In the High Court of Judicature at Madras

Dated: 21.12.2016

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The Honourable Mr.JUSTICE RAJIV SHAKDHER

Writ Petition No.43796 of 2016
& WMP No.37608 of 2016

M/s.BX Universal Fertilizer
represented by its Partner
Smt.Komal Khicha

.... Petitioner

Vs.

The Deputy Commissioner of Customs
(Group-2), Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

.... Respondent

PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari calling for the records of the respondent in F.No.S.Misc.385/2015-Gr.2, leading to issuance of order in original No.51148/2016 dated 18.10.2016 and quash the same as the same is contrary to law and the orders of this Hon'ble Court in W.P.No.27750 of 2015 dated 21.06.2016.

For Petitioner : Mr.S.Krishnanandh
For Respondents : Mr.Umesh Rao.K

O R D E R

1. Issue notice. Mr.Umesh Rao accepts notice on behalf of the respondent.

2. With the consent of counsel for parties, the Writ Petition is taken up for final hearing and disposal.

3. The order-in-original is dated 18.10.2016. This is a second round of litigation initiated on behalf of the petitioner.

4. The petitioner had approached this Court against the show cause notice dated 07.08.2015 (in short SCN) by way of a

Writ Petition numbered as:W.P.No.27750 of 2015. The said Writ Petition was disposed of by this Court by a speaking order dated 21.06.2016.

4.1. The relevant observations made by the learned single Judge, while disposing of the said Writ Petition, are set out hereunder:

> ".....The goods were imported through Chennai Port and the Officials of the respondent Department drew samples and sent the same to the Central Fertilizer Quality Control and Training Institute, Faridabad, Haryana for testing and submission of report. The samples so drawn were analyzed by the Central Institute and separate test reports have been furnished for each of the samples in respect of the 5 bills of entry. By way of illustration if one of the reports, dated 07.07.2015 is referred to, which pertains to the product which has been imported and covered by bill entry No.9883550, dated 14.07.2015, it is stated that sample confirms to standards. This report has been duly signed by the Assistant Director of Central Institute. Thus, there can be hardly any reason for the respondent Department to differ from the view taken by the Central Institute as they are an Expert Body and in effect, such test report would bind the Department, as the Department has no expertise to analyze a sample to find out as to whether it is a fertilizer or not. Therefore, necessarily they will have to go by the report of the specialized bodies and in the instant case, the Central Institute has been established under the control of Ministry of Agriculture and Rural Development, Government of India.
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> 3. Therefore, in my view the report would bind the Department, so far as coming to a conclusion as regards the classification of goods. That apart, the petitioner has pointed out from the Fertiliser (Control) Order, and in particularly, the Schedule No.1 (f-micro nutrients) that the goods covered in the bills of entry in finds place in entry Nos.3,13,and 17 and it is submitted that there can be no doubt that the product which is sought to be imported is a fertilizer. That apart, the petitioner has also produced the Certificate of Origin issued by the seller, which is from Singapore, certifying that the goods are of Turkish origin and this is also been certified by the Turkish company, by Certificate dated 09.05.2015.
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> 4. In the light of the above, there will be a direction to the petitioner to submit all the facts by way of an explanation to the show cause notice and the respondent is directed to take note of the observations

made by this Court in this Order as well as the Certificate issued by the Central Institute with all entries in the Fertiliser (Control) Order, and take a conscious and proper decision, in accordance with law, within a period of three weeks from the date on which, the reply is submitted by the petitioner along with a copy of this order....."

5. Accordingly, the matter was revisited by the adjudicating authority. The petitioner was, admittedly, given an opportunity to file relevant materials. The petitioner was also accorded personal hearing in the matter. It is, thereafter, that the adjudicating authority has passed the impugned order, which has been assailed in the Writ Petition.

5.1. In sum, the Adjudicating Authority has taken a view that the subject goods fall under Customs Tariff Heading 2840, in contrast to the petitioner's stand that they fall under Customs Tariff Heading 3102.

6. In my view, the issue raised in the Writ Petition is, thus, a mixed question of fact and law, notwithstanding the observation of this Court in order dated 21.06.2016.

7. Therefore, having regard to the scope of controversy, the petitioner, to my mind, should avail of the alternative remedy by way of an appeal, which is admittedly available to it. The petitioner is, thus, given liberty to withdraw the Writ Petition with leave to approach the first appellate authority, i.e., Commissioner of Customs (Appeals).

7.1. Needless to say, if any appeal is filed by the petitioner, the appellate authority, i.e., Commissioner of Customs (Appeals) will bear in mind the observations recorded by this Court in the order dated 21.06.2016, passed in W.P.No.27750 of 2015.

8. The Writ Petition is, accordingly, disposed of in terms of the aforesaid directions. Consequently, the connected Miscellaneous Petition is closed. However, there will be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
The Deputy Commissioner of Customs
(Group-2), Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

+1 cc to Mr.B.Satish sundar Advocate sr 74674
+1 cc to Mr Umesh Rao Advocate sr 76129

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