

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2016

CORAM

THE Hon'ble Mr.JUSTICE M. DURAISWAMY

W.P.No.30771 of 2015

and

M.P.No.1 of 2015

M/s SDS Ramcides Crop Science Private Ltd,
(formerly Sree Ramcides Chemicals Pvt Ltd.,)
represented by its Managing Director,
Mr.R. Gopal,
Nos.47 & 49, Bazullah Road,
VBC Solitaire, 7th floor,
T. Nagar, Chennai - 600 017

.....Petitioner

vs

The Commissioner of Central Excise,
Chennai II Commissionerate,
692, Anna Salai, M.H.U Complex,
Nandanam, Chennai - 600 035

..... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order No.19/2015 dated 01.09.2015 issued in C.No.V/15/104/2014-Cx.Adjn by the respondent and quash the same and further direct the respondent to permit the petitioner to cross-examine the Chemical Examiner, whose report has been relied upon in the impugned order dated 01.09.2015.

For petitioner : Mr.Hari Radhakrishnan

For respondent : Mr.A.P. Srinivas
Standing Counsel

ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order No.19/2015 dated 01.09.2015 issued in C.No.V/15/104/2014-Cx.Adjn by the respondent and quash the same and further direct the respondent to permit the petitioner to cross-examine the Chemical Examiner, whose report has been relied upon in the impugned order dated 01.09.2015.

2. The learned counsel for the petitioner contended that the respondent should have given an opportunity to cross examine the Chemical Examiner, who had given a report, stating that the product is not a Fertilizer. The learned counsel also submitted that in view of the judgement reported in 2013 (295) ELT 195 (Mad.), the respondent should have given an opportunity to cross examine the Chemical Examiner, who had given a report stating that the product is not a Fertilizer. Further, the learned counsel submitted that denying the opportunity of cross examination is a clear violation of principles of natural justice.

3. Countering the submissions made by the learned counsel for the petitioner, Mr.A.P. Srinivas, learned Standing Counsel, appearing for the respondent, submitted that Chemical Examiner's report was taken into consideration only at the instance of the petitioner and that the respondent had not taken the same on his own for consideration. The learned Standing Counsel also submitted that even without the Chemical Examiner's report, the respondent had come to a definite conclusion that the product is not a Fertilizer. The learned Standing Counsel relied upon paragraph 6.6 of the impugned order to submit that the respondent had come to the said conclusion, even without relying upon the Chemical Examiner's report. That apart, the learned Standing Counsel submitted that even if the Chemical Examiner's report is eschewed or ignored, the impugned order passed by the respondent would stand.

4. The learned Standing Counsel further submitted that since the petitioner had got an appeal remedy before the appellate authority, the petitioner can question the correctness of the impugned order before the appellate authority and in the case of the petitioner filing the appeal, the appellate authority may be directed to decide the matter, on merits and in accordance with law, without relying upon the Chemical Examiner's report.

5. Since the learned Standing Counsel, appearing for the respondent submitted that the Chemical Examiner's report can be eschewed or ignored by the appellate authority, while deciding the appeal, to be filed by the petitioner, I am of the view that instead of going into the merits of the matter, the petitioner can be given liberty to challenge the impugned order dated 01.09.2015 before the appellate authority and the appellate authority can be directed to decide the appeal, on merits and in accordance with law without relying upon the Chemical Examiner's report.

6. Accordingly, I give liberty to the petitioner to file an appeal as against the impugned order dated 01.09.2015 and also direct the appellate authority to decide the appeal, on merits and in accordance with law, without relying upon the Chemical Examiner's report. The petitioner shall file the appeal within ten days from the date of receipt of copy of this Order. The appellate authority shall entertain the appeal, without insisting on the question of limitation for the reason that the petitioner had filed the writ petition before this Court on 20.09.2015 itself. With the above observation, the writ petition is disposed of. No costs. Consequently, connected MP is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

sr

To

The Commissioner of Central Excise,
Chennai II Commissionerate,
692, Anna Salai, M.H.U Complex,
Nandanam, Chennai - 600 035

1 cc to Mr.A.P. Srinivas, Advocate, Sr. 16839
1 cc to Mr. Hari Radhakrishnan, Advocate, Sr. 16506

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JSV (CO)
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