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**Lalit Goel Vs. Commissioner of Central Excise**

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**SooperKanoon Citation** : sooperkanoon.com/714839

**Court** : Delhi

**Decided On :** Nov-02-2007

**Reported in** : 148(2008)DLT575; 2008(224)ELT216(Del)

**Judge** : Shiv Narayan Dhingra, J.

**Acts** : Customs Act, 1962 - Sections 132 and 135(1); Code of Criminal Procedure (CrPC) - Sections 439; Central Excise Act, 1944 - Sections 9(1)(C); Custom and Central Excise Compounding Rules, 2005 - Rules 5 and 6

**Appeal No.** : Bail Application No. 2102/2007

**Appellant** : Lalit Goel

**Respondent** : Commissioner of Central Excise

**Advocate for Def.** : Satish Aggarwal, Adv.

**Advocate for Pet/Ap.** : P.N. Lekhi, Sr. Adv.,; Ajay Aggarwal and; Jagmohan Bansal

**Judgement** :
ORDER

**Shiv Narayan Dhingra, J.**

1. This second application for bail has been filed by the applicant under Section 439 Cr.P.C. on the ground that the offence committed by the applicant is a bailable offence in view of the latest order of Supreme Court in Avinash Bhosale v. Union of India and Anr. in Criminal Appeal No. 1138/07 arising out of SLP (Crl.) No. 4421/07 wherein the Hon'ble Supreme Court granted bail on the ground that the offence under Section 135(1)(ii) was bailable. The order of the Supreme Court reads as under:

On the material placed on record, and the amended Section 135(1)(ii) of the Customs Act, 1962 it appears to us that apparently the offence which is alleged to have been committed is a bailable offence and thus the Magistrate has rightly granted bail to the Appellant. In view of this, the order of the High Court is set aside.

2. It is also stated that Punjab and Haryana High Court in its order dated 6th March, 2006 in case of Kulbhushan Goyal v. Joint Commissioner of Customs in Crl. Misc. No. 71789-M/05 also held that offence under Section 135(1)(ii) of Customs Act, 1962 is a bailable offence. This Court in Sita Ram v. Customs : 2005(188)ELT478(Del) granted bail to the applicant on the ground that the offence under Section 135(1)(ii) was made compoundable. It is stated that applicant has already filed a compounding application dated 14th August, 2007 as a result of which the prosecution itself may be ordered to be withdrawn by the Chief Commissioner. The scheme of compounding has been formulated by the Government keeping in view the reformative penal jurisprudence. The applicant was required to arrange appropriate funds for compounding fee and for this purpose the applicant should be out of custody. Filing of compounding application shows bonafide of the applicant. It is submitted that investigation in this case has been completed and after completion of investigation, a complaint has already been filed with ACMM, New Delhi. 04 witnesses out of total 82 witnesses have already been examined and examination of remaining witnesses will be a long drawn process. Applicant was in custody for about 07 months, the maximum sentence was 03 years. The entire evidence was record based and there was no possibility of tampering with the record.

3. In reply to the application, it is stated that the order of the Supreme Court cited by the applicant would not apply to facts and circumstances of the present case. The order pertains to amended Section 135(1)(ii) of Customs Act, 1962 and was passed by the Hon'ble Supreme Court on the basis of material placed before it while case of applicant was under unamended provisions. It is further submitted that order of Supreme Court in Avinash Bhosale's case was per incuriam. It was not brought to the notice of the Supreme Court. Hon'ble Supreme Court had already stayed the order of Mumbai High Court holding that the offence was bailable, in Criminal Appeal No. 189/2006. It was stated that in view of the judgment of Supreme Court in A.R. Antuley v. R.S. Nayak : 1988 CriLJ1661 , if the decision is per incuriam, the Court should ignore it. Similar observation was made by Supreme Court in West Bengal v. Tarun K. Roy : (2004)ILLJ421SC . The Supreme Court has yet to decide the issue if the offence was bailable or not in Criminal Appeal No. 189/2006. It is further pointed out that for the first time Mumbai High Court in case of Subhash Chaudhary v. Deepak Jyala and Ors. 2004(64) RLT 651 (Bom) had held that offence under Section 135(1)(ii) of Customs Act was bailable. The matter was agitated in Supreme Court by Union of India and the judgment of Mumbai High Court was stayed vide above Criminal Appeal. It is also submitted that this Court has already taken a different view and held that offence under Section 135(1)(ii) of Customs Act was non-bailable. View of this Court was not brought to the notice of Mumbai High Court in Subhash Choudhary's case. This Court had held similar view in other two cases viz. Mohan Lal Thapar v. Y.P. Dabara 2002 (1) JCC 460 and Inderjeet Nagpal v. Director of Revenue Intelligence ILR (2005) Delhi 296. It is submitted that whether the offence under Section 135(1)(ii) of Customs Act 1962 was bailable or not is sub-judiced and no final decision has been given by Supreme Court after considering the judgments of various High Courts Delhi High Court has consistently held that offence was not bailable.

4. While dismissing the earlier application of the applicant vide its order dated 23rd July, 2007 under Section 439 Cr.P.C. this Court had categorically observed that the offence under Section 135(1)(ii) was not a bailable offence. This Court in Inderjit Nagpal's case had also laid down that the offence under Section 135(1)(ii) of Customs Act was a non-bailable offence, relying on Mohan Lal Thapar's case I

find no reason to differ from the view taken by this Court earlier in three cases. In view of the fact that the SLP against the Mumbai High Court is pending and the decision of the Mumbai High Court holding that the offence is bailable has been stayed by Supreme Court and the order relied upon by the applicant was passed solely on the facts and the circumstances of the case, I consider that this Court cannot take a different view from what it has been already taken. The petitioner was at liberty to approach Supreme Court if he so desired against the order dated 23rd July, 2007 of this Court. The petitioner did not approach the Supreme Court.

5. Considering the merits of the case, the petitioner made an application for compounding of the offence. Order for compounding of offence was passed by Chief Commissioner of Central Excise and Service Tax Delhi Zone. The order reads as under:

DECISION

Shri Lalit Goyal is allowed to compound the offence punishable under Section 132, 135(1)(b) of the Customs Act, 1962 and Section 9(1)(C) of the Central Excise Act, 1944 and is granted immunity from prosecution under Rule 6 of the said Compounding Rules, 2005, subject to the acceptance of this order by the Hon'ble Court of ACMM, Patiala House, New Delhi, by paying the amount as mentioned below within 30 days of receiving this order:

Under Section 132 of C.A. 1962 : Rs. 50,000/-Under Section 135(1)(a) of C.A. 1962 : Rs. 1,05,59,972 (20% of M.V.)Under Section 135(1)(b) of C.A. 1962 : Rs. 1,05,59,972 (20% of M.V.) Under Section 9(1)(c) of C. Ex. A. 1944 : Rs.50,000/- The total amount in terms of Rule '5' of the said Custom and Central Excise Compounding Rules, 2005, comes to the tune of Rs.2,12,19,944/- (Rupees two crore twelve lac nineteen thousand nine hundred forty four only). Shri Lalit Goyal will also produce proof of having paid the compounding amount in the treasury, to the reporting authority i.e. the Commissioner, Central Excise, Delhi-I within 07 days of the depositing the above amount. This order is only with respect to the actions under the particular Sections of Customs Act, 1962 and Central Excise 1944 and is without prejudice to any other actions that may be taken against Shri Lalit Goyal.

Sd/-

Chief Commissioner C. Ex. And S.T (DZ)

The counsel for the applicant submitted that petitioner did stupidity in filing the compounding application. The applicant was not obliged to compound the offence and pay the hefty compounding fee as asked by the Chief Commissioner.

6. Reverting to the facts the petitioner floated a proprietorship firm in the name of Pioneer Soap and Chemicals and obtained a Central Excise Registration Number for manufacturing of washing soap. He applied for import of non-edible crude palm oil used for manufacturing of washing soap, which was granted by the concerned authorities. The import of crude palm oil for manufacturing of washing soap is allowed at concessional duty of 20% as against the normal duty of 65%. Applicant availed this concessional duty and imported palm oil. It was found that applicant did not manufacture washing soap but diverted the entire palm oil to the market and sold the same to the ghee manufacturers of UP and Haryana. The statement of witnesses recorded showed that the consignments were directly diverted to ghee manufacturers. The applicant also fabricated records and entries in order to avail the advantage of concessional duty. He also undervalued the consignment. The total evasion of custom duty was more than Rs.1.25 Crore.

7. It is obvious that applicant indulged in white collar crime diverting non edible palm oil to the ghee manufacturers for use into the ghee, which is consumed by the common people. He obtained license for concessional import of crude palm oil by misrepresentation that it would be used for manufacture of washing soap, depriving the public exchequer of import duty of more than Rs. one crore. The applicant, first made an application for compounding of the offence, then flatly refused to compound the offence and refused to pay the amount. The counsel for the petitioner described act of making compounding application as a stupidity of the applicant.

8. Considering all these facts and the fact that the applicant is in jail and the trial may take some time the applicant is granted bail if the applicant deposits 50% of the amount levied as compounding fee as specified in above-produced order in

para 05, with the Chief Commissioner of Central Excise without prejudice to the rights of the applicant. The applicant, if it is found after the trial, had not committed any offence shall be returned back this amount. If the evasion of duty is found, the amount shall be adjusted against duty payable and penalties levied as per law.

9. In case the applicant deposits the amount as indicated above, he be released on bail on his executing personal bond in the sum of Rs. One lac with one surety of the like amount to the satisfaction of the Trial Court concerned.

The application stands disposed of. dusty, if desired.

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