CNR No. DLCT-12-000115-2023
Ct. Case No. 12/2023
DRI v Baba Leather Impex Pvt. Ltd. & Ors.

16.12.2024

ORDER

1. Vide this order, I shall decide the application under Section 311 of Code of Criminal Procedure (in short 'Cr.P.C') moved on behalf of complainant for taking on record the several bill of entries and annexure thereto, pertaining to the present matter.

Brief Facts

2. An application has been moved under Section 311 of Cr.P.C. wherein the prosecuting agency DRI seeks to bring on record several bill of entries which is bill of entry no. 784799 dated 17.01.2005, 395206 dated 20.01.2005, 799120 dated 08.02.2005, 154184 dated 02.02.2005, 220631 dated 02.02.2005, 396613 dated 09.02.2005, 222486 dated 17.02.2005, 398042 dated 04.03.2005, 222518 dated 17.02.2005, 301930 dated 22.02.2005, 222331 dated 16.02.2005, 301934 dated 22.02.2005, 301929 dated 22.02.2005, 398039 dated 04.03.2005, 223666 dated 05.03.2005, 223665 dated 05.03.2005, 156114 dated 04.03.2005, 221128 dated 07.02.2005,

221127 dated 07.02.2005, 796990 dated 04.02.2005, 233679 dated 20.05.2002, 234222 dated 25.05.2005, 568900 dated 16.05.2005, 234223 dated 25.05.2005, 877041 dated 27.05.2005 which are mentioned in detail under the heading index qua application under Section 311 of Cr.P.C.

3. The present case stems out of a complaint case wherein the DRI seeks to prosecute the present accused alleging that the accused have imported the items declaring to have thickness of 0.6 mm to 0.8 mm, instead of actual thickness of 1.4 to 1.5 mm. Since, on the different thickness item,, different import duty are charged, the accused herein have evaded the import duty which otherwise would have been payable per law, if the same would have been disclosed truthfully.

4. It is further stated that voluminous documents were seized from the premises of Sh. Raj Kumar Anand alongwith Indian currency from the residential premises way back in 2005 when offence is said to have been committed. It is also submitted that the laptop belonging to Sh. Raj Kumar Anand was also seized, which bears the testimony, wherein the accused was furnishing the false information to the department (deflated bills) while he was importing goods to this country and was receiving actual and original bills from the exporter located in Taiwan/China.

5. It is further submitted that all the entities/accused were owned and controlled or indirectly controlled by Sh. Raj Kumar Anand and other accused M/s Baba Leather Impex (P) Ltd. and Raj Kumar Anand had controlled four more firms, namely M/s Trade Dignity, New Delhi, (Proprietor - Sh. Babulal [now deceased]), M/s Do Best Trade Corporation, Delhi (Proprietor, Sh. Suresh Kumar), M/s Trade & Trends, Haryana (Proprietor – Sh. Suresh Kumar), and M/s Baba Le Crafts Pvt. Ltd., Delhi (Director – Sh. Babulal [now deceased]).

6. It is pertinent to mention herein that the alleged offence is stated to have been committed in the year 2005. It has taken almost 17 long years for the DRI to file the complaint case herein. It was only in the year 2023 that the case came before the Court to be tried and it is at the stage of argument on charge. The instance of delay and poor prosecution does not cease herein but the bare testimony is evident earlier as one more application under Section 311 of Cr.P.C was moved which was allowed by my Ld. Predecessor vide order dated 01.04.2024 wherein the witnesses were summoned to be examined

and my Ld. Predecessor had clearly mentioned that it is not a deliberate mistake but an inadvertent one that prosecution was constrained to move such earlier application. It is pertinent to mention that this is the second application under Section 311 of Cr.P.C, therefore it rules out deliberate mistake but an inadvertent one as such occasion was also available at time of earlier application.

Law on Section 311 of Cr.P.C.

7. At the outset, it is necessary to discuss the provision of section 311 of Cr.P.C.:-

> **311. Power to summon material witness, or examine person present** – Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

Contention of the DRI

8. It has been argued on behalf of the Ld. Senior Counsel of DRI that all the physical copy has been seized but they could not be located but must have been with the department, as it was seized way back in 2005. However, the physical copy of every document which is being mentioned in the Annexure – A, Annexure – B, Annexure – C, Annexure – D, Annexure – E, Annexure – F or Annexure – G have been uploaded on the computer in the due course of business and same have been locked which cannot be tampered with. I have gone through annexures minutely.

9. Specific screenshots of bill of entries have been provided where it is alleged that this document which pertained to be bought before this Court to establish that mis-leading/false number of thickness have been given as an input to evade import duty. It is further submitted that in due course of business, these documents could not be procured as they are confidential documents and it is only at the higher forum or authorization, the same can be procured.

<u>Case Law Relied Upon</u>

10. The following judgments were cited by Ld. Counsels to support their respective submissions:

- **Rajender Prasad v. Narcotic Cell** [(1999) 6 SCC 110]
- **Mohanlal Shamji Soni vs. Union of India** [1994 SC 1346]
- Jamatraj Kewalji Govani vs. The State of Maharashtra [1967 (2) SCR 415].
- **Ram Chander vs. State of Haryana** [AIR 1981 SC 1036]
- **Mohanlal Shamji Soni vs. Union of India**.
- **Pedireddy Subareddi vs. State of Andhra Pradesh**.

11. Per contra, Ld. Counsel for the accused has argued that there is inordinate delay of 18 years in filing the complaint, that the entire pre-charge evidence have already been conducted, that the accused/defence cannot be taken by surprise that the documents were already in the possession/control of the DRI but it is only at the late stage that they have thought fit to be brought before this Court, that such documents have not been lost, destroyed, mis-placed or have been evaded out, that there is no justification of possible reasons as to why the screenshot of such bills have been filed but no physical copies have been filed, though admitted by Ld. Senior Counsel that they were seized, and the same are inadmissible as prescribed under section 138C(4) of the Custom Act, 1962.

12. Heard. Perused. Considered.

13. As far as the present case is concerned, the Court takes into consideration that this is the second application under section 311 of Cr.P.C, however same is also being read with Section 244 of Cr.P.C. and while such occasion was not availed of earlier on behalf of the DRI is still speculative. The arguments of the Ld. Senior Counsel that the data uploaded over computer are confidential and cannot be procured or accessed without the permission of the Court does not seems to inspire confidence, as these are already seized by the DRI as per their own version. There is no reason why such opportunity was not grabbed at the very first instance when the complaint case was filed by DRI after 17 years of the alleged occurrence.

14. Further, though it is not denied by the Ld. Senior counsels the all the documents were already stands seized by the

Raiding Officers, however, why such documents could not be located and brought fourth before this Court is still have not been answered. Per contra the arguments of the Ld. Counsel for the accused that there is inordinate delay in filing the present case is not sustainable in view that there is no limitation qua taking cognizance qua economic offence.

15. Another set of arguments on behalf of the accused have been that the accused is being taken by surprise and specifically at this stage when the pre-charge evidence have already been concluded, however, this Court is of the opinion that the right to cross-examine will be furnished and it is not that these documents have been created meanwhile but were uploaded during the course of the business. Henceforth, the argument is not sustainable.

16. The argument on behalf of the accused that when the physical copy of such documents were already under the control/possession of the DRI and the same has not been brought forth before this Court, this Court is of the opinion that the reliability of such document and such document being read as the primary and the secondary evidence is a different legal issue wherein the DRI has to satisfy this Court under which head of primary or secondary evidence the same shall be tendered. The same cannot be decided at this particular stage.

17. Further, the arguments of the Ld. Counsel is that the documents were confidential and the same has not be procured by the authority at the time of the prosecution, this Court is of the opinion that the Court cannot shy away from bringing the truth before this Court, however, the Court is not reluctant to observe that there are shortcomings and discrepancies in the prosecution as such documents when it has been argued were already seized by the raiding authority way back in 2005, almost 17 years have taken to bring the complaint case before this Court, and this will be second application under section 311 of Cr.P.C., and the DRI have not taken the occasion to bring before this Court on the previous occasion and the Court cannot shy away to bring the truth before this Court. The other set of arguments is that such documents, if brought before this Court would be inadmissible as per the Custom and as well as the Evidence Act, this Court is of the opinion that only the relevancy of the document have to be specified, the admissibility, the probative value, the viability and the reliance of such documents are of different issue and this Court is satisfied about the relevancy of such document.

18. Henceforth, this Court is of the opinion that the application is allowed subject to the cost of Rs. 50,000/- to be paid in DLSA by the DRI. It is clarified herein, that the department has to deduct the amount from the responsible officer for such lapse as since the cost is being imposed upon the State/ Department of State, it cannot be the case that the same be burden upon Exchequer. It is also not appreciated that though Sr. Counsel had submitted that physical copies is already seized by the Department and department could not lay his hand over such documents, and therefore Computer Copies from the database is required. This speaks clearly about the health of prosecution with 17 years delay, case being registered in 2023 before the Court, application under Section 311 Cr.P.C. has already being moved with present application being second application and delay on the part of DRI to bring it to the notice of Court with intricacies that same are confidential documents. The reason for imposing the cost is also that there have not been any genuine endeavor on the part of department to locate the already seized documents.

19. Application stands allowed as the document is relevant for the adjudication the case and in particular, regarding the input qua thickness of item(i.e. 0.6 mm), subject to payment of cost within one month. The ease with which the application has been moved, the diligence with which the complaint has been initiated after 17 years and despite the untiring efforts of the Department for all the 17 years, have failed to put forth the document which admittedly have been seized by their officers and reluctance with which instead of locating such document, the audacity with which the second application has been moved under Section 311 Cr.P.C. to prove such documents which were uploaded upon computer during the course of the business is deprecated. **The lack of vigilance and diligence on the part of the Department speaks volume and responsible officer be attributed by the Principal, ADG, DRI, Delhi Zonal Unit B-3 & 4, 6th Floor, Deendayal Antyodaya Bhawan, CGO Complex, Lodhi Road, New Delhi-110003, and the cost shall be deducted from the salary of such officer and if there are series of officer then proportionate reduction of salary be deducted from such officers. In the case the Principal, ADG, DRI, Delhi Zonal Unit B-3 & 4, 6th Floor, Deendayal Antyodaya Bhawan, CGO Complex, Lodhi Road, New Delhi-110003 fails to attribute such negligence on the concerned officer, the cost shall be ultimately deducted from the salary of Principal, ADG, DRI, Delhi Zonal Unit B-3 & 4, 6th Floor, Deendayal Antyodaya Bhawan, CGO Complex, Lodhi Road, New Delhi-110003. It is rather deprecated that such tale of submission, with averment that same cannot be procured but for the order of the court or by the higher officials of the custom speaks**

volume that despite the untiring effort of 17 years, the DRI is still failed to keep all the documents before the court and further did not take the occasion on the very first instance as where the aid of the court is required for prosecution.

20. Copy of the Order be also sent to Principal, ADG, DRI, Delhi Zonal Unit B-3 & 4, 6th Floor, Deendayal Antyodaya Bhawan, CGO Complex, Lodhi Road, New Delhi-110003. Compliance Report to this effect shall be filed by the DRI within 2 months from today.

Copies of this order be sent to Commissioner of Customs, ICD, Patparganj, Near Gazipur Bus Depot, Gazipur, New Delhi, Commissioner of Customs, Cochin Custom House, Willingdon Island, Cochin – 682009, Commissioner of Customs (Import), New Customs House, Ballard Estate, Mumbai - 400038, Commissioner of Customs, Nhava Sheva-III, Jawaharlal Nehru Custom House, Dist.- Raigad, Maharashtra – 400707 and Commissioner of Customs (Ports), 15/1, Strand Road, Custom House, Kolkata – 700001 alongwith bill of entries that have been written under their corresponding heading to be furnished before this Court alongwith relevant certificates.

1. **The Commissioner of Customs, ICD, Patparganj, Near Gazipur Bus Depot, Gazipur, New Delhi.**

S. No.	**Bill of Entry Number**	**Bill of Entry Date**	**Importer Name**
1.	395206	20.01.2005	M/S. BABA LEATHER IMPEX (P) LTD
2.	396613	09.02.2005	M/S. TRADE DIGNITY
3.	398042	04.03.2005	M/S. TRADE &TRENDS
4.	398039	04.03.2005	M/S. TRADE &TRENDS

2. **The Commissioner of Customs, Cochin Custom House, Willingdon Island, Cochin – 682009.**

S. No.	**Bill of Entry Number**	**Bill of Entry Date**	**Importer Name**
1.	154846	02.02.2005	M/S. TRADE &TRENDS
2.	156114	04.03.2005	M/S. TRADE &TRENDS

3. **The Commissioner of Customs (Import), New Customs House, Ballard Estate, Mumbai – 400038.**

S. No.	**Bill of EntryNumber**	**Bill of Entry Date**	**Port / ICD Code**	**Importer Name**
1.	568900	16.05.2005	INBOM1	M/S. TRADE DIGNITY
2.	301930	22.02.2005	INMUL6	M/S. TRADE &TRENDS
3.	301934	22.02.2005	INMUL6	M/S. BABA LEATHER IMPEX (P) LTD
4.	301929	22.02.2005	INMUL6	M/S. TRADE &TRENDS

4. **The Commissioner of Customs, Nhava Sheva-III, Jawaharlal Nehru Custom House, Dist.- Raigad, Maharashtra – 400707.**

S. No.	**Bill of Entry Number**	**Bill of Entry Date**	**Importer Name**
1.	784799	17.01.2005	M/S. TRADE &TRENDS
2.	799120	08.02.2005	M/S. TRADE &TRENDS

3.	796990	04.02.2005	M/S. TRADE &TRENDS
4.	877041	27.05.2005	M/S. BABA LEATHER IMPEX (P) LTD

5. The Commissioner of Customs (Ports), 15/1, Strand Road, Custom House, Kolkata – 700001.

S. No.	**Bill of Entry Number**	**Bill of Entry Date**	**Importer Name**
1.	220631	02.02.2005	M/S. BABA LEATHER IMPEX (P) LTD
2.	222486	17.02.2005	M/S. TRADE DIGNITY
3.	222518	17.02.2005	M/S. TRADE &TRENDS
4.	222331	16.02.2005	M/S. BABA LEATHER IMPEX (P) LTD
5.	223666	05.03.2005	M/S. TRADE DIGNITY
6.	223665	05.03.2005	M/S. BABA LEATHER IMPEX (P) LTD
7.	221128	07.02.2005	M/S. TRADE &TRENDS
8.	221127	07.02.2005	M/S. BABA LEATHER IMPEX (P) LTD
9.	233679	20.05.2005	M/S. TRADE DIGNITY

10.	234222	25.05.2005	M/S. BABA LEATHER IMPEX (P) LTD
11.	234223	25.05.2005	M/S. BABA LEATHER IMPEX (P) LTD

Copies of the abovementioned Bills of Entry along with Invoices and Packing Lists.

In case, physical copies of Bills of Entry are not available, certified copies of the same may be provided along with certificate under Section 138C of the Customs Act, 1962 read with Section 63(4)(c) of the BSA, 2023 (*earlier Section 65B of the Indian Evidence Act*).

(Vaibhav Chaurasia)
ACJM-04, RADC, New Delhi
16.12.2024