

(1985) 06 OHC CK 0008
In the Orissa High Court
Case No : O.J.C. No. 104 of 1980

Jaypore Sugar Company Ltd.

APPELLANT

Vs

Assistant Chief Accounts Officer Excise and Others

RESPONDENT

Date of Decision : 24-06-1985

Acts Referred:

Central Excise Rules, 1944 — Rule 10, 10A, 173G, 53, 8
Central Excises and Salt Act, 1944 — Section 2, 3(1)

Citation : (1985) 60 CLT 287 : (1987) 30 ELT 260

Hon'ble Judges : K.P. Mohapatra, J;J.K. Mohanty, J

Bench : Division Bench

Advocate : Y.S.N. Murty, for the Appellant; L. Rath, Central Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

J.K. Mohanty, J.—The petitioner company is a company registered under the Indian Companies Act having its registered office at Rayagada in the district of Koraput which manufactures sugar. Section 3(1) of the Central Excises and Salt Act (for short "the Act") provides that there shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into any part of India as, and at the rates, set forth in the First Schedule. As per Section 2(d) of the Act, "excisable goods" mean goods specified in the First Schedule as being subject to a duty of excise. Item No. 1 of the First Schedule is "sugar" produced in a factory ordinarily using power in the course of production of sugar. In order to achieve maximum production the Government of India decided to give incentives to the manufacturers of sugar. One of the incentives was rebate in the levy of an excise duty on sugar produced during certain periods in a year to the extent that it exceeded the quantity of sugar produced during the corresponding period of the previous year. By notification dated 4-10-1973 (Annexure-1), issued under Rule 8, Central Excise Rules, 1944 (for short "the Rules"), as amended by a

subsequent notification dated 20-4-1974 (Annexure-2), the Government announced a rebate of excise duty at the rate of Rs., 30/- per quintal of sugar produced by any factory during the month of April, 1974, which was in excess of 180% of the quantity of sugar produced during the month of April, 1973, provided that exemption should not be admissible to a factory which did not work during the base period. In Annexure-1, it has been clearly laid down that the expression "based period" means the period commencing from the first day of October, 1972 and ending with the 30th day of September, 1973. In pursuance of the above notification on 22-5-1974 the petitioner made an application claiming rebate of Rs. 1,51,830/- i.e., the amount of rebate of excise duty admissible at the rate of Rs. 30/- per quintal for the excess quantity of sugar produced during April, 1974. During April, 1974 the company produced 5,061 quintals of sugar whereas in the preceding year (1973) in the month of April, the production of sugar by the petitioner company was "Nil. So the petitioner claimed incentive rebate at the rate of Rs. 30/- per quintal on 5,061 quintals which comes to Rs. 1,51,830/-., The claim statement was forwarded to the Superintendent of Central Excise, Rayagada, in a letter dated" 23-5-1974 requesting him to allow the petitioner to credit the P.L.A. [personal ledger account] with the above amount. The letter dated 23-5-1974 and the application for claim dated 22-5-1974 are Annexure-3 and 3A respectively. The Assistant Chief Accounts Officer, Central Excise, Bhubaneswar informed that the claim for rebate was allowed and necessary credit might be effected in the P.L.A. of the company in basic excise duty with proper reference under intimation to the Superintendent, Central Excise, Rayagada, as per Annexure-4, dated 6-2-1975. Therefore, opposite party 1, the Assistant Chief Accounts Officer, Central Excise, Bhubaneswar, issued the letter dated 6-8-1976 (Annexure-6) stating that the amount of Rs. 1,51,830/- which was sanctioned to the company on 6-2-1975 vide Annexure-4 on the excess production of sugar in the month of April, 1974 was not admissible, as per the order of the Government of India as there was no production in April, 1973, which was the base year. The petitioner company was requested to debit the said amount of Rs. 1,51,830/- in the P.L.A. under basic excise duty immediately. The petitioner by a letter dated 16-8-1976 requested for a copy of the order of the Government of India by which the petitioner was not entitled to the incentive rebate of Rs. 1,51,830/- relating to the production of sugar in April, 1974. Opposite party No- 1, by his letter dated 4-9-1976 (Annexure- 7) replied that the amount of Rs. 1,51,830/- which was sanctioned towards the claim of rebate, might be debited in the P.L.A., immediately. It was further stated that the order of the Government of India could not be supplied to the licensee. Opposite party No. 2, the Superintendent of Central Excise, Rayagada, by his letter dated 17-1-1977 (Annexure-8) directed the petitioner to show cause to the Assistant Collector of Central Excise, Sambalpur as to why the amount of Rs. 1,51,830/- should not be recovered from the company under Rule 10A of the Rules. The petitioner submitted a reply to the show cause notice stating that the petitioner company was not liable to be called upon to make the refund and that the Government was estopped by the principle of equitable and

promissory estoppel on going back upon their earlier decision on this point.. On an earlier occasion the Central Board of Excise and Customs had stated that a sugar producing company was entitled to the incentive rebate in respect of the production during a particular period, even though the production in the corresponding period of the previous year was nil. The petitioner also submitted that the claim of the Government for refund . of the amount was barred by limitation under Rule 10 of the Rules. Opposite party 2 by his order dated 17-5-1977 (Annexure-9) negated the contention of the petitioner and confirmed the demand of Rs. 1,51,830/- to be recovered from the petitioner. Against the aforesaid order, the petitioner preferred appeal before the Appellate Collector of Central Excise, Calcutta The Appellate Collector in his order dated 5-11-1979 (Annexure-10) held that the contention of the petitioner was not acceptable and that Rule 10A of the Rules was applicable to the facts of the case. He accordingly dismissed the appeal. The petitioner has, therefore, filed this writ petition with a prayer to issue a writ/direction in the nature of certiorari or any other writ/direction quashing Annexures 6, 7, 8, 9 and 10.

2. The opposite parties have contested the claim of the petitioner. They have taken the plea that the petitioner is not entitled to rebate relating to the excess production of sugar in the month of April, 1974, as in the preceding year in the month of April the production of sugar of the petitioner company was nil. The incentive was meant for production of sugar in excess of the quantity of sugar produced during the corresponding period of the preceding year. As there was no production during the month of April, 1973, the question of giving incentive does not arise. It is also contended that Rule 10 of the Rules has no application to this case, but Rule 10A is applicable.

3. It will be convenient if the Notification dated 4-10-1973 (Annexure- 1) is extracted.

"G.S.Ro 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 Column (3) of the said Table.

TABLE	-----	S.No.
Description	of Sugar Duty of excise	
-----	-----	1. Sugar produced in a factory during the Forty rupees per period commencing from the 1st day of quintal. October, 1973 and ending with the 30th day of November, 1973, which is in excess of the quantity of sugar produced during the corresponding period in 1972. 2. Sugar produced in a factory during the Twenty rupees per period commencing from the 1st day of quintal December, 1973, and ending with the 30th day of April, 1974, which is in excess of 110% of the quantity of sugar produced during the period commencing from the 1st day of December, 1972

and ending with the 30th day of April, 1973. 3 Sugar produced in a factory during the Thirty rupees per period commencing from the 1st day of quintal. May, 1974, and ending with the 30th day of June, 1974, which is in excess of 110% of the quantity of sugar produced during the corresponding period in 1973. 4. Sugar produced in a factory during Twenty rupees per the period commencing from the 1st day quintal. of 1974, and ending with the 30th day of September, 1974, which is in excess of 110% of the quantity of sugar produced during the corresponding period in 1973. 5. Sugar produced during the period comm- Thirty rupees per encing from the 1st day of October, 1973 quintal. and ending with the 30th day of September, 1974 by a factory which commenced production on or after the 1st day of October, 1972, which is in excess of ten thousand metric tonnes, 6. Sugar produced during the period comm- Thirty rupees per encing from the 1st day of October, 1973 quintal. and ending with the 30th day of September, 1974, by a factory which commenced production for the first time on or after the 1st day of October, 1973, which is in excess of five thousand metric tonnes.

Provided that the exemption mentioned against serial numbers 1 to 4 of the said Table shall not be admissible to a factory which did not work during the base period.

2. In computing the production of sugar during the periods mentioned in Column (2) of the said Table -

(a) in respect of factory mentioned in the said table, -

(i) the date as furnished in Form R.G.I. prescribed in Appendix I to the Central Excise Rules, 1944, or in such other record as the Collector may prescribe under Rule 53 or Rule 173G of the said Rules, shall be adopted; and

(ii) any sugar obtained by refining gur or khandsari sugar shall not be taken into account;

(b) in respect of a factory mentioned in Serial Numbers 1 to 4 of the said Table,

(i) any sugar obtained by reprocessing of sugar house products left over in process at the end of the base period of earlier shall be taken into account; and

(ii) any sugar obtained by reprocessing or defective or damaged sugar or brown sugar, if the same has already been included in the quantity of sugar produced, shall not be taken into account.

Explanation. - In this notification, the expression "base period" means the period commencing from the 1st day of October, 1972, and ending with the 30th day of September, 1973".

The above notification was amended by the subsequent Notification dated 20-4-1974 (Annexure-2). The relevant portion of the said notification is as follows :-

"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 makes the following amendments to the notification of the Government of India in the Ministry of Finance (Department of Revenue and Insurance) No. 189/73-Central Excise, dated the 4th October, 1973,

In the said notification, -

(a) in the Table -

(i) for the Serial Nos. 2, 3 and 4 and the entries relating thereto, the following shall be substituted, namely :-

xx xx xx xx

28. Sugar produced in a factory during the Thirty upees per month of April, 1974, which is in quintal. excess of 180% of the quantity of sugar produced during the month of April, 1973. xx xx xx xx

It may be mentioned here that though initially the petitioner was intimated by opposite party 1 as per Annexure-4 that he would be allowed rebate and necessary credit might be effected in the P.L.A, of the factory in the basic excise duty, subsequently opposite party No. 1 issued a letter (Annexure-6) evidently basing on the trade notice of the Government of India dated 28-7-1976 that rebate cannot be allowed as there was no production in April, 1973 which was the base year. The same view was taken by opposite parties 3 and 4 as per Annexures 9 and 10.

4. The object of the notification in Annexure-1 (as amended by Annexure-2) was to provide incentive to the manufacturers of sugar so that they may be induced to produce more quantities of sugar Therefore, it was said, if the sugar produced during a certain period, i.e. from 1st October, 1973, to 30th September, 1974, was in excess of the sugar produced during the corresponding period in the previous year, called the base period, i.e. from 1st October, 1972 to 30th September, 1973, the manufacturer would be entitled to certain rebate of excise duty on the excess sugar produced On behalf of the opposite parties it is argued that in order to get the rebate of excise duty, a manufacturer must have to produce something, i.e., some sugar, during the relevant period in the base year. It is only when some was produced during a certain period of the year 1972-73 that the sugar produced during the corresponding period of the year 1973-74 can be said to have exceeded the production. According to the learned counsel for the opposite parties, the emphasis is on production. If there was no production of sugar during corresponding period in the preceding year (in this case the claim for rebate is for April, 1974, and admittedly there was no production during April, 1973) the notification will have no application.

5. Exactly similar matter came up before the Andhra Pradesh High Court in the case of Etikoppaka Co-operative Agricultural Society Ltd., Darlapudi, Visakhapatnam District v. Union of India, (1978) 2 AWR 106 wherein it was

held :-

"If no sugar was produced during the corresponding period in the year 1972-73 his argument was that the notification was inapplicable. This interpretation appears to me to be prima facie unreasonable. If no sugar was produced during the relevant period in the year 1972-73 it must be said that production of sugar during the relevant period was nil and the excess sugar produced in the year 1973-74 should be calculated on that basis. The interpretation of the Central Government counsel would also lead to absurd results. It would mean that if a manufacturer produced even one ounce of sugar during the relevant period in 1972-73 he would be entitled to rebate, but not if he produced "nil" sugar. The proviso to the notification, in my opinion, makes matters clear. It says that the exemption mentioned against Serial Nos. 1 to 4 shall not be admissible to a factory which did not work during the base period, ("base period" is defined in the explanation to the notification as the period from 1st October, 1972 to 30th September, 1973) that the exemptions would not be admissible., The proviso did not make exemptions inadmissible if the factory did not work during the relevant periods mentioned against Serial Nos. 1 to 4. If the object of the notification was not to grant any exemption in respect of the sugar produced during any one of the four periods mentioned against Serial Nos. 1 to 4 if no sugar was produced during the corresponding period in the base year, the proviso to the notification would have been worded differently. In the face of the proviso, I find it difficult to accept the argument of the learned counsel for the Central Government."

The Andhra Pradesh High Court did not agree with the view expressed by the Patna High Court in the decision reported in 1972 Tax LR 1684 [Shree Krishna Gyanoday Sugar Ltd. v., Union of India] which held a contrary view. Similar matter also came up before the Madras High Court in Writ Petition No. 436 of 1977, [reported in 1983 ELT 484] and some other writ petitions which were heard and decided analogously and the judgment was delivered on 28-9-1979 wherein the view expressed by the Andhra Pradesh High Court in (supra) was accepted The decision of the Patna High Court reported in (supra) was placed before us wherein it was held :-

"The idea behind exemption being to encourage production, the general provision under Serial Nos. 1 and 2 was not "meant to apply to factories which did not qualify for exemption, not having some production in the base year also, otherwise it may lead to absurdity. For example, if a factory produces 1,000 quintals of sugar between the 1st January, 1964 and the 30th June, 1964, but produces only 900 quintals of sugar during the period 1st January, 1965 to the 30th June, 1965, will not be entitled to any rebate under the general provisions, and a factory which has no production during the period 1st January to the 30th June, 1964 but produced only 900 quintals of sugar during the relevant period, i.e., the 1st January, to the 30th June, 1965, will be entitled to rebate over the entire quantity at the scale as indicated above. Such a result would be against the terms and spirit of the notification (Annexure-4)."

The reasoning given by the Patna High Court does not appear to be very convincing. In the example given by the said High Court, there was no excess production than the corresponding period in the previous year. So the question of giving any rebate did not arise. We are, therefore, inclined to accept the view expressed by the Andhra Pradesh High Court which has been supported by the Madras High Court and, with all respect, we are unable to subscribe to the view of the learned Judges of the Patna High Court, In our view the object of the notification was to give incentive to the manufacturers to produce more. If a manufacturer who did not produce any sugar during a certain period, in view of the incentives given, produced a good quantity of sugar during the corresponding period of the next year, his performance should be given due credit for which he deserves the incentive. In view of the above discussion, we are of the view that the petitioner is entitled to claim rebate on the sugar produced in April, 1974.

6. The next question is that the claim is barred under Rule 10 of the Rules and Rule 10A has no application to this case. In view of our foregoing conclusion, this question becomes academic. This matter was also raised before the Andhra Pradesh High Court and Madras High Court and both the High Courts held that Rule 10 of the Rules is applicable and not Rule 10A. We also endorse the same view.

7. In the result, therefore, the writ petition is allowed. The orders in Annexures-9 and 10 are quashed. The demands made as per Annexures-6 and 7 and the show cause notice as per Annexure-8 are also quashed. Hearing fee is assessed at Rs., 100/-.