

(2010) 09 MAD CK 0175

Madras High Court

Case No: Writ Petition No. 1759 of 2005

V.S. Exim Private Ltd.

APPELLANT

Vs

The Commissioner of Customs
and The Assistant Commissioner
of Customs

RESPONDENT

Date of Decision: Sept. 6, 2010

Acts Referred:

- Agricultural Produce Cess Act, 1940 - Section 3
- Marine Products Export Development Authority Act, 1972 - Section 14

Hon'ble Judges: K.B.K. Vasuki, J

Bench: Single Bench

Advocate: R. Asokan, for the Appellant; T.R. Senthilkumar, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.B.K. Vasuki, J.

The writ petition is filed for issuing writ of declaration declaring the action of Respondents in collecting the Cess under the Agricultural Produce Cess Act, 1940 on the export of Prawns/Shrimps by the Petitioner as illegal and without authority and to consequently restrain the Respondents from collecting Cess.

2. The Petitioner is carrying on business in export of marine products. The Petitioner purchases harvested prawns/shrimps etc, segregate them into various grades clean them and export them after processing and the entire process does not involve any agricultural operation and the export activities carried on by the Petitioner is covered under Marine Products Exports Development Authority Act, 1972 but the marine products exported by the Petitioner is as per Section 14 of the Act, levied tax at the rate of not exceeding 3% advalorem in addition to sum equivalent to 0.5% of the value of the exports as customs duty under the Agricultural Produce Cess Act,

1940.

3. The dispute raised in this writ petition is whether the prawns/shrimps can be treated as fish, the export of which to be levied of 0.5% advalorem customs duty as Cess, as per Section 3 of the Agricultural Produce Cess Act, 1940. According to the Petitioner, the Prawns/Shrimps belonging to different species and are not covered under item No. 7 in the schedule and cannot be subjected to levy of Cess as customs duty.

4. The learned Counsel for the Petitioner has also in support of such contention relied upon the judgment of Hon"ble Division Bench reported in [Commissioner of Customs Vs. Edhayam Frozen Foods and CESTAT, South Zonal Bench](#), wherein the Hon"ble Division Bench has dealt with the issue as to whether Prawns/Shrimps are different from fish for the purpose of Agricultural Produce Cess Act, 1940 and has after elaborate discussion answered the issue against the revenue. The Hon"ble Division Bench has in Para 40, Page 235 of the judgment clearly held that the expression fish contained in schedule 7 of the Agricultural Produce Cess would not include within itself Prawns/Shrimps.

5. Our High Court has also in earlier batch of writ petitions in WP. Nos. 15253 to 15256 of 2005 disposed of on 01.09.2005 taken the same view following the order of Madurai Bench dated 20.01.2005 made in WP. Nos. 281 to 285 of 2004. The judgment dated 01.09.2005 would further reveal that the customs exercise service appellate tribunal has also taken the same view and disposed of all the appeals pending before the same in this regard, in favour of the companies and against the revenue. That being the legal position and the manner in which the issue involved in this case is already settled in the earlier judgment. The levy and collection of tax as Cess and customs duty under for the export of Prawns/Shrimps products by the Petitioner is to be necessarily held illegal and without jurisdiction.

6. In the result, the writ petition is allowed as prayed for. No costs.