In the High Court of Judicature at Madras

Dated : 23.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.41020 of 2016 & WMP.No.35029 of 2016

V.Ramasamy Naidu & Brothers,
rep.by its Partner V.Ramasamy ...Petitioner

Vs

1.Government of India, rep.by its Secretary to Government, Ministry of Finance, Department of Revenue, North Block, New Delhi-1.

2.Central Board of Excise & Customs, rep.by its Chairman, North Block, New Delhi-1.

3.The Assistant Commissioner of Central Excise, Service Tax and Customs, Salem II Division, Salem-4. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the entire records relating to the proceedings of the 3rd respondent herein in C.No.V/15/19/ 78/2016-C.Ex.Adj dated 23.9.2016, quash the same and direct the 2nd respondent herein to issue appropriate instructions under Section 37B of the Central Excise Act, 1944 on the application dated 19.7.2016 of the petitioner herein.

For Petitioner : Mr.L.Chandrakumar
For Respondents : Mrs.Hema Muralikrishnan, SPC

ORDER

Mrs.Hema Muralikrishnan, learned Senior Panel Counsel accepts notice for the respondents. Heard both.

2. The petitioner is a small scale industry manufacturing starch and sago and in this writ petition, the petitioner has challenged a show cause notice issued by the third respondent under the provisions of the Central Excise Act, 1944. In the impugned show cause notice, the third respondent proposed to levy central excise duty on the tapioca starch and sago cleared

during the period from 2010-11 to 2012-13, under Section 11A of the said Act. Apart from that, there is a proposal to demand interest under Section 11AA of the said Act and impose penalty under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the said Act.

3. The learned counsel for the petitioner submits that respondents 1 and 2 owe a public duty to consider the question of classification of sago raised by the sago manufacturers as back as in the year 2012 and in particular, the representation dated 19.7.2016 and issue appropriate directions/instructions under Section 37B of the said Act. He further submits that as long as the said representation has not yet been considered and a direction issued by the Central Board, the third respondent cannot demand central excise duty or propose to impose interest and penalty.

4. In the considered view of this Court, the impugned proceedings being only a show cause notice, the same cannot be interdicted for the reasons given by the petitioner. As of now, there is no direction issued by the Central Board under Section 37B of the said Act. Therefore, whatever contentions the petitioner seeks to raise, it should be raised by way of a reply to the show cause notice. At this stage, the impugned show cause notice cannot be quashed.

5. Accordingly, the writ petition is dismissed. No costs. Consequently, the above WMP is also dismissed.

6. The petitioner is granted 30 days' time from the date of receipt of a copy of this order to submit their explanation to the impugned show cause notice raising all factual and legal contentions, which the third respondent shall consider, after affording an opportunity of personal hearing.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
1.The Secretary to Government of India, Ministry of Finance, Department of
Revenue, North Block, New Delhi-1.

2.The Chairman, Central Board of Excise & Customs,North Block,New Delhi-1.

3.The Assistant Commissioner of Central Excise, Service Tax and Customs, Salem II Division, Salem-4.

+1 cc to M/s.Hema Muralikrishnan Advocate sr 68676

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