(1993) 10 MAD CK 0035

In the Madras High Court

Case No : Criminal Miscellaneous Petition No. 6600 of 1990

Sri Ambal Mills Ltd. APPELLANT

Vs

Assistant Collector of C. Ex., Coimbatore RESPONDENT

Date of Decision : 28-10-1993

Acts Referred:

Central Excises and Salt Act, 1944 — Section 9
Criminal Procedure Code, 1973 (CrPC) — Section 309, 482

Citation : (1995) 76 ELT 517

Hon'ble Judges : Pratap Singh, J

Bench : Single Bench

Advocate : Shri Jawahar Sundaram, for Mr. T.R. Rajagopalan, for the Appellant; Shri P. Rajamanikam, Central Govt. Public Prosecutor, for the Respondent

Judgement

1. This petition coming on for hearing upon perusing the petition and upon hearing the arguments of Mr. Jawahar Sundaram, Advocate for the Mr.

T. R. Rajagopalan and Mr. P. Rajamanikam, Central Government Public Prosecutor on behalf of the respondent, the court made the following

order :-

The accused in C.C. No. 5 of 1990, on the file of the Chief Judicial Magistrate, Coimbatore, have filed this Criminal Miscellaneous Petition u/s

482 of the Code of Criminal Procedure for quashing further proceedings in the said C.C. No. 5 of 1990.

2. The respondent has filed the complaint against the petitioners and another for offences punishable u/s 9(1)(ii) of the Central Excises and Salt

Act, 1944, read with Rules 9(2), 173Q and 210 of Central Excise Rules, 1944, for contravention of Rules 9(1), 52A, 53 and 173F of the said

Rules, on the following allegations : On 24-4-1987, the officers of the

Headquarters Preventive Unit, Coimbatore, made a surprise visit to the

accused-company. In a stock challenge conducted by them, they found the stable fibre yarn weighing 16,633 kilograms in double cross reel form

(DHCR). However, the yarn was entered in the statutory books as double hank plain reel (DHPR) yarn free of duty, whereas DHCR yarn attracts

duty. The Officers seized the stock of 16,633 kilograms DHCR yarn on the reasonable belief that the yarn was accounted as HDPR yarn in the

RG 1 register with the intention to evade payment of Central Excise duty.

3. In his statement dated 24-4-1987, the fifth-accused, the resident Director of the accused-company, had inter alia stated that the seized quantity

of 16,633 kilograms of DHCR yarn have been accounted as DHPR yarn in the RG 1 register, bale register of reeling register; that this practice

was followed from March, 1987 onwards. Enquiries were made with the yarn dealers. They have stated that they received only cross reel yarn

from the accused company and that they did not notice the description of yarn marked on the bales and that the price was uniform and that their

customers were only powerloom owners. From the above, it appeared that the accused-firm have contravened the provisions of Rules 9(1), 52A,

53 and 173F of the Central Excise Rules, 1944, inasmuch as they had removed DHCR yarn without payment of duty under improper gate pass

and maintained improper daily stock account. Show cause notices were issued to all the accused 1 to 8 and after receiving their replies, case was

adjudicated by the Collector of Central Excise, Coimbatore, in the proceedings dated 21-7-1988, confirming evasion of duty of Rs. 36,961.20 on

the DHCR yarn cleared during the period from 5-3-1987 to 24-4-1987 and Rs. 7,26,096.39 on the yarn cleared during the period from

September 1984 to 4-3-1987 and imposing a fine of Rs. 1,25,000/- and a combined penalty of Rs. 1,00,000/-.

4. The accused-firm had indulged in the manufacture and clearance of DHCR yarn by misdeclaring the same as DHPR yarn and thus evaded

payment of Central Excise duty and rendered themselves liable for punishment u/s 9(1)(ii) of the Central Excises and Salt Act, 1944, read with

Rules 9(2), 173Q and 210 of Central Excise Rules, 1944, for contravention of Rules 9(1), 52A, 53 and 173F of the said Rules.

5. Mr. Jawahar Sundaram, representing Mr. T. R. Rajagopalan learned counsel on

record for the petitioners, would submit that as against the

adjudication made by the Collector of Central Excise, Coimbatore, in proceedings dated 21-7-1988, the petitioners have filed an appeal before

the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi, and they also have filed application for stay of the order of Collector,

demanding Central Excise duty and the Tribunal had granted conditional stay and that the said condition was also complied with and as on today,

the entire recovery proceedings, pursuant to the order of the Collector of Central Excise stands stayed and in the circumstances, and the trial of the

case may be stayed till the disposal of the said appeal.

6. Per contra, Mr. P. Rajamanickam, learned standing counsel for the respondent, would submit that the criminal proceedings and the adjudication

before the Collector and the appeal therefrom are parallel proceedings, and that has nothing to do with this criminal proceedings.

7. Mr. Jawahar Sundaram, learned counsel for the petitioners relies upon Plasticraft Industries Vs. Assistant Collector of Central Excise, , in which

this Court had held that the proceedings can be stayed before the Tribunal, if appeal and prosecution are on identical issues. While laying the said

ruling, my learned brother Justice T. S. Arunachalam had observed as follows :

The Supreme Court in catena of decisions has held that the pendency of an appeal before the appellate authorities against adjudication

proceedings would not be a bar for the criminal proceedings to be proceeded with, since the Criminal Court will have to decide the issues arising

out of the criminal proceedings on the evidence let in before the Criminal Court independently.

The learned Judge has further observed as follows :-

However, it may be that in an appropriate case the Criminal Court may adjourn or postpone the hearing of a criminal case in exercise of its

discretionary power u/s 309 of the Criminal Procedure Code, if the disposal of any proceeding under the Act which has a hearing on the

proceedings before it is imminant so that it may take also into consideration the order to be passed therein. Even here the discretion should be

exercised judicially and in such a way as not to frustrate the object of the Criminal proceedings. There is no rigid rule which makes it necessary for

a criminal court to adjourn or postpone the hearing of a case before it indefinitely or for an unduly long period, only because some proceedings

which may have some bearing on it is pending elsewhere.

However, on the facts of that case, the learned Judge has directed stay of the proceedings for six months.

8. Mr. T. Rajamanickam, learned standing counsel for the respondent, would rely upon an unreported ruling rendered by me in M/s. Ajantha

Biscuit Company and others v. The Assistant Collector of Central Excise, Madurai [Order dated 6-9-1991 in Crl. M.P. No. 13477 of 1989],

wherein I have held that the proceedings cannot be quashed because of the order of the Appellate Collector. He also relied upon an unreported

ruling rendered by me in M/s. Anderson Pharmaceuticals and another v. Assistant Collector of Central Excise (Legal), Madurai [Order dated 2-9-

1991 in Crl. M.P. No. 16889 of 1989], wherein a similar view was taken. He further relied upon a decision reported in N. Jayathilakan Vs.

Additional Secretary, , in which this Court had taken a similar view.

9. The gravaman of the offence punishable u/s 9(1)(ii) of the Central Excises and Salt Act, 1944 is evasion of duty. Relevant allegations in this

regard are made at page 2 and in the last paragraph at page 3 of the complaint. The relevant portion in the last paragraph of page 3 reads as

follows :

From the above, it appeared that the accuses firm have contravened the provisions of Rules 9(1), 52A and 173F of Central Excise Rules, 1944,

inasmuch as they had removed DHCR yarn without payment of duty under improper gate pass and maintained improper daily stock account.

The penultimate paragraph, which is also relevant, reads as follows :

The complainant, therefore, states that the accused firm has indulged in manufacture and clearance of DHCR yarn by misdeclaring the same as

DHPR yarn and thus evaded payment of Central Excise duty and thus rendered themselves liable for punishment u/s 9(1)(ii) of the Central Excises

and Salt Act, 1944......

From the above, it would be clear that the adjudication made by the Collector has nothing to do with the criminal proceedings, which has been

independently referred to. So, even if the appeal is allowed by the Tribunal, it may not have any relevance with regard to the conduct of the criminal proceedings.

10. In view of the above, I am unable to accept the submission made by Mr. Jawahar Sundaram. This petition based on that submission fails and

shall stand dismissed.