IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.29770 & 29771 of 2015
&
M.P.No.1 of 2015

Thirumalai Vasan Sago & Starch Products
rep. by its Managing Partner ... Petitioner in both W.Ps.

Vs

1. The Commissioner of Customs
Central Excise and Service Tax I
No.1, Foulks Compound
Anai Medu, Salem 636 001.

2. Central Board of Excise & Customs
North Block, New Delhi 110 001.

3. Union of India
(Rep. by the Secretary Ministry of Finance)
Department of Revenue
North Block, New Delhi.

4. Tamizhaga Starch & Sago Producers Assn.
Sago Serve Compound
Jageer Ammanpalayam
Omalur Main Road, Salem 636 302.
... Respondents in both W.Ps.

Prayer in W.P.No.29770 of 2015: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus to forbearing the 1st respondent - Commissioner of Central Excise, Salem or his officers and agents from in any manner proceeding to assess or recover central excise duty on the clearance of Sabudana for the period between 1.3.2011 to 28.2.2013 pending disposal of the application dated 4.4.2015 filed by the petitioner's before the 3rd respondent herein.

Prayer in W.P.No.29771 of 2015: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus to direct the third respondent to dispose the Application dated 04.04.2015 presented by the petitioner, invoking section 11C of the Central Excise Act, 1944 and waive the Central Excise Duty liability on the clearance of Tapioca Sago (Sabudana) for the period between 01.03.2011 to 28.02.2013.

For Petitioner : Mr.N.Prasad

For Respondents : Mr.V.Sundareswaran
Standing Counsel

C O M M O N O R D E R

Heard Mr.N.Prasad, learned Counsel appearing for the petitioner and Mr.V.Sundareswaran, learned Standing Counsel appearing on behalf of the respondent and with the consent of learned counsel appearing on either side, these Writ Petitions are taken up for final disposal.

2.The petitioner is a Manufacturer of Tapioca Sago (Sabudana) and he has filed W.P.No. 29770 of 2015, to forbear the first respondent from in any manner proceeding to assess or recover central excise duty on the clearance of Sabudana for the period between 1.3.2011 and 28.2.2013 pending disposal of the application dated 4.4.2015 filed by the petitioner' before the 3rd respondent herein. The petitioner has also filed W.P.No.29771 of 2015, to direct the third respondent to dispose the Application dated 04.04.2015, invoking section 11C of the Central Excise Act, 1944 and waive the Central Excise Duty liability on the clearance of Tapioca Sago (Sabudana) for the period between 01.03.2011 and 28.02.2013.

3.The problem arose on account of the fact that after 01.04.2011, Excise Duty was levied on Tapioca and the substitutes therefrom manufactured from starch at 1%. The present petitioner and their Association viz. the fourth respondent and other similarly placed persons submitted representations to the Government requesting for grant of exemption from levy of excise duty on the clearances of Tapiacop Sago. The Government acceded to their request and by Notification No.12/2013-CE dated 01.03.2013, granted exemption and the grant on duty was 'Nil'. However, the benefit of the Notification dated 01.03.2013, was prospectively i.e. 01.03.2013. This lead to water-shed area for the period between 01.03.2011 and 28.02.2013. As a result, Notices were issued to the petitioner as well as the members of the fourth respondent Association and it is stated that the matters are in the various States before various Forums and some of the cases are before the CESTAT in the Appeals filed by the assessees against the issue on Excise Duty for the said period. In the background of the aforesaid facts, the petitioner along with others submitted representations to the Government of India requesting them for issuance of Notification under section 11C of the Central Excise Act, 1944, to waive duty of Excise of Tapioca Sago.

4.During the pendency of the Writ Petitions, it is submitted that the Government of India by an order dated 15.03.2016, has rejected the petitioner's request for grant of exemption. Thus, the prayer sought for in the Writ Petitions have become infrcutuous.

5.The learned counsel for the petitioner submits that apart from the plea raised by the petitioner with regard to the claim of exemption under section 11-C of the Central Excise Act, the petitioner in the affidavits filed in support of the Writ Petitions raised other grounds on merits as well as on the ground of limitation and those issues may be left open to be adjudicated upon by the petitioner before the appropriate Forum, on merits as well as on law.

6.In the light of the above, the Writ Petitions are dismissed as infructuous, leaving it open to the petitioner to raise all the contentions before the appropriate Forum. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Rpa

To

1. The Commissioner of Customs
Central Excise and Service Tax I
No.1, Foulks Compound
Anai Medu, Salem 636 001.

2. The Central Board of Excise & Customs
North Block, New Delhi 110 001.

3. The Secretary Ministry of Finance
Union of India
Department of Revenue
North Block, New Delhi.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.40586

W.P.Nos. 29770 & 29771 of 2015

(CO)
CA(05/08/2016)