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**(1994) 01 MAD CK 0083**

**In the Madras High Court**

**Case No :** Writ Petition No. 3228 of 1985

Jeypore Sugar Co. Ltd. APPELLANT

Vs

Union of India RESPONDENT

**Date of Decision :** 21-01-1994

**Acts Referred:**
Central Excises and Salt Act, 1944 — Item 1

**Citation :** (1994) 71 ELT 653

**Hon'ble Judges :** Venkataswami, J

**Bench :** Single Bench

**Advocate :** Shri R. Krishnamurthy for Mr. Muthukumaraswamy and another, for the Appellant; Shri K. Jayachandran, Addl. Central Government Standing Counsel, for the Respondent

# Judgement

1. The petitioner, aggrieved by the preliminary order on the question of jurisdiction of the Tribunal, has filed this writ petition.

2. Brief facts are the following :-

The petitioner is a manufacturer of sugar which is liable to Central Excise duty under Tariff Item 1 of the First Schedule to the Central Excises and Salt Act, 1944. As per Notification No. 4-C.E., dated 1-1-1972, the Government of India have granted concession in the matter of levy of excise duty to such quantities of sugar actually delivered to the Government for distribution at fair price to domestic consumers or for any other purpose for which the Central Government may decide in public interest to utilise the said sugar. It is the case of the petitioner that in order to avail that concessional rate of levy of excise on the sugar manufactured by it, the petitioner voluntarily placed certain quantity of sugar at the disposal of the Government and, thereafter during the period from February to June, 1972, cleared 45 number of consignments out of that factory after paying duty at the concessional rate. With reference to the above consignments, on the question of rate of excise duty, after going through the facts, the Collector of Central Excise, Guntur, finally passed an order on

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23-10-1974 that the duty already paid was correct and the subsequent charges levelled against the petitioner were not proved. Thereafter, the third respondent, after following the usual procedure, by order dated 6-1-1978, revised the aforesaid order and imposed a penalty of Rs. 6 Lakhs (Six Lakhs) against the petitioner on the ground that the petitioner had not actually supplied the sugar manufactured in its factory to the Government as per Notification No. 4 dated 1-1-1972. The petitioner, aggrieved by that Order of the third respondent, preferred an Appeal to the Government of India which were then holding the power. Subsequently, by virtue of amendment, the powers were transferred to the first respondent. The relevant provision in this connection, reads as follows :-

"35-D. Procedure of Appellate Tribunal. - (2) Every appeal against a decision or order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment, shall be heard by a Special Bench constituted by the President for hearing such appeals and such Bench shall consist of not less than three members and shall include at least one Judicial Member."

3. The question raised by way of preliminary issue by the petitioner before the Tribunal was, that the Special Tribunal has no jurisdiction as no question relating to rate of duty of excise or to the value of the goods for the purpose of assessment arises out of the facts of this case. According to the petitioner, the only question to be decided on the facts of this case is, whether the petitioner has delivered sugar to claim concessional rate of excise duty as per the conditions prescribed in Central Excise Notification No. 4, dated 1-1-1972 or not. That question can be decided by the Regional Tribunal and not by the Special Tribunal. However, the first respondent overruled that objection, and, by the impugned order, held that on the facts of the case, it has jurisdiction to decide the issue. Hence this writ petition.

4. Heard learned counsel on both sides.

5. The only objection taken by Mr. K. Jayachandran, learned counsel for the Revenue is to the effect that the Customs, Excise and Gold (Control) Appellate Tribunal functioning at Madras will have no jurisdiction to go into the question when the dispute relates to the rate of duty of excise or to the value of goods for the purpose of assessment. Such question shall be heard by a Special Bench constituted by the President.

6. But, in this case, it is clear on going through the records that the question that has to be decided is, whether the petitioner has supplied levy sugar at the disposal of the Government or not. If the answer to the question is in the affirmative, the petitioner is entitled to concessional rate of levy of excise duty. Otherwise, the petitioner is liable to pay at the full rate. The question whether the petitioner has placed at the disposal of the Government the levy sugar depends only upon the facts and it does not depend upon the interpretation of the notification. Therefore, the objection raised by the learned counsel for the

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Revenue is not sustainable.

7. Accordingly, the writ petition is allowed. There will be no order as to costs. The Customs, Excise and Gold (Control) Appellate Tribunal at Madras will dispose of the appeal filed by the petitioner within three months from the date of receipt of a copy of this Order.

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