(1993) 12 AHC CK 0001

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 151 of 1992

Gangeshwar Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 02-12-1993

Acts Referred:

Central Excise Rules, 1944 — Rule 8
Central Excises and Salt Act, 1944 — Section 11B

Citation : (1995) 76 ELT 515

Hon'ble Judges : S.C. Verma, J;R.K. Gulati, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.C. Verma, J.—The petitioner-Company is engaged in the manufacture and sale of sugar. Under the Central Excises and Salt Act, 1944, sugar being an excisable goods, excise duty was levied on its manufacture and was collected by the respondents under Rule 8 of the Central Excise and Salt Rules, 1944. The Central Govt. issued an exemption Notification No. 146/74/F. No. 14/22/74/CX I, dated 12-10-1974, providing for certain excise duty rebate on excess production in the sugar year 1974-75 which was in excess of average production of the corresponding period in the preceding five sugar years. The petitioner in accordance with the aforesaid Notification claimed rebate on the basis of its production during the period 1-12-1974 to 30-9-1975. The petitioner company claimed rebate of excise duty for a sum of Rs. 25,90,952.36 P. The aforesaid rebate claimed by the petitioner was sanctioned by the Supdt., Central Excise, M.O.R. (S.R.P.) Saharanpur, vide their order dated 18-10-1975. Later on the petitioner lodged another claim in respect of the same period, which according to it was not made on account of wrong interpretation of the Notification. The petitioner company further claimed rebate of excise duty of Rs. 14,96,071.32 P. The revised claim of the petitioner was rejected by an order dated 13-4-1978 and the petitioner thereafter challenged the aforesaid order in Writ Petition No. 644 of 1980 before this Court. The writ petition was ultimately allowed and the impugned order dated 13-4-1978 was quashed with the direction to the Supdt., Central Excise to dispose of the petitioner''s application under a fresh order in accordance with law and in the light of the interpretation placed by the Bench on Clause (2) of the Notification dt. 12-10-1974. The learned Judges had given the direction in the following terms :

"A reading of the above clause discloses that for determining the rebate which a sugar mill is entitled to on account of excess production during the period 1-12-1974 to 30-9-1975, one has to see what was the average production during the corresponding period of the preceding five years. After finding out the average production of the corresponding period of the preceding five years, rebate has to be worked out on the excess production applying the relevant clauses (a) to (e) as may be applicable."

2. By the impugned order dated 17-1-1992, the Supdt., Central Excise, Roorkee, while considering the petitioner''s application for grant of rebate, held that in terms of the Notification dated 12-10-1974 there is no further refund/rebate due to the petitioner for the said period and whatever was due to them, had already been sanctioned and paid. From the perusal of the entire order we find that there is nothing to indicate that the Supdt., Central Excise has considered the matter in accordance with the directions of this Court and has calculated the average production of the corresponding period of the preceding five years and has worked out the rebate on the excess production in accordance with the relevant Clauses (a) to (e) of the Notification dated 12-10-1974. The Supdt., Central Excise has not indicated any reason, whatsoever, why the petitioner''s claim has been rejected and as to why it would not be entitled to rebate in accordance with Clause (2) of the Notification dated 12-10-1974.

3. In the counter-affidavit the respondents have tried to justify the impugned order by stating that the refund of additional duty/rebate as claimed by the petitioner will amount to unjust enrichment which is not admissible to them in view of amended provisions of Section 11B of Central Excises and Salt Act, 1944. In our opinion, the justification given by the respondents in the counter-affidavit is not borne out from the impugned order passed by the Supdt., Central Excise and we do not think it necessary to consider the explanation which is now being furnished in the present circumstances. Apart from that, the direction of this Court was very clear inasmuch as, the Supdt., Central Excise was directed to first find out the average production of the petitioner and, thereafter, to determine the amount or rebate which the petitioner was entitled to in accordance with Clause (2) of the Notification. From the impugned order it is very clear that this exercise has not been performed by the Supdt., Central Excise and unless the directions issued by this Court earlier, are complied with, in our opinion, the conclusion drawn by the Supdt., Central Excise that no rebate is due to the petitioner for the aforesaid period, would not be in accordance with law.

4. For the aforesaid reasons, the petition deserves to be allowed.

5. The petition is, accordingly, allowed. The impugned order dated 17-1-1992 filed as Annexure 9 to the Writ Petition is quashed. We direct the Supdt., Central Excise, Range Roorkee (U.P.), respondent No. 2, to decide the matter afresh in accordance with the directions of this Court dated 4th February, 1991 and in the light of the observations made above.

6. Since the matter is pending since 1992, it would be desirable that respondent No. 2 is directed to decide the case within a period of three months from the date of presentation of a certified copy of this order before the said respondent. There shall be no order as to costs.