Baccarose Perfumes And Beauty Products ... vs Central Bureau Of Investigation on 6 September, 2024

Author: Abhay S. Oka

Bench: Abhay S. Oka

2024 INSC 662

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 3216 OF 2024

BACCAROSE PERFUMES AND BEAUTY PRODUCTS PVT. LTD …APPELLANT

VERSUS

CENTRAL BUREAU OF INVESTIGATION & ANR. … RESPONDENTS

J U D G M E N T

AUGUSTINE GEORGE MASIH, J.

1. The Appellant (hereinafter referred to as “Appellant-Company”) is assailing the Order dated 15.09.2023, wherein the High Court of Gujarat dismissed the Criminal Revision Application No. 783 of 2017 (hereinafter referred to as “CRA No. 783 of 2017”) moved under Section 397 read with Section 401 of Code of Criminal Procedure, 1973 (hereinafter referred to as “CrPC 1973”) against the rejection of discharge application moved by the Appellant-

Company. The said application was dismissed by the learned Special Judge (CBI) at Ahmedabad (hereinafter referred to as “Special Judge”) vide Order dated 19.07.2017.

2. It is alleged by the Central Bureau of (hereinafter referred to as “Respondent- Agency”), that the Appellant-Company had entered into a criminal conspiracy with Shri Yogendra Garg, Joint Development Commissioner, Kandla Special Economic Zone, Kandla (hereinafter referred to as “KASEZ”), and Shri V.N. Jahagirdar, Deputy Commissioner of Customs, KASEZ, between the period from March 2001 to August 2004. It is alleged that the latter officials perverted their official positions and allowed the Appellant-Company to clear its goods into the Indian Market on payment

of Countervailing Duty (hereinafter referred to as "CVD") on the invoice value of the concerned goods, rather than the payment of the CVD on the Maximum Retail Price (hereinafter referred to as "MRP") of the said goods, thereby causing a wrongful gain to themselves and a corresponding wrongful loss to the Government exchequer to the tune of INR 8,00,00,000/- (Rupees Eight Crores only).

3. Before pursuing the aftermath of the allegations by the Respondent-Agency, it is crucial to delve into the backdrop in which the allegations arose against the Appellant-Company.

4. The Appellant-Company claims to be a private limited company duly incorporated under the Companies Act, 1956, which is engaged in manufacturing and exporting of cosmetics and toilet preparations and having one of its units in KASEZ. As per the Appellant-Company, its products get cleared from the KASEZ Unit into the Domestic Tariff Area (hereinafter referred to as "DTA") in consonance with the necessary permissions granted to it by the appropriate authority. It is its case that it had effected the following three kinds of clearances from its KASEZ Unit into the DTA, being (a) Clearances of goods weighing or containing less than 20 gram or 20 millilitre, (b) products containing alcohol, and (c) other goods in "Wholesale Packs".

5. From August 2004 onwards, Officers of the Kandla Customs (hereinafter referred as "Revenue Authorities") moved against the Appellant-Company, alleging that they had escaped payment of CVD on the aforementioned clearances on account of non-disclosure of MRP as per the provisions of the Standards of Weights and Measures Act, 1976 (hereinafter referred to as "SWM Act 1976") as they had declared only the invoice value of the said goods. This was a violation of the proviso to Section 3(2) of the Customs Tariff Act, 1975 (hereinafter referred to as "CT Act 1975") read with Section 4A(2) of the Central Excise Act, 1944 (hereinafter referred to as "CE Act 1944"), and on the said ground, goods being cleared by the Appellant-Company into the DTA were intercepted. The Revenue Authorities issued Show Cause Notices dated 03.11.2004, 10.11.2004, and 10.02.2005 (along with Corrigendum dated 11.03.2005) under Section 28 of the Customs Act, 1962 (hereinafter referred to as "CA 1962"), under Section 11A of the CE Act 1944, and under Section 124 of CA 1962 respectively.

6. Thereafter, pursuant to the said allegation based on source information to Respondent- Agency, First Information Report bearing number RC-6(A)/2005-GNR under Section 120B read with Section 420 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC 1860") and Section 13(1)(d) of the Prevention of Corruption Act, 1998 (hereinafter referred to as "PCA 1998") was registered on 04.04.2005 at Gandhinagar branch of Respondent-Agency (hereinafter referred to as "the FIR"). A raid is also claimed to have been conducted on the KASEZ Unit of the Appellant-Company by the Respondent-Agency.

7. Eventually, Assessment Orders were passed observing the non-declaration of MRP on the concerned goods by the Appellant-Company. These Assessment Orders were assailed by the Appellant-Company before the Commissioner of Customs (Appeals), Kandla by filing of appeals, which resulted in the passing of Orders dated 09.05.2005 and 30.06.2005. The Commissioner of Customs (Appeals), Kandla observed that the concerned goods were ought to be assessed under

Section 3(2) of the CT Act 1975 as opposed to the proviso to the said provision. Furthermore, declaration of MRP is necessary on packages intended for retail sale and not for bigger packages for wholesale trade. The Revenue Authorities were directed to consider the case of the concerned goods of the Appellant-Company afresh in light of the observations made in the said Orders.

8. In the meanwhile, a clarification was sought from the Office of the Collector of Legal Metrology and Director of Consumer Affairs by the Appellant-Company in the said regard and it was responded vide Letter dated 04.01.2006 wherein, the view taken by the Appellant- Company by placing reliance on Rule 29 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (hereinafter referred to as "Packaged Commodities Rules 1977") was affirmed.

9. Placing reliance on the Letter dated 04.01.2006 and other materials on record, the Appellant-Company moved three applications before the Settlement Commission and immunity was granted to it under the CE Act 1944, CA 1962, and IPC 1860 vide Common Order No. 248/Final Order/CEX/KNA/2007 dated 21.08.2007.

10. The Investigation Officer, thereafter, was pleased to move a Closure Report dated 05.03.2008 before the learned Special Judge. The Court, however, rejected the said Closure Report vide order dated 01.06.2010, and instead directed for registration of a Special Case against the accused persons, including the Appellant-Company. This case came to be registered as CBI Special Case No. 48 of 2010.

11. The Appellant-Company moved the High Court of Gujarat by filing a Special Criminal Application challenging the above Order which was dismissed on 12.12.2011. Aggrieved, the Appellant-Company moved this Court through filing of Special Leave Petition (Criminal) No. 14430 of 2013. This Court was pleased to condone the delay in filing, but while dismissing the petition vide Order dated 26.07.2013 observed that only cognizance had been taken by the learned Special Judge and directed issuance of summons to the Appellant-Company, and thereby, it was not an appropriate stage to interfere. However, liberty was granted to the Appellant-Company to pursue and plead for discharge at the time of hearing of charges.

12. In pursuance of the said liberty, the Appellant-

Company moved an application for discharge before the learned Special Judge. One of the grounds was that the Appellant-Company had been granted immunity under the CE Act 1944, CA 1962, and IPC 1860 through Order dated 20.08.2007 passed by the competent authority, i.e., the Settlement Commission and pressed into service the observations made by this Court in General Officer Commanding, Rashtriya Rifles v. CBI1 and Another, Jamuna Singh and Others v. Bhadai Shah2, and Devarapalli Lakshminarayana Reddy and Others v. V. Narayana Reddy and Others3 to the effect that mere filing of FIR with the police, which is subsequently forwarded to the Court, does not amount to institution of prosecution. Furthermore, that the Appellant- Company is not a "public servant" vis-à-vis Section 13(1)(b) read with Section 13(2) of the PCA 1998. Besides this, the Court had already refused to accept contentions of the Respondent-Agency against Shri Yogendra Garg for sanction under Section 197 of the CrPC 1973, and henceforth, the Appellant- Company cannot be

prosecuted alone for the charge under Section 120B of IPC 1860, and it finally put forth that the offences under Section 1 (2012) 6 SCC 228 2 1963 SCC OnLine SC 263 3 (1976) 3 SCC 252 420 read with Section 120B of IPC 1860 are not made out as against the Appellant.

13. The learned Special Judge, however, disagreed Company and dismissed the said application vide Order dated 19.07.2017. To substantiate its dismissal, the Court with reference to the CE Act 1944, observed that as per Section 4A(1), it transpires that the retail price of the concerned goods is to be declared, which through reliance on Circular dated 01.03.2001 and the concerned provisions of law, is interpreted as declaration of MRP.

14. It is against the said Order dated 19.07.2017 that the Appellant-Company had moved the High Court of Gujarat in CRA No. 783 of 2017 which eventually led to the passing of the Impugned Order dated 15.09.2023. During the pendency of the CRA No. 783 of 2017, the High Court of Gujarat stayed further proceedings before the Special Judge while issuing notice to the Respondent-Agency vide Order dated 18.08.2017. It was brought to the attention of the High Court that the Appellant-Company had paid a total of INR 1,51,45,378/- (Rupees One Crore Fifty One Lakhs Forty Five Thousand Three Hundred and Seventy Eight only) during the investigation by the Revenue Authorities and admittedly, in light of the Orders dated 09.05.2005 and 30.06.2005, the Appellant-Company had become entitled to a refund instead.

15. While passing the Impugned Order dated 15.09.2023, the High Court of Gujarat disagreed with the contentions of the Appellant-Company, and affirmed the contentions of the Respondent-Agency.

16. It is in this backdrop that the Appellant-

Company moved this Court in Special Leave Petition (Civil) No. 13422 of 2023 by reiterating its earlier contentions. On the first date of hearing, our attention was drawn to the Order dated 09.05.2005 of the Office of Commissioner of Customs (Appeals) which had directed that the matter be remanded to the assessing authority for fresh assessment. No further development is there in the case of the Appellant-Company. Accordingly, vide Order dated 16.10.2023, proceedings before the Trial Court were stayed. The Respondent-Agency, too, filed their contentions as part of its Counter Affidavit dated 19.04.2024.

17. Having heard the counsels for both the parties at length, it is pertinent to consider the concerned provisions of law before we delve into the legal and factual facet.

18. Predominantly, the argument of the Appellant-

Company pertained to having been granted immunity by Settlement Commission vide Order dated 20.08.2007 as per Section 32K of the CE Act 1944. A perusal of the powers of the Settlement Commission leads us to equivalent provision under the CA 1962 through Section 127H. Both the provisions are pari materia to each other and bear the same text. These sections provide for an explicit bar from prosecution on grant of immunity in cases where the proceedings for any offence have been instituted subsequent to the date of receipt of the application seeking such immunity

under the relevant law.

19. A perusal of the scheme of the CrPC 1973 allows us to infer that mere registration of FIR cannot be interpreted to mean that it constitutes the initiation of such proceedings. A registration of FIR necessitates an investigation by a competent officer as per the detailed process outlined in Sections 155 to

176. It is only after a Final Report (or as referred in the common parlance, a Challan or a Chargesheet) is submitted as per the compliance of Section 173(2) of CrPC 1973, cognizance for the offence(s) concerned is taken. However, undoubtedly, the Court is not bound by the said report.

The cardinal principle that investigation and taking of cognizance operate in parallel channels, without an intermingling, and in different areas was also laid down by this Court in H.N. Rishbud v. State (Delhi Admn.)4 and 4 (1954) 2 SCC 934 further elaborated and reiterated in Abhinandan Jha and Others v. Dinesh Mishra5 and State of Orissa v. Habibullah Khan6.

20. In Hira Lal Hari Lal Bhagwati v. CBI, New Delhi7, even though the subject matter of the dispute pertained to Kar Vivad Samadhan Scheme, 1998 (hereinafter referred to as "KVSS 1998"), the observations of this Court came to the rescue of the Assessee-Company therein. As per the said factual matrix, the case of the Assessee-Company therein was settled under the KVSS 1998 on 10.02.1999 by the Designated Authority and as per the terms of the settlement, the Assessee-Company therein withdrew the appeal before this Court on 16.03.1999 and a certificate for full and final settlement was issued on 19.07.1999. Despite that, on 06.01.1999, a case was registered as against the Appellant therein in capacity as the office bearer of the Assessee-Company. It was 5 1967 SCC OnLine SC 107 6 2003 SCC OnLine SC 1411 7 (2003) 5 SCC 257 held by this Court that continuation of such a prosecution would be inconsistent with the intent and provisions of the law. The Appellant therein was also obliged to withdraw the appeal before this Court, which might have had also impacted the merits of the criminal proceedings as against them.

21. The above ratio, as laid down by this Court, would be fully applicable to the case-at-hand, especially when it is not in dispute that the Commissioner of Customs (Appeals), Kandla returned a finding that the Appellant-Company was not required to pay the CVD on the basis of MRP, but as per the invoice value. This is in consonance with the submission of the Appellant-Company.

On remand to the Assessing Authority for decision afresh on the liability, it had observed that the Appellant-Company was entitled to a refund of INR 1.39 Crores out of the INR 1,51,45,378/- (Rupees One Crore Fifty One Lakhs Forty Five Thousand and Three Hundred Seventy Eight only) paid by it to the Revenue Authorities as per the demand made earlier for the purpose of clearance of the concerned goods. This position is also admitted by the Respondent-Agency in its Counter Affidavit dated 19.04.2024. Moreover, the said Order was never challenged by the Revenue Authorities, and has, thus, attained finality.

22. Furthermore, the Appellant-Company had successfully claimed immunity from prosecution under the CA 1962, CE Act 1944, and IPC 1860 vide Order dated 21.08.2007. In such a

circumstance, there was no fiscal liability on the Appellant-Company, and accordingly, the Order dated 01.08.2010 passed by learned Special Judge, taking cognizance against the Appellant-Company, ought not to have sustained. As the very basis of the allegation of offence against the Appellant-Company was found to be non- existent, it would have amounted to misuse rather abuse of the process of law. It may be added here that the prosecution sanction as sought against the officials of KASEZ, who were said to have committed the offences under PCA 1988, stood declined. In the light of this additional fact, the application for discharge, as moved by the Appellant-Company, ought to have been accepted by the learned Special Judge.

23. In light of the above, the present Appeal is allowed. The proceedings against the Appellant-Company are quashed by setting aside the Impugned Order dated 15.09.2023 passed by the High Court of Gujarat in CRA No. 783 of 2017 and the Order dated 01.06.2010 passed by the Special Judge in RC6(A)/2005.

24. Pending applications, if any, stand disposed of.

..... J.

(ABHAY S. OKA) .....J. (AUGUSTINE GEORGE MASIH) NEW DELHI;

SEPTEMBER 06, 2024.