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**(2013) 08 MEG CK 0001**

**In the Meghalaya High Court**

**Case No :** Criminal Petition No. 51 (SH) of 2012

Deepak Atal and Another

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision :** 22-08-2013

**Acts Referred:**

**Citation :** (2013) 08 MEG CK 0001

**Hon'ble Judges :** S.R. Sen, J

**Bench :** Single Bench

**Advocate :** D. Baruah and Mr. K. Khan, Advovates, for the Appellant; R. Debnath, CGC, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

S.R. Sen, J.—Petitioner approached this court by way of an application u/s 482 Cr.P.C. praying for quashing of the proceedings of C.R. Case No. 192(S) 2010 u/s 629A read with section 297(1) of the Companies Act, 1956 pending before the Chief Judicial Magistrate, Shillong. The brief facts of the case in a nutshell is that the petitioner is a Director and Company Secretary of M/s. Apeejay Surrendra Corporate Services Limited having its registered office at Apeejay House, 15 Park Street, Kolkata-700016. The Company had sold tea with effect from 01.04.2006 to 31.03.2007 valued at Rs. 5.19 lacs to M/s. A.J. Tea Private Limited, wherein Mr. Jit Paul is also one of the Director.

2. On 27.06.2008 first notice was received by the petitioner wherein, it is alleged that petitioner has sold tea without previous approval of the Central Government and in the said notice also it was advised to the petitioner to move a separate application for compounding the offence within 15 (fifteen) days. In case no application is moved, then prosecution will follow vide letter dated 19.08.2008. The petitioner replied that there was no violation of section 297(1) of the Companies Act, 1956 and also further stated that the transactions are exempted from restricted provisions of the said Act. Inspite of all these replies, the respondent i.e. Registrar of Companies has filed a C.R. Case bearing C.R. Case

No. 192(S) 2010 u/s 629A read with section 297(1) of the Companies Act, 1956 which is pending at present before the Chief Judicial Magistrate, Shillong. Being aggrieved by the action of the respondent i.e. Registrar of Companies, the petitioner approached this Court by way of this instant petition praying for quashing the C.R. Case.

3. Learned counsel, Mr. D. Baruah assisted by Mr. K. Khan appearing for and on behalf of the petitioner submits that the petitioner entered into the contract for selling tea for which prior consent of the Central Government is not necessary as far as the exemption provided under the provisions of section 297(2)(a). He also further contended that the offence was not a continuous offence. It was a onetime contract besides that C.R. Case had been filed after lapse of limitation period. Therefore, the C.R. case in question has no legs to stand and need to be quashed.

4. The learned counsel in support of his submission relied on Section 297(1) as well as 629A of the Companies Act and also further relied on Section 468/469 and 473 of the Criminal Procedure Code. In reply, Mr. R. Debnath, learned CGC submits that the petitioner failed to substantiate his claim by any document. However, he agreed while moving the C.R. Case, no petition has been filed for condoning the delay.

5. It is true, on perusal of the proviso of section 297(1), that approval of the Central Government is necessary, however, the said section at sub-section (2)(a) make also a provision that will not attract in case of purchase of goods and materials from the company, or the sale of goods and materials to the company, by any Director, relative firm, partner or private company as aforesaid for cash at prevailing market prices. The petitioner's case is that they have sold tea to a company M/s. A.J. Tea House Private Ltd., wherein Mr. Jit Paul is one of the Directors and sold tea for a sum of Rs. 5.19 lacs since they have sold only the tea for cash. In my considered view, this case is covered by the provision (2)(a) of section 297 of the Companies Act, 1956 and in such case, prior approval of the Central Government is not necessary. Further, section 629A provides a penalty which is reproduced herein as under:

629 A. Penalty where no specific penalty is provided elsewhere in the Act. - If a Company or any other person contravenes any provision of this Act for which no punishment is provided elsewhere in this Act or any condition, limitation or restriction subject to which any approval sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to five thousand rupees, and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.

6. On bare perusal of the provision under 629 A, of the Companies Act, it is

apparent that when no specific provision is prescribed by this Act, or any other Act, in such a case, penalty will be fined only to the extent of Rs. 5000/- and if it is a continuous offence, further penalty will be imposed @ Rs. 500/- per day for each continuous offence. It is clear that the case falls within the parameter of fine. Besides that, the respondent also could not substantiate or advance any argument that the offence is a continuous offence. Further, Section 469 Cr.P.C. makes a provision that the commencement of limitation begins from the date of knowledge. Section 468 Cr.P.C. makes a provision for limitation for taking cognizance of the offence. On perusal of Section 468(2)(a) Cr.P.C., it appears that, a case is to be filed within six months, if the offence is punishable with fine only. In my earlier discussion, I have already stated that as far as 629A of the Companies Act, the case of the petitioner falls within the parameter of fine. If it is so, the court can take cognizance within six months, but here from the record, it appears that date of knowledge is 27.06.2008 and the C.R. Case bearing No. 192(S) 2010 has been filed on 05.03.2010. If it is so, definitely the court concerned has no power to take cognizance as it has already lapsed and barred by Section 468(2)(a) Cr.P.C.

7. It is also an admitted fact that there was no petition for extension of the period or condonation of delay. Therefore, I find that the petitioner has succeeded to establish his case and in the light of the above discussions, this court has no other way, but to invoke the power of Section 482 Cr.P.C. Accordingly, by invoking the power u/s 482 Cr.P.C., I hereby quash the proceedings of C.R. Case No. 192(S) 2010.

8. With these observations and directions, the instant petition is allowed and the matter stands disposed of. Registry to roll back Lower Court case record to the concerned court with a copy of this Judgment and Order.