IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.9712 of 2011
and
M.P.No.1 of 2011
(Through Video Conferencing)

M/s.Agro Pipes Pvt. Ltd.,
Represented by its Managing Director,
Jyothi Modi
11A, Kondi Chetty Street,
Chennai - 600 001. ... Petitioner

Vs.

1. Union Government of India,
Ministry of Finance,
Represented by Joint Secretary of
Government of India,
Department of Revenue,
No.14, HUDCO Vishala Building,
B Wing, 6th Floor, Bhikaji Cama Place,
New Delhi - 110 066.

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

3. Assistant Commissioner of Customs (Drawback),
Office of the Commissioner of Customs,
60, Rajaji Salai,
Chennai - 600 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records in order no.7899 of 2008 on the file of third respondent dated 15.07.2008 and quash the same and direct the third respondent to release the drawback claim in the circumstances of the case.

For Petitioner : No appearance
For Respondents : Mr.S.Gurumoorthy (SPC)

O R D E R

This case was argued by the learned counsel for the respondents at length on two days. An order dismissing the Writ Petition was passed on 01.04.2021. The operative portion of the order was dictated in the open court. It was predicated on the assumption that the petitioner had wrongly challenged only Order in Original No.7899/08, dated 15.07.2008 passed by the Original Authority, namely the third respondent.

2. Under these circumstances, this Writ Petition was dismissed with liberty to the petitioner to approach the appropriate forum against the impugned order passed by the third respondent Original Authority.

3. However, while finalising the reasons given for dismissing the Writ Petition, it was noticed that the petitioner has filed this Writ Petition for a consolidated relief and had not only challenged the Order in Original No.7899/08, dated 15.07.2008 passed by the third respondent Original Authority but also the subsequent orders of the second respondent Commissioner of Customs (Appeals) and the first respondent Revisional Authority.

4. Since the above mistake was noticed, this case was listed today under the caption "for clarification" and the order dated 01.04.2021 passed in this Writ Petition has been recalled by a separate order.

5. The fact indicates that the third respondent as a Original Authority had passed Order in Original No.7899/08, dated 15.07.2008. It was based on the opinion expressed by the Central Institute of Plastics Engineering & Technology (CIPET) vide their letter dated 10.06.2008. The Central Institute of Plastics Engineering & Technology (CIPET) by its communication dated 10.06.2008 informed the Deputy Commissioner of Customs as follows:-

> With reference your above letter, we would like to inform you that the pipe tested at CIPET, Chennai is considered as RIGID PVC PIPE based on flexural modulus. This pipe is coming in the category "Other category of pipe".
>
> Here we would like to mention few application of the given pipe.
>
> 1. Agricultural irrigation
> 2. Civil Engineering & Construction works
> 3. De-Watering in coal mines
> 4. Dairy good processing industries
> 5. Cleaning and recycling of black liquor, pulb in paper, jute, cotton industries.

6. Earlier, the Chemical Laboratary of the Customs Department had clarified that its Laboratary was not equipped to state as to whether the goods exported by the petitioner was a rigid spiral or not and hence the sample may be referred to the Central Institute of Plastics Engineering & Technology (CIPET), Guindy, Chennai and sealed remanent returned.

7. During the course of proceedings before the Revisional Authority namely, the first respondent, the Central Institute of Plastics Engineering & Technology (CIPET) appears to have apparently given a different opinion by its communication dated 12.05.2009 in respect of the same material. Though this has been considered by the first respondent Revisional Authority, it is to be emphasized that the testing authority is not a competent authority to determine the classification. Its role is limited to give indicators of chemical composition for a final determination of correct classification by the assessing officer.

8. Since the different opinion has been given now by the CIPET, I am of the view that the impugned Order in Original No.7899/08, dated 15.07.2008 passed by the third respondent, order dated 24.04.2009 of the second respondent Commissioner of Customs (Appeals) and the order dated 07.03.2011 of the first respondent Revisional Authority which confirms the order of the third respondent are liable to be quashed and the case should be remitted back to the third respondent to re-determine the correct classification for the purpose of grant of duty drawback to the petitioner on the export made by it in terms of the Schedule to the duty drawback.

9. It is made clear that the third respondent shall pass a fresh order on merits taking note of the clarification issued by the CIPET on 12.05.2009. The third respondent shall apply its mind based on the chemical composition and physical attribute given in the opinion of CIPET. Since the issue pertains to the export made by the petitioner during the year 2002, the third respondent shall endeavour to pass a fresh order in terms of the above classification of CIPET, within a period of three months from the date of receipt of a copy of this order.

10. Accordingly, this Writ Petition is disposed of. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Secretary,
Union Government of India,
Ministry of Finance, Department of Revenue,
No.14, HUDCO Vishala Building, B Wing,
6th Floor, Bhikaji Cama Place,
New Delhi - 110 066.

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

3. Assistant Commissioner of Customs (Drawback),
Office of the Commissioner of Customs,
60, Rajaji Salai, Chennai - 600 001.

+1cc to Mr.S.Gurumoorthy, Advocate, S.R.No. 26533

W.P.No.9712 of 2011
and M.P.No.1 of 2011

SKY(CO)
GN(09/08/2021)