BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.03.2021
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.3378 of 2020
and
W.M.P.(MD)No.2841 of 2020

M/s.Adsorbent Carbons Private Ltd.,
Represented by its Director,
Mr.N.V.Ajay,
C-92, SIPCOT Industrial Complex,
Tuticorin 628 008. ... Petitioner

-Vs-

1.The Commissioner of CGST and Central Excise
Office of the Commissioner of CGST & Central Excise
Central Revenue Building,
Bibikulam,
Madurai-625 002.

2.The Joint Commissioner of CGST and Central Excise
Office of the Commissioner of CGST & Central Excise
Tirunelveli Sub Commissionerate of Madurai Commissionerate
Central Revenue Building,
Tractor Road, N.G.O.'A' Colony,
Tirunelveli 7. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records in relation to the impugned order-in-original No.MDU-CEX-COM-06 to 018/2019, dated 16.10.2019 on the file of the first respondent and quash the same and consequently, forbear the second respondent from issuing show cause notices demanding duty on granulated charcoal with the allegation of clandestine removal without any corroborative evidence.

For Petitioner : Mr.J.Shankarraman
for Mr.S.P.Maharajan
For Respondents : Mrs.S.Ragaventhre
Junior Panel Standing Counsel

ORDER

Heard the learned counsel on either side. This Court also had the benefit of assistance from Thiru.K.Sivakumar, Commissioner of CGST and Central Excise, Madurai.

2.The petitioner is a manufacturer of Granulated Activated Carbon(GAC). The petitioner is a 100% Export Oriented Unit. The petitioner was served with a bunch of show cause notices proposing to levy excise duty equivalent to customs duty together with penalty. The petitioner filed W.P.(MD)No.5991 of 2018 questioning the same. By order dated 01.02.2019, this Court relegated the petitioner to go before the assessing officer himself. This Court observed that the petitioner can raise all his contentions before the authority and in the event of adverse order being passed, the petitioner can always invoke the writ jurisdiction of this Court again. Though in the show cause notices, the proposed amount leviable was indicated at Rs.55,96,99,274/-, in the impugned order, it was restricted to Rs.3,10,70,480/-. Penalty to the tune of Rs.40,00,000/- was also imposed by the impugned order dated 16.10.2019. Questioning the same, this writ petition has been filed.

3.The respondents have filed a detailed counter affidavit. The learned Standing Counsel took me through the contents of the same. She strongly emphasized that since the order impugned in the writ petition is appealable, the present writ petition ought to be dismissed as not maintainable.

4.The learned counsel for the petitioner submitted that the petitioner procures coconut shells and subjects the same through a heating process. The output is known as Granulated Activated Carbon and the same is sold. His pointed contention is that the levy of excise duty can only be on the product actually manufactured which is removed from the factory premises. In this regard, the learned counsel drew my attention to Section 3 of Central Excise Act, 1944 and Rule 8 of the Central Excise Rules, 2007. In the case on hand, the authority has not proposed to levy duty based on the actual manufacture or removal. Instead, the respondents have chosen to apply a formula and work out the output and levied tax on that basis.

5.The stand of the respondents is that they have not applied any arbitrary formulae. They have only chosen to apply the norms laid down by the Coconut Development Board. The said Board had issued a letter dated 06.09.2006, in which, input-output ratio has been laid down. The said Board is obviously an expert body. Therefore, the respondents cannot be faulted for applying the norms laid down by them.

6.While the respondents cannot be accused of any arbitrariness, the question is whether they are justified in applying the norms laid down by the Coconut Development Board. The issue on hand is *no longer res integra*.

7.The learned counsel for the petitioner drew my attention to the decision of the Hon'ble Supreme Court reported in *1978 (2) ELT (J 172) (SC) (M/s.Oudh Sugar Mills Limited Vs. Union of India*). The Hon'ble Supreme Court in the said decision made it clear that calculations regarding output cannot be based on inferences involving assumption. The Division Bench of the Madras High Court, vide order dated 25.02.2021 in C.M.A.No.746 of 2016 (M/s.IOCEE Exports Ltd., Vs. The Commissioner of Central Excise,Chennai-II Commissionerate, Nungambakkam, Chennai) had also held that standard input and output norms cannot be the sole basis for giving a cause of action for issuing the show cause notice for determination of the wastage, when there is no allegation of diversion made against the assessee.

8.In the case on hand, there is no allegation against the petitioner that they had indulged in clandestine removal.

9.Therefore, I am of the view that the order impugned in the writ petition which rests on formula given by the Coconut Development Board, cannot be sustained. In this view of the matter, the order impugned in the writ petition is set aside. The matter is remitted to the file of the first respondent. The first respondent shall verify the records and revisit the issue and levy duty based on actual production / removal of the goods in question.

10.This Writ Petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Commissioner of CGST and Central Excise
Office of the Commissioner of CGST & Central Excise
Central Revenue Building,
Bibikulam,
Madurai-625 002.

+1 CC to M/s.S.P.MAHARAJAN, Advocate (SR-12509[F] dated 19/03/2021)

W.P.(MD)No.3378 of 2020
and
W.M.P.(MD)No.2841 of 2020

KMV(CO)
TR(28.04.2021) 4P 3C