(1999) 02 SC CK 0140

In the Supreme Court Of India

Case No : Civil Appeal No. 3689 Of 1998

Neoli Sugar Products Factory Ltd. APPELLANT

Vs

Commissioner of Central Excise, Kanpur RESPONDENT

Date of Decision : 19-02-1999

Acts Referred:

Citation : (1999) 9 SCC 169 : (1999) SCC(L&S) 941 : (2000) 2 UPLBEC 1022

Hon'ble Judges : Sujata V. Manohar, J;R. C. Lahoti, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Under a Notification No. 132/82-C.E. dated 21/4/1982 issued under sub-rule (1) of Rule 8 of the central Excise Rules, 1944, the central government exempted sugar described in column 1 of the Table in the said Notification and falling under sub-rule (1) of sub-item (1) of Item No. 1 of the First Schedule to the central Excises and Salt Act, 1944 from so much duty of excise and special duty of excise leviable thereon as is specified in columns 2 and 3 of that Table. In the said Table, under column 1, sugar produced in a factory during the period commencing on 1st day of May, 1982 and ending with 30th day of September, 1982, which is in excess of the average production of the corresponding period of the preceding three sugar years, is given concessions as described In columns 2 and 3. Explanatory note 4 of the said Notification is as follows :-

?4. Nothing contained in this notification shall apply to a sugar factory where production during the period mentioned in column (1) of the said Table, during all the preceding three sugar years was nil.?

2. Thereafter by a subsequent Notification 193/82-CE dated 11/6/1982 paragraph 4 of the explanation was altered to read as follows:

?4. Where production during May to September in all the preceding three sugar years was nil, the entire production during May to September, 1982, will be entitled to the exemption under this notification.?

3. The appellant claimed exemption in respect of its production for the period 1/5/1982 to 30/09/1982 on the basis that the production for the preceding three sugar ears for the said period was nil and, therefore, their entire production during the period 1/5/1982 to 30/09/1982 was entitled to the concessions as set out in columns 2 and 3 of the Table attached to the Notification No. 193/82-CE dated 11/6/1982. The tribunal has given the appellant concessions only for the period 11/6/1982 to 30/09/1982 on the ground that the second Notification is dated 11/6/1982.

4. The tribunal was in error in doing so because the period for which the second Notification No. 193/82-CE dated 11/6/1982 gives exemption, is clearly-spelt out in paragraph 4 of the said Notification. In paragraph 4 it is expressly stated that the entire production from May to September, 1982 will be entitled to exemption under this Notification if the production during May to September in the three preceding sugar years was nil. Therefore, since the appellant Is entitled to the benefit of Notification No. 193/82-CE dated 11/6/1982, the appellant''s entire production during May to September. 1982 is entitled to exemption under this Notification, since its production during the said months for the preceding three sugar years was nil.

5. The appeal is, therefore, allowed. The impugned order of the tribunal is modified and the appellants given the benefit of Notification No. 193/82-CE dated 11/6/1982 for the entire period 1/5/1982 to 30/09/1982.