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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 7919/2023**

PAWAN KANT

..... Petitioner

Through: Mr. Mukul Rohatgi, Mr. Sandeep Sethi and Mr. Dayan Krishnan, Sr. Advocates with Mr. Rishi Aggarwal, Mr. Parminder Singh, Mr. Abhay Agnihotri, Mr. Vikram Choudhary, Mr Ankit and Ms. S. Seth, Advocates

versus

DIRECTORATE OF REVENUE INTELLIGENCE Respondent

Through: Mr. Satish Aggarwala, SSC with Mr. Gagan Vaswant, Advocate

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

03.11.2023

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CRL.M.A. 29533/2023 (for exemption)

1. Allowed subject to all just exceptions.
2. The application stands disposed of.

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3. By way of the present petition filed under Section 482 of the Code of Criminal Procedure, 1973, the petitioner seeks the following reliefs:-

“A. Pass an Order allowing the present Petition and quash and set aside the Impugned Complaint being Ct. Cases No. 2012/2022 dated 06.10.2022 titled as “Directorate of Revenue Intelligence V/s Salt Experience and Management Private Limited and ors” pending before the Ld. Additional Chief Metropolitan Magistrate - 01, Patiala House Court, New Delhi and proceedings thereunder;

B. Pass an Order quashing and setting aside the Impugned Order dated 01.07.2023 passed by the Court of Ld. Additional Chief

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Metropolitan Magistrate - 01, Patiala House Court, New Delhi in the Impugned Complaint being Ct. Cases No. 2012/2022 dated 06.10.2022 titled as "Directorate of Revenue Intelligence V/s Salt Experience and Management Private Limited and Ors"

4. Issue notice.
5. Learned counsel appearing for the respondent accepts notice. He, at the outset, submits that upon instructions from Mr. Abhay Yamdagni, Senior Intelligence Officer, DRI, that the respondent/ DRI will be filing a SLP against the order dated 05.10.2023 passed by the Division Bench of this Hon'ble Court in CUSAA No.3/2023 titled *Commissioner Of Customs, New Customs House, New Delhi v. Pawan Kant*.
6. Learned counsel appearing for the respondent seeks and is granted, three weeks to file a reply. Rejoinder thereto, if any, be filed within two weeks thereafter.
7. The parties are further called upon to file a written synopsis not exceeding three pages giving a chronological list of dates, events and documents, if any, alongwith relevant judgments duly highlighted which they wish to rely upon, within a period of two weeks.
8. Accordingly, renotify on 21.02.2024.

CRL.M.A. 29532/2023 (for stay)

9. The present application is filed by the petitioner/applicant seeking stay of the operation of the Impugned Order dated 01.07.2023 and of the proceedings in Impugned Complaint being Ct. Cases No.2012/2022 dated 06.10.2022 pending before the Ld. Additional Chief Metropolitan Magistrate-01, Patiala House Court, New Delhi insofar as the same pertains to the petitioner.
10. Learned senior counsel for the petitioner submits that the impugned

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summoning order passed in the impugned complaint for the alleged commission of the offences punishable under Sections 135(1)(a), 135(1)(b) and 135(1)(c) read with 135(1)(i)(A) of the Customs Act, 1962, has been passed in a mechanical manner, without observing any reasons thereof, and without appreciating the fact that DRI concealed the judgement dated 28.03.2022 passed by the learned Customs, Excise and Service Tax Appellate Tribunal (CESTAT) whereby the petitioner was exonerated on the same set of facts which form part of the present complaint, which is a verbatim reproduction of the Show Cause Notice dated 17.07.2019.

11. Learned senior counsel for the petitioner further relies upon the findings rendered by the Hon'ble Supreme Court in the ***Radheyshyam Kejriwal v. State of West Bengal*** (2011) 3 SCC 581, and Clause 15.9.2 of the Customs Manual, 2023, issued by CBIC on 31.01.2023 to submit that in case of exoneration on merits, criminal prosecution on the same set of facts cannot be allowed to continue.

12. Perusal of the records reveal that the impugned Complaint dated 06.10.2022 is identical to the Show-Cause Notice dated 17.07.2019. So much so, the gravamen of the averments made therein and the documents relied in both are substantially identical. It is also not disputed that the order dated 28.03.2022 passed by the learned CESTAT in Customs Appeal No.50497/2022 in ***Pawan Munjal v. Commissioner of Customs*** was not disclosed before the learned ACMM- 01, Patiala House Courts, New Delhi, though the learned counsel for the respondent appearing for the Commissioner of Customs herself on the date of passing the impugned order dated 01.07.2023 made a categorical statement to the effect that “all



the documents pertaining to the present appeal have already been filed”.

13. In rebuttal of the same, especially qua the non-disclosure of the order dated 28.03.2022, learned Senior Standing Counsel for the DRI submits that since it was not a party to the proceedings before the learned CESTAT, there was no occasion for either being aware or withholding any information qua the said order.

14. Considering the aforesaid contentions raised by the learned senior counsel appearing for the petitioner, especially the fact that the summoning order has been passed without giving any reasons for the same, this Court is of the opinion that *prima facie*, the matter requires consideration.

15. Further, in the opinion of this Court, considering that the petitioner has been exonerated by the learned CESTAT on the same set of facts and this fact has not been disclosed before the learned Trial Court, the petitioner herein has been able to make out a case for grant of interim protection.

16. Accordingly, the operation of the impugned order dated 01.07.2023 passed by the Ld. Additional Chief Metropolitan Magistrate - 01, Patiala House Courts, New Delhi in Ct. Cases No. 2012/2022 and all proceedings emanating therefrom pending before the ACMM-01, shall remain stayed qua the petitioner, till the next date of hearing.

17. Accordingly, renotify on 21.02.2024.

SAURABH BANERJEE, J

NOVEMBER 3, 2023/So