(2014) 01 AHC CK 0067

In the Allahabad High Court

Case No : Central Excise Appeal No. 35 of 2009

Commissioner of Central Excise — APPELLANT

Vs

U.P. State Sugar Corporation — RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G(1)

Citation : (2014) 302 ELT 509 : (2014) 24 GSTR 381

Hon'ble Judges : Mahesh Chandra Tripathi, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : Subodh Kumar, Senior Standing Counsel and S.P. Kesarwani, Advocate for the Appellant; Sudhakar Singh, Advocate for the Respondent

Judgement

1. Heard Shri V.K. Raghuvanshi, learned counsel appearing for the appellant and Shri Sudhakar Singh, learned counsel appearing for respondent M/s. Indian Potas Limited. This appeal has been filed by the Commissioner of Central Excise u/s 35G(1) of the Central Excise Act, 1944 against the judgment and order dated September 4, 2008.

2. This appeal was earlier dismissed by a Division Bench of this court vide the judgment and order dated March 30, 2009 against which order, the Department filed SLP No. 3692 of 2009 (converted into Appeal No. 7481 of 2011). The hon''ble apex court vide the judgment and order dated August 26, 2011 set aside the order of the High Court dated March 30, 2009 and disposed of the matter directing the High Court to dispose of the appeal expeditiously as possible, preferably, within six months. This appeal has been listed before this Bench today and has been heard.

3. We have heard learned counsel for the parties and proceed to decide the appeal finally as agreed by the learned counsel for the parties.

4. The appeal has been preferred on the following two questions of law, which are as follows:

(A) Whether the remission of Central excise duty can be allowed despite undisputed fact of shortage of 895 quintals?

(B) Whether there being no satisfactory reason for shortage of 895 quintals of BISS sugar, the Tribunal is justified in remission of Central excise duty?

5. A demand was raised by the Commissioner of Central Excise vide its order dated March 18, 2004 demanding the duty of 895 quintals of sugar, which was found as storage lost. The respondent made an application for condonation of storage loss and remission of excise duty leviable on 895 quintals of sugar. A show-cause notice was issued to the respondent as to why the duty be not confirmed and the application dated October 24, 2001 should not be rejected. The Commissioner by an order dated August 30, 2004 disallowed the claim of the respondent for remission of duty amount and the application was rejected. The duty already deposited by the party was confirmed.

6. The respondent filed an appeal before the Customs Excise and Tax Appellate Tribunal, which has been allowed by the impugned judgment dated September 4, 2008. The Tribunal, relying on the earlier judgment of the CESTAT, Northern Bench, New Delhi as reported in 2005 (100) ECC 446 held that the Revenue could not show any non-accountal or illicit clearance of standard sugar and molasses obtained after reprocessing and that demand of duty is not sustainable. The finding of the Tribunal recorded in paragraph 4 is as follows:

4. On a careful consideration of the submissions made by both the sides, I find that BISS sugar which was reprocessed resulted in recovery of 11,029 quintals of standard sugar and 749 quintals of molasses. The Revenue has not able to show that there has been any non-accountal or illicit clearance of standard sugar and molasses obtained after reprocessing. During reprocessing some loss of sugar is bound to take place which got converted into molasses. Therefore, there is no reason for demanding duty on the quantity of BISS sugar lost in reprocessing. I therefore, find merits in the appeal. Accordingly, the order of the Commissioner (Appeals) is set aside and the appeal is allowed.

7. The judgment of the CESTAT, Delhi relied by the Tribunal does not have any application in the present case. In the case of 2005 (100) ECC 446 , there was no case of storage loss nor any claim for remission of duty was raised before the Commissioner. In the said case the demand of duty was raised on the ground that quantity of sugar loss during reprocessing is chargeable to duty. It is useful to quote paragraph 2 of the judgment in 2005 (100) ECC 446 :

2. Shri V. Kackria, learned advocate/pleaded that the appellants are manufacture of sugar. Due to storage of sugar for a long period, some sugar becomes not suitable for consumption and such sugar is called below Indian sugar standard. Such sugar is taken for reprocessing to convert it into standard sugar. In the present case, the appellants had taken 11,751 quintals of BISS sugar for reprocessing and obtained 11,029 quintals of reprocessed Indian sugar standard and 749 quintals, of molasses which were cleared on payment of duty. The

Department has demanded duty on the ground that quantity of sugar lost during reprocessing is chargeable to duty. He pleaded that during reprocessing of BISS sugar, standard sugar and molasses are generated. They have paid duty and same are duly accounted for in RT-7C return. He pleaded that duty paid on the molasses was more than the duty leviable on the sugar. Thus, there is no reason for the Department to raise demand as they have fully accounted for BISS sugar taken for reprocessing.

8. Present case is one where storage loss was detected. The respondent never informed about storage loss. It has been noted in the order that on sufficient reasons storage loss up to 0.5 per cent, is condonable. It has been further noted by the Commissioner that the storage loss of 895 quintals, which is to the extent of 17 per cent, beyond the permissible limit of 0.5 is not condonable.

9. We are of the view that remission of Central excise duty could not have been allowed in view of non-disputed fact that the storage loss was of 895 quintals.

10. Questions 1 and 2 both are answered in favour of the appellant. In view of above, the order of the Tribunal dated September 4, 2008 is unsustainable and is hereby set aside. The appeal is allowed.

