(1985) 07 DEL CK 0022

In the Delhi High Court

Case No : Civil Writ Petition No. 413 of 1972

Malwa Sugar Mills Co. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 25-07-1985

Acts Referred:

Citation : (1989) 42 ELT 538

Hon'ble Judges : Sunanda Bhandare, J

Bench : Single Bench

Judgement

Sunanda Bhandare, J.—The petitioner Malwa Sugar Mills Company Limited is a company registered under the Companies Act, 1956 and carries on the business of Sugar Mills at Dhuri District Sangrur, Punjab. Sugar is included as Essential Commodity within the definition of Section 2A of the Essential Commodities Act, 1955. In pursuance powers u/s 3 of the Essential Commodities Act the Government of India promulgated the Sugar Control Order, 1966 which came into force from 10th June 1966. By virtue of the said Sugar Control Order the Government of India regulated the production of sugar in the country and under clause (4) thereof the Govt. of India sought to restrict the sale of sugar by producers. By clause (5) the Government of India issued directions regarding production, maintenance of stock, storage and sale of sugar. By a Press Note dated 7th October, 1966 the Govt. of India introduced a partial decontrol of Sugar. Under this Scheme 60 per cent. of the total production of the sugar each sugar factory was requisitioned by the Govt. of India to be sold at a controlled price to its nominees and, the remaining 40 per cent. of the total production of the sugar was allowed to be sold in the open market. This partial decontrol was continued even during the year 1969-70 and 1970-71, however for these two years 70 per cent. and 60 per cent. respectively of the sugar produced was to be treated as levy sugar for controlled distribution and the balance 30 per cent. and 40 per cent. was for free sale in the open market.

2. u/s 3 of the Central Excises and Salt Act, 1944 duty is levied on all excisable

goods produced or manufactured in India at rates specified in the First Schedule of the Act. Item No. 1 of the First Schedule deals with sugar and the rate of duty so fixed.

3. By the Finance Act, 1970 30 per cent. ad valorem duty was increased by 7-1/2 per cent. making it 37-1/2 per cent. ad valorem. Section 37(1) of the Central Excises and Salt Act, 1944 empowers the Central Government to make rules to carry into effect the purpose of the Act. Sub-section (2) of Section 37 make rules for exemption of any goods from the whole or any part of the duty imposed by the Act. In exercise of this power the Central Government made rule known as the Central Excise Rules, 1944. Under Rule 8 of the sub-rules the Central Government by a notification in the Official Gazette exempted excisable goods from the whole or any part of the duty livable on such goods. Accordingly, by a notification dated 1st March, 1970 bearing No. 15 of 1970, the Central Government exempted sugar falling under sub-item (i) of the First Schedule to the Central Excises and Salt Act, 1944 and required by the Central Government to be sold under clause (f) of sub-section (12) of Section 3 of the Essential Commodities Act, 1955 from so much of the duty of excise and additional duty of excise livable thereon as in excess of the duty and the additional duty calculated at 20 per cent. and 5 per cent. respectively. The effect of this notification was that although by the Finance Act, 1970 sugar was subjected to duty of excise at 37 per cent. ad valorem the Central Government gave a partial exemption of this excise duty at 25 per cent. ad valorem for the sugar which was sold at control rate to the Government. The petitioner though paid 37-1/2 per cent. ad valorem excise duty on the free sugar tried to take advantage of the notification to get partial exemption even for the sugar for which they were allowed free sale.

4. It was contended by the learned Counsel for the petitioner that on that correct interpretation of the said notification no different rate of duty should have been levied on free sale sugar. Though in the writ petition it was contended that excise duty being a duty imposed on the manufacturers of sugar and not on the sale the respondents were not entitled to make an artificial classification of the same commodity on the basis of the sale and had, Therefore, challenged the validity of the notification itself. However, at the time of the hearing of the case it was urged that the notification should be so interpreted that the partial exemption should be available both to sugar available for free sale as well as levy sugar sale.

5. The relevant portion of the notification dated 1st March, 1970 reads thus :

"The Central Government hereby exempts sugar falling under sub-item (i) of Item No. 1 of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944) and required by the Central Government to be sold under clause (f) of sub-section (2) of Section 3 of the Essential Commodities Act, 1955 (10 of 1955), from so much of the duty of excise and the additional duty of excise livable thereto as in excess of the duty and the additional duty calculated at 20 per cent. and 5 per cent. respectively, on the basis of the price determined by the Central Government from time to time, under sub-section (2) of Section 3 of the said

Essential Commodities Act, as the price payable for such sugar to the producer thereof.

Provide that the element of the duty and the additional duty, if any, added to price aforesaid shall be deducted before calculating the duty and the additional duty on the basis of such price."

6. The wording of the notification reproduced herein above makes it amply clear that the Government had classified sugar into two categories, one required by the Central Government and the other available for free sale in the open market through licensed dealers. It was only the sugar which was available to the Central Government which was partially exempted from excise duty under Rule 8 of the Central Excise Rules, 1944. The excise duty chargeable on free sale, Therefore, would be 37-1/2 per cent. and the excise duty which was available by the Central Government would be 25 per cent. This relief was obviously given to that quantity of sugar which was made available to be sold at control rate. In my view, such a classification is perfectly valid and is also reasonable.

7. In the result, the writ petition is dismissed. Since the petitioners have already paid the correct duty under law, there will be no order as to costs.

