(2001) 09 MAD CK 0059

In the Madras High Court

Case No : Writ Petition No. 7029 of 1996

P.C. Duraisamy APPELLANT

Vs

Assistant Commissioner of Cus. and C. Ex., Erode-I RESPONDENT

Date of Decision : 05-09-2001

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2002) 140 ELT 77

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : R. Gandhi, S.C, for the Appellant; C. Krishnan, CGSC, for the Respondent

Judgement

P.K. Misra, J.—Heard the learned Counsel appearing for the parties.

2. The petitioner, proprietor of Sakthi Trading Company has filed this writ petition to quash the proceeding in O.C. No. 578 of 1996, dated 24-4-

1996. The said document purports to be show cause notice served on the petitioner, wherein it was stated that the petitioner was manufacturing

edible preparations such as Turmeric Powder, Chilly Powder, Coriander Powder, Masala Powder, Sundavathal and washing and cleaning

preparations such as Soapnut powder and cleaning powder and as such those preparations are coming within the edible preparation as classified

under Central Excise Tariff sub-heading 2108.90 as ""Edible preparations not elsewhere specified or included"" and the soapnut powder and

cleaning powder under Central Excise Tariff sub-heading 3402.90. In the notice, it was indicated that the edible preparations were exigible at the

rate of 20% adv. and the washing and cleaning preparations at 30% adv.

3. The main contention of the petitioner is to the effect that the manufacture of

Turmeric Powder, Chilly Powder, Coriander Powder, Masala

Powder etc. do not attract any Excise Duty as the same is coming under 0903.00.

4. The counter affidavit has been filed on behalf of the Department. It has been stated therein that the petitioner need not have approached the

High Court at this stage as only show cause notice has been issued and the petitioner should have availed of the alternative remedies provided

under the Act.

5. In the counter affidavit, it is also further submitted that -

in the meantime, the Ministry of Finance, Department of Revenue in their letter F. No. 16/4/95-CXI, dated 30-4-1996 (Circular No. 205/39/96-

CX) have given certain instructions on the classification of Spices. According to the instructions, products like Sambar Powder, Rasam Powder,

Puliyogare Mix or Powder, Vaeghibath Mix or Powder consisting mainly of spices and required to be added to cooked dal or cooked rice mainly

for spicing, flavouring or seasoning would appear to merit classification as spices under sub-heading No. 0903.00 attracting NIL rate of duty. On

the other hand, products like instant Sambar Mix, Instant Rasam Mix, Instant spiced bhath Mix, (Bisibele-bath) or Instant Kharabhath Mix

consisting of Dal or Rice flakes or Sooji along with spices and other substances and which can be made up into preparations by simply mixing and

boiling/cooking in water would merit classification as miscellaneous edible preparations under sub-heading No. 2108.90 of Central Excise Tariff

attracting 20% duty.

I submit that regarding Paras 5 and 6 it is submitted that as per the instructions given in the Ministry''s letter F. No. 16/4/95-CX, dated 30-4-1996

(Circular No. 205/39/96-CX) all the goods manufactured by the petitioner except branded soap-nut powder, branded sundavathal, branded

appalam and un-branded Turmeric are classified under sub-heading No. 0903.10 as spices and the same has since been approved.

6. In the course of hearing of the writ petition the learned Counsels appearing for the respondents vehemently contended that the writ petition is

pre-mature and should be dismissed. It is further contended that the petitioner instead of availing alternative remedies should not have approach

this court.

7. It is true that where alternative remedies available, ordinarily the High Court should not entertain the matter under Article 226. Similarly even if

the High Court has entertained the writ petition seeking to quash the show cause notice, it is open to the person concerned to file show cause so

that the matter can be determined by the appropriate authority. While these cannot be any dispute relating to such well accepted principles, in the

present case, in view of the stand taken by the respondent practically accepting the contention of the petitioner, I do not think any useful purpose

would he served by directing the petitioner to undergo the process of filing show cause and pursuing the statutory remedies. In view of the stand

taken in the counter affidavit itself, the show cause notice so far as it relates to articles included in 0903,00 is quashed. It is however made clear

that if there is any other item manufactured by the petitioner not coming within the aforesaid entry, it would be open to the opposite party to

proceed in accordance with law. Subject to the aforesaid observation, the writ petition is disposed of without any order as to costs.