

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2015

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.M.SUNDRESH

W.P.Nos.790 to 792, 260 to 262, 33803 of 2014 & 5516 of 2015

and

W.P.(MD) Nos.1954 to 1959 of 2014

and

M.P.No.1 of 2014 in W.P.No.33803 of 2014 & M.P.No.1 of 2015 in
W.P.No.5516 of 2015

M/s.Nizam Coal Private Limited,
rep. by its Director-Operation S.Fazlur Rahman,
No.117 (Old No.49), New Avadi Road,
Kilpauk,
Chennai-600 010. ... Petitioner in W.P.No.790 of 2014

M/s.Malco Energy Ltd.,
Rep. by its Head-Finance,
Sri Kamal Jain, Mettur,
Salem District. ...Petitioner in WP.260, 261, 262/14,
1957 to 1959/14.

M/s.Sesa Sterlite Ltd.,
Rep. by its AGM[Indirect Taxes]
Sri Mukul Agarawal,
SIPCOT Industrial Complex,
Madurai Bypass Road,
T.V.Puram Post, Tuticorin. ...Petitioner in WP.1954/14 to
1956/14.

M/s.Malco Energy Ltd.,
Rep. by its Authorised Signatory,
Mettur, Salem District. ...Petitioner in WP.33803/14.

Kamal Jain,
P.O.Box No.4,
Mettur Dam, Salem District. ...Petitioner in WP.5516/15.

-vs-

- 1.Union of India,
rep. by the Secretary,
Ministry of Finance (Dept. of Revenue),
North Block,
New Delhi-110 001.
- 2.The Chairman,
Central Board of Excise & Customs,
North Block,
New Delhi-110 001. ..Respondents 1 and 2 in all WPs.
- 3.Commissioner of Customs,
Custom House,
Tuticorin-628 004.
- 4.Additional Director General,
Directorate of Revenue Intelligence,
Gopalakrishna Road,
T.Nagar,
Chennai-600 017. .. Respondents 3 & 4 in WPs.790 & 792/14.
- The Commissioner of Customs,
Trichy customs Commissionerate,
1, Williams Road, Cantonment,
Trichy 620 001. ..R.3 in WP.1 to 262/14
33803/14 & 5516/15.
- The Assistant Commissioner of Customs,
Customs House,
Nagapattinam. ..R.4 in WP.260 t 262/14,
33803/14 & 5516/15.
- The Additional Director General,
Directorate of Revenue Intelligence,
Zonal unit, 25, Gopalakrishna Road,
T.Nagar, Chennai. ..R.3 in WP.1954/14 to 1959/14.
- The Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin. ..R.4 in WP.1954 to 1959/14.
- The Assistant Commissioner of Customs [Imports]
Customs House, New Harbour Estate,
Tuticorin. ..R.5 in WP.1954 to 1959/14.

W.P.No.790 of 2014 filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration to declare that the inclusion of steam coal (27011920) under "Other Coal" (270119) in Customs Tariff Act, 1975 as null and void and violative of Articles 14, 19(1)(g) and 265 of the Constitution of India.

To issue a Writ of Declaration to declare that Sl. No.123 [as framed] of the table in Notification No.12/2012, dated 17.3.2012 as null and void and ultra vires Article 14, 19[1][g] & 265 of the Constitution of India, Sec.25 of the Customs Act, 1962 and Sec.2 of the Customs Tariff Act, 1975 read with Heading 2701 of the said Tariff and consequently that the said S.No.123 covers any type of coal falling under chapter Heading 2701 of Customs Tariff Act, 1975 imported for generation of Steam/power in line with object of the said notification contained in para 184 of Budget speech dated 16.3.2012 of the Honourable Finance Minister and pass further or other orders [in WP.791/14, 261, 1955, 1959/14]

To issue a Writ of Prohibition prohibiting the 3rd respondent herein from taking any further action pursuant to the show cause Notice C.No.VIII/26/15/2013, DRI-TIN dated 3.4.2013 of the 4th respondent and prohibit 3rd respondent from taking further action pursuant to the said show cause Notice C.No.VIII/26/15/13 DRI-TTN dated 3.4.13 [in WP.792/14]

To issue a Writ of Prohibition prohibiting the 3rd respondent herein from taking any further action pursuant to the show cause notice C.No.VIII/10/23/13-Cus dated 21.5.2013 issued by the 3rd respondent pertaining to assessments done by the 4th respondent under Sl.NO.123 of the table to notification No.12/12 dated 17.3.12 in respect of coal imported by the petitioner. [in WP.262/14]

To issue a Writ of Prohibition prohibiting the 4th respondent herein from taking any further action pursuant to the show cause Notice F.No.VIII/26/6/2013-DRI dated 12.8.2013 issued by the 3rd respondent pertaining to assessments done by the 5th respondent under Sl.No.123 of the table to notification No.12/2012 dated 17.03.2012 in respect of coal imported by the petitioner [in WP.1954/14]

To issue a Writ of declaration to declaring the inclusion of steam coal [27011920] under "OTHER COAL" [270119] in Customs Tariff Act, 1975 as null and void, arbitrary, unreasonable and violative of Article 14, 19[1][g] and 265 of the Constitution of India [in WP.1956/14 & 1958/14]

To issue a Writ of Prohibition prohibiting the 4th respondent herein from taking further action pursuant to the show cause Notice F.No.VIII/26/11/2013-DRI-CBE dated 9.4.13 issued by the 3rd respondent pertaining to assessments done by the 5th Respondent under Sl.NO.123 of the table to notification No.12/2012 dated 17.3.2012 in respect of coal imported by the petitioner [in WP.1957/14]

To issue a Writ of certiorari calling for and quashing the order NO.11/14 dated 30.9.2014 passed by the 3rd respondent and pass such further or other orders. [in WP.33803/14]

To issue a Writ of certiorari calling for the records relating to the order No.11/14 dated 30.9.14 passed by the 3rd respondent and quashing

the same in so far as it relates to imposing of penalty on the petitioner herein[in WP.5516/15]

For Petitioners : Mr.Arvind P.Datar
Senior Counsel
for
Mr.R.Raghavan
Mr.N.Viswanathan

For Respondents : Mr.G.Rajagopalan
Addl. Solicitor General-I
assisted by
Mr.V.Sundareswaran, SPC

* * * * *

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

We have heard the learned counsel for parties at length. In some of the writ petitions, challenge was made to the show cause notice, but in the absence of stay, orders have been passed by the competent authority. Those orders are also under challenge before us.

2. Learned Senior Counsel for the petitioners, on instructions, seeks to withdraw all these writ petitions and avail of the appellate remedy with liberty to raise all issues available in law including declaratory relief. Endorsement has been made. In view of the pendency of these writ petitions before this Court, four (4) weeks time is granted from today to avail of the appellate remedy.

3. The writ petitions are dismissed as withdrawn in terms aforesaid. No costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

Sd/-
Asst. Registrar.

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/true copy/

Sub Asst. Registrar.

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To

- 1.The Secretary,
Ministry of Finance (Dept. of Revenue),
North Block, New Delhi-110 001.
 - 2.The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi-110 001.
 - 3.The Commissioner of Customs,
Custom House, Tuticorin-628 004.
 - 4.The Additional Director General,
Directorate of Revenue Intelligence,
Gopalakrishna Road,
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1, Williams Road, Cantonment,
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 6. The Assistant Commissioner of Customs,
Customs House,
Nagapattinam.
 7. The Additional Director General,
Directorate of Revenue Intelligence,
Zonal unit, 25, Gopalakrishna Road,
T.Nagar, Chennai.
 8. The Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin.
 9. The Assistant Commissioner of Customs [Imports]
Customs House, New Harbour Estate,
Tuticorin.
- +4ccs to Mr.V.Sundareswaran, Advocate SR.No.15744
- +3ccs to Mr.R.Raghavan, Advocate SR.No.15910

W.P.Nos.790 to 792, 260 to 262,
33803 of 2014 5516 of 2015 and
W.P. (MD) No.1954 to 1959 of 2014

rv[co]
gp/7.4.