BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.09.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.11397 of 2020

DCW Limited
Represented by its
General Manager (Legal & Indirect
Taxation)
Mr.M.Thyagamoorthy
Sathupuram
Thoothukudi District – 628 229. **...** Petitioner

Vs.

1.The Principal Commissioner &
Ex-Officio,
Additional Secretary to
Government of India,
Ministry of Finance,
Department of Revenue,
Government of India,
8th Floor, World Trade Centre, Centre-I,
Cuffe Parade, Mumbai – 400 005.

2.The Commissioner of Customs,
Custom House, Tuticorin-4. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the first respondent, bearing order No.08-09/2020-CUS(SZ)/ASRA/Mumbai, dated 03.02.2020 and issued on 12.02.2020 and quash the same.

For Petitioner : Mr.S.Jai Kumar

For R-2 : Mr.R.Nandha Kumar
Senior Standing Counsel

ORDER

This Writ Petition is filed for Writ of Certiorari, to quash the impugned order dated 03.02.2020 of the first respondent passed in Order No.08-09/2020-CUS(SZ)/ASRA/ Mumbai.

2. The petitioner is a company incorporated under the Companies Act, 1956. The said company is engaged in manufacturing Caustic Soda, PVC resin, Upgraded Beneficiated Ilmenite and other chemicals. For manufacturing the Upgraded Beneficiated Ilmenite, the petitioner imports raw material through the Tuticorin Port. After manufacturing the Upgraded Beneficiated Ilmenite, the petitioner exports through the Tuticorin Port. The said activity is carried out for the past several decades from 1970 onwards.

3. According to the petitioner, the said product is classified under Customs Tariff Item No.28230090 under the Customs Tariff Act. The petitioner filed its shipping bills for export of the goods under duty drawback scheme in

June and July 2012, while the other shipping bills were filed under the Advance Authorization Scheme. The export goods were cleared from the petitioner’s factory to the port under Central Excise supervision clearance under Form ARE-I where the Excise authorities countersigned the export invoice and goods. But according to the Customs Department, the said product ought to be classified under Tariff Item 26140020 (Ores, Slag and Ash) of the Revised Indian Trade Classification (RITC)/Customs Tariff. According the Customs Department, the goods appeared to fall under 'Titanium Ores and Concentrates' and not under “Titanium Oxide” as classified by the petitioner exporter. The specific contention of the petitioner is that it is not Titanium Ores and Concentrates in its natural form, after manufacturing process it is a value added product as “Upgraded Beneficiated Ilmenite”. Hence, it is comes under classification Customs Tariff Item No.28230090.

4. The Assistant Commissioner of Customs has dismissed the petitioner's claim and classified it under 26140020 and denied duty drawback vide orders dated 31.12.2012 and 11.03.2013. Hence, the petitioner had preferred appeals before the Commissioner (Appeals), the appellate authority. The appellate authority vide order dated 17.05.2013 allowed the petitioner's appeals for classification and duty drawback. The Department had preferred appeal against

the order of classification to Tribunal and preferred two revision petitions against the order passed in duty drawback to the Revisional Authority, the Government of India. The Government of India had set aside the Appellate Authority order dated 17.05.2013 and classified the product under 26140020 and denied duty drawback vide common order dated 03.02.2020 and served on 12.02.2020. Aggrieved over the same, the present writ petition is filed.

5. Based on the aforesaid order, for the subsequent exports also the product was classified under the Customs Tariff Item No.26140020 and an Order-in-Appeal Nos.160 to 180 of 2012 was passed vide order dated 23.08.2013. The petitioner was aggrieved over the same and had preferred appeal before Tribunal in Customs Appeal Nos.42216 to 42236 of 2013. This Appeal filed by the assessee is tagged along with the Department Appeal filed in Customs Appeal No.41778 of 2013. Pending this writ petition, the Tribunal had considered both the appeals filed by the Department and the Assessee and vide order dated 28.06.2013 had dismissed the appeal filed by the Department and allowed the appeal filed by the assessee. The Tribunal has held in favour of the petitioner and classified the product under 28230090.

6. The respondents had issued periodical 16 show cause notices for the subsequent exports. After the Tribunal's order the said 16 show cause notices were considered by the respondents in Order-in-Original No.38/2023, wherein it is held that the Tribunal had classified the product under 28230090, therefore on review, the same was accepted by the Commissioner of Customs followed by the Chief Commissioner of Customs, Trichy vide letter F.No.CCO/LGL/MISC/ 211/2023-LGL dated 02.09.2023. And based on the Principles of Judicial Discipline the respondents have dropped the proceedings initiated in the said 16 show cause notices.

7. Therefore, this Court is confirming the order passed by the Tribunal. Hence, the impugned order is quashed. The product "Upgraded Beneficiated Ilmenite" will fall under 28230090 under the Customs of Tariff Act. Consequently the petitioner is entitled to drawback and the same shall be granted to the petitioner.

8. With these observations and directions, this Writ Petition is allowed. There shall be no order as to costs.

15.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Sml

S.SRIMATHY, J.

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