IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2024

CORAM

THE HON'BLE **MR JUSTICE C. SARAVANAN**

**W.P.No.10210 of 2022**
**and**
**W.M.P.Nos.9915 of 2022 and 21953 of 2023**

Cetex Petro Chemical Ltd.,
Rep.by its Managing Director : Sri.S.Ilanhai,
Manali, Chennai – 600 068. ...Petitioner

Vs.

The Principal Commissioner of CGST and CE,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Chennai – 600 034. ...Respondent

**Prayer:**Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records relating to the Order-in-Original No.58/2022 CH.N.GST dated 30.03.2022 passed by the respondent and quash the same as violative of principles of natural justice, without a re-test of samples and Test report, change of classification is opposed in law and on mere assumption that the Test report is inconclusive a different view cannot be taken and arbitrary and unsustainable in law.

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|---|---|---|
| For Petitioner | : | Mr.A.Mudimannan |
| For Respondent | : | Mr.AP.Srinivas<br>Sr.Standing Counsel |

**<u>O R D E R</u>**

Heard Mr.A.Mudimannan, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Sr.Standing Counsel for the respondent.

2. The petitioner has challenged the impugned Order-in-Original **No.58/2022 CH.N.GST** passed by the respondent/The Principal Commissioner of CGST and Central Excise on **30.03.2022**.

3. By the impugned order, the following demands have been confirmed, which are extracted hereunder:-

> *I. I demand differential duty of Rs.2,58,15,561/- (Rupees Two Crores Fifty Eight Lakhs Fifteen Thousand Five Hundred and Sixty One Only) for the clearances made during the period from September 2015 to June 2017 under Section 11A91) of the Central Excise Act, 1944.*

*II. I demand appropriate interest on the amount confirmed in clause (ii) above under Section 11AA(1) of the Central Excise Act, 1944 and*

3.1. The said demands were proposed in the show cause notice No.**C.No.V/15/28/2017-CH.N.Adj** dated **06.10.2017**.

4. The petitioner had replied to the said show cause notice and sought for time, in the light of the pendency of W.A.No.767 of 2022 against the order dated **15.01.2018** of this Court in W.P.No.185 of 2018, wherein the petitioner had challenged the order of the Appellate Commissioner dated **22.03.2018**. The said appeal is said to be pending as on date of that writ petition.

5. The aforesaid Order-in-Appeal dated **22.03.2018** pertained to the period between June 2013 to August 2015. In fact, the petitioner has earlier challenged the notice that preceded Order-in-Original in WP.Nos.23997 to 23999 of 2016. The writ petition was disposed of directing the respondents to adjudicate the show cause notice for the earlier period after testing the product.

6. It is the submission of the petitioner that the petitioner had also succeeded before the Additional Commissioner vide Order-in-Original Nos.5,6,7 of 2017 dated **23.08.2017**, decision stood reversed vide Order-in-Appeal No.134/2018 dated **22.03.2018** which was the subject matter of W.P.No.185 of 2018 which was dismissed on **05.01.2018**, in respect of which WA.No.767 of 2022 is said to be pending.

7. The only refrain of the petitioner, in the replies that was filed for the **Show Cause Notice No.C.No.V/15/28/2017-CH.N.Adj** dated **06.10.2017** is that the Writ Appeal No.767 of 2022 was pending and therefore, hearing be kept in abeyance and therefore, not to proceed to pass order.

8. It is the petitioner to expedite the pendency in WA.No.767 of 2022. The dispute in the present writ petition relates to the period between September 2015 to June 2017. The proceedings cannot be kept in abeyance. The petitioner could have filed a statutory appeal against the order of the Appellate Commissioner instead of approaching this Court in W.P.No.185 of 2018 against

which W.A.No.767 of 2022, is now pending. If an appeal was filed, the issue would have attained finality by this time.

9. Therefore to balance the interest of the parties herein, the Court is inclined to quash the impugned order and remits the case back to the respondent to pass fresh orders on merits. Meanwhile, it is open for the petitioner to make submissions on merits before the respondent. It is also made clear that the petitioner shall not seek any adjournment stating that the writ appeal is pending against the order passed in WP.No.185 of 2018 in WA.No.767 of 2022. In case, order is passed in WA.No.767 of 2022 before the date fixed for hearing, the respondent may consider the same.

10. With the above directions, this writ petition stands allowed. No costs. Connected Miscellaneous Petitions are closed.

**19.10.2024**

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case: Yes/No
***nst***

To:

The Principal Commissioner of CGST and CE,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Chennai – 600 034.

**C.SARAVANAN, J.**

***nst***

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