

(2015) 05 AHC CK 0060

In the Allahabad High Court

Case No : Central Excise Appeal No. 315 of 2006

Commissioner of Customs and Central Excise

APPELLANT

Vs

U.P. State Sugar Corporation Ltd.

RESPONDENT

Date of Decision : 04-05-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11-A

Citation : (2015) 05 AHC CK 0060

Hon'ble Judges : Arun Tandon, J;Arvind Kumar Mishra-I, J

Bench : Division Bench

Advocate : K.C. Sinha and S.P. Kesarwani, for the Appellant; Rajendra Kumar Srivastava, Advocates for the Respondent

Judgement

1. Heard Sri Ashok Singh, learned counsel for the department and Dr. Y.K. Srivastava, learned counsel for the assessee.

2. The present central excise appeal was admitted on the substantial question of law which reads as under:

"Whether the remission of duty involved on storage loss of molasses be allowed even without filing of remission application though prescribed specifically in the statute under Rule 21 of Central Excise Rules, 2002?"

3. From the record of the present appeal, we find that the adjudicating authority namely the Joint Commissioner, Central Excise, Meerut-I, vide the Order-in-Original No. 05/JC/04 dated 30.03.2004 held that the assessee was liable for payment of Rs. 5,40,192/- under Section 11-A of the Central Excise Act, 1944 in respect of loss of 10803.84 quintals of molasses. Penalty of like amount was also imposed upon the assessee.

4. Not being satisfied, the assessee filed an appeal before the Commissioner (Appeals) Meerut. The appeal came to be rejected under order dated 30.09.2005 wherein it was recorded that despite repeated opportunity, the assessee had failed to produce any document which could establish that any application for

grant of remission from excise duty under Rule 21 of the Central Excise Rules 2002 (hereinafter referred to "as the Rules") was made in respect of alleged loss of the molasses within the permissible limit of 2% due to natural circumstances. The first appellate authority held that the assessee had not responded to the proceedings. It has been held that in absence of remission, application having been made/having been granted by the competent authority in respect of molasses said to have been lost, for whatever reason, it may be, the order of the assessing authority had to be maintained.

5. Not being satisfied, the assessee filed second appeal before the Tribunal which has been allowed under the order impugned dated 18.05.2006 observing that the impugned loss is within the condonable limit of 2% as specified as per the instructions issued by the Additional Collector, North U.P. Collectorate vide instruction dated 01.06.1989, in continuation of instructions dated 21.09.1983. The notification provides that storage losses of molasses stored in steel tanks/pucca pits can be condoned up to 2% of the molasses stored. Since loss of excisable goods in the facts of the case was less than 2%, it was not necessary for the authority to enter into detailed scrutiny or to verify bonafide of the loss so caused. It has been noticed that the storage and movement of the molasses is controlled by the U.P. Excise Authority inasmuch as molasses is ultimately used for manufacturing of alcohol potable as well as non-potable. In view of the aforesaid finding, the Tribunal has set aside the order of the assessing authority as well as appellate authority. It is against this order of the Tribunal, the present excise appeal has been filed.

6. Learned counsel for the department questioning the reasoning of Tribunal submitted that the circular which has been relied upon by the Tribunal only fixes the outer limit in the matter of treating the loss of the excisable goods as one within permissible, due to natural circumstances but the circular does not do away with the making of the mandatory application under Rule 21 of the Rules for waiving off/remission of the excise duty of the goods manufactured but lost due to natural circumstances.

7. It is his case that in the facts of the case, finding recorded by the assessing authority as well as by the first appellate authority to the effect that the appellant had not made any application in respect of waiver/remission with regard to the manufactured goods said to have been lost in natural course. There is no reason for remission of the duty on the goods so lost by the Tribunal nor the Tribunal could have set aside the levy of penalty for the same reason.

8. It is the case of the department that in every case where loss of excisable goods is within permissible limit or out side the permissible limit, accidental or in natural course an application under Rule 21 of the Rules is a must. Since no application was filed before the competent authority, no question of waiver/remission of the excise duty in respect of excisable goods so lost arises. Learned counsel submits that in absence of such order having been made, the Tribunal is not justified in quashing the order of the appellate authority as well as assessing

authority.

9. Learned counsel for the assessee on the contrary after referring to the circulars dated 01.06.1989 and dated 21.09.1983 submitted that in the facts of the case, loss was within 2% permissible limit in respect of stored molasses, therefore, the order of the Tribunal may not be interfered with by this Court. Reference is also made to the judgment of the learned Single Judge of this Court in the case of Hindustan Coca-Cola Beverages Pvt. Ltd. Vs. Union of India, (2013) 296 ELT 150 .

10. We may record that the learned Single Judge under the judgment and order referred to above has held as follows:

"39. The aforesaid Rule is of a general nature whereas the circulars under which exemption is being claimed are very specific and are confined only to the wastage of excise goods namely aerated waters only and are not applicable to other goods and it refers to the wastage or loss only on account of breakage of bottles during handling and not for any other purpose. The import of Rule 21 is therefore very wide and that of the circulars very narrow. Therefore, the procedure for remission of excise duty prescribed under Rule 21 of the Rules is to be followed where it is being claimed for reasons other than those prescribed in the circulars. However, as regards 0.5% tolerance limit provided for aerated water it stands exempt on being certified by the Range Staff in terms of the circulars. The aforesaid circulars have the effect of impliedly reducing the quantity of aerated water produced by 0.5% of the monthly production. In this situation, when the quantity produced stand reduced there is no necessity for claiming remission."

11. We find it difficult to agree with the reasoning of the Hon''ble Single Judge, that limit of wastage permitted due to natural circumstances can be treated to be less production or as not having been manufactured. In our opinion the notification only prescribes outer limit up to which excisable goods can be said to have been lost in natural course, with reference to the particular good. Such prescription of the outer limit will not mean that the statutory provision for claiming such remission are to be given a go by. It is not open to the assessee to himself determine the remission because of alleged loss even if it is within the permissible limits.

12. It is settled principle of law that if law requires something to be done in a particular manner it has to be done in that manner or not at all. Privy Council in Nazir Ahmad vs. Emperor AIR 1936 253 (Privy Council) laid down the dictum that when a statute requires a thing to be done in a particular manner, it must be done in that manner or not at all. The Hon''ble Apex Court has reiterated and followed the aforesaid dictum in a catena of cases and one of the recent judgment in Commissioner, Income Tax, Chandigarh v. Pearl Mechanical Engineering and Foundry Works Pvt. Ltd. A Constitution Bench of the Hon''ble Apex Court in Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala

and Ors. reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the same itself.

13. We have no hesitation to record that even if in the facts of the case, the assessee claims remission from excise duty of goods said to have been lost in natural course, within the permissible limit, as per the circulars, he has to follow the procedure prescribed under Rule 21 of the Rules. Only after an order is made granting remission in respect of the goods so lost due to natural circumstances, he could be exempted from payment of excise duty.

14. The Tribunal has not examined the aforesaid aspect of the matter while allowing the appeal filed by the assessee. The order of the Tribunal cannot be legally sustained and is hereby quashed. The matter is remanded to the Tribunal to decide afresh in the light of the observations made by us hereinabove after summoning the original records and after satisfying as to whether any application for remission had been moved by the assessee. If such an application was made, it will be seen as to what orders had been passed by the competent authority. All consequential actions shall be taken, accordingly.

15. Such direction is being issued in the background that the Tribunal is the last forum for recording findings of facts.

16. Since the matter is being remanded to the Tribunal for decision afresh in the light of the observations made, the present appeal is allowed for statical purposes.