

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

Criminal Petition No.6826 OF 2016

Between:

Stackline Systems Private Ltd & other

... Petitioners/Accused

And

Deputy Commissioner (legal),
Customs, Central Excise and Service Tax,
Hyderabad-I Commissionerate, Hyderabad
Represented by the Special Public Prosecutor,
Customs and Central Excise, Hyderabad.

...Respondent/Complainant

DATE OF JUDGMENT PRONOUNCEMENT: 20.10.2023

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 their fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.P. No. 6826 of 2016

% Dated 20.10.2023

Stackline Systems Private Ltd & other

...Petitioners/Accused

And

\$ Deputy Commissioner (legal),
Customs, Central Excise and Service Tax,
Hyderabad-I Commissionerate, Hyderabad
Represented by the Special Public Prosecutor,
Customs and Central Excise, Hyderabad.

... Respondent/Complainant

! Counsel for the Petitioners: Sri Ch. Pushyam Kiran

^ Counsel for the Respondents: Sri Domnic Fernandes
&
Gadi Praveen Kumar

>HEAD NOTE:

? Cases referred

1. (1997) 7 Supreme Court Cases 622
2. 2023 SCC Online SC 269
3. (2015) 14 Supreme Court Cases 186

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.6826 of 2016****ORDER:**

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') by the petitioners/Accused, to quash the proceedings against them in CC.No.32/2015 on the file of Special Judge for Economic Offences at Hyderabad. The offence alleged against the petitioners are under Section 9 of the Central Excise Act, 1944.

2. Heard learned Counsel for the petitioners and Sri Dominic Fernandes, learned Special Senior Standing Counsel for the respondent.

3. The Deputy Commissioner (Legal) of Central Excise and Service Tax, filed a complaint before the Special Judge for Economic Offences alleging that the 1st petitioner represented by the 2nd petitioner who is the Managing Director, evaded Central Excise duty in the guise of trading of Modular Furniture, falling under the heading 9403 of the first schedule to the Central Excise Tariff Act, 1985, even after crossing the threshold exemption limit prescribed under notification No.8/2003-CE, dated 01.03.2003, as such liable under Section 9 of the Central Excise Act, 1944.

The period of offence was during the year 2005-2006. The said fact was known to the agency, when the officers of the Central Excise (Hyd-1) Commissioner visited the factory premises of Accused No.1 on 20.02.2008 and scrutinized the records of the company. It was found that the 1st petitioner company maintained records with respect to production of finished goods, receipt and usage of raw material and they had not paid duty on the clearances made during the financial year 2005-2006 over and above the limit of Rs.1 crore as specified in the notification dated 01.03.2003. Resultantly, non-payment of duty was to an extent of Rs.32,29,153/- on the valuation of Rs.1,97,86,473/-.

4. The petitioners aggrieved by the show-cause notice and thereafter the Commissioner passing an order on 24.06.2011, confirming the show-cause notice, filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) passed order dated 16.09.2011 waiving 50% of the amount confirmed in the original, directing the petitioner to deposit remaining 50% on or before 22.10.2011.

5. A letter dated 01.07.2014 was addressed to the Chief Commissioner, Customs & Central Excise, Hyderabad Zone, Hyderabad, requesting approval for launching prosecution. Along

with the said letter of the Commissioner dated 01.07.2014, Investigation Report dated 24.06.2011 was also filed. According to the Investigation Report, the petitioner evaded Central Excise Duty in the guise of trading of Modular Furniture. The office note was put up on 17.07.2014. In the said office note it is mentioned that Prosecution against the petitioner company may be sanctioned since it is a case of serious nature and there is sufficient evidence to prove fraudulent intention. Further, the notes are to the effect that there was penalty of Rs.5,000/- imposed against the 2nd petitioner who is the Managing Director and no proposal for prosecution of the Managing Director was suggested as the said penalty was set aside by the Commissioner (Appeals) vide OIA 89 & 90/2011 (H-I) CE, dated 14.11.2011. The proposal for launching prosecution submitted by the Hyderabad-1, Commissioner was put up for perusal and approval on 31.07.2014.

6. Thereafter, a letter was addressed to the Commissioner, Customs and Central Excise, Hyderabad-1 by the Assistant Commissioner Sri K.Chandra Sekhar vide letter dated 1.08.2014 which reads as follows;

“ Please refer to your letters O.R.No.108/2010-Hyd.1.Adj, dated 01.07.2014 and 25.07.2014, wherein proposal for

launching prosecution against M/s.Stackline Systems Private Limited was submitted to this office.

2. The Chief Commissioner of Customs, Central Excise & Service Tax, Hyderabad Zone, has accorded administrative approval for launching prosecution against M/s.Stackline Systems Private Limited, Islampur Village, Toorpan Mandal, Medak District as proposed by the Commissioner of Customs & Central Excise, Hyderabad-1 Commissionerate, Hyderabad in respect of the order in Original No.22/2011-(C.E.) dated 24.6.2011.

3. Necessary prosecution proceedings may please be initiated against the above mentioned firm immediately and the date of filing of criminal complaint may be intimated to this office at an early date.

7. The learned Counsel appearing for the petitioners would submit that the Prosecution is bad in law since no proposal was made for prosecuting the second petitioner. Further, the sanction orders were not filed along with the complaint.

8. Sri Domnic Fernandes, Learned Senior Standing Counsel appearing for the respondent/complainant, would submit that letter dated 01.08.2014 along with the letter of Commissioner-S.N.Saha dated 01.07.2014 and the note which was put up seeking sanction, would suffice to prosecute the petitioners. It is clearly mentioned in the complaint and also in the letter that the

Chief Commissioner has accorded administrative approval for launching prosecution against the 1st petitioner. In accordance with the Circular No.1009/16/2015-CX an order conveying the sanction issued by the sanctioning authority and forwarded to the Commissionerate concerned for appropriate action would suffice. The said letter dated 01.08.2014 and the other communication is the 'sanction' that was required for prosecution and there are no separate sanction orders.

9. Having gone through the circular No. 1009/16/2015-CX, dated 23.10.2015, the relevant provisions to sanction prosecution are as under:

“5. Authority to sanction prosecution

5.1) The Criminal complaint for prosecuting a person should be filed only after obtaining the sanction of the Principal Chief/Chief Commissioner of Central Excise or Service Tax as the case may be.

5.2) In respect of cases investigated by the Directorate General of Central Excise Intelligence (DGCEI), the criminal complaint for prosecuting a person should be filed only after obtaining the sanction of Principal Director General/Director General, CEI.

5.3) An order conveying sanction for prosecution shall be issued by the sanctioning authority and forwarded to the Commissionerate concerned for taking appropriate action for expeditious filing of the complaint.”

10. In clause-5 of the aforesaid circular, it is specifically mentioned that a criminal complaint can be filed only after obtaining the sanction of the Chief Commissioner of Central Excise. In the present case, admittedly there is no sanction order which was issued by the Chief Commissioner of Central Excise. A letter addressed by the Assistant Commissioner informing that the Chief Commissioner had accorded administrative approval for launching prosecution, will not suffice and it cannot be said that such communication would amount to sanction accorded by the Chief Commissioner of Customs.

11. Any sanction required to be issued by a specified authority which would be the competent authority, the documents pertaining to the case have to be examined by such competent authority and proceedings have to be issued by giving reasons as to why prosecution has to be launched. A duty is cast upon the competent authority to apply its mind to the facts of the case to grant sanction. A statute requiring sanction to be made is for the purpose of ensuring that criminal prosecution is not launched vexatiously or improperly or in a routine manner or when no offence is made out. The competent authority has to shoulder responsibility of scrutinizing the available material and record its

satisfaction to criminally prosecute a person. The grant of sanction was described as a solemn and sacrosanct act by the Honourable Supreme Court in various Judgments.

12. The Honourable Supreme Court in ***Mansukhlal Vithaldas Chauhan v. State of Gujarat***¹ held that whether a sanction is valid would depend upon the material placed before the sanctioning authority. Grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act.

13. Similar view was taken by the Honourable Supreme Court in ***S.Athilakshmi v. State rep. by the Drug Inspector***² and in ***Nanjappa v. State of Karnataka***³.

14. The prosecution instituted without a proper sanction would fail since the proceedings would be void for want of a valid sanction. The Court cannot take cognizance of an offence until pre-requisite of sanction is fulfilled by the prosecution and filed before the Court.

15. In the present case, except the office communication dated 01.08.2014, there is no separate sanction order which is accorded

¹ (1997) 7 Supreme Court Cases 622

² 2023 SCC OnLine SC 269

³ (2015) 14 Supreme Court Cases 186

by the Chief-Commissioner. A mere letter conveying that the Chief Commissioner had accorded administrative approval for launching criminal prosecution cannot be a valid document to launch prosecution against the petitioners.

16. Clause-6.7 of the Circular;

“6.7)A criminal complaint in a court of law should be filed by the jurisdictional Commissionerate only after the sanction of the Principal Chief/Chief Commissioner or Principal Director General/Director General of DGCEI has been obtained.

6.9) Once the sanction for prosecution has been obtained, criminal complaint in the court of law should be filed as early as possible by an officer of the jurisdictional Commissionerate authorized by the Commissioner.

6.10).....It shall be the responsibility of the officer who has been authorized to file complaint, to take charge of all documents, statements and other exhibits that would be required to be produced before a Court.”

17. It is specifically mentioned that i) Sanction has to be obtained and ii) An offence has to be ‘authorized’ by Commissioner.

18. The letter dt.01.08.2014 which the Special Standing Counsel for respondent, claims to be a sanction order does not reflect that

any person was authorized to file a complaint. The said aspect is also an infirmity in launching the prosecution. Even in the complaint, it is mentioned that sanction was granted vide letter dated 01.08.2014. No authorization is filed to show that the 'Deputy Commissioner (legal)' was authorized to file complaint.

19. For the aforesaid reasons, since there is no valid sanction as required, the proceedings against the petitioners in CC.No.32/2015 on the file of Special Judge for Economic Offences at Hyderabad, are hereby quashed.

20. Accordingly, the Criminal Petition is allowed.

Miscellaneous applications pending, if any, shall stand closed.

K.SURENDER, J

Date: 20.10.2023

Note: L.R. copy to be marked.

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THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.6826 of 2016

Dt. 20.10.2023

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