(1991) 08 AHC CK 0071

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 351 of 1983

Mahalakshmi Sugar Mills Co. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 06-08-1991

Acts Referred:
Central Excise Rules, 1944 — Rule 10, 8(1)
Constitution of India, 1950 — Article 226

Citation : (1991) 2 AWC 515 : (1994) 46 ECC 161 : (1992) 58 ELT 475

Hon'ble Judges : B.P. Jeevan Reddy, C.J;R.B. Mehrotra, J

Bench : Division Bench

Advocate : A.K. Yog, for the Appellant;

Final Decision : Allowed

Judgement

B.P. Jeevan Reddy, C.J.—The petitioner is a Public Limited Company duly incorporated under the Indian Companies Act and is manufacturing sugar by vacuum pan process. By means of the present writ petition under Article 226 of the Constitution of India, the petitioner has challenged the order of the Asstt. Collector, Central Excise, Saharanpur, dated 28-2-1984 whereby a demand raised against the petitioner for refund of an amount of Rs. 10,94,280/- has been confirmed.

2. The necessary facts of the case for decision of the writ petition are as under:

In order to encourage and maximising the production of sugar, the Central Government in exercise of its powers conferred under Rule 8(1) of the Central Excise Rules, 1944 issued a notification dated 4-10-1973. The said notification was amended by another notification, dated 20-4-1974. Portions relevant for the purposes of the present case of the aforesaid notifications are being reproduced below:-

"BHARAT SARKAR VITTA MANTRALAYA, NEW DELHI DATED THE 4TH OCTOBER, 1973. NOTIFICATION CENTRAL EXCISE

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 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. Description of Sugar Duty of Excise No.

(1) (2) (3)

1. ... ... 2. ... ...

3. Sugar produced in a factory during the period commencing Thirty rupees per from the 1st day of May, 1974, and ending with the quintal. 30th day of June, 1974 which is in excess of 110% of the quantity of sugar produced during the corresponding period in 1973.

4. ... ...

5. ... ...

6. ... ... 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.

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.

... ... "GOVERNMENT OF INDIA MINISTRY OF FINANCE (DEPARTMENT OF REVENUE AND INSURANCE) NEW DELHI, DATED 20TH APRIL, 1974. NOTIFICATION CENTRAL EXCISE

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, namely:-

In the said notification -

(a) In the Table.

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

2. ... ...

2A. ... ...

2B. ... ...

3. ... ...

3A. Sugar produced in a factory during the period Forty rupees per commencing from the 1st day of May, 1974, and ending quintal. with the 30th day of June, 1974 which is in excess of 180% of the quantity of sugar produced during the corresponding period in 1973 ... ...

3. In pursuance of the aforementioned notifications, the petitioner Company submitted the requisite information and claimed the rebate in accordance with the conditions stipulated in the said notifications.

4. In the claim, which the petitioner Company, submitted for rebate, it was specifically mentioned that in the months of May and June, 1973, there was no production as such 27,357 quintals of sugar produced in the months of May and June was excess production on which rebate was admissible under the aforesaid notifications at Rs. 40/- per quintal.

5. The aforementioned claim submitted by the petitioner Company was allowed and the petitioner Company was granted a rebate of Rs. 10,94,280/-. Subsequent thereto a notice, dated 22-12-1976 was served on the petitioner by the Range Officer of Central Excise, Roorkee to explain as to why the amount of rebate given to the petitioner may not be recovered back under Rule 10 of the Central Excise Rules. The petitioners contested the said notice. Ultimately by the impugned order, the demand has been confirmed and the petitioner Company has been asked to pay back the amount for which rebate was granted to it.

6. The sole question for consideration in the present matter is whether under the aforesaid notifications, the petitioner Company was entitled for a rebate? In the impugned order it has been held that since petitioner''s production in the relevant period i.e., May and June, 1973 was nil, the petitioner Company was not entitled to any rebate in view of the proviso of the notification, dated 4-10-1973. In the order, it has also been held that since the petitioner Company did not work during the relevant base period in the preceding year i.e., in the months of May and June, 1973, under the proviso, the rebate was not admissible to the petitioner.

7. The counsel for the petitioners has submitted that ''base period'' has been defined in the said notification itself. According to the notification, dated 4-10-1973, ''base period'' means the period commencing from the 1st day of October, 1972 and ending with the 30th day of September, 1973. The petitioners'' contention is that admittedly the petitioner''s factory did work during the aforesaid period though it did not work in the relevant preceding period i.e., May and June, 1973. Still in view of the definition given in the notification aforesaid, the petitioner Company will be entitled for the rebate as under the proviso the rebate was not admissible only if for the whole sugar year i.e., from the 1st day of October, 1972 to 30th day of September, 1973, the petitioner''s

factory did not work. The petitioner''s contention is that the petitioner''s factory did work in the preceding base period, as defined in the Explanation to the notification, is not in dispute and as such the petitioner Company was clearly entitled for the rebate.

8. A similar question came up for consideration before this Court in the case of L.H. Sugar Factories Ltd. v. Union of India and Ors., reported in 1983 ELT 205All The notifications involved for consideration in this case were almost similar in nature and the Explanation and the proviso were also similar to the proviso and the Explanation given in the present notifications. This Court took the view that if the petitioner''s factory did not produce any sugar during the preceding equivalent period but did produce sugar in the period defined under the Explanation, the petitioner was entitled for the rebate. The present case is squarely covered by the aforesaid decision. We are in agreement with the said decision. Since it is not disputed that petitioner factory did work in the ''base period'' as defined in the Explanation i.e., between 1-10-1972 and 30-9-1973 the petitioner factory was entitled for the rebate as contemplated in the aforesaid notifications and the order passed by the Department for refund of the rebate is patently illegal and is liable to be quashed.

9. The petitioners have also raised a contention that the demand-made from the petitioners is barred by time. In view of the fact that we are allowing the writ petition on the first count, we do not propose to decide the second question raised by the petitioners.

10. The writ petition is accordingly allowed with costs. The order of the Asstt. Collector, Central Excise, Saharanpur, dated 28-2-1984, filed as Annexure SA-1 to the supplementary affidavit is quashed.

