(1988) 08 CAL CK 0040

In the Calcutta High Court

Case No : Matter No. 1515 of 1981

Ramnugger Cane and Sugar Co. Ltd. APPELLANT

Vs

Superintendent of C. Ex. RESPONDENT

Date of Decision : 05-08-1988

Acts Referred:

Central Excise Rules, 1944 — Rule 173G, 53, 8(1)
Central Excises and Salt Act, 1944 — Section 35
Essential Commodities Act, 1955 — Section 3(1), 3(2)

Citation : (1989) 41 ELT 387

Hon'ble Judges : Baboo Lal Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Baboo Lal Jain, J.—The petitioner No. 1 which is a sugar factory made certain incentive rebate claims under Central Excise Notification No. 146/74-CE/F.No. 14/22/74-CX. I, dated 29-10-1974, by its letter dated 5th Februry, 1975. The said claims of the petitioner were rejected by letter dated 17th March, 1975 and also by further letter dated 1st May, 1975.

2. On the petitioner further pursuing the matter, the Under Secretary to the Government of India, Ministry of Finance (Central Board of Excise & Customs) by its letter dated 30th May, 1975 informed the petitioner that if the petitioner felt aggrieved by the order of the Chief Accounts Officer, he may follow the procedure of appeal/revision as provided under the Central Excises and Salt Act, 1944.

3. It appears that the petitioner wrote several letters to the Assistant Collector, Central Excise, praying that the order should be granted by the Assistant Collector, Central Excise. It also appears that by letter dated 26th September, 1977, the Assistant Collector wrote to the petitioner that the Chief Accounts Officer is the competent authority to grant the incentive rebate, on sugar after proper scrutiny of claim. The Chief Accounts Officer has rejected the claim of the petitioner No. 1, by his letter of the 1st May, 1975. In spite of the fact that the

rejection was by letters dated 17th March, 1975 and 1st May, 1975 and in spite of the fact that the petitioner was made known by letter dated 26th September, 1977 that the said order of 1st May, 1975 was by the competent authority, the petitioner moved this application on 27th August, 1981.

4. It has been urged before me on behalf of the respondent that the petitioner did not follow the procedure prescribed by Section 35 of the Central Excises and Salt Act, 1944 and it has also been contended that the petitioner having an alternative remedy did not pursue the same since 1975 and has moved this writ petition in 1981 i.e. after about 4 years from the time when the petitioner received the said communication from the Assistant Collector dated 26th September, 1977. In the circumstances the respondents pray for dismissal of the petition on the ground of delay as also on the ground of not following the alternative statutory remedy.

5. This application was heard quite some time back and detailed submissions were made on behalf of both the parties. After hearing the parties, I was about to deliver my judgment, when suddenly the petitioner prayed, that his client should be granted some time to file a supplementary affidavit inter alia showing what a sugar years meant. Such time was granted, but the petitioner has not availed of the same.

6. This matter has since appeared in my list, for some time past. During the last few days it has been called a few times but no one seems to have appeared on behalf of the petitioner.

7. The respondent has been pressing for early hearing of this case, and since no one, has appeared on behalf of the petitioner in the second call, I have proceeded with the further hearing of the matter.

8. I now propose to consider firstly the merits of the case of the petitioner.

9. The main contention of the petitioner is based on the Notification No. 146/74 which is as follows : -

"Notification

Central Excise

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 columns (3) and (4) of the said Table : -

TABLE

-- Duty of Excise Sl. No. Description of Sugar Free sale Levy Sugar Sugar

-- (1) (2) (3) (4) -- 1. Sugar produced in a factory under the period commencing on the first day of October, 1974 and ending with the 30th day of November, 1974 in excess of the average production of the corresponding period of the preceding five sugar years in respect of which : (a) The overall production of the Rs. 60/- Rs. 16/- factory for the entire sugar year does not equal per quin- per quin- the average production of the preceding five tal tal sugar years. (b) The overall production of the Rs. 82/- Rs. 22/- factory for the entire sugar year equals or ex- per quin- per quin- ceeds the average production of the tal tal preceding five sugar years. Sugar produced in a factory during the period commencing on the 1st day of December, 1974 and ending with the 30th day of September- 1975 which is in excess of the average production of the corresponding period of the preceding five sugar years, that is : (a) on excess production upto 7.5% Rs. 20/- Rs. 5/-per per quin- quintal tal (b) On excess production on the next Rs. 40/- Rs. 10/ 10% per quin- per quin- tal tal (c) On excess production on the next Rs. 50/- Rs. 14/ 10% per quin- per quin tal tal (d) On excess production on the next Rs. 60/- Rs. 18/ 10% per quin- per quin tal tal (e) On excess production beyond Rs. 82/- Rs. 22/ 37.5% per quin- per quin tal tal. --

Explanation. - In this notification -

(a) "Average production" in relation to sugar produced in period by a factory which had gone into production for the first time in 1967-68 or earlier, means the simple average production during the corresponding period of the preceding five sugar years;

(b) "free sale sugar" means sugar other than levy sugar;

(c) "Levy sugar" means sugar required by the Central Government to be sold under an order made under Clause (f) of Sub-section (2) of Section 3 of the Essential Commodities Act, 1955 (10 of 1955);

(d) "Sugar year" means the period of twelve months beginning with the 1st day of October and ending with the 30th day of September next following.

2. In computing the production of sugar during the periods mentioned in column (2) of the said Table,-

(a) in respect of a factory mentioned in the said Table, -

(i) the date, as furnished in form R.G. I prescribed in Appendix I to the Central Excise Rules, 1944, or in such other record as the collectory may prescribe Under Rule 53 or Rule 173G of the said rules, shall be adopted; and

(ii) any sugar obtained by refining gur or khandsari sugar shall not be taken into account;

(b) In respect of a factory mentioned in serial numbers 1 and 2 of the said Table,

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(i) any sugar obtained by reprocessing of sugar-house products left over in process at the end of the base period or earlier shall be taken into account; and

(ii) any sugar obtained by reprocessing of defective or damaged sugar or brown sugar, if the same has already been included in the quantity of sugar produced, shall not be taken into account.

3. In the case of a factory which has gone into production for the first time after 1967-68, the first two years of production shall not be taken into account while computing average production of the preceding five sugar years. Where production in one or more sugar years among five sugar years was nil, the production in such sugar year or sugar years shall be ignored and the average production shall be the average of the production of the corresponding period of the remaining sugar years.

4. Nothing contained in this notification shall apply to a factory which has been producing sugar only for three years or less.

Sd/- G.S. Maingi (No. 146/74) Under Secretary to the Government of India. No. 146/74-CE/F. No. 14.22/74-CX. I." 10. The said notification was amended by Notification No. 150/75, dated 14-61975 which reads as follows : -

''''In the notification of the Government of India in the Ministry of Finance (Department of Revenue and Insurance) No. 146/74-CE [GSR 421(E), dated the 12th October, 1974] published on pages 1943 to 1945 of the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (1), dated the 12th October, 1974 on page 1945"

(i) in line 10, for "WHERE production" read "4-Where production".

(ii) in line 14, for "4" read "5".

11. The contention of the petitioner is that Clause 3 of the said notification had no application in the case of the petitioner. The said Clause 3 was of course was later on split into two by the aforesaid subsequent Notification No. 150/75, dated 14th June, 1975. If it is read as amended then of course the petitioners'' contention would not have any force at all. The petitioner, however, contended that the said Notification dated 14th June, 1975 was published, after the claim in question was made by the petitioner. However, even if it is read as originally published, then also, in my opinion, the portion of Clause 3 which provides that where the production in one or more sugar years among five years was nil, the production of such sugar year or sugar years shall be ignored and the average production shall be the average of the production of the corresponding period of the remaining sugar years, applies to all cases where the production during the sugar years was nil. In my opinion, if the production during the sugar year was nil, the said year is to be ignored for the purpose of arriving at the average and the average of the production is to be arrived at in respect of the balance years

only by dividing them with the number of years during which the production was carried out. In my opinion, there is nothing to warrant that the said portion of Clause 3 is to apply only to factories which went into production for the first time after 1967-68 and not to the factories which went into production prior thereto in my opinion, the petitioners'' claim as appearing from Annexure ''C was erroneous inasmuch as the petitioner did not produce any sugar during the sugar years 1970-71,1971-72 and 1973-74. The petitioner only produced sugar during sugar years 1969-70 and 1972-73 and, therefore, the average was to be arrived at by dividing the total production of two years by two and not by five as has been done by the petitioner. That was also the contention of the authorities as noted in the letter dated 1st May, 1975. In my opinion, the said amendment, which was made by the Notification dated 14th June, 1975, was binding on the petitioner and there are no grounds for holding the same to be ineffective as against the petitioner. The learned Advocate for the petitioner relied on the judgment of the Madras High Court in the case of Sakti Sugar Mills Ltd. v. Union of India in writ petition No. 436 of 1977 = 1983 ELT 484 and in other writ petitions, being the judgment passed by Varadarajan, J., dated 28th September, 1979. In my opinion, the said judgment does not in any manner support the case of the petitioner. On the other hand it supports the interpretation as hereinbefore stated. The learned Advocate for the respondent relied on the judgment of the Punjab & Haryana High Court in Civil Writ Petition No. 4092 of 1977 in the case of The Morinda Co-operative Sugar Mills Ltd. v. Union of India and Ors. In that case also it was held that if no production was made during the base periods, the rebates are not admissible.

12. In my opinion, this petition is liable to be rejected firstly on the ground that the same is highly belated and secondly, also on the ground that the appropriate remedies available to the petitioner under the said Act were not availed of and also on the ground that the petitioner-company in any event was not entitled to the rebate on the basis as purported to be claimed by the petitioner-company under the said Notification.

13. Under the circumstances this application is dismissed and the rule, if any, is discharged. There will be no order as to costs.

