IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.11.2019
CORAM
THE HONOURABLE DR. JUSTICE ANITA SUMANTH
W.P.Nos.27205 of 2013
MP.No.1 of 2013

M/s.Sree Ramcides Chemicals Pvt. Ltd.
Represented by its Managing Director,
Mr.R.Gopal ...Petitioner

--Vs--

The Additional Director General
Director General of Central Excise Intelligence,
Chennai Zonal Unit, C-3, C-Wing, II Floor,
Rajaji Bhavan, Besant Nagar,
Chennai-600 090 ... Respondent

2.The Commissioner of Central Excise No.1
Williams Road Cantonment Tiruchirapalli

3.The Commissioner of Central Excise, Chennai-VI
No.692 Annasalai MHU Complex
Nandanam Chennai-35

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Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorari, calling for the records pertaining to the impugned show cause notice no.69/2013 dated 07.09.2013 issued in F.No.INV/DGCEI/ CHZU/ CE/ 38/2012-Or No.113/2011 by the respondent and quash the same.

For Petitioner : Mr.Hari Radha Krishnan
For Respondents: Mr.V.Sundareswaran
Senior Panel Counsel

ORDER

The challenge in this case is to a show cause notice dated 07.09.2013. The matter has been heard in detail on several occasions and finally the following three issues have been identified as arising for adjudication.

2. The first issue is in relation to the proposal for levy of differential duty on five products namely, (i) Rhino Power (ii) Allwin XL Liquid (iii) Rishab (iv) Rock (v) Agrovet, wherein the petitioner contends that the differential duty of income has already been remitted.

3. The Department was asked to verify this aspect of the matter and Mr.V.Sundareswarn, learned Senior Panel Counsel has submitted a memo dated 13.11.2019 to the following effect:

> The petitioner according to the instructions of the 2nd respondent in instruction in C.No.I/10/27/2013-Legal dt.11/10/2019 and C.No.1/10/27/2013-Legal dt.11/11/2019 had remitted the differential duty on 5 products namely Rhino Power, Allwin XL Liquid, Rishab, Rock & Agrovet pursuant to the undertaking before the CESTAT in F.O.Nos.40273-40279/2016 dt.27/01/16. In so far as other 5 products are concerned namely Allwin Top Powder, Allwin Wonder Powder, Allwin Gold 15 G Granules, Allwin XL granules & Allwin Gold Liquid are concerned, as against the order CESTAT in F.O.Nos.40273-40279/2016 dt.27/01/16 appeal is pending before Apex Court CA.Diary.No.28495 of 2016. The SCN.No.17/2012-CE dt.2/9/11 and SCN.No.12/12-C.E.dt.7/5/12 issued by the 2nd respondent which is kept in call book would be adjudicated pursuant to the order of Apex Court referred to above.

4. Mr.Sundareswaran, concurs on the position that the petitioner has remitted differential duty on the above five products and the matter has attained finality. Thus, he undertakes that the proposals in show cause notice, in so far as they relate to the units at Trichy, will not be pursued by the respondent. This is recorded.

5. The second issue is in relation to the demand for duty in respect of (i) Allwin Wonder (ii) Allwin Top (iii) Allwin XL (iv) Rock (v) Rishab for the period August 2008 to 2011-12. An argument was initially advanced by the petitioner to the effect that the identical proposal had been made earlier in respect of the same period, based on a report of the chemical examiner dated 26.08.2009, that was adverse to the petitioner and that recommended classification of the aforesaid five products under chapter heading 38.24.

6. The Commissioner, vide proceedings dated 05.05.2010 in Order-in-Original No.8 of 2010, had directed the classification

of the aforesaid products in terms of CETH 3101 0099 of the Central Excise Tariff Act, 1985 as 'fertilizers', dropping further proceedings in that case.

7. Thus according to the petitioner, the present impugned proceedings constitute a review of the order of the Commissioner for the same period (August 2008 to November 2009), impermissible in law. Without going into the legal question raised, I note that the impugned show cause notice covers the period November 2009 to 2011-12 that includes the period August 2008 to 2009. Thus since the instant proceedings cover a longer duration of time, I am of the considered view that the proceedings should be allowed to be proceeded and be taken to their logical conclusion, one way or another. I am also inclined to take this view based on the fact that the impugned show cause notice reveals, prima facie, some new material, unavailable earlier, leading to the suspicion of escapement of duty.

8. Though parties have made extensive submissions on the classification of the products, the reports of the chemical examiner as well as the language of the Tariff Act itself, since the proceedings under the impugned show cause notices will go on, it would neither be appropriate to record the submissions made nor to make any observations thereupon at this stage.

9. The respondent will issue a notice of hearing to the petitioner pursuant to show cause notice dated 07.09.2013 and after hearing the petitioner and considering all/any materials that may be circulated by it, complete the proceedings within a period of three months from date of conclusion of personal hearing.

10. This writ petition is disposed in the aforesaid terms. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/
Sub Asst. Registrar

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To

The Additional Director General
Director General of Central Excise Intelligence,
Chennai Zonal Unit, C-3, C-Wing, II Floor,
Rajaji Bhavan, Besant Nagar,
Chennai-600 090

2.The Commissioner of Central Excise No.1
Williams Road Cantonment Tiruchirapalli

3.The Commissioner of Central excise Chennai-VI
No.692 Anna Salai MHU Complex Nandanam Chennai-35

+1 cc to Mr.V.Sundareswaran Advocate sr95265
+1 cc to M/s.Hari Radhakrishnan Advocate sr95643

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