(1991) 02 AP CK 0028

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13351 of 1989

Agarwal Industries Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 21-02-1991

Acts Referred:
Central Excise Rules, 1944 — Rule 57K, 57N

Citation : (1992) 57 ELT 561

Hon'ble Judges : Yogeshwar Dayal, J;Upendralal Waghray, J

Bench : Division Bench

Advocate : K. Srinivasa Murthy, for the Appellant; I. Koti Reddy, SC for Central Govt., for the Respondent

Judgement

1. The petitioners M/s. Agarwal Industries Limited, Industrial Area, Azamabad, Hyderabad, have filed the present writ petition for a writ of mandamus restraining the respondents from giving effect to Notification No. 39/89-C.E. (NT), dated 25-8-1989 prior to 30-8-1989 and to permit the petitioner to utilise the unavailed credit which was accumulated on the use and hydrogenation of rice bran oil prior to 30-8-1989.

2. Vanaspati (hydrogenated vegetable oil) is normally manufactured from conventional oils. To encourage use of minor oils, the Central Government introduced in 1986-87 a scheme of rebate in excise duties for Vanaspati and soap linked to user of minor oils like rice bran oil, mahuva oil, water-melon seed oil etc. The Central Government inserted on 1-3-1987 Section AAA containing Rules 57K to 57P in Chapter V of the Central Excise Rules. On that date the Government also issued notification under Rule 57-K viz., Notification No. 27/1987 and Notification No. 40/1987 specifying the final products, minor vegetable oils and rates at which credit was to be given for use of such minor oils in manufacture of Vanaspati. Notification No. 40/1987 was, however, superseded by Notification No. 192/1987-C.E., and the said notification was subsequently amended by Notification No. 17/88-C.E., dated 1-3-1988.

3. The case of the petitioners in the writ petition was that in pursuance of the scheme brought in by Notification No. 27/1987, the petitioners were entitled to credit of money and that credit of money can be taken on completion of hydrogenation of such minor oils after following certain other procedure prescribed under the Notification. The credits so taken will be available for utilisation under the scheme only after the commencement of the succeeding month. This quantum of oil used in the manufacture of Vanaspati and the credit utilised for payment of duty on Vanaspati cleared should not exceed Rs. 1000/- per metric ton. The excise duty payable on Vanaspati was Rs. 1900/- per metric ton and, therefore, the manufacturer will have to pay a minimum of Rs. 900/- per metric ton of Vanaspati cleared from other sources.

4. The petitioners were using considerable quantity of rice bran oil but, as the petitioners can claim credit of money only to the extent of Rs. 1,000/- per metric ton Vanaspati cleared, there was considerable un-utilised credit accumulated to their credit. It was further stated that no time limit was prescribed for claiming credit, since the credit can be taken any time after commencement of the succeeding month as per the notification. The petitioner has accumulated credit over Rs. one crore which is being adjusted from time to time against Vanaspati clearances. By Notification No. 39/89-C.E. (NT), dated 25-8-1989, though it was published in the Gazette only on 28-8-1989, but was made available to public on 30-8-1989, the Central Government had withdrawn the credit facility for the usage of rice bran oil and other incentives given for the usage of various types of minor oils. The petitioner like others was under the impression that the notification was only prospective in operation. The petitioner is continuing to avail credit which was in his favour but the petitioner was informed by the Superintendent of Central Excise, Azamabad Range-II not to avail of the same on or from 25-8-1989 for payment of excise duty on the manufacture of Vanaspati.

5. As the petitioner was thus forbidden from utilising the credit from 25-8-1989 the present writ petition was filed challenging the view taken by the respondents and a direction being given on that basis. The petitioner wants this court to issue a writ of mandamus restraining the respondents from preventing the petitioner from utilising the credit earned as a result of use of minor oils in the manufacture of Vanaspati.

6. The validity of such a direction came up for consideration before the Gujarat High Court in Special Civil Application No. 6495/1989 and batch (M/s. Deepak Vegetable Oil Industries Ltd. v. Union of India) decided by the Bench consisting of G. T. Nanavati and J. U. Mehta, JJ., by judgment dated 30-1-90/5-2-90. The Gujarat High Court in the aforesaid case took the view that the notification granting concession in payment of excise duty by taking credit in the use of minor oils the petitioner acted bona fide and on the belief that he was entitled to the concession in the notification and further that he will have a right to utilise the credit in terms of the said notification. This view was based on the ground Rule 57N continued to exist which conferred a right to credit for manufacture of

Vanaspati from minor oils.

7. The Gujarat High Court also drew inspiration from the fact that the scheme was again introduced on 11-10-1989 by Notification Nos. 45 and 46/1989. The Gujarat High Court while allowing the writ petition directed issue of a writ mandamus to permit the petitioners therein to utilise the credit of money earned by them as a result of purchase of duty paid notified goods before the notifications in question came to be rescinded for payment of the excise duty on manufacture of Vanaspati or soap as the case may be. The Gujarat High Court also directed that these benefits will be available to the petitioners, in addition to the benefits which have again been made available to them under Notification Nos. 45/89 and 46/89 dated 11-10-1989.

8. This decision of the Gujarat High Court was subject matter of SLP No. 10118-27 of 1990 (Union of India v. Deepak Vegetable Oil Industries Ltd.) before the Supreme Court. After hearing both parties the Supreme Court dismissed the SLP by its order on 8-10-1990.

9. Identical questions were raised before the Delhi High Court in Civil Writ No. 90/1990 (Hindustan Lever Ltd. v. Union of India) decided on 30-11-1990 by a Division Bench of the Delhi High Court (M. C. Jain, CJ., and Arun Kumar, J.) and they again took the same view following the view of the Gujarat High Court and another decision of the Punjab and Haryana High Court reported in Amrit Banaspati Co. Ltd. and Another Vs. Union of India (UOI) and Others, . They also gave the same direction as was given by the Gujarat High Court and also noticed that the decision of the Gujarat High Court has been affirmed by the Supreme Court. We are in agreement with the view of the aforesaid High Courts that Rules 57N read with Notification 27/1987 dated 1-3-1987 the right of the petitioner to utilise the credit which was accumulated to its account for having purchased minor oils and having used in the production of Vanaspati has not been effected. The petitioner is entitled to use it in the manner indicated in the notification. We, accordingly, issue the same direction as was issued by the Gujarat High Court.

10. In the result the writ petition is allowed and a writ mandamus shall issue directing the respondents to permit the petitioners to utilise the credit of money earned by them as a result of purchase of duty paid notified goods before the Notification dated 25-8-1989 which remained accumulated to the credit of the writ petitioners. It is clarified that these benefits will be available to the petitioners in addition to the benefits which have again been made available to them under Notification Nos. 45/89 and 46/89 dated 11-10-1989. The petitioners to bear their own costs in these proceedings.

