

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Appellant No.325 OF 2010

Between:

The Deputy Commissioner (legal)
Customs & Central Excise,
Hyderabad-IV Commissionerate,
Hyderabad, rep. by Spl. Public Prosecutor,
Hyderabad. ...Appellant

And

M/s.Saachi Textiles Pvt. Ltd.,
and another. ... Respondents

DATE OF JUDGMENT PRONOUNCED: 01.11.2022

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 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 |

K.SURENDER, J

* THE HON'BLE SRI JUSTICE K. SURENDER

+ CRL.A. No. 325 of 2010

% Dated 01.11.2022

The Deputy Commissioner (legal)
Customs & Central Excise,
Hyderabad-IV Commissionerate,
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! **Counsel for the Appellants:** Sri A.Rajsekhar Reddy.

^ **Counsel for the Respondents:** Sri B.Chandrasen Reddy,
Learned Senior Counsel

> **HEAD NOTE:**
? **Cases referred**

¹ (2013) 11 supreme court Cases 688

THE HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No. 325 OF 2010****JUDGMENT:**

This Criminal Appeal is filed by the Appellant/Complainant aggrieved by the acquittal recorded by the Metropolitan Sessions Judge, Hyderabad, in CrI.A.No.385/2008 dt.02.06.2009 whereby the learned Sessions Judge set aside the conviction and the sentence passed by the Special Judge for Economic Offences at Hyderabad in C.C.No.6 of 2000 dt.27.11.2008, convicting the accused under Sections 9(1)(b) and 9(1)(bb) read with Section 9-AA of Central Excise Act.

2. Heard both sides and perused the record.
3. The appellant-Deputy Commissioner of Customs and Central Excise, Hyderabad filed a complaint against the respondents alleging violation of Sections 9(1)(b) and 9(1)(bb) read with Section 9-AA of Central Excise Act.
4. The case of the appellant/complainant is that the 1st respondent Company are manufacturers of polyester textured yarn and twisted yarn and fall within the ambit of Central Excise Tariff Act, 1985. It was found by the complainant that the

respondents were procuring raw material on fictitious names and using them for manufacture of finished goods resulting in evasion of Central Excise Duty. On 11.10.1996, the Central Excise Officers physically verified the premises of Accused No.1 company and having gone through the books maintained and also the stocks available found discrepancies in textured yarn goods and twisted yarn goods which were in excess and some of the textured yarn was in shortage. Thereafter, proceedings were conducted in the factory premises and also residential premises of Accused No.2. All the relevant material was seized. It was found that Accused No.1 has declared their values during 199-1997 as 3,64,68,404/- and concessional rate of duty benefit was not available to those manufacturers whose value of clearances exceeds 300 lakhs during preceding financial year. For the said reason A1 was required to pay differential duty of Rs.6,25,000/- as BED and Rs.93,750/- as AED, accordingly, show cause notices were issued.

5. On 28.11.1997, the Commissioner of Customs and Central Excise, confirmed the duty of Rs.1,01,17,322/- as BED and Rs.15,17,598/- as AED under Central Excise Rules and

confiscated the textured yarn weighing 1339.59 Kgs. and twisted yarn weighing 871.80 kgs.

6. It is the case that Accused No.1 company managed by Accused No.2, deliberately and willfully suppressed the acquisition, manufacture and clandestinely moved excisable goods without payment of duty. For the said reason the acts resulted in evasion of Central Excise Duty as stated above which are punishable under the provisions of Section Sections 9(1)(b) and 9(1)(bb) read with Section 9-AA of Central Excise Act and also violation of Central Excise Rules, 1944.

7. The learned Special Judge for Economic Offences by Judgment dated 27.11.2008 in C.C.No.6 of 2000 found both the respondents guilty of the offences and convicted them. However, on appeal by the respondents, the learned Sessions Judge found that the respondents were guilty for the offences alleged, however, it was not open for the complainant to launch prosecution proceedings or to continue the prosecution proceedings against the respondents, having regard to Ex.D8 which is appeal order dt.28.02.2006 and also in view of Ex.D6- a confidential circular issued by the Department, dt.04.04.1996. Exs.D6 and D7 are the circulars of the Central Excise

Department which are not disputed by PW1, which are the circulars issued framing guidelines for launching prosecution under Central Excise Act, 1944 and enhancement of monetary limit which prescribed for launching prosecution was 25 lakhs prospectively from 12.12.1997. Ex.D7 is another circular dt.04.04.1994 issued clarifying guidelines for prosecution under the Central Excise Act, 1944, that before launching any prosecution it is necessary that the Department should have evidence to prove that the person, company or individual had guilty knowledge of the offences and had fraudulent intention to commit the offence in any manner which indicates *mens rea*. Further, Ex.D7 also contains guidelines for withdrawing prosecution which were improperly initiated.

8. The learned Sessions Judge further found that as claimed by the Special Public Prosecutor Exs.D6 and D7 though are in-house circulars, the complainant is estopped from putting forward any contention contrary to Ex.D6. Further, in relation to the prosecution, it is not open to the complainant to pick and choose on his whims and fancies irrespective of the monetary limit mentioned in Ex.D6 as it amounts to discrimination and forbidden by the Constitution of India.

9. Sessions Judge found that the ultimate duty payable as per Ex.D8-final order passed by the CESTAT (Customs Excise and Service Tax Appellate Tribunal), BED payable by Accused No.1 comes to Rs.17,74,021/- and AED payable by A1 comes to Rs.1,98,848/-, and the total being Rs.19,72,869/- which amount is below the monetary limit for launching prosecution as per Ex.D6.

10. The learned Special Public Prosecutor appearing for the appellant/complainant Sri A.Rajashekar Reddy, argued that the findings of the trial court punishing the accused for the offences alleged are correct and the Appellate Sessions Court has misinterpreted the circulars and has come to an erroneous conclusion that the duty imposed on accused is less than Rs.25 lakhs. In the CESTAT order dt.28.06.2006 which is Ex.D8, the Special Counsel submits that the said Tribunal has not reduced the payment of Rs. 1.16 crores, but upheld the demand confirmed by the adjudicating authority. However, the adjudicating authority permitted the accused to adjust benefit of CENVAT (Central Value Added Tax) credit of about Rs.96.00 lakhs. Permitting the CENVAT credit does not reduce the demand but gives the accused a choice to pay part of the duty

demanding by utilizing the credit. However, the total demand of duty and confiscation were upheld by the Tribunal but reduced the penalties.

11. Though, CESTAT had decided the issue, ultimately it has reduced the penalties and when the amounts payable are concerned, Accused No.1-Company is liable to pay Rs. 17,74,021/- towards BED and Rs.1,98,848/- towards AED totaling to Rs. 19,72,869/-. Ex.D6 which is a confidential circular enhancing the monetary limit for launching prosecutions to Rs.25 lakhs is not disputed. The said enhancement of monetary limit was prospective in nature and squarely applicable to the benefit of the appellant in the present facts and circumstances as discussed above.

12. The Hon'ble Supreme Court in the case of **Radhakrishna Nagesh v. State of Andhra Pradesh**¹ held that under the Indian criminal jurisprudence, the accused has two fundamental protections available to him in a criminal trial or investigation. Firstly, he is presumed to be innocent till proved guilty and secondly that he is entitled to a fair

¹ (2013) 11 supreme court Cases 688

trial and investigation. Both these facets attain even greater significance where the accused has a judgment of acquittal in his favour. A judgment of acquittal enhances the presumption of innocence of the accused and in some cases, it may even indicate a false implication. But then, this has to be established on record of the Court.

13. This Court does not find any illegality in the orders of the learned Sessions Judge for relying upon Exs.D6, D7 and also D8 and finding that the benefit ought to have been extended to the appellants, the same cannot be held to be improper or not based on record.

14. Accordingly, the Criminal Appeal fails and dismissed.

As a sequel thereto, miscellaneous applications pending, if any, shall stand closed.

K.SURENDER, J

Date: 01.11.2022

Note: LR copy to be marked

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THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL NO. 325 OF 2010

Dt. 01.11.2022

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