

(1979) 11 KAR CK 0009
In the Karnataka High Court
Case No : Writ Petition No. 5731 of 1976

India Sugars and Refineries Ltd., Hospet	APPELLANT
Vs	
Union of India and Others	RESPONDENT

Date of Decision : 08-11-1979

Acts Referred:

Central Excise Rules, 1944 — Rule 10, 8 (1)

Citation : (1983) 12 ELT 209

Hon'ble Judges : M.K. Srinivasa Iyengar, J

Bench : Single Bench

Advocate : G. Vasantha Pai and K.J. Shetty, for the Appellant; U.L. Naryana Rao, Senior Central Govt. Standing Counsel, for the Respondent

Judgement

1. In this writ petition the demand made by the Excise authorities to refund a sum of Rs. 3,84,537.23 by a communication dated 14-11-75 (Exhibit "D") on the ground that there was an excess allowance of rebate in regard to excise duty and further proceedings to enforce the same are challenged.

2. The petitioner is a manufacturer of sugar. By a notification dated 12-10-74, a copy of which has been filed as Exhibit "A", the Government of India, in exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, granted certain exemption in regard to sugar. The notification is as follows :

NOTIFICATION

CENTRAL EXCISE

G.S.R. In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central 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 Duty of Excise -----				Free Sale Levy
Sugar	Sugar	-----		
(1)	(2)	(3)	(4)	-----
1. Sugar produced in a factory during the period commencing on the first day of Oct., 1974 and ending with the 30th day of November, 1974 in excess of the average production of the corresponding period of the preceding five sugar years in respect of which : (a) The overall production of the factory Rs. 60/- per Rs. 16/- per for the entire year sugar year does quintal quintal not equal the average production of the preceding five sugar years. (b) The overall production of the factory Rs. 82/- per Rs. 22/- per for the entire sugar year equals or quintal quintal exceeds the average production of the preceding five sugar years. 2. Sugar produced in a factory 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 excess production upto 7.5% Rs. 20/- per Rs. 5/- per quintal quintal (b) On excess production on the next 10% Rs. 40/- per Rs. 10/- per quintal quintal (c) On excess production on the next 10% Rs. 50/- per Rs. 14/- per quintal quintal (d) On excess production on the next 10% Rs. 60/- per Rs. 18/- per quintal quintal (e) On excess production beyond 37.5% Rs. 82/- per Rs. 22/- per quintal quintal				
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3. The Petitioner sent up a claim as per Exhibit "B" dated 5-8-1975 claiming in all a rebate of Rs. 6,93,249.62. According to the petitioner, this is the correct amount of excise duty rebate that they were entitled so far as the production season from December 1974 to the end of September 1975 was concerned. As is clear from the notification two factors entered into the calculation of the rebate that can be allowed. One is the average production for the previous five years and the other is the net production for the period concerned, namely, December 1974 to September 1975. The quantity of sugar produced by the petitioner's factory for the period December 1974 to the end of April 1975 was, 2,05,102 quintals but of which 242 quintals had been taken for reprocessing the sugar that had been produced in the earlier period and accordingly, the net production amounted to 2,04,860 quintals. Working on the same basis, the total production for the five previous seasons 1969-70 to 1973-74 worked out to 1,85,775.6 quintals. Thus the excess production during the relevant period was calculated at 19,084.4 quintals. The rebate allowable was calculated taking into account 7.5 per cent of this excess and the next three successive 10 per cent of such excess and thereafter the balance of the excess, i.e. over and above 37.5 per cent of such excess. The rebate was calculated on the basis of the quantity of sugar allowed for free sale and by way of levy sale. The amounts so calculated were respectively Rs. 4,61,907.66 and Rs. 2,31,341.96 totalling to Rs. 6,93,249.62. In response to this demand, the department indicated its provisional acceptance and the rebate was allowed. However, on 14-11-1975, a demand was made that

the allowance that had been made was not correct and it was excessive and not in accordance with the notification and the company was asked to refund the amount as stated therein. Even in a subsequent correspondence on 3-4-1976, the Collector of Central Excise stated that the matter was still under consideration by the Union Government. However, by a communication dated 1-7-1976, the petitioner was directed to refund the amount immediately and an order for detention of sugar was also issued. It is at this stage that this writ petition was filed. Rule nisi was issued and an interim order of stay was made which was subsequently modified the effect of which was that the goods that were detained were released on certain conditions.

4. The contention on behalf of the petitioner is that the notification is clear that the excess production during the relevant year over the average production of the previous five years was entitled to the rebate and the notification prescribed slabs in accordance with which rebate had to be allowed and accordingly rebate at particular rates on 7.5 per cent of this excess and the next three successive 10 per cent of such excess and the balance over and above 37.5 per cent has been calculated and till now, this calculation has not been found to be in any way inaccurate. The contention on behalf of the department, as it appears from the counter affidavit that has been filed, is that the petitioner was entitled to rebate on several percentage specified in the notification on the average production for the previous five years and not on the basis of the percentage of the excess production over the average of the previous years. The relevant portion in the objection statement is as follows :-

"However, the dispute arises only regarding the method of calculation of the entitlement to rebate under Item No. 2 of the Notification. This involves proper construction of serial No. 2 of the said notification, keeping in view the policy of the Government in sanctioning such concessions. The contention of the petitioners that the percentage of rebate envisaged in Sl. No. 2 of the said notification has to be worked out with reference to actual excess production and not with reference to the average production of the corresponding period of preceding 5 sugar years is not correct as it is contrary to the correct interpretation and spirit of the Notification and also contrary and repugnant to the intention of the Government in granting such a concession."

5. The following explanation will substantiate this stand of the revenue.

"The question for consideration is the proper construction of serial No. 2 of the exemption notification of the 12th October, 1974 relating to the levy of Central Excise duty on sugar. This grants exemption from the duty of excise to the extent mentioned in columns (3) and (4) of the Schedule to the Notification. This exemption is applicable to sugar produced in a factory 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 years. It has thus to be kept in mind that the exemption is to be given only to excess production, the implied object

being to encourage increased production of an essential commodity needed by the citizens for their day to day use."

6. The destruction of the excess production of sugar which is entitled to the exemption is set out in detail in clauses (a) to (e). The notification after specifying that the exemption is granted to sugar produced which is in excess of the average production goes on to say..., that is,

(a) on excess production upto 7.5%

(b) on excess production on the next 10%

(c) on excess production beyond 37.5%.

7. Reading the various clauses as a whole, the express intention would appear to be to give a large exemption, to greater production. In other words, the greater the increase in the production, the higher would be the exemption. Thus clause (a) gives exemption on excess production upto 7.5%. The quantum of exemption steadily increases till clause (e) grants an exemption on excess production beyond 37.5%. In other words, the exemption is granted on the excess production upto a certain percentage. This excess can only be calculated with reference to the average production. It is clear that the rates of percentages are to be calculated with reference to the average production which is exceeded."

8. So far as the submission made in the objection statement in regard to the object with which this allowance was being made, namely, to afford an incentive for higher production, no exemption can be taken to that nor is it disputed on behalf of the petitioner. There is no dispute either that the entire excess production during the relevant year was entitled to relief. The only submission that is objected to as being unwarranted is the penultimate sentence in para 4 of the objection statement, namely, "This excess can only be calculated with reference to the average production".

9. The submission on behalf of the petitioner that the notification is clear and explicit in regard to the relief to be granted is indisputable. The further contention that the percentages referred to in the table refer to the actual excess production over the average of the previous five years is, to my mind, well-founded and plain from a reading of the notification which is unambiguous and does not detract in any manner from the objectives sought to be achieved or the purpose for which the relief was granted. If the contention on behalf of the department is to be accepted, then, we have to read into the notification words which are not there and these words would be "on excess production upto 7.5% of the average production of the previous five years." Such addition is impermissible and there is no warrant to make such an addition which would entirely alter the plain and simple meaning of the words actually used in the notification. As is clear from the notification, what is entitled to relief is the excess production of the previous years. Once that excess is computed, the figure of average production for the previous five years has no bearing on the

rebate to be allowed. If the intention was only to allow the rebate to the extent of or certain percentages of the average of the previous five years, it was open to the authorities to specifically state so. When the expression used in plain and meaningful there is no scope for assuming an ambiguity and trying to interpret it on a supposed intention of the makers of the notification. The principle is well established and the Supreme Court in *Hansraj Gordhandas Vs. H.H. Dave*, Assistant Collector of Central Excise and Customs, Surat and Others, while considering the interpretation of an exemption provision under the Central Excises and Salt Act, 1944, observed as follows :

"It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the taxpayer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority."

10. In that case, certain exemption had been allowed in regard to cotton fabrics manufactured by cooperative societies. The appellant before the Supreme Court had got the cotton fabrics manufactured by the co-operative societies, and he was the owner of the cotton fabrics. The contention of the department was that the cotton fabrics having not been manufactured by the co-operative society "for itself", the exemption was unavailable. The Supreme Court interpreting the relevant clause held that on a true construction what was required for claiming exemption was that the cotton fabrics must have been produced on powerlooms owned by the co-operative society and there was no further requirement that the fabrics must be produced by the co-operative society on the powerlooms "for itself".

11. The words used in the instant case do not suggest any contrary intention other than that the relief would have to be granted in regard to certain percentages of the excess production during the relevant year over the average production for the previous five years. One has to go by the express terms of the notification and the plain meaning thereof. Accordingly, the submission made on behalf of petitioner is entitled to be accepted.

12. During the course of the arguments, Shri G. Vasanth Pai, learned counsel for the petitioner brought to my notice a judgment of High Court of Madras wherein a similar question had been considered. That judgment is dated 28-9-79 in writ petition No. 436 of 1977 and other connected matters - 1983 E.L.T. The precise question about the interpretation of the notification dated 12-10-74 came up for consideration in Writ Petition Nos. 550, 551 and 2467 of 1977. It transpires that the High Court of Andhra Pradesh had also considered the said notification and accepted the contention that had been put forth on behalf of the department. The extracts from that judgment are also to be found in the judgment of the High Court of Madras. The learned Judge of the Andhra Pradesh High Court had held that excess production upto 7.5 per cent, that is to say, the excess production upto 7.5 per cent of average production of the previous years, was

entitled to a rebate of Rs. 20/- per quintal in the case of free sale sugar and Rs. 5/- per quintal in the case of levy sugar. Similar was the observation in regard to the subsequent wordings of the notification.

13. The learned Judge of the High Court of Madras who decided the matter took a different view and did not agree with the view taken by the High Court of Andhra Pradesh. With great respect, I am unable to agree with the interpretation sought to be made on the working of the notification by the High Court of Andhra Pradesh. There is no warrant for reading the words "average production of previous five years" into the notification which is otherwise plain and conveys full meaning and which also subserves the purpose and objects for which the relief was being given. The learned Judge of the Madras High Court took note of similar notification that had been issued in the earlier years and the purpose for which they had been issued and that the object in the notification under consideration was also similar. The learned Judge expressed himself thus :

"I am of the opinion that the intention of the Government of India with reference to the notification dated 12-10-74 must also have been as originally interpreted by the Government of India itself to grant rebate at the different rates provided for in the notification dated 12-10-74 in respect of different slabs of excess production without reference to the percentage which each of the slabs bears to be average production in the preceding five years".

14. In this part of the judgment, the learned Judge was referring to a letter dated 1-11-1972 addressed by the Central Board of Excise and Customs to one of the Writ Petitioners in the cases before him. The view I have expressed above is in accord with the view expressed in the judgment of the High Court of Madras and I fully agree with the reasoning in that judgment.

15. The learned counsel for the petitioner also contended before me that the provisions of rule 10 had not been followed and no show cause notice had been issued and the demand made would be not in accordance with law and the demand made would be barred by limitation. In my opinion, it is unnecessary to consider these submissions in the view I have taken on the main contention and therefore I refrain from expressing any opinion in regard to these submissions.

16. There is a further prayer in this writ petition that the respondents have withheld a sum of Rs. 60,555.19 out of the claim that had been made in a sum of Rs. 6,93,249.62 and there should be a direction to the respondents to pay that amount. It would appear that this involves a calculation which the department would have to make and ascertain if the total claim made was correct or not. The petitioner will be at liberty to pursue that matter with the department in regard to this claim.

17. For the reasons stated above, the petitioner is entitled to succeed. Accordingly, the rule is made absolute and the demand made as per Exhibit "D" dated 14-11-1975 is quashed. In consequence of the rule being made absolute, the liability under the bank guarantee given in compliance of the interim order of

this court, will also lapse. Parties shall bear their own costs.