BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.9098 of 2020
and
W.M.P.(MD)No.8337 of 2020

M/s.Devi Crop Science (P) Ltd.,
Represented by its General Manager (Operations),
M.Ramasamy. ... Petitioner

Vs.

The Commissioner of CGST & Central Excise,
Central Revenue Buildings,
Rathnasamy Nadar Road,
Bibikulam, Madurai - 625002. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records comprised in Order in Original No MDU-CEX-COM-07-2020 dated 13.05.2020 in File No.C.No.V/38/15/03/2019-Adjn on the file of the respondent and quash the same.

For Petitioner : Mr.S.Muthuvenkataraman
For Mr.S.P.Maharajan.

For Respondent : Mrs.S.Ragaventhre

ORDER

Heard the learned counsel for the writ petitioner and the learned standing counsel for the respondent. This Court also had the benefit of hearing the assessing authority through video conferencing.

2.The case of the petitioner is that they are both a trader as well as an importer. They are also manufacture of fertilizers for the purpose of export. In the case of hand, the respondent had levied duty with interest and penalty on the petitioner by classifying the goods in question under Chapter 38 of the Central Excise Tariff Act. The case of the petitioner is that the goods in question will fall only under Chapter 31. Questioning the same, this writ petition has been filed.

3.The stand of the authority is that the issue of classification cannot be gone into in writ jurisdiction.

4.However, the learned counsel for the petitioner states that he is not entering into the merits of the matter for the present. He would only confine himself to demonstrating the violation of the principles of natural justice. In the impugned order at Page No.24, it is seen that the authority had placed reliance on the pamphlet of the writ petitioner for the purpose of classifying the goods in question under Chapter 38. The petitioner's counsel would point out that this pamphlet that has been heavily relied upon by the assessing authority has not been projected in the show cause notice. It was also not a subject matter that cropped up during personal hearing. Only in the final order for the first time, the said pamphlet had been introduced.

5.It is well settled that what is not finding place in the show cause notice cannot be introduced for the first time in the final order. That would amount to taking the noticee/assessee by surprise. This is clear violation of principles of natural justice. So on this ground, I interfere with the impugned order. The impugned order is quashed.

6.The assessing the authority is amenable to granting personal hearing to the petitioner on 05.04.2021. On the said date, the petitioner shall appear before the authority. I make it clear that the petitioner will not receive any separate or independent notice. Since the stand of the authority is clear from the impugned order, the petitioner may place their contentions as well as other relevant materials in response to the same. The respondent will independently consider the materials to be placed by the petitioner and thereafter pass orders in accordance with law. I make it clear that I have not gone into the merits of the matter. The contentions of both parties are left open. The interference with the impugned order is only on this limited aspect and not on any other ground.

7.The writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// 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
The Commissioner of CGST & Central Excise,
Central Revenue Buildings,
Rathnasamy Nadar Road,
Bibikulam, Madurai – 625002.

+1 CC to M/s.S.P.MAHARAJAN, Advocate (SR-10979[F] dated 15/03/2021)

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12.03.2021

SSS(CO)
TR(31.03.2021) 3P 3C