(2009) 07 DEL CK 0119

In the Delhi High Court

Case No : Criminal M.C. 2637-40 of 2005

Seiko Brushware (India) and Others APPELLANT

Vs

Directorate of Revenue Intelligence and Another RESPONDENT

Date of Decision : 15-07-2009

Acts Referred:
Customs Act, 1962 — Section 132, 135

Citation : (2009) 07 DEL CK 0119

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : Aakash Aggarwal, for the Appellant; Satish Aggarwal, for the Respondent

Judgement

Mool Chand Garg, J.—In this matter, the controversy raised on behalf of the petitioner is that on the basis of a departmental adjudication holding that the petitioner was guilty of committing offences under the Customs Act, the petitioner was not only proceeded departmentally but a complaint was also filed on behalf of the second respondent u/s 132 and 135 of the Customs Act, 1962 and thereafter on the same day, Ld. ACMM, Patiala House, New Delhi, issued summons to the petitioner herein.

2. Subsequent to the original adjudication by the Enforcement Directorate, the petitioner filed a first appeal which was dismissed. However, in the second appeal filed by him before CESTAT, the petitioner was completely exonerated vide order dated 22.02.2005 of the offences alleged to have been committed in the original departmental adjudication.

3. In this manner, the basis on which the complaint has been filed by the second respondent stood nullified and therefore, in such kind of matters continuing criminal complaint is not justified. The said complaint is pending in the Court of ld. ACMM, Patiala House, New Delhi, instituted by the second respondent and therefore is liable to be quashed in exercise of the powers vested in this Court u/s 482 Cr.P.C.

4. The petitioner has relied upon the following judgments:

1) Arjun Amla v. Enforcement Directorate Crl.Rev.P.246/2007, decided on 13.03.2009

2) Ajay Gulati v. UOI Crl.M.C.1108 & 1109 of 2007, decided on 03.04.2008

3) Anil Mahajan v. UOI Crl.Rev.P.160/2007, decided on 05.02.2008

4) Medisphere Marketing Ltd. v. Inspector Custom Preventive Crl.M.C.541/2004, decided on 24.01.2008

5) Bihariji Mfg. Co. (P) Ltd. v. CCE Crl.M.C.938/2005 decided on 14.02.2007

6) Sunil Gulati v. R.K. Vohra Crl.M.C.2173/2004 decided on 20.12.2006

7) R.K. Goenka v. Collector of Customs Crl.M.C.1132/2002 decided on 02.09.2009.

5. On behalf of the respondents, the only submission made by the learned Counsel is that they have challenged the order passed in appeal before the Supreme Court by filing SLP which is still pending disposal and, therefore, the orders may not be passed for quashing of the complaint as it may create anomaly inasmuch as in case the second respondent succeeds before the Apex Court, it would become difficult to revive the complaint and to trace the petitioners and it may also lead to other complications.

6. Insofar as the law with regard to quashing of a complaint in such kind of situation, this Court has consistently held that once departmental adjudication exonerates the accused of the offences which are the basis of lodging a complaint against the accused/petitioners before a criminal Court u/s 135 Customs Act such complaints though could have been filed in view of the judgment delivered in the case of Standard Chartered Bank v. Andhra Bank Financial Survives Ltd. 2006 (6) SCC 1994; the complaint cannot be permitted to be tried further because once the department has no legs to stand with respect to the original cause of action, continuing criminal proceedings and prosecuting the accused in such like matters tantamounts to abuse of the process of Court and therefore such proceedings must come to an end. In this regard reference can be made to a judgment delivered by a learned Single Judge of this Court in the case of Sunil Gulati v. R.K. Vohra and Ors. 2007 1 JCC 220. where it has been held:

On the same violation alleged against a person, if adjudication proceedings as well as criminal proceedings are permissible, both can be initiated simultaneously. For initiating criminal proceedings, one does not have to wait for the outcome of the proceedings are independent in nature. The findings in the departmental proceedings would not, amount to re-judicata and initiation of criminal proceedings in these circumstances can be treated as double jeopardy as they are not in the nature of "prosecution".

In case adjudication proceedings are decided against a person who is facing prosecution as well and the Tribunal has also upheld the findings of the adjudicators/assessing authority, that would have no bearing on the criminal proceedings and the criminal proceedings are to be determined on its own merits in accordance with law, uninhibited by the findings of the Tribunal. It is because of the reason that insofar as criminal action is concerned, it has to be proved as per the strict standards fixed for criminal case before the criminal court by producing necessary evidence. In case of converse situation namely where the accused persons are exonerated by the competent authorities/Tribunal in adjudication proceedings, one will have to see the reasons for such exoneration to determine whether these criminal proceedings could still continue. If the exoneration in department adjudication is on technical ground or by giving benefit of doubt and not on merits or the adjudication proceedings were on different facts, it would have no bearing on criminal proceedings. If, on the other hand, the exoneration in the adjudication proceedings is on merits and it is found that allegations are not substantiated at all and the concerned person(s) is/are innocent, and the criminal prosecution is also on the same set of facts and circumstances, the criminal prosecution cannot be allowed to continue.

The reason is obvious criminal complaint is filed by the departmental authorities alleging violation/contravention of the provision of the Act on the part of the accused persons. However, if the departmental authorities, themselves, in adjudication proceedings, record a categorical and unambiguous finding that there is no such contravention of the provisions of the Act, it would be unjust for such department authorities to continue with the criminal complaint and say that there is sufficient evidence to foist the accused persons with criminal liability when it is stated in the departmental proceedings that ex facie there is no such violation. The yardstick would, therefore, be to see as to whether charges in the departmental proceedings as well as criminal complaint are identical and the exoneration of the concerned persons in the departmental proceedings is on merits holding that there is no contravention of the provisions of the any Act.

7. This Court also took a similar view in the case of The Printer House Pvt. Ltd. v. Nishi Singh 2009 (2) JCC 1279, wherein it has been held:

In view of the aforesaid once a departmental adjudication exonerates the petitioners on merits and there is a finding that there was no evasion of tax the question of culpable state of mind cannot be presumed and for that reason even the complaint filed by the petitioner which is based upon their original assumption would not survive.

8. In these circumstances even though the petitioner is entitled for quashing, but since the second respondent has approached the Supreme Court and the SLP filed by them is still pending, the matter is adjourned sine die awaiting further orders by the Apex Court with liberty to the parties to revive the present petition, if required.

Crl.M.A.5522/2009

The order dated 05.05.2009 is recalled to the extent of vacation of interim orders and the interim order granting stay of proceedings before the Trial Court are made absolute.

The application is disposed of.

