

(2016) 03 MAD CK 0223

In the Madras High Court

Case No : Writ Petition No. 15154 of 2015 and M.P. Nos. 1 and 2 of 2015

Vasudha Biotek Pvt. Ltd.

APPELLANT

Vs

Assistant Commr. of Cus., Chennai

RESPONDENT

Date of Decision : 30-03-2016

Acts Referred:

Citation : (2016) 336 ELT 628

Hon'ble Judges : M. Duraiswamy, J.

Bench : Single Bench

Advocate : K. Harishankar,, for the Petitioner; T. Chandrasekaran, SCGSC and K. Raju, CGSC, for the Respondent

Final Decision : Dismissed

Judgement

M. Duraiswamy, J.—The petitioner has filed the above writ petition to issue a writ of certiorarified mandamus to call for the records of the Schedule specifying the Source of Import requirement date Nil issued by the 2nd respondent and to quash the same, insofar as it pertains to Entry No. 100 and consequently to direct the 1st respondent to permit the clearance of the goods of the petitioner.

2.1 According to the petitioner, it is engaged in the import, manufacture and sale of insecticides. One of the insecticides which the petitioner is engaged in the manufacture is known as 2-Chloroethyl Phosphoric Acid, which is also known as "Ethephon". Under the provisions of the Insecticides Act, 1968 (hereinafter referred to as "the Act"), any person desiring to import or manufacture any insecticides must apply to the 2nd respondent for registration of its insecticides under Section 9(1) of the Act. Where a particular insecticide has already been registered, any other person desirous of manufacturing or importing the same insecticide must obtain a registration under Section 9(4) of the Act.

2.2 According to the petitioner, it has obtained a registration certificate under Section 9(4) of the Act in respect of Ethephon vide registration dated 1-7-1991

and one more registration in February, 1992.

2.3 Thereafter, the petitioner applied to the Directorate General of Foreign Trade for a certificate of registration of Export-Import and obtained the same. Therefore, according to the petitioner, they are eligible to freely import all goods which are available for import under the Export-Import Policy of the Government of India.

2.4 Further, according to the petitioner, since there is no ban on import of Ethephon, the petitioner commenced the importation of Ethephon from a source in China which was selling the same at a competitive price. According to the petitioner, since 1997, the petitioner has been importing Ethephon and clearing it through the Chennai Port by filing the necessary Bill of Entry with the 1st respondent.

2.5 That apart, according to the petitioner, in February, 2015, the petitioner, placed an order for the supply of 1750 Kg. Ethephon from a Chinese Company and the consignment reached Chennai on 22-3-2015. On 23-3-2015, the 1st respondent refused to permit the petitioner to clear the consignment of Ethephon, since the petitioner had not obtained a separate "Source of Import" registration from the 2nd respondent.

2.6 According to the petitioner, in spite of repeated representations made by the petitioner, the 1st respondent refused to release the consignment. Hence, the petitioner has come forward with this writ petition.

3.1 The 1st respondent, in his counter, has stated that even in case of routing the material through the Supplier, the material is required to originate from the source of import duly accompanied by an invoice issued only by the source of import. Further, the 1st respondent has stated that the petitioner should get NOC from the 2nd respondent for the release of the consignment.

3.2 That apart, the 1st respondent has also stated in the counter that the Importer has wrongly used the certificate obtained by them for the import of pesticides. The certificate of registration was issued for the purpose of indigenous manufacturing only and not for import of Ethephon 70% and the Importer is wrongly using the said certificate for import of the pesticides.

4. The 2nd respondent in his counter has stated that the certificate produced by the petitioner is not sufficient for the import of Ethephon and that the said certificate is meant only for the manufacturing purpose. Therefore, the import of Ethephon from China by the petitioner cannot be permitted.

5. Heard the learned counsel on either side and perused the materials available on record.

6. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the insecticide viz., Ethephon was imported by the petitioner from China. For the

release of the Pesticides, a registration certificate under Section 9(4) of the Act is necessary. The petitioner contended that they have obtained a registration certificate in the year 1991 and also in 1992. The said certificates are also produced by the petitioner in the Additional typed set of papers. On a perusal of the certificate dated 1-7-1991 issued under Section 9(4) of the Act, it could be seen that the said certificate was issued for indigenous manufacture only and not meant for import of Ethephon. When it was not issued for the purpose of import of Ethephon and it was issued only for the purpose of indigenous manufacture, the petitioner cannot rely upon this document to say that they are entitled for import of Ethephon from China. Similarly, the registration certificate dated 10-2-1992 was also issued only for indigenous manufacture. When both the documents relied upon by the petitioner pertain to the indigenous manufacture only, the same cannot be pressed into service by the petitioner for importing Ethephon from China. The petitioner's contention that it has been importing Ethephon since 1991 cannot be accepted as a ground for permitting them to import Ethephon insecticides, without following the mandatory provisions of the Act. It can only be said that the petitioner Company have managed to import Ethephon all these years. As stated above, that cannot be a ground for directing the respondents to release the consignment. In the absence of the mandatory registration, the prayer sought for in the writ petition cannot be allowed.

7. In these circumstances, the writ petition is devoid of merits and the same is liable to be dismissed. Accordingly, the writ petition is dismissed. No costs. Connected miscellaneous petitions are also dismissed.