IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

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THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.Nos.19314 and 19315 of 2006
and M.P.Nos.1 and 1 of 2006

Taher Ali Industries &
Projects (P) Ltd.,
Punarkulam,
Gandarvakottai Taluk,
Pudukottai District
Rep. by its Power Agent
Mohamed Fakrudeen ..Petitioner in both the WPs

Vs.

1.The District Collector,
Nagapattinam District.

2.The District Collector,
Thiruvarur District.

3.The Additional Commissioner of
Customs & Central Excise,
Trichy.

4.The Executive Engineer,
Tamil Nadu Water Supply &
Sewerage Board,
Project Division,
Vedaranyam CWSS
Mannargudi 614 001. ..Respondents in both the Wps

Prayer in W.P.No.19314 of 2006:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the letter dated 27.04.2006 in Rc.No.1149/2006/A2/AD(P) and quash the same and direct the 1st Respondent to issue a certificate in favour of the Petitioner in terms of Notification No.47/2002 C.E. Dated 06.09.2002 for availing exemption of central excise duty for providing the work for Vedaranyam Combined Drinking Water Supply Scheme.

Prayer in W.P.No.19315 of 2006:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, to direct the 2nd Respondent to issue a certificate certifying the Petitioner is entitled for availing central excise duty exemption under Notification No.47/2002 dated 06.09.2002.

(In both the W.P.s)
For Petitioner : Mr.M.Abdul Nazeer

For Respondents : Mr.Prathap Singh (for R1 and R2)
Government Advocate

Mrs.Hemalatha (for R3)

Mrs.S.Tamilarasi (for R4)

COMMON ORDER

The petitioner in these writ petitions is a manufacturer of pre-stressed concrete pipes and is engaged in laying, jointing, testing and commissioning of PSC pipes, on contract from various entities including public sector undertakings.

2.During the year 2000-2001 the Tamil Nadu Water Supply and Drainage Board (in short 'TWAD Board') had awarded a contract in respect of the Vedaranyam Combined Drinking Water Supply Scheme (VCDWS Scheme) to an entity by the name of M/s.IVRCL Infrastructures and Projects Limited, Hyderabad, (IVRCL).

3.The petitioner and IVRCL had entered into a joint venture, IVRCL entrusting a major portion of the scheme work to the petitioner under agreement dated 18.12.2001. Consequent upon such agreement the petitioner had registered itself under the provisions of the Central Excise Act and commenced operations.

4. According to the petitioner, Notification No.6/2002 Central Excise dated 01.03.2002 as amended by Notification No.47/2002 Central Excise, exempted various items of machineries, instruments, apparatus and appliances, equipments, etc., including pipes involved in Drinking Water Supply Projects for the consumption of humans and animals from the levy of Central Excise. The petitioner avers that the scope of work undertaken by it in relation to the VCDWS Scheme would attract the benefit of the exemption Notifications as above.

5. An application dated 07.10.2002 was filed seeking certification in this regard from the Collector of Pudukottai and a certificate dated 26.12.2002 issued by the District Collector to the effect that pipes used exclusively for the supply of drinking water from infiltration well/source to storage reservoir or tank would be eligible for exemption in terms of the Notifications so long as it related to the Vedaranyam Combined Drinking Water Supply Scheme.

6.While this is so, proceedings appear to have been initiated by the Central Excise authorities under notice dated 25.09.2003 calling upon the petitioner to appear and show cause as to why the exemption in terms of the aforesaid Notifications not be rejected. After hearing the petitioner an order in original was passed confirming the assessment proposals, which was confirmed all the way till an order by the Customs, Central Excise and Service Tax Appellate Tribunal (Tribunal) dated 27.09.2005. The operative and relevant portion of the Tribunal is extracted below:

> "2.The appellants are challenging the demand of duty on pre-stressed concrete (PSC) pipes, which were used for drawing water from its source and conveying the same to water treatment plants situate at different places and further for conveying purified water from the plants to the final storage. The assessee, claiming benefit of exemption under Notification No.47/2002-CE dated 06.09.2002, cleared the pipes without payment of duty. The original authority and the first appellate authority denied the benefit of the Notification to the assessee on the ground that they failed to comply with an important condition stipulated therein. The condition was that "a certificate should be produced from the Distt. Collector/Distt. Magistrate/Deputy. Commissioner of the District in which the plant was located certifying that the goods were cleared for the purpose specified in Column (3) of the Table to the Notification. The specified purpose was conveyance of water to water treatment plant and conveyance of purified water for final storage. The authorised representative of the company submits that the Range Officer had allowed them to obtain a certificate from the Distt. Collector within whose jurisdiction their manufacturing unit was located and accordingly a certificate was obtained from the Distt. Collector and produced. We have found no material on record to show that any Central Excise Range Officer had advised the assessee in the above manner. On the other hand, it is clear from the records that the aforesaid condition stipulated under the Notification was not fulfilled by the party. We are told that the water treatment plants are located in the Nagapattinam and Tiruvarur districts. It is not the appellants' case that any certificate issued by the Collectors of these districts was produced before the Central Excise authorities in compliance with the aforesaid condition. The authorised representative, at this stage, submits that, given an opportunity, they can produce such certificates. We have heard the ld. SDR also.
>
> 3.After giving careful consideration to the submissions, we are of the view that, for the ends of justice, an opportunity should be given to the assessee to satisfy the requirements of the exemption Notification. Accordingly, we set aside the orders of both the lower authorities and remand the matter to the original authority with a direction to adjudicate

> the dispute afresh, after giving the assessee a reasonable opportunity (not exceeding 90 days) of producing the aforesaid evidence (if any) and of being heard. The appeal stands allowed by way of remand.”

7.Pursuant to the aforesaid order, the petitioner states that it has been making strenuous efforts to obtain supporting documents from various entities. The District Collector, Nagapattinam, upon consideration of the petitioners' request November 9, 2005 has issued an order dated 27.04.2006 rejecting the request of the petitioner. A petition for re-consideration of the request is stated to have been filed before the District Collector, Nagapattinam that is pending.

8.Post remand by the CESTAT, the petitioner was in receipt of notice dated 25.05.2006 calling upon the petitioner to appear for a personal hearing on 21.06.2006 before the Assessing Officer. It is as against the aforesaid notice that the petitioner has approached this Court by way of the present writ petition seeking a Mandamus, directing the 2nd respondent, the District Collector, Tiruvarur to issue a certificate to the effect that the petitioner is entitled to the exemption in terms of Notification No.47/2002 dated 06.09.2002.

9. I am of the considered view that the prayer sought in this Writ Petition is pre-mature insofar as the impugned proceedings are only at notice stage. The petitioner has succeeded before the Tribunal that has remanded the matter to be completed afresh, after affording opportunity to it. Having accepted the order of the Tribunal, the petitioner cannot now stand in the way of the remand proceedings. It is for the petitioner to appear before the Officer and put forth its case on merits. I am also unable to issue the positive direction as sought for by the petitioner to the 2nd respondent to issue the required certification as the grant of certification or otherwise is dependant on various factual parametres to be taken into consideration by the certifying authority and seen/applied in the context of the Notifications relied upon.

10. The petitioner had rightly availed of the statutory appellate remedy in the first round of litigation. The Tribunal has recorded a factual finding to the effect that there was no material available on record in support of the petitioners' claim and has remanded the matter to the assessing authority to consider the matter afresh, after affording an opportunity to the petitioner to enable it to circulate such materials as it may be in a position to procure to support its claim of exemption. It is, consequently, incumbent upon the petitioner to satisfy the authorities, on facts, that it is indeed entitled to the exemption sought.

11. The petitioner is granted liberty to produce such materials as it may be in a position to procure, to support its

claim of exemption. Seeing as show cause notice dated 25.05.2006 stands frozen under an order of stay for the last 13 years, the stay is vacated forthwith. The District Collector, Thiruvarur will pass orders upon the representation dated April 9, 2006, on or before 04.10.2019.

12. The petitioner will appear before the 3rd respondent on Wednesday, the 23rd of October 2019 and no further notice need be issued in this regard. After hearing the petitioner, orders will be passed by the Additional Commissioner of Customs and Central Excise/ R3 in accordance with law and on merits within a period of four weeks thereafter, i.e., on or before 30.11.2019.

13.Both writ petitions are disposed with the aforesaid directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The District Collector,
Nagapattinam District.

2.The District Collector,
Thiruvarur District.

3.The Additional Commissioner of Customs & Central Excise,
Trichy.

4.The Executive Engineer,
Tamil Nadu Water Supply & Sewerage Board,
Project Division, Vedaranyam CWSS
Mannargudi 614 001.

+2cc to Mr.M.Abdul Nazeer, Advocate SR.No.78543
+2cc to M/s.R.Hemalatha, Advocate SR.No.78632
+1 cc to M/s.S.Thamizharasi,Advocate Sr.No. 78774
+1 cc to The Government Pleader Sr.Nos.79360 and 79361

AKM/03.10.19/5P-11C /

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