(2015) 09 MAD CK 0068

In the Madras High Court

Case No : W.P. Nos. 26785-26786 of 2015 and W.P.M.P. No. 29230 of 2015

Hindustan Lever Ltd. — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:
Agricultural Produce Cess Act, 1940 — Section 3

Citation : (2015) 324 ELT 277

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : L. Maithili, for the Appellant; A.P. Srinivas, Standing Counsel, for the Respondent

Judgement

R. Mahadevan, J.—Seeking for a mandamus forbearing the respondents from collecting Cess under the provisions of the Agricultural Produce Cess Act, 1940 on export of marine products such as prawns and shrimps, scampi, squid, octopus, crab, lobster, etc., the petitioner has come up with W.P. No. 26785 of 2005. The other writ petition in W.P. No. 26786 of 2005 is filed by the very same petitioner for refund a sum of Rs. 18,79,552/- being the amount collected from the petitioner and appropriated towards Cess during the period between July, 2004 to June, 2005 with interest. Since the common issue is with regard to Cess payment, both the writ petitions are taken up, heard together and disposed of by this common order.

2. The petitioner is a company registered under the Companies Act and it is a manufacturer and an exporter of branded soaps, detergents, personal care products, tea and coffee and value added marine products, castor oil and its derivatives, rice, etc. The petitioner is also engaged in the export of processed marine products. According to the petitioner, they are not liable to pay Cess on the export of processed marine products such as prawns and shrimps, scampi, squid, octopus, crab and lobsters, etc.

3. The grievance of the petitioner is the abovesaid processed marine products

are not covered for payment of Cess and collection of Cess on marine products both under the provisions of the Agricultural Cess Act, 1940 and the provisions of the Marine Product Export Development Authority Act, 1972 and if made would amount to double taxation. Moreover, the above processed marine products are not "Fish" and therefore, they are not liable to levy of cess under Section 3 of The Agricultural Produce Cess Act, 1940. Hence, the petitioner is now before this Court with these writ petitions for appropriate reliefs.

4. Heard both sides and also perused the records carefully.

5. Admittedly, assailing the action of the respondents insisting Cess payment under the Agricultural Produce Cess Act, 1940 and pointing out all the valid points, the petitioner made a representation dated 16-8-2004 to the 3rd respondent and the said representation has been kept pending.

6. In so far as the refund of Cess amount is concerned, according to the learned counsel for the petitioner, at the time of admission of W.P. No. 29280 of 2005, this court by order dated 22-8-2005 granted an interim order of injunction restraining the respondents from levying Cess under the Agricultural Produce Cess Act, 1940. But, however, the learned counsel for the respondent is not in a position to state whether pending disposal of writ petition any amount has been collected towards Cess payment.

7. In the meanwhile, touching upon the very such same subject matter, a Division Bench of this court passed a judgement in Commissioner of Customs Vs. Edhayam Frozen Foods and CESTAT, South Zonal Bench, , wherein it has been held that the expression fish contained in Schedule 7 to the Agricultural Produce Act, 1940 would not include within itself prawns and shrimps. Very recently, following the abovesaid judgement, yet another Division Bench of this court in The Commissioner of Customs Vs. Universal Cold Storage Ltd. , decided the issue in favour of the assessee and against the revenue.

8. Placing reliance on the abovesaid decisions, the learned counsel for the petitioner prays this court to pass similar order in this matter also.

9. On the other hand, the learned standing counsel appearing for the respondents submitted that neither any adverse order has been passed nor any proceeding is pending against the petitioner and the representation of the petitioner alone is pending for consideration with the 3rd respondent and therefore, he prays that an appropriate direction may be issued for the early disposal of the representation of the petitioner.

10. In view of the above, this court directs the 3rd respondent to consider the representation of the petitioner dated 16-8-2004 with regard to levy of Cess in the light of the judgments of the Division Benches of this court referred to above and dispose of the same on merits and in accordance with law after affording due opportunity to the petitioner including personal hearing. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of

this order. The petitioner company is directed to place all their submissions including copies of the orders passed by the Division Benches of this court which shall be taken into consideration by the 3rd respondent while passing the orders on the representation of the petitioner as directed above. Insofar as the refund of Cess payment, which has been collected towards Cess between July, 2004 to June, 2005, is concerned, it is open to the petitioner-company to workout their remedy, if so advised, in the manner known to law in the light of the outcome of the decision to be taken by the 3rd respondent on their representation dated 16-8-2004 as directed above. The writ petitions are disposed of with the above directions. No costs. Consequently, connected MP is closed.

