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Date of pronouncement : 20.11.2026
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APHC010300692026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3564]**
(Special Original Jurisdiction)

FRIDAY, THE 20th DAY OF NOVEMBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE BATTU DEVANAND

THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA

WRIT PETITION NO:16109 of 2026

Between:

1. TEMPLE CITY DEVELOPERS PVT. LTD, A COMPANY INCORPORATED UNDER THE COMPANIES ACT, HAVING ITS REGISTERED OFFICE AT PLOT NO.360/6057, 2ND FLOOR, UNIT-F/3, BIJU PATTANAIK COMMERCIAL COMPLEX, DAMANA SQUARE, CHANDRASEKHARPUR, BHUBANESWAR - 751016, ODISHA, REPRESENTED BY ITS MANAGING DIRECTOR.

2. BIJAY KUMAR PRADHAN, S/O BHALU PRADHAN, AGED ABOUT 54 YEARS, MANAGING DIRECTOR, M/S TEMPLE CITY DEVELOPERS PVT. LTD., RIO MIG-97, KANAN VIHAR, PHASE-II, PATIA, BHUBANESWAR, DISTRICT KHURDA, ODISHA.

3. RANJAN KUMAR PATTANAIK, S/O DHRUBA CHARAN PATTNAIK, AGED ABOUT 44 YEARS RIO H. KENDUPALLI, F P.O. NUKHAPADA, CUTTACK - 754032, ODISHA, AND PLOT NO. N31363, IRC VILLAGE, BHUBANESWAR, DISTRICT KHURDA, ODISHA.

4. SABYASACHI PATTANAIK, S/O LATE PRAMOD CHANDRA PATTNAIK, AGED ABOUT 61 YEARS RIO C-2, 205, 2ND FLOOR, LAKE VIEW HOMES APARTMENTS, NAYAPALLI, BHUBANESWAR, DISTRICT KHURDA, ODISHA.

...PETITIONER(S)

AND

1. UNION OF INDIA, REP BY ITS SECRETARY, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS (CBIC),I NORTH BLOCK, NEW DELHI - 110001

2. THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, PORT AREA, VISAKHAPATNAM, ANDHRA PRADESH - 530 035.

3. THE SUPERINTENDENT OF CUSTOMS, (PREVENTIVE), CUSTOM HOUSE, PORT AREA, VISAKHAPATNAM - 530 035

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue, a Writ, Order, or Direction, more particularly one in the nature of a Writ of Mandamus, calling for the records relating to C.C. No. 2 of 2025 in File No. S6111/2023-RI and I (Prosecution) on the file of the Court of the Special Judge for Economic Offences-cum-IV Additional District and Sessions Judge, Visakhapatnam dated 08.01.2025, and to quash the said complaint and all further proceedings arising there from as being an abuse of the process of Court and consequently direct Respondent Nos. 1 to 3, through Respondent No. 4, to withdraw and refrain from proceeding further with the said prosecution, and pass

IA NO: 1 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in C.C. No. 2 of 2025 in File No. S611112023-RI&I (Prosecution) on the file of the Court of the Special Judge for Economic Offences-cum-IV Additional District and Sessions Judge, Visakhapatnam dated 08.01.2('25, including dispensing with the personal appearance of the Petitioners, and pass

Counsel for the Petitioner(S):

1. V.RAVINDHAR

Counsel for the Respondent(S):

1. SANTHI CHANDRA (Sr. Standing Counsel for CBIC)

The Court made the following:

THE HON'BLE SRI JUSTICE BATTU DEVANAND
&
THE HON'BLE SRI JUSTICE TUHIN KUMAR GEDELA

WRIT PETITION No.16109 of 2026

ORDER: *(Per Hon'ble Sri Justice Tuhin Kumar Gedela)*

Heard,

Sri V.Ravindhar, learned counsel for the petitioners and Ms.Santhi Chandra, learned Standing Counsel for CBIC/respondents.

2. This Writ Petition is filed seeking a Writ of Mandamus, calling for the records relating to C.C.No.2 of 2025 in File No.S6/11/2023-RI&I (Prosecution) on the file of the Special Judge for Economic Offences-cum-IV Additional District & Sessions Judge, Visakhapatnam dated 08.01.2025, and *inter alia* to quash the said complaint.

3. The matter has undergone several adjournments, enabling the parties to complete the pleadings. Finally, on 15.09.2026, this Court heard the matter.

4. The precise contention advanced by the learned counsel for the petitioners is that, when the CESTAT, Hyderabad allowed all four appeals and set aside the entire demand of Rs.43,01,233/- together with all the penalties and the said order dated 07.04.2026 attained finality, the invocation of criminal case against the petitioners on the same charges/allegations is not maintainable. To be more precise, the learned counsel would further submit that C.C.No.2 of 2025 in File No.S6/11/2023-RI & I (Prosecution), registered

for the offences under Sections 132, 135(1)(a) and 135(1)(c) read with Section 140(1) and 140(2) of the Customs Act, 1962, punishable under Section 135 read with Section 120B of IPC, cannot be continued and is liable to be quashed in view of the pronouncement of the Hon'ble Apex Court.

5. To decide the said question of law, it is appropriate to expatiate the facts narrated in the affidavit in detail:

> *"The petitioner, M/s.Temple City Developers Private Limited representing by its Managing Director filed the appeal before the Customs, Excise and Service Tax Appellate Tribunal, Hyderabad against the Order-In-Appeal dated 26.10.2018, wherein the Commissioner rejected the appeals against the Order-In-Original confirming demand of differential duty and imposition penalty".*

6. The issue, in brief, is set out in paragraph No.2 of the order, which reads as follows:

> "*2. The issue, in brief, is that based on certain intelligence Department carried out certain investigation and searches which revealed that the appellants have mis-declared the value of their export consignments, resulting in non-payment customs duty to the tune of Rs.43,01,233/-. The enquiry also revealed that the exporter M/s Temple City Developers Pvt Ltd., (TCDPL) had entered into a contract dated 16.07.2013 and Addendum No.1 27.09.2013 in the name of one M/s Pacific Global Resources Pte Ltd., Singapore (hereinafter referred to as M/s PGRPLS) as buyer for export of Iron ore fines having 57% Fe content. The FOB price agreed and mentioned was USD 70 PDMT. The exporters sent two consignments under the cover of two shipping bills dated 25.07.2013 and 12.08.2013 per vessels 'M.V. Olympus' and 'M.V. Ruby Halo' respectively. In both the shipping bills, the declared FOB was USD 70 PDMT. The Investigation revealed that there was another contract referred to by Department as Second Contract bearing no. BBSPL/RGPLS/034/13-14 dated 16.07.2013 between one M/s Rotomac Global Pte Ltd., Singapore (M/s RGPLS) as seller and M/s Bagadiya Brothers (Singapore) Pte Ltd., Singapore (M/s BBSPL), both Singapore registered companies, as seller and buyers for 25,000 WMT of iron ore fines having 57% Fe content. Department also noticed that M/s PGRPLS was fully controlled and managed on day-to-day basis by one M/s Rotomac Global Pvt Ltd., Kanpur (M/s RGPLK). All the said three companies were held and managed on day-to-day basis by same set of directors and employees. It was also noticed by Department that one Shri Pradeep Kumar Mangaraja, Managing Director of M/s TCDPL in association with Shri SabyasachiPattnaik negotiated with the overseas*

buyer for both shipments and one Shri Ranjan Kumar Pattnaik helped in preparation of export documents for the said two Iron ore shipments".

7. During the course of investigation, statements were recorded under Section 108 of Customs Act, 1962 from the Managing Director of the petitioner and the other Managers of M/s.RGPLK, and *inter alia*, confirmed that the contracts between M/s.PGRPLS and M/s.TCDPL were signed by the Manager of M/s.PGRPLS and the Department has recorded the statements and *inter alia,* revealed that the information about the export price for both the consignments as USD 70 PDMT and that they were not aware of Contract No.BBSPL/RGPLS/034/13-14 dated 16.07.2013, wherein the price was shown as USD 89 PDMT. During the course of adjudication, the petitioners/appellants therein mainly submitted that they have sent the consignment to M/s.PGRPLS and also received export proceeds from the said firm as per agreement contracted @ USD 70, and they have not received any amount over and above the contract price.

8. In continuation of their submissions before the Authority, the petitioners raised that the evidence placed on record in support of the allegations has no evidentiary value. They further pointed out that the statements would have evidentiary value only if the Adjudicating Officer had admitted the statements as evidence.

9. The Customs, Excise and Service Tax Appellate Tribunal (in short "the CESTAT") considered the arguments advanced by the petitioners and found the crux of the issue is whether the appellants had exported iron ore at lower FOB value in terms of a dummy contract and also received higher

consideration in cash from the buyer of the consignments over and above the contracted value. The case has been made out on the basis of detection of a so-called dummy contract, which revealed that there was another contract between the entities in Hong Kong selling the consignment at a higher price i.e., USD 89 PDMT. The Department has made out a case that the whole thing was orchestrated by splitting the price into two parts. Firstly, the exports were made on declared value of USD 70 PDMT for the supply of iron ore to M/s.PGRPLS, whereas there was another contract of USD 89 PDMT between M/s. Rotomac Global Prt Ltd, Singapore and M/s.BBPTEL, Singapore. The CESTAT, in order to ascertain whether there was any dummy contract, considered that it was necessary to determine whether the export has been made to M/s.PGRPLS or to some other company and further, whether the payments have been received in cash over and above and that amount through them or through some other entity on their behalf and the entire differential amount has been settled in cash.

10. The statements recorded under Section 108 of the Act *per se* were considered admissible in evidence, subject to the requirement of certain amount of corroboration of other independent evidence. At paragraph 12 of the impugned order, the CESTAT observed that the statements given by three co-accused and also the appellants therein were retracted, though such retractions were not allowed by the Adjudicating Authority, as it was done only at the time of adjudication.

11. Further, it is observed that, while we agree with the contention of the Learned AR that such retractions at such a belated stage are nothing but an afterthought, but in view of the admitted position that such retractions were made before the Adjudicating Authority, the Authority ought to have passed an order giving detailed reasons as to why such retractions at that stage were not permissible. It was further observed that, as is evident from the documents relied, there is no Panchanama or recovery document indicating the recovery proceedings of such documents as to how the Department took the printouts of various e-mails and caught hold of documents i.e., contract bills etc., which are heavily relied upon by the Department. There is no Panchanama showing such recovery and veracity of the said e-mail cannot be established and some reflection of details cannot be corroborated except for statements given by Shri Manoj Kumar Upadhyay, who incidentally has neither been made a co-accused nor his cross-examination was allowed, when sought by the appellant.

12. The Tribunal found that unless there is a compliance with the provisions of Section 138C of Customs Act, reliance cannot be placed on e-mails or other electronic evidence. The Tribunal placed reliance on the judgment of a Co-Ordinate Bench in the case of ***SN Agrotech vs. Commissioner of Customs, New Delhi*** [(2018 (361) ELT 761 (Tri-Del)], wherein *inter alia*, they also considered the order of the Hon'ble Supreme Court in the case of ***Anwar PV vs. P.K.Basheer*** [2014 (10) SCC 473]. The Tribunal also taken note of the case laws cited by the Learned AR in support that it is not necessary to

have a strict compliance of the provisions of Section 138C of the Customs Act for admissibility of the electronic evidence, as held by the Hon'ble Supreme Court in the case of ***Additional Director General, Adjudication vs. S.K. and Company Pvt Ltd***[2025 (9) TMI 76 (SC)]. The Tribunal, while considering the judgment of the Hon'ble Supreme Court, held that, in view of the record of proceedings duly signed by the recipients, including the various statements in a peculiar facts of the case, there was due compliance of Section 138C(4) of the Act. Therefore, in a particular set of facts various departments available on record in the form of record of proceedings and the statements recorded under Section 108 of the Act could be said to be the due compliance of Section 138C(4) of the Act.

13. Upon considering the said ratio, the Tribunal held that there are no details of proceedings as to how electronic documents were obtained by the department, and the said documents cannot be good evidence in the absence of compliance with the statutory provisions. The Tribunal has also taken note of several judgments as indicated at paragraph 17 of the impugned order and finally coming to the factual matrix, held that reliance on statements recorded under Section 108 of the Customs Act, and on certain e-mails or computer printouts are not absolute and are subjected to certain regulatory guidelines and procedure in the interest of fair play and bonafide opportunity to the person against whom Department has levelled charges based on these evidences only cannot be sustained. Further, it is also observed that there is no cross-examination of witness, no details of proceedings under which the

so-called e-mails, documents were obtained by the Department or produced by any of the witness or appellant, non-compliance of statutory provisions before admitting the electronic evidence etc., would indicate that reliance placed on such statements and documents is not tenable in the given factual matrix and ultimately concluded that the Department was not able to conclusively establish that there is receipt of additional consideration by the appellant in relation to export of two consignments, warranting revision of declared assessable value and consequent demand of differential duty and allowed the appeal filed by the petitioners/appellants. The order was pronounced on 07.04.2026.

14. Learned counsel for the petitioners would submit that the said order has become final, as the Department has not preferred any statutory appeal against the said order. In the absence of any such appeal, the order has attained finality. Therefore, the Department cannot now initiate criminal proceedings, which are admittedly pending against the petitioners in C.C.No.2 of 2025 in File No.S6/11/2023-RI&I (Prosecution) on the file of the Special Judge for Economic Offences-cum-IV Additional District & Sessions Judge, Visakhapatnam.

15. To substantiate his contention that the Department is estopped from continuing the criminal proceedings against the petitioners on the same charges, particularly, when the order has become final, learned Counsel would submit that the petitioners cannot be subjected to criminal prosecution based on the same allegations. He drew the attention of this Court to Column-

III of the criminal case, which sets out the nature of offences, as extracted hereunder:

> *"M/s Temple City Developers Pvt. Ltd., having their registered office at Plot No.360/6057, 2nd Floor, Unit-F/3, BijuPattanaik Commercial Complex, Damana Square, Chandrasekharpur, Bhubaneswar 751016, Odisha, exported two shipments of iron ore through vessels 'M.V.Olympus' and 'M.V Ruby Halo', to M/s Pacific Global Resources Pte Ltd., Singapore. Intelligence gathered revealed that in these two shipments of iron ore, M/s 'Temple City Developers Pvt. Ltd. mis-declared the value as USD 70.00 PDMT (Per Dollar Metric Ton) by suppressing the actual transaction value of USD 89.00 PDMT (Per Dollar Metric Tonj) in order to evade payment of appropriate Customs Export Duty amounting to Rs. 43,01,233/-. Hence, from the records of this case and from the facts and materials, the Principal Commissioner of Customs, Custom House Visakhapatnam, in exercise of powers conferred on undersection 137(1) of Customs Act 1962, accorded Authorisation as ADG, DRI, Mumbai Zonal Unit accorded sanction to prosecute 1. M/s Temple City Developers Pvt. Ltd., Plot No.360/6057, 2nd Floor, Unit-F/3, BijuPattanaik Commercial Complex, Damana Square, Chandrasekharpur, Bhubaneswar-751016, Odisha".*

16. Learned counsel for the petitioners would draw the attention of this Court to a few pronouncements of the Hon'ble Apex Court. Firstly, in ***K.C.Bulidings and Another v.Assistant Commissioner of Income Tax[1],*** the Hon'ble Supreme Court, at paragraph 31, held as follows:

> "*31. Itis a well-established principle that the matter which has been adjudicated and settled by the Tribunal need not be dragged into the criminal courts unless and until the act of the appellants could have been described as culpable".*

17. In ***JP Tobacco Products Pvt Ltd v. Assistant Collector of C EX, MP[2],*** the Hon'ble Supreme Court, at paragraphs 7 and 8, observed as follows:

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[1] (2004) 2 SCC 731
[2] 2008 (17) SCC 488

> "*7. It is pertinent to note that pursuant to the order of remand passed by the Tribunal on 21-12-1995, the Commissioner of Central Excise again confirmed the demand of duty and penalty. The said order, upon being challenged, has been set aside by the Tribunal vide its order dated 3rd April 2007. It is stated that the Revenue has not filed any appeal against the said order, meaning thereby, the same has attained finality.*
>
> *8. It is submitted by Mr. Soli Sorabjee, learned senior counsel appearing for one of the appellants that in view of the fact that the levy of duty and penalty have been set aside by the Tribunal vide order dated 3rd April 2007 and the same having attained finality, the prosecution on the charge of evasion of duty and consequent levy of penalty cannot continue".*

18. The other judgment relied upon by the learned counsel for the petitioners, is ***System India castings and others v. Principal Commissioner of Income Tax and another[3].***

19. The learned Single Judge of the High Court, after considering the judgments of the Hon'ble Supreme Court, expressed the following views at paragraphs 8 and 9 as follows:

> "*8. In view of the settled legal position as enunciated by the Supreme Court in the matter of K.C. Builders v. Asst. CIT (supra), it will be an empty formality to direct the petitioners to approach the trial Magistrate, who has otherwise kept the application preferred by the petitioners pending since January 15, 2014.*
>
> *9. In the circumstances, this court deems it appropriate to exercise its inherent power for quashing the proceeding of Criminal Case No.29362 of".*

20. On concatenation of the ratio laid down by the Hon'ble Supreme Court in the above case, it can safely be held that prosecution cannot be initiated in cases where the departmental appeals/proceedings have ended in exoneration.

21. Admittedly, in the present case, the appeal filed by the petitioners before the CESTAT is allowed and the said order has become final. The contention of

[3] 2019 SCC Online Chh 63

the petitioners has full force and finds support in the ratio laid down by the Hon'ble Supreme Court in the judgments referred to above.

22. On the other hand, Ms.Santhi Chandra, learned Standing Counsel for CBIC/respondents, would submit that there is no embargo or any estoppel preventing the Department from continuing the criminal proceedings against the concerned/accused, despite the fact that the Department had lost the departmental proceedings and particularly, she would submit that the said criminal proceedings can be initiated and continued even after the order has become final. She vehemently contended, by way of the counter-affidavit, that the contentions raised by the petitioners are untenable. She further submits that both the departmental proceedings and the criminal proceedings are entirely different in nature and that the Hon'ble Supreme Court, in a catena of judgments, has categorically observed that both the proceedings can proceed simultaneously, as they do not overlap. To substantiate her vehement arguments, she relied upon the order of the learned Single Judge of this Court, in ***K. Neelakanta Rao and Another vs. State of Andhra Pradesh[4].*** Learned counsel drew the attention of this Court to paragraphs 10, 11 and 12, which read as follows:

> "*10. The question raised was whether prosecution is barred under Article 20(2) of the Constitution of India, which says that no person shall be prosecuted and punished for the same offence more than once. While stating that Article 20(2) of the Constitution was in terms not applicable, the Supreme Court proceeded to examine the contention with reference to Section 403 of Cr.PC and held as follows:*

[4] 2000 (4) ALD 540

> *"in order to get the benefit of Section 403, Criminal Procedure Code or Article 20(2), it is necessary for an accused person to establish that he had been tried by a 'Court of competent jurisdiction' for an offence and he is convicted or acquitted of that offence and the said conviction or acquittal is in force. If that much is established, it can be contended that he is not liable to be tried gain for the same offence nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 236 or for which he might have been convicted under Section 273. It has been repeatedly held by this Court that adjudication before a Collector of Customs is not a 'prosecution' nor the Collector of Customs a 'Court',*
>
> *11. The Supreme Court also considered the question whether the findings of the Collector of Customs in such circumstances operate as the issue estoppel in the prosecution and answered and held that in the facts of the case that doctrine was not applicable. In that view of the matter, the Supreme Court rejected the contention that in view of the adjudication proceedings having been dropped against the concerned accused therein, the criminal prosecution of those accused must be quashed.*
>
> *12. In view of this authoritative pronouncement of the Supreme Court, there is no manner of doubt that adjudication proceedings under the Customs Act irrespective of the result would not bar the criminal prosecution of the persons said to have committed the offence under Section 135 of the Customs Act".*

23. Learned counsel for the respondents would submit that, in view of the said ratio, the criminal proceedings initiated against the petitioners can be allowed to continue and any interdiction or retraction from the above action of the Department by this Court would be unwarranted. The arguments advanced by the learned counsel for the respondents have no force, particularly, in view of the ratio laid down by the Hon'ble Supreme Court in the judgments relied upon by the learned counsel for the petitioners.

24. **Analysis:**

Heard learned counsel for the petitioners as well as the learned counsel for the respondents/CBIC. The legal proposition in the present case, is by all force settled by the Hon'ble Apex Court in its legalistic view and is no more *res integra*. There is no dispute in the fact that the order dated 07.04.2026 passed

by CESTAT, Hyderabad attained finality and the factual aspect, which couches both factual and legal matrix, is not even rebutted in the counter and the same cannot be extinguished through the arguments of the learned counsel for the respondents. The parameters of law have been clearly laid down by the Hon'ble Supreme Court in the judgments (1), (2) and (3) cited supra (emphasis supplied).

25. On the above settled score, the Writ Petition deserves to be allowed.

26. Ergo, the Writ Petition No.16109 of 2026 is allowed and, *inter alia*, the compliant in C.C.No.2 of 2025 in File No.S6/11/2023-RI&I (Prosecution), on the file of the Special Judge for Economic Offences-cum-IV Additional District & Sessions Judge, Visakhapatnam dated 08.01.2025, is hereby quashed. There shall be no order as to costs.

Consequently, miscellaneous applications, pending if any, shall stand closed.

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JUSTICE BATTU DEVANAND

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JUSTICE TUHIN KUMAR GEDELA

Dated:20.11.2026
KNN

THE HONOURABLE SRI JUSTICE BATTU DEVANAND

THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA

WRIT PETITION NO: 16109 OF 2026

Between:

Temple City Developers Pvt. Ltd and Others **...PETITIONERS**

AND

Union Of India and Others **...RESPONDENTS**

ORDER PRONOUNCED ON **20.11.2026**

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE BATTU DEVANAND

THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

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JUSTICE BATTU DEVANAND

_____

JUSTICE TUHIN KUMAR GEDELA

THE HONOURABLE SRI JUSTICE BATTU DEVANAND

THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA

WRIT PETITION NO: 16109 OF 2026

% 20.11.2026

 # Between:

Temple City Developers Pvt. Ltd and Others **...PETITIONERS**

AND

$ Union Of India and Others **...RESPONDENTS**

! Counsel for the Petitioner(s) : Mr.V.Ravindhar

! Counsel for the Respondent(s) : Ms.Santhi Chandra, Standing Counsel for CBIC

<Gist :

>Head Note:

? Cases referred: 1. (2004) 2 SCC 731

2. 2008 (17) SCC 488

3. 2019 SCC Online Chh 63

4. 2000 (4) ALD 540