BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.29151 & 29152 of 2025 AND
W.M.P.(MD)No.22580 of 2025

in W.P.(MD)No.29151 of 2025

1. Sea6 Energy Private Ltd.,
29, Ayyanadaippu Village,
Vijayalakshmi Warehouse Complex,
Madurai Bypass Road, Thoothukudi – 628 008,
Also at: 1st Floor, CCAMP, NCBS-TIFR,
Bellary Road, GKVK Post,
Bangalore – 560 065 also at:
Rep. by its authorized representative
Mr.G.Jagadish Prabhakar.

2. Nelson Vadassery,
CEO-Sea6 Energy Private Limited,
1st Floor, CCAMP, NCBS-TIFR, Bellary Road, GKVK Post,
Bangalore – 560 065. ... Petitioners

Vs.

1. The Assistant Commissioner of Customs,
Group 2, O/o.the Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin – 628 004.

2. The Commissioner of Customs(Appeals),
No.1, Williams Road, Cantonment,
Trichy – 620 001.

3. The Commissioner of Customs,
O/o.the Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin – 628 004. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the third respondent permit provisional assessment of the imported goods falling under the description "Seaweed Extract KAA03" against a bond without insisting on any bank guarantee closely approximating to 100% of the differential duty, (the difference of duty between CTH 3101 00 99 and CTH 3808 93 40) or in the alternative direct the third respondent to permit provisional assessment against bank guarantee which do not exceed 25% of the differential duty amount(the difference of duty between CTH 3101 00 99 and CTH 3808 93 40) in view of the first petitioner's valid AEO MSME Tier 1 Certificate dated 18.03.2025 bearing No.INAAQCS3728J1F255 and the binding CBIC Circular No.38/2016 dated 22.08.2016, Circular No.42/2020 dated 29.09.2020 and Circular No.54/2020 dated 15.12.2020.

in W.P.(MD)No.29152 of 2025

1. Sea6 Energy Private Ltd.,
   29, Ayyanadaippu Village,
   Vijayalakshmi Warehouse Complex,
   Madurai Bypass Road, Thoothukudi – 628 008,
   Also at: 1st Floor, CCAMP, NCBS-TIFR,
   Bellary Road, GKVK Post,
   Bangalore – 560 065 also at:
   Rep. by its authorized representative
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Customs House, New Harbour Estate,
Tuticorin – 628 004. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the second respondent to pass a reasoned order in appeal bearing No.C24/06/2024-TTN(CUS) within a time frame to be specified by this Court after complying with the principles of natural justice.

(in both WPs.)

For Petitioner : Mr.Naresh Thacker,
for Mr.K.Jeyamohan.

For Respondents : Mr.R.Gowri Shankar

* * *

COMMON ORDER

Heard both sides.

2. The writ petitioner is an incorporated Company engaged in the business of growing and converting seaweeds into bio-fuel, bio-stimulants and other bio-renewable products. The petitioner has been importing Seaweed Extract KAA03 for manufacture of organic fertilizers and bio-stimulants having end use application as agriculture inputs. The writ petitioner had been classifying the said product under CTH 3101 00 99 (Animal or vegetable fertilizers). While so, an import made in August 2023 encountered a road block. Tuticorin Customs took the stand that the product imported by the petitioner ought to have been classified under CTH 1212 29 10 (Seaweeds) and not under CTH 3101 00 99. The petitioner thereupon requested the first respondent herein to pass a speaking order in respect of the Bill of Entry No.7450919 dated 21.08.2023. The first respondent thereupon passed an order-in-original on 09.11.2023 rejecting the declaration made by the importer and reclassifying the item under CTH 38089340(plant growth regulator).

The importer filed an appeal before the appellate authority(second respondent herein) on 08.01.2024 challenging the order-in-original dated 09.11.2023. Even though the hearing was concluded way back in February 2024, the appeal is yet to be disposed of.

3. The petitioner has been continuing to import Seaweed Extract. But in view of the order dated 09.11.2023 passed by the first respondent herein, in respect of the subsequent consignments, the declarations made by the importer were not accepted. According to the writ petitioner, they were under compulsion to obtain provisional release of the goods by furnishing bank guarantees for 100% of the duty difference.

4. Till date the petitioner had furnished bank guarantees to the tune of Rs.3.4 Crores(approximately). This led to serious liquidity crunch. Unable to bear the burden any further, the writ petitioner filed W.P.(MD)Nos.29150 to 29152 of 2025. The main prayer in W.P.(MD)No.29150 of 2025 is for return of the bank guarantees. When it was pointed out that the writ prayer as such may not be maintainable, the learned counsel for the writ petitioner submitted that he may be permitted to file an amendment petition.

5. The prayer in W.P.(MD)No.29152 of 2025 is for disposal of the appeal filed by the petitioner within a time frame. The prayer in W.P.(MD)NO.29151 of 2025 is for directing the Customs Authority to provisionally assess the imported goods under CTH 3101 00 99 against a bond without insisting on any bank guarantee.

6. The moot question for consideration is whether the goods imported by the writ petitioner have to be classified under CTH 3101 00 99 or under CTH 1212 29 10.

7. I find considerable merit in the contention of the learned counsel appearing for the writ petitioner that when the dispute was whether the classification should be under CTH 3101 00 99 or under CTH 1212 29 10, the adjudicating authority could not have hit upon a third classification. The original dispute was whether the product was a vegetable fertilizer or Seaweed per se. The adjudicating authority ought to have categorized the goods only under either of the two heads. A third heading could not have been introduced without putting the assessee on notice. The adjudicating authority on

his own could not have brought the imported goods under the third category, namely Plant Growth Regulator which was neither the case of the assessee nor that of the department.

8. When the adjudicating authority is unable to accept the classification of the assessee and also the stand of the department, the only course of action open to him is to inform both the sides accordingly. The adjudicating authority will have to spell out his reasons for not accepting the stand of either of the parties. The adjudicating authority may tentatively indicate the proper classification. The matter should then be remitted to the file of the assessing officer to revisit the issue and pass a speaking order after putting the assessee on notice.

9. The importer filed an appeal before the appellate authority way back in January 2024. Section 128-A(4-A) of the Customs Act, 1962 reads that the appellate authority shall, where it is possible to do so, hear and decide the appeal within a period of six months from the date on which it is filed. The Hon'ble Supreme Court had held in ***Anil Rai Vs. State Of Bihar (2001 (7) SCC 318)*** that

when the hearing had concluded, the decision must be rendered in three months. This direction can be applied across the board to all judicial and quasi-judicial authorities. In the case on hand, the hearing was concluded in February 2024. We are now in October 2025. It is not known as to why the appellate authority had not disposed of the writ petitioner's appeal till date. Since the adjudicating authority had already classified the goods in question as Plant Growth Regulator, though it was in respect of one Bill of Entry, neither the assessing officer nor the adjudicating authority can be expected to take a different stand in respect of the subsequent consignments of the very same goods. Therefore, the question that calls for consideration is regarding the course of action that has to be adopted during the intervening period.

10. Since the appellate authority had not decided the issue, the assessing officer is also unable to pass any final assessment order. In these circumstances, the goods are being provisionally assessed. The petitioner wants the authority to release the goods on furnishing of bond. The respondents on the other hand insisted on furnishing of bank guarantee.

11. The learned counsel appearing for the writ petitioner draws my attention to the decision of the Hon'ble Larger Bench (Cuostoms, Excise & Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad) in Excise Appeal No.11791 of 2014 etc. batch in M/s.P.I.Industries Limited (Formerly M/s.Isagro (Asia) Agrochemicals Pvt. Ltd.), Panoli-394 116 Vs. The Commissioner of Central Excise & Customs, Surat-II, Surat-II. The Tribunal in the said decision had spelt out what is fertilizer and what is Plant Growth Regulator.

12. The Plant Growth Regulator contains the following chemicals:-

1. Indol Acetic Acid
2. Gibberellic Acid
3. 1-Naphthyl Acetic Acid(NAA)
4. 6-Benzyladenine
5. Hydrogen Cynamide
6. Ethephon
7. Florchlorfenuron
8. Mepiquate Chloride
9. Paclobutrazole
10.Triacontanol
11.Chlormequat Chloride

On the other hand, the goods in question apparently do not contain any of the aforementioned chemicals as evident by the accompanying certificates. It can be seen therefrom that the goods in question primarily contain water (75%), Nitrogen, Potassium, Magnesium and Calcium. Prima facie, none of the constituents that go to constitute a Plant Growth Regulator are present in the goods in question. In fact, that is not even the case of the respondents. Probably, that was why the Division Bench of Bombay High Court in the decision rendered in ***W.P.No.5349 of 2025 vide order dated 29.04.2025 (Biostadt India Limited Vs. Union of India & Others)*** had permitted provisional release of such goods on furnishing of bond alone. The Customs authority were mandated not to insist on bank guarantee from the importer. The petitioner asserts before me that the goods that were the subject matter before the Bombay High Court and the goods that are imported by the writ petitioner are identical.

13. The petitioner has been importing goods right from 2017 till August 2023. They were classified under Chapter 31 and assessed accordingly. Since August 2023, the Department took a different stand.

14. For the forgoing reasons, I am inclined to grant relief to

the petitioner herein. So long as the goods imported by the petitioner are only Seaweed Extract which do not contain chemicals that are present in a Plant Growth Regulator, the goods shall be provisionally assessed and released subject to furnishing of bond alone and without insisting on furnishing of bank guarantee. This arrangement is only an interim arrangement. It will abide by the order to be passed by the appellate authority. If the appellate authority passes any order adverse to the petitioner, the petitioner is of course at liberty to avail such judicial remedies that are open to them under law.

15. In view of the statutory mandate set out in Section 128-A(4-A) of the Act and taking note of the fact that the hearing had concluded way back in February 2024, the appellate authority / second respondent herein is directed to dispose of the petitioner's appeal on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order. Since the hearing had concluded way back in February 2024, the appellate authority is called upon to issue fresh personal hearing notice to the writ petitioner. Since certain subsequent development had taken place, the petitioner is at liberty to file supplementary grounds of

appeal. These writ petitions are allowed in the aforementioned terms. No costs. Consequently, connected miscellaneous petitions are closed.

29.10.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU

G.R.SWAMINATHAN,J.

PMU

W.P.(MD)Nos.29151 & 29152 of 2025

29.10.2025