(2016) 07 MAD CK 0083

In the Madras High Court

Case No : Writ Petition Nos. 23997 to 23999 of 2016

Cetex Petrochemicals Ltd. APPELLANT

Vs

Commissioner of C. Ex., Chennai-I RESPONDENT

Date of Decision : 14-07-2016

Acts Referred:

Citation : (2016) 340 ELT 108

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : Shri K. Jayachandran, Advocate, for the Petitioner; Shri A.P. Srinivas, AGP, for the Respondent

Final Decision : Disposed Off

Judgement

T.S. Sivagnanam, J.—Heard Mr. K. Jayachandran, learned counsel for the petitioner and Mr. A.P. Srinivas, learned Additional Government Pleader appearing for the respondents and with the consent of either side, the writ petitions are taken up for final disposal.

2. In these writ petitions, the petitioner has challenged the show cause notices issued by the respondents, dated 24-6-2014, 2-7-2015 and 26-4-2016 respectively. In the show cause notice dated 24-6-2014, the respondent has proposed to claim differential duty to the tune of Rs. 55,19,100/- for the clearances made from June, 2013 to May, 2014 under Section 11A (1) of the Central Excise Act, 1944. Apart from that, there is a proposal to demand interest and penalty.

3. In the show cause notice dated 2-7-2015, the respondent has proposed to claim differential duty to the tune of Rs. 44,81,958/- for the clearances made from June, 2014 to March, 2015 under Section 11A(1) of the Central Excise Act, 1944. Apart from that, there is a proposal to demand interest and penalty.

4. In the show cause notice dated 26-4-2016, the respondent has proposed to claim differential duty to the tune of Rs. 42,91,250/- for the clearances made

from April, 2015 to August, 2015 under Section 11A(1) of the Central Excise Act, 1944. Apart from that, there is a proposal to demand interest and penalty.

5. The petitioner has come forward before this Court challenging the show cause notices in the light of the earlier proceedings, which were initiated by the Department in respect of the same goods and the correctness of which is pending consideration of CESTAT wherein, an interim order has been granted in favour of the petitioner, dated 11-9-2014, which is to the following effect :-

After hearing both sides and on perusal of records, we find that the classification was changed on the basis of Chemical Examiner''s report. The applicant has requested for cross-examination of the Chemical Examiner as well as disputed the report on various grounds. Ld. AR, on behalf of the Revenue submits that on two occasions, they have disputed the report which was rebutted by the Chemical Examiner by giving written reply. We are not satisfied with the contention of the ld. AR, insofar as rebuttal of the report and the cross-examination of the Chemical Examiner cannot be taken in the same line. On the other hand, we find that the Chemical Examiner''s report itself is self-contained one which will be examined at the time of appeal hearing at length. In view of that, we direct the applicant to make a pre-deposit of Rs. 20,00,000/- (Rupees twenty lakhs only) within 8 weeks. Upon deposit of the said amount, pre-deposit of balance amount of duty along with interest and penalty would be waived and recovery be stayed till disposal of the appeals. Compliance to be reported on 27-11-2014 and thereafter, appeal will be listed for hearing on 1-1-2015.

6. It is not in dispute that the appeal is still pending before the CESTAT and the interim order is in force. In the meantime, the show causes were issued to the petitioner for the subsequent year. The petitioner has submitted their reply and essentially the petitioner sought for re-inspection. In fact, the Superintendent of Central Excise A-3 Range, Chennai, sent a communication to the petitioner, dated 10-3-2016, requesting them to make necessary arrangements for drawing of samples to be examined for chemical composition. The petitioner immediately agreed to the same and approached the Department, after which one more communication was sent to the petitioner on 30-5-2016, requesting to furnish the information called for in the said letter. This information was furnished by the petitioner by reply dated 16-6-2016. While so, a notice of personal hearing has been issued to the petitioner dated 28-6-2016, fixing the personal hearing on 14-7-2016 (Today).

7. When these writ petitions came up for admission on 13-7-2016, the learned Standing Counsel for the respondent, who accepted notice on behalf of the respondent, was directed to get instructions in the matter as to what was the outcome of the communications sent to the petitioner for drawing of samples and the matter was posted on 14-7-2016. Today, when the matter was taken up for hearing, a letter sent by the Superintendent of Central Excise, A-3 Range, Chennai, dated 13-7-2016, addressed to the Assistant Commissioner of Central Excise, A Division, Chennai-I Commissionerate, has been produced. Copy of

which has been marked to the petitioner as well as the Joint Director, Customs House Laboratory, Chennai. In the said communication, it has been stated as follows :-

"Sub : C.Ex. - Drawing and Testing of samples in r/o M/s. Cetex Petrochemicals Ltd., Manali - Reg.

Please refer to the Principal Commissioner''s letter dated 4-3-2016. Assistant Commissioner''s letter to the Chief Chemical Examiner dated 4-4-2016, Joint Director of Customs House Laboratory''s letter to the Assistant Commissioner, dated 29-4-2016 and this office letters to Joint Director vide OC No. 140/2016, dated 27-5-2016 & DC No. 188/2016, dated 27-6-2016, in respect of the above mentioned subject.

In this regard, it is submitted that the sample has not been drawn for testing till date. Arrangement is being made in consultation with Chemical Examiner, Customs House Laboratory, Chennai for drawal of sample in the next week either on 19-7-2016, or 20-7-2016.

Testing of the sample will also be done at the Laboratory of M/s. Cetex Petrochemicals Ltd., since the facility of gaseous sample testing is not available at the Customs House Laboratory."

8. From the above communication, it is evident that the Department is now going to draw the samples on 19-7-2016 or 20-7-2016. If such is the case, then the respondent cannot obviously proceed with the personal hearing fixed today (14-7-2016), and should await the test report, so as to decide as to the chemical composition of the consignment.

9. In the light of the above, these writ petitions are disposed of with the following directions. The respondent is restrained from proceedings with the personal hearing scheduled to be held today (14-7-2016) at 3.30 p.m. and as stated in the above referred communication dated 13-7-2016, the sample shall be withdrawn and sent for testing and on receipt of the test report, copy of the same shall be furnished to the petitioner and thereafter, it is open to the respondent to proceed further after affording an opportunity of personal hearing to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.