IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.30628 of 2018
and
W.M.P.No.35714 of 2018

M/s.Sri Varahi Chemicals
Represented by its Partner,
Mr.L.P.Sanjeev Kumar Jain
Plot No.3094, Block No.24, Sector-III
Jeevan Bhima Nagar, Anna Nagar West Extn.,
Chennai-600 101.

..Petitioner

vs.

1. The Commissioner of Customs
Chennai Commissionerate-II
Custom House, No.60, Rajaji Salai
Chennai-600 001.

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

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, restraining the respondents herein from collecting any duty in the name of anti-dumping duty in terms of Notification No.50/2017-Customs (ADD) 18.10.2017 in respect of the imports made by the petitioner firm from the countries specified in Notification No.34/2012-Customs (ADD) dated 03.07.2012.

For Petitioner : Mr.S.Murugappan
For Respondents : Mr.V.Sundareswaran standing counsel

O R D E R

This writ petition is filed seeking for mandamus restraining the respondents from collecting any duty in the name of anti-dumping duty in terms of Notification No.50/2017-Customs (ADD) dated 18.10.2017 in respect of the imports made by the petitioner firm from the countries specified in Notification

No.34/2012-Customs (ADD) dated 03.07.2012.

2. The case of the petitioner is as follows:

The petitioner firm regularly imports Soda Ash from various countries. The soda ash so imported is classifiable under Heading 2836 2010 as well as 2836 2020 of the first schedule to the Customs Tariff Act, 1975 and besides the Basic Customs Duty, it also attracts anti-dumping duty in terms of Section 9A of the Customs Tariff Act, 1975, if the aforesaid product imported, is originated from People's Republic of China, European Union, Kenya, Iran, Pakistan, Ukraine and USA. In terms of Notification No.34/2012-Customs (ADD) dated 03.07.2012, anti-dumping duty at various rates were prescribed when soda ash is imported from these countries. The Designated Authority for anti-dumping duties initiated a mid-term review and in terms of Notification No.15/28/2014-DGAD dated 23.09.2016 recommended revoking of the anti-dumping duty levied in terms of the above Notification. The Notification No.55/2016-Customs (ADD) dated 21.12.2016 was issued by the Government of India rescinding Notification No.34/2012, which imposed anti-dumping duty on soda ash imported from those countries. The Government of India issued a Notification No.33/2017-Customs (ADD) dated 30.06.2017, extending the levy of anti-dumping duty upto 2nd July 2018 in respect of the imports. In pursuant to the order passed by the Hon'ble High Court of Gujarat dated 23.02.2017, the Designated Authority initiated fresh proceedings and issued Notification No.15/28/2014-DGAD dated 22.07.2017 and again recommended revocation of anti-dumping duty imposed on the subject goods. The Government of India issued another Notification No.50/2017-Customs (ADD) dated 18.10.2017, by rescinding Notification No.34/2012-Customs (ADD) dated 03.07.2012, but kept the recession in abeyance subject to the final order of the Hon'ble High Court of Gujarat in Special Civil Application No.14202 of 2017. The Hon'ble High Court of Gujarat finally disposed the matter on 11.06.2018 and remitted the matter back to the Designated Authority for deciding the issue afresh in accordance with law. In the above background, the validity of the original levy of anti-dumping duty in terms of Notification No.34/2012 and extended by Notification No.33/2017, was expired by 02.07.2018. Even though the right to collect such anti-dumping duty in terms of the said Notification got expired on 02.07.2018, the respondents continued to take a stand that the consignments of Soda Ash imported from the countries referred to in the Notification No.34/2012 will be subjected to anti-dumping duty. Hence, the present writ petition is filed seeking for the relief as stated supra.

3. A counter affidavit is filed by the respondents, wherein, it is stated as follows:

The imposition of anti-dumping duty on the import of Soda

Ash in terms of Notification No.34/2012 dated 03.07.2012 levied on import from the specific countries with different rates for a period of five years valid upto 02.07.2017. Thereafter, by Notification No.55/2016-Customs (ADD) dated 21.12.2016 based on the mid-term review of Notification No.15/28/2014-DGAD dated 23.09.2016, the Central Government proposed for revoking the levy of ADD imposed in terms of Notification No.34/2012. The above said proposal for revoking Notification No.34/2012 by the Central Government was challenged before the Hon'ble High Court of Gujarat by the local manufacturers. Consequent to the above said litigation, ADD Notification No.33/2017-Customs (ADD) dated 30.06.2017 was issued extending the levy of ADD upto 02.07.2018. The Hon'ble High Court of Gujarat vide common judgment dated 23.02.2017, quashed the disclosure statements and final findings dated 23.09.2016 and issued direction to initiate fresh proceedings. Accordingly, the Designated Authority initiated fresh proceedings and issued Notification No.15/28/2014-DGAD dated 23.09.2016 recommended revocation of anti-dumping duty imposed on the subject goods. The same was again challenged by some domestic manufacturers before the Gujarat High Court. Thereafter, the Notification No.50/2017-Customs (ADD) dated 18.10.2017 was issued wherein, levy of ADD in terms of Notification No.34/2012 continued beyond the expiry period until the outcome of final order of the High Court of Gujarat. The Hon'ble High Court of Gujarat on 11.06.2018 disposed all applications in the subject matter and remitted the matter back to the Designated Authority for deciding the issue afresh in accordance with law. In the meantime, the DGAD rendered the final findings vide proceedings F.No.7/5/2017-DGAD dated 14.12.2018 concluding that the continuation of anti-dumping duty is not warranted and accordingly, did not recommend the extension of the anti-dumping duty on import of subject matter from the subject countries. The said order dated 14.12.2018 is an appealable order before the Customs, Excise and Service Tax Appellate Tribunal. Hence, the interest of Revenue has to be protected by imposing certain conditions on the petitioner.

4. Mr.S.Murugappan, learned counsel for the petitioner submitted that the crux of the issue before this Court is that whether the respondents are entitled to collect anti-dumping duty from the petitioner in respect of import of Soda Ash from the countries referred supra, in the absence of any statutory right conferred on them, especially, when such right conferred through the Notification got expired already on 02.07.2018. He further contended that even according to the respondents, the DGAD rendered the final findings on 14.12.2018 itself, subsequent to the order passed by the Hon'ble High Court of Gujarat on 11.06.2018, holding that the continuation of anti-dumping duty is not warranted and thus, he did not recommend the extension of the anti-dumping duty on import of subject matter

from the subject countries. When such being the factual position, the learned counsel for the petitioner contended that the respondents are not entitled even to seek any interim protection for releasing the subject matter goods viz., Soda Ash.

5. On the other hand, the learned standing counsel for the respondents submitted that though, as on date, there is no notification entitling the collection of anti-dumping duty from the petitioner, since the order passed by the DGAD dated 14.12.2018 is an appellable order before the Tribunal, the interest of the Revenue has to be protected by directing the petitioner to furnish some bond.

6. There is no dispute to the fact that the anti-dumping duty was imposed in pursuant to the Notification issued as stated supra. It is also not in dispute that the right to collect such anti-dumping duty got expired on 02.07.2018. Even otherwise, as it is admitted by the respondents in the counter affidavit that the DGAD has already passed an order on 14.12.2018 holding that the continuation of anti-dumping duty is not warranted and thus, he is not recommending for the extension of the anti-dumping duty on import of subject matter from the subject countries. It is an admitted case of the respondents that as on date, no notification is in force empowering the collection of ADD. On the other hand, it is a matter of fact such power conferred on the authorities through issuance of relevant notification ceased to exist after 02.07.2018. Hence, I am of the view that there is no justification on the part of the respondents in seeking for any interim protection for releasing the goods without collecting the anti-dumping duty on the reason that the order passed by DGAD dated 14.12.2018 is an appellable order. Needless to say that the respondents cannot insist upon the petitioner to protect the interest of the Revenue towards the anti-dumping duty in the absence of any statutory right available as on today for levying & collecting such duty. On the other hand, it is an admitted fact that such right has already ceased to exist on 02.07.2018, which right was also not recommended to continue by the DGAD by proceedings dated 14.12.2018.

7. Under such circumstances, the petitioner is entitled to succeed in this writ petition. Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Customs
Chennai Commissionerate-II
Custom House, No.60, Rajaji Salai
Chennai-600 001.

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

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.6164

+1cc to Mr.S.Murugappan, Advocate, S.R.No.5359

W.P.No.30628 of 2018

RV(CO)
GSP(28/01/2018)