IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2024

CORAM

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.9508, 9512, 9513, 9516 & 9519 of 2024
and
W.M.P.Nos.10505, 10506, 10510, 10512, 10513, 10514, 10516, 10518,
10520 & 10522 of 2024

BASF Catalysts India Private Limited,
Plot No.P8/1, Mahindra World City,
Veerapuram Village, Chengalpattu Taluk,
Tamil Nadu 603 002, India.
Tel:+91-44-67468181,
Represented by its Authorised Signatory,
Mr.T.Parthasarathy. ... Petitioner in all WP's

Versus

Deputy Commissioner (ST)-I,
Office of the Joint Commissioner (ST),
Large Taxpayers Unit,
Integrated Commercial Taxes Building,
Nandanam, Chennai 600 035. ... Respondent in all WP's

PRAYER in W.PNo.9508 of 2024: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent relating to impugned show cause notice dated 15.03.2024, bearing reference No.GSTIN/ 33AAACE2545B1ZD/2020-2021 issued along with Form GST DRC 01 bearing reference no.ZD330324087106L and quash the same.

PRAYER in W.PNo.9512 of 2024: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent relating to impugned show cause notice dated 15.03.2024, bearing reference No.GSTIN/ 33AAACE2545B1ZD/2019-2020 issued along with Form GST DRC 01 bearing reference no.ZD330324087008J and quash the same.

PRAYER in W.PNo.9513 of 2024: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent relating to impugned show cause notice dated 15.03.2024, bearing reference No.GSTIN/ 33AAACE2545B1ZD/2021-2022 issued along with Form GST DRC 01 bearing reference no.ZD330324087208F and quash the same.

PRAYER in W.PNo.9516 of 2024: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent relating to impugned show cause notice dated 15.03.2024, bearing reference No.GSTIN/ 33AAACE2545B1ZD/2023-2024 issued along with Form GST DRC 01 bearing reference no.ZD3303240865858 and quash the same.

PRAYER in W.PNo.9519 of 2024: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent relating to impugned show cause notice dated

15.03.2024, bearing reference No.GSTIN/ 33AAACE2545B1ZD/2022-2023 issued along with Form GST DRC 01 bearing reference no.ZD330324087317E and quash the same.

In all WP's

For Petitioner : Mr.Vijay Narayan, Sr. Adv.
and Mr.R.Parthasarathy,
for Mr.Edward James

For Respondent : Mr.C.Harsha Raj, AGP (Tax)

COMMON ORDER

In these writ petitions, show cause notices issued in respect of assessment years 2019-20, 2020-21, 2021-22, 2022-23, and 2023-24 are challenged.

2. The petitioner is engaged in manufacturing and trading of catalysts and catalytic converters. As regards catalysts, the petitioner classified such product under HSN Code: 38151290. As regards catalytic converters, the petitioner classified the same under HSN Code 84213990. In respect of such classification, the petitioner received a notice in Form GST ASMT-10 on 14.12.2023. Such notice was replied to on 12.01.2024. Thereafter, an

intimation dated 21.02.2024 was issued and such intimation was replied to on 01.03.2024. The impugned show cause notices were issued thereafter on 15.03.2024.

3. Oral arguments on behalf of the petitioner were advanced by Mr. Vijay Narayan, learned senior counsel, and Mr.R.Parthasarthy, learned counsel for the petitioner.

4. The following submissions were made by them :

i) The show cause notices do not satisfy the requirements of Section 74 of applicable GST enactments;

ii) Section 74 cannot be invoked in relation to classification disputes especially when the petitioner had classified the relevant goods under HSN Codes 38512190 and 84213990 for a considerable period of time;

iii) The order of the Commissioner of Central Excise, dated 29.02.2016 upheld the classification of the petitioner and rejected the contention that the catalytic converter should be classified as catalysts;

iv) The judgment of the Hon'ble Supreme Court of India in

Westinghouse Saxby Farmer Limited v. Commissioner of Central Excise, Calcutta, (*Westinghouse Saxby), (2021) 5 SCC 586,* was erroneously applied to support the issuance of show cause notices without noticing that the classification is required to be determined on the basis of headings and any relevant section or chapter notes. It was contended that if the classifications were to be determined as per the headings, section or chapter notes, the classification by the petitioner is liable to be upheld without recourse to Note 3 of the first schedule to the Customs Tariff Act, 1975.

5. These contentions were responded to by Mr. C. Harsha Raj, learned Additional Government Pleader, as follows:

i) By relying on the earlier oder of this Court in *M/s.SL Lumax Limited, Rep.by its Chief Financial Officer Sri.G.Murugan v. Deputy Commissioner of State Taxes-II, (M/s.SL Lumax)* in W.P.Nos.5066, 5067, 5070 & 5071 of 2024, dated 01.03.2024, he contended that a similar challenge to show cause notices was considered and disposed of by directing the petitioner to reply to the show cause notice and by directing the assessing officer, to duly take note of the contentions and decide the same in an objective manner.

ii) The order of the Commissioner of Central Excise pertained to a dispute as to whether a catalytic converter should be classified as a catalyst under Chapter 35 instead of Chapter 84. Therefore, learned Additional Government Pleader submits that the order does not support the contention of the petitioner that the catalytic converter should be classified under Chapter 84 and not Chapter 87.

iii) As regards Section 74 being invoked, apart from asserting that the ingredients are satisfied, learned Additional Government Pleader submits that the only difference would be with regard to the percentage of penalty imposed in case the tax demand is confirmed.

6. At the outset, it should be recognized that the challenge in all these writ petitions is to show cause notices pertaining to different assessment years. Ordinarily, a challenge to a show cause notice is not entertained under Article 226 unless the petitioner is able to establish lack of jurisdiction or that even if all the allegations in the show cause notices are

taken to be correct, no case is made out to proceed.

7. In these cases, the challenge is on the ground that the ingredients of Section 74 are not made out. It is possible for the petitioner to respond to the respective show cause notice and indicate that none of the ingredients of Section 74 are made out. Even if the assessing officer disregards the same and issues assessment orders on such basis, it would be still possible for the petitioner to challenge such orders in accordance with law. As regards the challenge on the ground that the proposed classification is entirely based on the judgment of the Hon'ble Supreme Court in *Westinghouse Saxby,* it is always open to the petitioner to refer to the first schedule of the Customs Tariff Act, 1975 and the HSN Explanatory notes and contend that the classification under Chapter 84 is the correct classification. It is also possible to contend that the judgment of the Hon'ble Supreme Court in *Westinghouse Saxby* does not apply to the case of the petitioner in view of Note 1 of the General Rules of Interpretation of this schedule.

8. It was further contended on behalf of the petitioner that the contentions of the petitioner are being disregarded as is evident from the repeated reference to *Westinghouse Saxby* in the intimation and show cause notices in spite of the reply to the ASMT-10 notice. On *prima facie* examination of the relevant documents, there is some merit in this contention. Therefore, it is made clear that it is incumbent on the respondent to duly consider all contentions raised by the petitioner objectively without any pre-determination while dealing with the petitioner's reply to the show cause notices.

9. Learned senior counsel for the petitioner submits that the last date for submitting the replies expires on or before 15.04.2024 and the hearing is scheduled on 10.04.2024. In view of the filing of these writ petitions, it is just and appropriate that these time lines be revised to enable the petitioner to respond meaningfully to the show cause notices.

10. For reasons set out above, these writ petitions are disposed of on the following terms:-

i) The petitioner shall reply to the respective show cause notice on or before 29.04.2024;

ii) Upon receipt of the petitioner's reply, the respondent is directed to provide a reasonable opportunity to the petitioner, including by way of personal hearings;

iii) The respondent is further directed to consider all contentions raised by the petitioner objectively and not in a pre-determined manner by taking note of the observations in this order; and

iv) There shall be order as to costs. Consequently, connected miscellaneous petitions are also closed.

08.04.2024

Index : No
Internet : Yes
Neutral Citation: No
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To
The Deputy Commissioner (ST)-I,
Office of the Joint Commissioner (ST),
Large Taxpayers Unit,
Integrated Commercial Taxes Building,
Nandanam, Chennai 600 035.

SENTHILKUMAR RAMAMOORTHY,J

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