(1996) 07 AHC CK 0111

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 60 of 1982

D.C.M. Ltd. APPELLANT

Vs

Superintendent, Central Excise RESPONDENT

Date of Decision : 08-07-1996

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)
Constitution of India, 1950 — Article 226

Citation : (1997) 90 ELT 39

Hon'ble Judges : S.N. Saxena, J;B.M. Lal, J

Bench : Division Bench

Advocate : Sudhir Chandra, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

B.M. Lal, J.—This petition involves interpretation of Notification No. 146, dated 12-10-1974 issued by the Government of India Ministry of Finance (Department of Revenue and Insurance) New Delhi. The Notification was issued under Sub-rule (1) of Rule 8 of Central Excise Rules 1944. By the Notification Central Government exempted sugar described in column (2) of the Table given in the Notification, from so much of excise duty leviable thereon, as is specified in the corresponding entry in columns (3) and (4) of the said Table. For brevity, only relevant portion of the Notification referred above dated 12-1-1974 contained in Annexure 1 to the writ petition is reproduced herein below:

"NOTIFICATION CENTRAL EXCISES

G.S.R. In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Centra] Excise Rules, 1944, the Central Government hereby exempts sugar, described in column (2) of the Table below and falling under sub-item (1) of Item No. 1 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) from so much of the duty of excise leviable thereon as is specified in the corresponding entry in columns (3) and (4) of the said table:

Table SI. Description of sugar Free Sale Duty of excise No. Sugar Levy Sugar 1. 2. 3. 4. 1. - - - 2. Sugar produced in a factor during the period commencing on the 1st day of December, 1974, and ending with the 30th day of September, 1975, which is in excess of the average production of the corresponding period of the preceding five sugar years, that is: (a) on excise production up to 7.5% Rs. 20/- Rs. 5/- per quintal. per quintal. (b) on excess production on the next Rs. 40/- Rs. 10/- 10% per quintal per quintal. (c) On excess production on the next Rs. 50/- Rs. 14/- 10% per quintal. .per quintal. (d) On excess production on the next Rs. 60/- Rs. 18/- 10% per quintal. per quintal. (e) On excess production beyond Rs. 82/- Rs. 22/- 37.5% per quintal per quintal."

2. Before endeavouring to interpret the relevant clause (2) of the Notification, quoted above, it is necessary to see the object of the Notification itself. The object of the Notification was to provide incentive to the sugar manufacturers for increasing and exceeding the production of sugar more than the average production of sugar, specially during certain lean periods every year. Therefore, only those manufacturers were entitled to rebate whose production exceeded the average production of the corresponding period of the preceding 5 sugar years. The relevant period stated in the Notification is the period commencing on the 1st day of December, 1974, and ending with the 30th day of September, 1975.

3. This petition under Article 226 of the Constitution is filed by M/s. D.C.M. Ltd, petitioner, seeking quashing of the impugned order of the Government of India dated 26-12-1981 (Annexure 5), the order of the Appellate Collector dated 6-3-1981 (Annexure 4) and the order of the Superintendent Central Excise dated 7-1-1978 (Annexure 3). The petitioner has also prayed that the respondents be commanded to refund to the petitioner an amount of Rs. 8,07,215.85 towards Excise Rebate on excess production of sugar in 1974-75 sugar crushing season.

4. The case as set out by the petitioner is as under :

M/s. Mawana Sugar Works Mawana an unit of the petitioner D.C.M. Ltd. is engaged in manufacture of sugar by pan vacuum process. According to petitioner, during the period mentioned in the aforesaid Notification, the Unit produced sugar in excess of the average production i.e. 31,813 bags (each bag containing one quintal sugar), and submitted claim of rebate for the period commencing from 1st day of December 1974 and ending on 30th September 1975, as per the provisions of Notification quoted above. The Unit''s claim of rebate amounting to Rs. 3,26,083.25 had been sanctioned vide ACAO Central Excise Kanpur''s Order No. ACAO/Sug/Ex-Prod/75/42558, dated 3-10-1975 and credited in their Personal Ledger Account. The claim so granted was in terms of S. No. 2(a) of the table annexed to the above said Notification and the amount of rebate was calculated and sanctioned & @ 20/- per quintal for free sale sugar and Rs. 5/- per quintal for levy sugar.

5. However, the dispute pertains to the revised claim dated 26-2-1976 submitted by the petitioner claiming Rs. 11,33,299.10 P invoking clauses SI. No. 2(a) to

2(e) of the Table quoted above, by dividing the excess production of 31813 quintals in different sets of 7.5%, 10%, 10%, 10% and beyond 37.5%. The amount of Rs. 3,26,083.25 already received by the petitioner was adjusted and supplementary amount of Rs. 8,07,215.85 was claimed.

6. The case as set out by the department against the aforesaid supplementary claim of the petitioner is that petitioner is undoubtedly entitled to rebate in excise duty on the sugar produced in its factory during the period December, 1974 to September, 1975 in excess of the average production of the sugar of the corresponding period of the preceding five years but the exemption is to be allowed at different rates prescribed in the Table quoted above. According to the respondents one and uniform rate is to be applied which is prescribed in the Table quoted above, and the exemption is to be given only to excess production. The Clauses 2(a) to 2(e) of the Table quoted above make the intention clear that larger exemption is to be given on greater production and the percentage is to be calculated with reference to the average production.

7. Learned senior counsel Sri Sudhir Chandra appearing for the petitioner contended that aforesaid Notification vide its Clauses 2(a) to 2(e) of the Table envisages that the percentage is to be calculated on the excess production itself and not with reference to the average production of preceding 5 years and as such the claim as set out by the petitioner is liable to be allowed.

8. Having heard learned counsel we are of the opinion that the Notification has to be interpreted in the form it exists and not in the form it should be and it is not permissible to add any word to it rather the actual words used in the Notification are to be given effect. The cardinal rule of interpretation is that a particular clause should not be read in isolation rather the relevant provision as a whole should be read together. A careful reading of the entire provision of clause 2 of the Table quoted above makes it crystal clear that the exemption is to be allowed on the sugar manufactured in excess of the average production of the preceding five sugar years. The rate of exemption is given in Clauses 2(a) to 2(e) of the Table. Quintalwise rate is given in Column No. 3 and 4 in Clauses 2(a) to 2(e). This quintalwise rate varies according to the percentage of excess. The excess is to be assessed in terms of percentages and the percentages of excess are to be calculated with reference to the average production. Thus, if the total excess production does not go beyond 7.5% of the factory is not entitled to exemption greater than Rs. 20/- per quintal in respect of free sale sugar and Rs. 5/- in respect of levy sugar. The percentage slab should mean the percentage of the average production and not the excess production.

9. In the instant case the actual dispute pertains to the calculation of percentages. According to the petitioner the percentages referred in the Clauses 2(a) to 2(e) of the Table quoted above are to be calculated with reference only to the excess production and according to the respondents the percentages are to be calculated with reference to the average production of corresponding period of 5 preceding sugar years. In the opinion of this court the exemption is to be

granted only on excess production and the percentages of excess product on are to be calculated with reference to the average production of corresponding period of 5 preceding sugar years and it has to be worked out as the excess production is how much percent of the average production and thereafter accordingly the rebate is to be allowed as per the rate prescribed in columns 3 and 4 of the Clauses 2(a) to 2(e) as the case may be.

10. Learned senior counsel Sri Sudhir Chandra submitted that the matter in issue has been taken into consideration in Sakthi Sugars Limited Vs. Union of India (UOI) and Others, by Madras High Court, in India Sugars and Refineries Ltd., Hospet Vs. Union of India and Others, by Karnatka High Court and in Triveni Engineering Works Ltd. and Another Vs. Union of India (UOI) and Others, by Delhi High Court and it has been held that the rebate is computable in regard to the percentage of excess production during the relevant year and not in regard to the percentage of average production of the previous years.

11. No doubt the decisions of various High Courts referred above have persuasive value for this Court but with due regard to concerned High Courts we are unable to persuade our judicial conscience as in our considered opinion the true interpretation of express, plain and meaningful words used in the Notification i.e. ''excess of the average production'' and thereafter ''on excess production upto 7.5% is that percentage has to be calculated with reference to average production. In other words the excess is to be worked out in percentage and the percentage is to be calculated with reference to the average production of preceding five years. The various slabs for exemption are specified in Sub-sections Nos. (a) to (e) of Sub-clause (2). If Sub-sections Nos. (a) to (e) with the broad headings of Sub-clause (2) namely in excess of the average production'' are read together it would be clear that the percentages specified are in relation to the average production only.

12. As far as the principle of interpreting taxing Statutes, Rules and Notification issued thereunder is concerned, the same has been well settled by their lordships of apex court in catena of decisions and it has been ruled that the Court must always remember that legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent and that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry. In the matter of taxation the rate of tax and objects to be taxed are to be determined by the Legislature and unless it is found to be so unreasonable, the court would not interfere with the latitude enjoyed by the legislature in this behalf.

13. In the instant case petitioner is entitled to the exemption for the sugar produced in excess of the average production and the same has been paid to him to the extent it is admissible under the said Notification. As regards the supplementary claim made by the petitioner the same has not been found admissible under the Notification as percentage of his excess production if calculated with reference to the average production of preceding five years, it

does not cross the slab of 7.5% provided under Sub-clause (a) of clause (2) of the Table quoted above. Therefore, the orders impugned in this petition do not call for any interference by this Court.

14. For the reasons given above, in our considered opinion, this petition is liable to be dismissed consequently it is dismissed.

