoever filed to show that as against the order of the High Court of Telangana, appeal is filed.

3. The learned senior counsel for the petitioner submitted that the entire allegations found in the show cause notice has found to be false and that order has reached finality up-to High Court of Telangana. Therefore, seeks for allowing this petition. In support of his submissions, he placed reliance on the order of this Court dated 20.07.2022 made in S.S.Shahul Hameed vs. The Chief Enforcement Officer (Crl.O.P.No.1690 of 2022)

4. Heard both sides and perused the materials placed on record.

5. The entire private complaint is based on the allegations made in the show cause notice issued to the petitioner. The very show-cause notice was the subject matter of adjudication before the CESTAT, Hyderabad and also the High Court of Telangana, wherein, the allegations found in the show cause notice was found to be false and negatived. It is relevant to note that though Courts have repeatedly held that adjudication proceedings and criminal prosecution can be launched simultaneously; decision in adjudication proceedings is not necessary before initiating criminal prosecution; adjudication proceedings and criminal proceedings are independent in nature to each other; the finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution; adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure; the finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. <u>If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and **in case**</u>

of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.?

6. Whereas, on careful perusal of the common judgment of the High Court of Telangana in Central Excise Appeal Nos.23,27,29,31 & 32 of 2024 dated 22.11.2024, it would indicate that the order is not based merely on technical ground and also on merits considering the factual aspects in the case. Such view of the matter, this Court is of the view when the allegation is found to be not sustainable at all after appreciation of evidences available on record, criminal prosecution on the very same set of facts and circumstances cannot be allowed to continue as the same appears to be bleak. This has been held by the Hon'ble Supreme Court in the case of Ashoo Surendranath Tewari vs. The Deputy Superintendent of Police, EOW, CBI & Another[Crl.A.No.575 of 2020 (arising out of SLP(Crl.).No.5422 of 2015) dated 08.09.2020]

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7. In view of the detailed common order dated 08.02.2024 passed by CESTAT, Hyderabad and common judgment dated 22.11.2024 passed by the High Court of Telangana, I am of the view that the chances of conviction in a criminal trial involving the same facts appear to be bleak. Therefore, the present criminal prosecution in C.C.No.30 of 2025 on the file of the learned Judicial Magistrate, Customs Court, Alandur stands set aside.

8. Accordingly, this petition stands allowed. Consequently, connected miscellaneous petitions stand closed.

11.09.2025

dhk
Neutral Citation:Yes/No

To

1. The Judicial Magistrate
Customs Court at Alandur

Crl.O.P.No.17519 of 2025