(1991) 02 MAD CK 0053

In the Madras High Court

Case No : Writ Appeal No''s. 58-61 of 1991

Zinc Products APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 11-02-1991

Acts Referred:

Citation : (1992) 57 ELT 222

Hon'ble Judges : Thanikkachalam, J;Nainar Sundaram, J

Bench : Division Bench

Advocate : Shri R. Sashidharan, for the Appellant; Shri K. Jayachandran, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

Nainar Sundaram, J.—There are four Writ Appeals. The parties are two in number. M/s. Zinc Products preferred W.P. No. 19387 of

1990, impugning the order dated 26-6-1990 of the Central Board of Excise and Customs whereunder there is a direction to all the Collect orates

to classify micro nutrient under Heading 38.08 which covers plant growth regulators. Hitherto M/s. Zinc Products has been classifying its product

of zinc sulphate under Heading 28.33 which covers sulphate of all metals. M/s. Zinc Products has preferred W.P. No. 19379 of 1990 questioning

the communication dated 26-11-1990 of the Superintendent of Central Excise, Madras, whereunder M/s. Zinc Products has been called upon to

classify its product zinc sulphate micro nutrients under Heading 38.08 and there is a further call to furnish the requisite particulars on that basis.

W.P. No. 19671 of 1990 was preferred by M/s. Swathy Chemicals (P) Ltd., which is also a manufacturer of the very same product, to quash the

order of the Central Board of Excise and Customs dated 26-6-1990 and it has also preferred W.P. No. 19672 of 1990, impugning the communication of the Superintendent of Central Excise, Madras, dated 26-11-1990. All the four Writ Petitions had a common disposal at the

hands of the learned Single Judge. Ultimately, the learned Single Judge opined that the communication of the Superintendent of Central Excise,

Madras, is only a call upon the parties to furnish the particulars and the parties can furnish the particulars and put forth their contentions even with

reference to bringing in of their product under the Heading 38.08, and as and when adjudication takes place the parties can have recourse to the

process of law available to them. In this view, the learned Single Judge did not express any opinion with reference to the propriety or otherwise of

the zinc sulphate manufactured by the parties being brought under the Heading 38.08. Thus, all the four Writ Petitions were dismissed. W.A. No.

58 of 1991 has been preferred against W.P. No. 19379 of 1990, W.A. No. 59 of 1991 has been preferred against W.P. No. 19387 of 1990,

W.A. No. 60 of 1991 has been preferred as against W.P. No. 19671 of 1990, W.A. No. 61 of 1991 has been preferred as against W.P. No.

19672 of 1990. When the Writ Appeals came up for admission, we deemed fit to order notice of option to be served on the respondents through

their Standing Counsel. Such a notice has been served and Mr. K. Jayachandran, learned Additional Central Government Standing Counsel,

represents the respondents.

2. With reference to the communication of the Superintendent of Central Excise, Madras, dated 26-11-1990. Mr. R. Sashidharan, learned

Counsel for the appellants, submitted that in view of the express language used in the said communication, there is no scope for the parties to make

further say on the question, and the Superintendent of Central Excise, Madras, has already declared in the said communication that the products of

the appellants have to come only under Heading 38.08 and driving his clients to participate in any adjudication proceedings pursuant to the said

communication in the said circumstances will be a futile process. We did go through the contents of the communication of the Superintendent of

Central Excise, Madras, dated 26-11-1990 and we find that the complaint of the learned Counsel for the appellant is not without substance. There

has been a stand expressed therein that the appellants are not eligible to adopt the other procedure, on the basis that Heading 28.33 would govern and the appellants have been directed to classify their products only under Heading 38.08 and there is a further call on that basis to furnish the

particulars regarding total value of clearances of the products of the appellants. All these have happened without any show cause to the appellants,

and without affording any opportunity to them to makes their say on the question. In the said circumstances, we do not think that the Writ Petitions,

impugning the communication of the Superintendent of Central Excise, Madras, dated 26-11-1990, should be thrown out asking the appellants to

take a chance pursuant to the call put forth in the said communication.

3. Coming to the attack on the order dated 26-6-1990 of the Central Board of Excise and Customs, once we eschew to communication of the

Superintendent of Central Excise, Madras, dated 26-11-1990, the process on the basis of the order of the Central Board of Excise and Customs

dated 26-6-1990 is yet to be set in motion in conformity with law and as and when the same is set in motion, the appellants may be given the

liberty to seek the due process of law as may be available to them and as they may be advised. We are not obliged to express any opinion with

reference to the steps which they may take. As on date, it should be held that there is no order of quantification passed against the appellants. It is

for the authorities concerned to issue the requisite show cause to the appellants if there is a warrant for the same and if that event happens, it is for

the appellants to express their stand and if they are to face any adverse proceedings, liberty is theirs to seek the due process of law, as stated

above. Hence, the dismissal by the learned Single Judge of the Writ Petitions questioning the order dated 26-6-1990 of the Central Board of

Excise and Customs will have to stand subject to the above. Accordingly, W.A. Nos. 59 and 60 of 1991 are dismissed, subject to what all we

have observed above with reference to the steps if any to be taken by the authorities. W.A. Nos. 58 and 61 of 1991 are allowed, quashing the

communication of the Superintendent of Central Excise, Madras, dated 26-11-1990, challenged in W.P. Nos. 19379 and 19672 of 1990; and

those Writ Petitions will stand allowed. No costs.

