(1986) 08 AHC CK 0033

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3023 of 1977

Ishwari Khetan Sugar Mills Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 12-08-1986

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)

Citation : (1987) 10 ECR 423 : (1987) 32 ELT 373

Hon'ble Judges : D.S. Sinha, J;A.N. Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.N. Verma, J.—The petitioners were manufacturers of sugar by vacuum pan process. By means of this petition the petitioners challenged the legality of the demand notice issued by the Assistant Collector, Central Excise, Gorakhpur against the petitioners for recovery of Rs. 7,21,827/-. The demand has been raised on the ground that the petitioner was wrongly allowed excise rebate in the like amount under the relevant notification dated 28th September, 1972.

2. In the exercise of power conferred under sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government granted exemptions to sugar factories manufacturing sugar from certain amounts of excise duties leviable thereon to be calculated in terms of the table appended to the notification, a true copy whereof is annexure 1 to the petition. According to this table factories producing sugar during the period commencing 1st of October, 1972 and ending with the 30th day of November, 1972 which was in excess of the quantity of sugar produced during the corresponding period, in 1971 the rebate allowable was fixed at Rs. 40/- per quintal. In regard to sugar produced in a factory the period commencing from 1st day of December, 1972 and ending with the 30th day of April, 1973 which is in excess of 115 per cent quantity of sugar produced during the period commencing from the 1st day of December> 1971 and ending with the 30th day of April, 1972 exemption was fixed at Rs. 20/- per quintal.

3. There was, however, a proviso added to the table which stated that exemption under the said notification shall not be admissible to a factory which did not work during the base year. The base year was defined in the notification as meaning the period commencing from 1st day of October, 1971 and ending 30th day of September, 1972. The petitioner did produce sugar during the 1st day of October, 1972 to 30th day of April, 1973 and if the proviso mentioned above is held not to be applicable to the petitioners, they would undeniably be entitled to claim excise rebate under the said notification.

4. The only controversy therefore is whether the petitioner is covered by this proviso. The proviso as mentioned above states that exemption shall not be admissible to a factory which did not work during the base period which means the period from 1st October, 1971 to 30th September, 1972. It has not been controverted in the counter-affidavit that the petitioner did produce sugar during the base period as well except for the months of October and November, 1971. The point is whether a sugar factory which has not produced sugar during the whole of the base period, as defined in the said notification, but only during a part of it would become disentitled to claim excise rebate in terms of the aforesaid notification. The question came up for consideration before this court in the case of L.H. Sugar Factories Ltd. v. U.O.I. and Ors. reported in 1983 U.P. T C 138. A precisely similar situation prevailed in that case. There also the petitioner factory did produce sugar during the period 18th ''October, 1971 and 30th Sept., 1972 but it had not produced any sugar during the months of May and June, 1972. The respondent in that case had contended that inasmuch as the petitioner factory had not worked during the whole of the base year it was not entitled to claim excise rebate in terms of the aforesaid notification dated 28th September, 1972. The contention was repelled by the Division Bench which held that the mere fact that the factory had not produced during a part of the base year would not ipso facto disentitle it from claiming the benefit of excise rebate admissible under the said notification. The said decision is directly in point and completely covers the controversy.

5. In the counter-affidavit the respondents have conceded that except for Rs. 3,13,827/- the rebate was rightly allowed to the petitioner. It may be added that the petitioner was initially allowed the rebate of Rs. 7,33,827/-. Subsequently by the impugned demand the department took the stand that the petitioner was wrongly allowed the rebate and claimed the refund of the amount. The stand taken in the counter-affidavit however, is that the petitioner was not entitled to claim the entire rebate because of the impact of a subsequent notification elated 4.10.1973. According to this notification the rebate was allowable to sugar factories only if there was nil production during the sugar period from 10.7.1970 to 3.11.1970. It is only when the factory did not produce during this period that the rebate was admissible on the entire production of October November, 1972.

6. The stand taken in the counter affidavit is clearly untenable and is based on an interpretation of the notification dated 4.10.1973. We are not concerned here

with the impact of that notification. The notification which is relevant to the controversy is the one dated 28th September, 1972. In terms of that notification the petitioner clearly became entitled to the rebate which was rightly allowed to it in the beginning. It was only as a result of a failure to conceive the true implications of this notification and the proviso thereto that the Department was illegally raising the demand for the refund of the amount previously allowed to the petitioner as excise rebate.

7. In the result the petition succeeds and is allowed. The impugned demand notice dated 24th March, 1977 (Annexure 4 to the petition) is quashed. The petitioner will be entitled to their costs from the respondents.