(1987) 01 AHC CK 0015

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 116/84

Kesar Enterprises Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 08-01-1987

Acts Referred:
Central Excise Rules, 1944 — Rule 10A

Citation : (1988) 33 ELT 289

Hon'ble Judges : R.K. Gulati, J;K.C. Agarwal, J

Bench : Division Bench

Judgement

K.C. Agarwal, J.—M/s. Kesar Sugar Works Ltd. Baheri, district Bareilly, which was subsequently, converted into M/s. Kesar Enterprises filed the present writ petition for quashing of the order of the Assistant Collector, Customs and Central Excise, Bareilly, dated 19-12-1983.

2. The brief facts of the case are these. M/s. Kesar Sugar Works Ltd., Baheri, district Bareilly is a factory engaged in manufacturing sugar. It manufactured 40896.03 quintals of sugar during the months of May and June, 1973 and applied for a rebate amounting to Rs. 12,26,880.90 under Notification No. 203/72 dated 28-9-1972 as amended by Notification No. 91/73 dated 1-3-1973. This rebate amount was allowed to be credited in their personal ledger account vide letter dated 7-9-1973.

3. Subsequently, it was found as per Notification No. 203/72 dated 28-9-1972 as amended by Notification No. 91/73 dated 1-3-1973 that the rebate was admissible for the excess production during the corresponding period of the preceding year. Since there was no production during the corresponding period of the preceding year, the Superintendent, Central Excise, Pilibhit wrote a letter dated 5-3-1977 calling upon the petitioner to show cause as to why the sum of Rs. 12,26,880.90 be not debited for the wrong credit taken during the period May and 3une, 1973. The notice was issued under Rule 10-A of the Central Excise Rules,

4. M/s. Kesar Sugar Works Ltd., submitted a reply challenging the validity of recovery proceedings by contending Inter alia, (i) that as per notification rebate could be disallowed if the factory did not work during the base period i.e. 1-10-1971 to 30th September, 1972. Since the factory worked during this period though there was no production during the months of May and 3une, 1972, even then the petitioner was entitled to rebate on the excess production during the period 1-5-1973 to 30-6-1973; (ii) that the demand was barred by time as per Rule 10 of the Excise Rules. The Assistant Collector holding that under the opening paragraph of the notification of 1972-73, the petitioner was entitled for relief on so much of duty of excise payable thereon as specified in corresponding entry No. 3 of the table appended to the said notification. Since the petitioner did not manufacture any sugar in the month of May and 3une, 1972, which was the corresponding year to the months of May and June, 1973 hence, it was not entitled to any rebate. The Assistant Collector repelled the contention raised on behalf of the petitioner. On this basis the following order was passed :

"I, accordingly, confirm the demand of Rs. 12,26,880.90 paise (Rupees Twelve Lacs Twenty Six Thousand Eight Hundred Eighty and Paise Ninety only) issued against M/s. Kesar Sugar Works Ltd., Baheri, Distt. Bareilly by the Superintendent, Central Excise, M.O.R., Pilibhit. This amount should be deposited by them within a period of three months from the date of receipt of this order."

5. Challenging the aforesaid order, the petitioner''s contention was that whether the petitioner had worked from 1-5-1972 to 30-6-1972 was not relevant for the purpose of deriving or obtaining the benefit. What was relevant only was that the petitioner must have worked in the year 1972. Through the application for stay, the petitioner made a prayer that the sum of Rs. 12,26,880.90 be not realised from it. On the stay application, the court was pleased to direct :-

"Meanwhile the operation of the impugned orders of demand, dated 19-12-1983 and 5-3-1977, of respondent nos. 3 and 4 respectively shall remain stayed provided that petitioners furnish bank guarantee for a sum of Rs. 12,26,880.90 P. within a month from today in favour of respondent No. 2, namely, the Collector, Central Excise, Kanpur. In the event of failure to furnish the Bank guarantee, the stay order shall remain automatically vacated."

6. The controversy which has been raised by the petitioners'' counsel was that the Assistant Collector committed an error in holding that the petitioner was not entitled to get the rebate as the production of the same months in the year 1972 was nil. Counsel urged that having nil production in the preceding year was not a relevant consideration for considering the entitlement of rebate. Since the petitioners, counsel urged, had worked during the base period beginning from 1st October, 1971 to 30th September, 1972, the notification fully applied for incentive rebate. In support of his contention, the petitioners'' counsel relied upon the decision of various High Courts. It is true that the Patna High Court has not followed the decisions of other High Courts and has taken a different view. We are bound by the decision of our own High Court, and, therefore, following

the same, we hold that the Assistant Collector was wrong in directing the refund of the amount and its being returned by the petitioner.

7. In the result, the writ petition succeeds, and is allowed. The order of the Assistant Collector dated 19-12-1983 is quashed. The bank guarantee given by the petitioner in pursuance of the stay order shall stand discharged.