In the High Court of Judicature at Madras

Dated: 08.06.2017

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The Honourable Mr.JUSTICE RAJIV SHAKDHER
and
The Honourable Mr.JUSTICE R.SURESH KUMAR

Writ Appeal No.87 of 2017
and C.M.P.No.1425 of 2017

V.Ramasamy Naidu & Brothers
rep. by its Partner
V.Ramasamy
No.8/98, Mettu Street, Ulipuram Post,
Gangavalli Taluk, Salem District.
... Appellant/Petitioner

Vs.

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

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

3. Assistant Commissioner of Central Excise,
Service tax and Customs, Salem II Division,
No.21, Theerthamalai Arcade, Veerapandiar Nagar,
II Cross, Salem - 4.
... Respondents/Respondent

APPEAL under Clause 15 of the Letters Patent against the order dated 23.11.2016 passed in W.P.No.41020 of 2016 on the file of this Court.

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 Adi dated 23.09.2016, 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 19.07.2016 of the petitioner herein.

For Appellant : Mr.L.Chandrakumar
For Respondents: Ms.Hema Muralikrishnan

J U D G M E N T

(Judgment of the Court was delivered by RAJIV SHAKDHER,J.)

1. Learned counsel for the appellant assails the order dated 23.11.2016, passed by the learned single Judge in W.P.No.41020 of 2016.
2. In the Writ Petition filed, the appellant sought to challenge the Show Cause Notice dated 23.09.2016 (in short, the 'SCN'). Admittedly, a reply to the SCN, dated 23.09.2016, has been filed by the appellant.
3. The basic grievance of the appellant is that the product manufactured by it, i.e., Sago (Sabudhana) falls under tariff heading - item 1106 20 10, i.e., under Chapter 11, as against tariff heading - item No.1903 00 00, i.e., under Chapter 19.
4. It is the learned counsel's submission that a representation has been made to the second respondent, i.e., Central Board of Excise and Customs, under Section 37-B of the Central Excise Act, 1944 (in short, the '1944' Act), which has not been dealt with by the said respondent.
   4.1. To be noted, the representation is dated 19.07.2016.
5. A bare perusal of Section 37-B of the 1944 Act would show that the second respondent, which is constituted under the Central Board of Revenue Act, 1963 (in short, the '1963 Act'), is empowered to issue such orders, instructions and directions to the Central Excise Officers, as it may deem fit, and, to such other officers and all other officers, employed in the execution of the provisions of the Central Excise Act, 1944, wherever it may consider it necessary or expedient to do so, for the purpose of uniformity of classification of excisable goods or with respect to levy of duty of excise on such goods.
   5.1. The proviso to Section 37-B makes it clear that no such orders, instructions or directions can be issued: i) to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner; and/or, ii) to interfere with the discretion vested in Commissioner of Central Excise (Appeals), in the exercise of his appellate functions.
6. Having regard to the scope and ambit of the provisions, we are not persuaded by the submissions advanced by the learned counsel for the appellant, that any directions ought to be issued to the second respondent for disposing of the representation, as, in our view, it would then be a

direction, issued in a particular case. In any event, the appellant has taken the defence, in reply to the SCN, with regard to the error in the classification of the product, manufactured by it and, therefore, the concerned Assessing Officer, who has the necessary jurisdiction, will deal with this aspect of the matter.

7. Having said so, it will be open to the Sago industry, generally, to approach the second respondent, if they, deem it necessary.
8. We find no merit in the appeal. The appeal, is, accordingly dismissed.
9. Consequently, the connected Miscellaneous Petition is also dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

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

3. Assistant Commissioner of Central Excise,
Service tax and Customs, Salem II Division,
No.21, Theerthamalai Arcase, Veerapandiar Nagar,
II Cross, Salem - 4.

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.40708
+1cc to Mr.Hema muralikrishnan, Advocate, S.R.No.41026

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RSI(CO)
RS(22/06/2017)