

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.38850 of 2006

and

M.P.No.1 of 2006

The Indian Hume Pipe Co. Ltd.,
8, First Street,
Gopalapuram, Chennai-600 086
Represented by its General Manager
Sri Ajay Asthana ...Petitioner

vs.

- 1.The Superintendent of
Central Excise III "C" Range
138-E, Pothanur Main Road,
Coimbatore.
- 2.The District Collector
Kancheepuram District.
- 3.The Tamil Nadu Water Supply and
Drainage Board
31, Kamarajar Salai
Chennai-600 005.
Represented by its Managing Director. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records in Ir.No.A1/1234/Central Excise/2004 dated 28.08.2006 on the file of the 2nd respondent which forms the basis of the letter in O.C.No.270/2006 dated 12.09.2006 on the file of the 1st respondent.

For Petitioner : Mr.Raghavan Ramabadran

For Respondents: Mr.K.S.Ramasamy for R1

Mr.D.Suriyanarayanan
Additional Government Pleader for R2

Mr.N.Jothi Kumar
standing counsel for R3

O R D E R

This writ petition is filed challenging the order of the second respondent dated 28.08.2006, wherein and whereby, the second respondent had withdrawn the Certificates issued to the petitioner by the then District Collector on 07.11.2002 and 17.12.2003 for the purpose of availing exemption of excise duty for the pipes supplied for the CWSS to Sriperumpudur UTP in Kancheepuram District and Poonamallee UTP in Thiruvallur District.

2. Heard Mr.Raghavan Ramabadran, learned counsel appearing for the petitioner and Mr.K.S.Ramasamy, learned counsel appearing for the first respondent, Mr.D.Suriyanarayanan, learned Additional Government Pleader appearing for the second respondent and Mr.N.Jothi Kumar, learned standing counsel appearing for the third respondent.

3. The case of the petitioner, in short, is as follows:

The petitioner is a Company, engaged in the manufacture, supplying, laying, jointing and commissioning of water pipes and water systems of various dimensions and specifications. They entered into various contracts with various parties including the third respondent. One of the contracts entered with the third respondent is for execution of works contract at Sriperumbudur UTP in Kancheepuram District and Poonamallee UTP in Thiruvallur District. During the period of 2002-2005, the petitioner cleared various pipes required for the above said project and while clearing the said goods from the premises of the petitioner to the site of the contract, the petitioner availed the benefit of Notification No.6 of 2002 as amended by Notification No.47/2002 of the Central Excise Department, which exempted the subject matter goods from the payment of duty. The benefit of the above notification was conditional, as the Certificate issued by the District Collector must be produced. Accordingly, the District Collector, Kancheepuram issued the Certificates dated 07.11.2002 and 17.12.2003, certifying that the goods are cleared by the petitioner for use in the contract as envisaged in the Notification No.6/2002 as amended by Notification No.47/2002. On the basis of the above certificates, the petitioner cleared the said goods. However, to the petitioners' shock and surprise, they received a communication from the first respondent dated 12.09.2006, calling upon the petitioner to pay excise duty on the clearance of the said goods. The basis of the above demand was that the certificates already issued by the District Collector dated 07.11.2002 and 17.12.2003 were withdrawn by the proceedings of the District Collector dated 28.08.2006. Therefore, questioning the said withdrawal, the present writ petition was filed.

4. It is the contention of the petitioner that the very withdrawal of the certificates issued by the District Collector is unilateral and it cannot be done without issuing any notice to the petitioner and affording an opportunity of hearing as well.

5. On the other hand, the learned counsel for the second respondent submitted that the petitioner is not entitled to have exemption and therefore, the certificates already issued were rightly withdrawn.

6. This Court, at this stage, is not expressing any view on the merits of the claim made by the petitioner as to whether they are entitled to get exemption or not for the payment of excise duty based on the above two certificates. However, those two certificates were subsequently, withdrawn resulting the first respondent to demand excise duty from the petitioner. Undoubtedly, the withdrawal order was passed without putting the petitioner on notice. Certainly, the impugned order withdrawing the certificates already issued to the petitioner would drive the petitioner to face serious consequences. Therefore, such action of the second respondent in withdrawing the certificates already issued to the petitioner cannot be done, without putting the petitioner on notice and hearing their objections, if any. Therefore, this Court is satisfied that the impugned order is liable to be set aside only on the ground of violation of principles of natural justice.

7. Accordingly, this Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the second respondent for passing fresh orders on merits and in accordance with law, after giving notice to the petitioner and also providing an opportunity of personal hearing. It is open to the petitioner to place all the objections and material facts before the second respondent opposing the proposed cancellation/withdrawal of those certificates. The respondents 1 & 2 are also at liberty to make their submissions before the second respondent in respect of the proposed withdrawal of the certificates. The second respondent, shall accordingly, issue notice to the petitioner and pass fresh orders after hearing all the parties concerned within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Superintendent of
Central Excise III "C" Range
138-E, Pothanur Main Road,
Coimbatore.

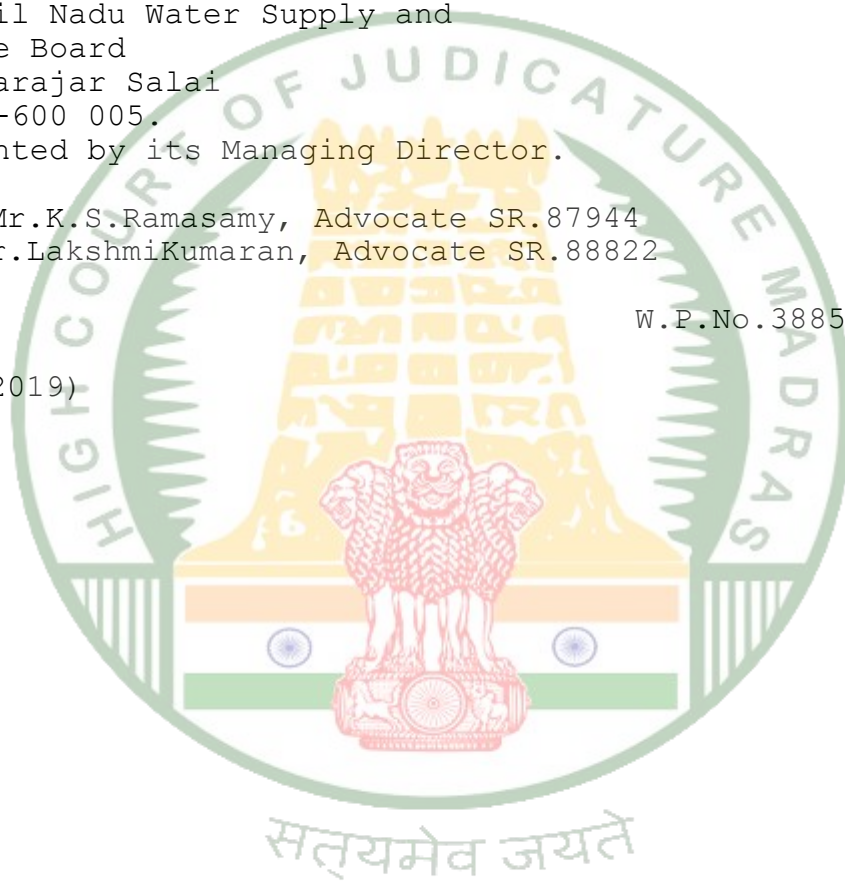
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Represented by its Managing Director.

+1cc to Mr.K.S.Ramasamy, Advocate SR.87944
+1cc to Mr.LakshmiKumaran, Advocate SR.88822

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MR(CO)
CB(28/11/2019)



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