(2013) 04 AHC CK 0224

In the Allahabad High Court

Case No : Central Excise Reference No. 73 of 2000

K. Sahakari Ch. Mills APPELLANT

Vs

Commissioner of Central Excise, Allahabad RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Citation : (2014) 299 ELT 275

Hon'ble Judges : Ram Surat Ram (Maurya), J;Prakash Krishna, J

Bench : Division Bench

Advocate : Ved Byas Misra, for the Appellant; S.P. Kesarwani, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Ved Byas Misra for the applicant and Sri S.P. Kesarwani for the Revenue. The Customs, Excise and Gold Control Appellate Tribunal, New Delhi has referred the following questions of law u/s. 35G of the Central Excise Act for the opinion of this Court:--

1. Whether introduction of Section 11D would invalidate w.e.f. 20-9-1991 the enforcement of Notification Nos. 130/83-C.E. and 132/83-CE. though continued upto 30-9-1994.

or

it would mean to continue the incentive scheme in spite of provision of Section 11D effective from 20-9-1991.

2. Whether the provisions of Section 11D based on the principle of unjust enrichment are also applicable to the incentive schemes of the Govt. of India which allows the appellant to retain the differential amount.

2. The facts giving rise to the present Reference are that M/s. Kisan Sahakari Chini Mills Ltd., Ghosi, District Mau (the respondent) has cleared certain free sugar on paying excise duty at concessional rate in October, 1992, December,

1992 to January, 1993 and February, 1993. It may be mentioned that in order to give incentive for production of sugar, the Government of India through Notification Nos. 130/83-C.E. and 132/83-CE., dated 27-4-1983 has granted partial exemption of basic excise duty and additional excise duty leviable on the sale of sugar to the newly installed sugar factories as well as the factories who have expanded their manufacture by installing new machineries. The respondent company is engaged in the manufacture of sugar by vacuum pan process and was a new industry, accordingly, it was claiming exemption under the aforesaid Government Order dated 27-8-1983 of the basic excise duty and additional excise duly. Later on, it was noticed that the respondent has collected the full excise duty from the customers, but has not deposited the full amount as under the Government Order it was entitled to deposit the concessional amount. Accordingly, three notices dated 3-5-1993, 7-5-1993 and 7-5-1993, demanding difference of the amount of excise duty collected by the respondent for the period October, 1992, December, 1992 to January, 1993 and February, 1993, respectively, have been issued. In these notices, total demand of Rs. 6,93,696/- has been made. The respondent appeared before the adjudicatory authority and has submitted that Section 11D has been inserted in the Central Excise Act w.e.f. 29-9-1991. By insertion of this Section, the effect of the exemptions granted to the respondent by the Government Order dated 27-4-1983 has not been effected. Since the respondent was entitled for exemption under the Government Order dated 27-4-1983, as such, the excess amount collected by the respondent cannot be recovered. After hearing the parties, the adjudicatory authority by order dated 31-3-1994 held that since the respondent has actually collected the full amount of the excise duty from the customers, but has paid to the Government only at the concessional rate, accordingly he is liable to deposit the excess amount of the excise duty u/s. 11D of the Act. On these findings, the demand made through the aforesaid notices have been upheld by the order dated 31-3-1994. The respondent filed an appeal from the order which has been dismissed by the Commissioner of Central Excise, Allahabad by order dated 31-12-1994. The respondent filed the second appeal which has also been dismissed by the Customs, Excise and Gold Control Appellate Tribunal, New Delhi by order dated 30-3-1998 1998 (103) ELT 545 . Thereafter, on the application of the respondent, the aforesaid questions have been referred to this Court.

3. The controversy involved in this Reference is covered by the judgment of Supreme Court in Kisan Sahakari Chini Mills Ltd. v. Collector of Central Excise, Allahabad, 2005 (182) E.L.T. 26 (S.C.), in which the Supreme Court has held that under the incentive scheme, exemption of excise duty at the concessional rate has been granted to the assessee, but the Government Order does not permit the assessee to collect more than what they have to pay to the Government under the scheme. If the assessee has collected excess excise duty, then it is bound to deposit such excess amount in view of the provisions of Section 11D of the Central Excise Act. Since the controversy has already been decided by the Supreme Court, accordingly, this Reference is fully covered by the judgment of

the Supreme Court. We hold that the applicant/manufacturer is liable to deposit the entire sum collected as duty from the purchasers and cannot be permitted to retain the differential amount of duty, i.e. the difference in between the normal rate of duty and concessional rate. Accordingly, the Reference is answered in negative, i.e. against the assessee and in favour of the Department.

