

(1991) 11 MAD CK 0052

In the Madras High Court

Case No : Writ Petition No. 5589 of 1983

Salem Co-operative Sugar Mills Ltd.

APPELLANT

Vs

Asstt. Collector of C. Ex

RESPONDENT

Date of Decision : 15-11-1991

Acts Referred:

Constitution of India, 1950 — Article 14
Essential Commodities Act, 1955 — Section 3

Citation : (1995) 80 ELT 47

Hon'ble Judges : Govindasamy, J

Bench : Single Bench

Judgement

Govindasamy, J. 1. The petitioner Co-operative Sugar Mills are assesseees on the file of the Superintendent of Central Excise, Rasipuram. The Government of India, in order to encourage sugar production during the lean period, viz., between May and September, 1982, issued a Notification under rule 8(1) of the Central Excise Rules, 1944 in No. 132/82-Central Excises dated 21-4-1982, providing exemption for the excess sugar production during the period between 1st May and 30th September, 1982 over and above the average production during the lean period, viz., 1st of May to 30th September, of the preceding three years. The notification is as follows :-

"GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

New Delhi, the 21st April, 1982 ----- 1 Vaisakha, 1904
(Saka) Notification No. 132/82-Central Excises

G. S. R. (E) In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, read with sub-clause (4) of clause 50 of the Finance Bill, 1982, which clause has, by virtue of the declaration made in the said bill

under the Provisional Collection of Taxes Act, 1931 (16 of 1931), the force of law, the Central Government hereby exempts sugar, described in column (1) 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 and special duty of excise leviable thereon as is specified in the corresponding entry in columns (2) and (3) of the said Table :

Provided that the amount of exemption specified in column (2) or column (3) of the said Table shall not exceed the amount of duty of excise and special duty of excise payable on free sale sugar or levy sugar, as the case may be.

Explanation. - In this notification, -

(a) "average production" in relation to sugar produced in a period in a factory, means the average production during the corresponding period of each of the preceding three 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 commencing on the 1st day of October and ending with the 30th day of September next following.

(2) In computing the production of sugar during period mentioned in column (1) of the Table in respect of a factory mentioned therein, -

(i) the data, as furnished in Form R. G. 1 prescribed in Appendix 1 to Central Excise Rules, 1944 or in such other record as the Collector may prescribe under rule 53 or rule 173G of the said rules, shall be adopted;

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

(iii) any sugar obtained by reprocessing of sugarhouse products left over in process at the end of any preceding sugar year shall be taken into account; and

(iv) 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) Where during the period mentioned in column (1) of the said Table, production in any of the preceding three sugar years was nil the average production shall be determined as under :

The average shall be the average of the corresponding period among the preceding three sugar years in which the factory has actually produced and the period or periods in which it did not produce during the said three sugar years shall be ignored while arriving at the average.

(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. The Government by Notification No. 193/82 dated 11-6-1982 made certain amendments to the aforesaid notification, which is as follows :-

"GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

New Delhi, the 11th June, 1982 ----- 21 Jyaishta, 1904
(Saka) Notification No. 193/82-Central Excise

In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, read with sub-section (4) of section 50 of the Finance Act, 1982 (14 of 1982), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 132/82-Central Excises, dated the 21st April, 1982, namely :- In the said notification, -

(a) In the preamble, for the words, brackets and figures "sub-clause (4) of Clause 50 of the Finance Bill, 1982, which clause has by virtue of the declaration made in the said Bill under Provisional Collection of Taxes Act, 1931 (16 of 1931), the force of law", the words, brackets and figures "sub-section (4) of Section 50 of the Finance Act, 1982 (14 of 1982)" shall be substituted;

(b) for paragraph 4, the following paragraph shall be substituted, namely :-

" (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."

The petitioner had produced during the lean period, viz., between 1st May, 1982 and 30th September, 1982 (hereinafter referred to as the "incentive period"), about 43856 quintals. The petitioner had produced during the corresponding lean period in the year 1979, about 67,811 quintals. However, the petitioner had not produced sugar during the corresponding lean period, i.e., 1st May to 30th September, for the year 1980 and 1981. The petitioner by their letter Rc. 3796/82 GI dated 17-8-1982 filed a rebate claim for a sum of Rs. 6,35,965-07 stating that their production for 1981-82 season (incentive period) had exceeded the average production of the corresponding lean period of 1978-79, 1979-80 and 1980-81 and consequently they were eligible for rebate as per the notification referred to hereinabove.

3. The Assistant Collector of Central Excise, Salem issued a notice C. No. V/1/300/292/82 T3 dated 17-2-1983 whereby the petitioner was called upon to show cause as to why the rebate claim for a sum of Rs. 6,35,975-07 for the

manufacture of sugar during the incentive period should not be rejected for the reasons stated therein. The reasons stated therein are that the average production during the lean period of preceding three years, in the instant cases, is arrived at as 67,811 quintals on the basis that the said 67811 quintals were divided by ignoring the period of nil production and thus on comparing the average of production of 67,811 quintals with the incentive period production of 43,856 quintals there was no excess production during the incentive period and hence the claim appeared to be inadmissible. It is at this stage, the petitioner has filed the above writ petition for a declaration declaring paragraph 3 of the Notification No. 132/82- C. E., dated 21-4-1982 as amended by Notification No. 193/82-C. E., dated 11-6-1982 of the second respondent herein issued under Rule 8(1) of the Central Excise Rules, 1944 as illegal and unconstitutional insofar as the petitioner-mill is concerned.

4. Mr. C. Natarajan, learned counsel appearing on behalf of the petitioner, contended that the average production should have been calculated on the basis that the production of sugar during the corresponding lean period of the preceding three years should be divided by 3 instead of 1, even though the petitioner had not produced any sugar during the corresponding lean period for two years. That is the sum and substance of the main argument in the instant case.

5. Paragraph 3 of the said notification provides that the average shall be the average of the corresponding periods among the preceding three sugar years in which the factory had actually produced and the periods in which it did not produce during the said three sugar years shall be ignored while arriving at the average. It is the contention of Mr. C. Natarajan that the courts have held that while calculating the average production of sugar during the lean period of the corresponding years, the total production should be divided by 3, irrespective of the fact whether the manufacturer produced sugar in all the three preceding years or in any one of the preceding three years. Learned Counsel for the petitioner further contended that even though the object of the notification is to provide incentive so as to increase production during the lean period, it does not have any nexus for the reasons that the manufacturers were not permitted to plan to produce more sugar during the incentive period by issuing such notification in advance and consequently the manufacturer could not increase the production of sugar during the incentive period. By issuing the impugned notification, no manufacturer would increase the production by reason of the fact that when the area was specified, the supply could be only from the area in which the sugarcane crops were cultivated [and] consequently there was no scope for increase of production of sugar during the incentive period and as such the impugned notification does not serve as incentive for increasing the production during the incentive period. Learned counsel further contended that paragraph 4 of the Notification provides for grant of exemption for entire production and such of those persons who fall under paragraph 4 are very fortuitous than others who were regularly manufacturing or producing sugar

during the corresponding lean period of preceding three years.

6. In reply Mr. P. Narasimhan, learned Senior Central Government Standing Counsel appearing on behalf of the respondents, contended that what is provided under the impugned notification is an incentive in order to increase or maximise the production during the incentive period. It is the case of the learned counsel for the respondent that during the lean period the juice yield from the sugarcane is less due to driage and sometimes it is uneconomical to produce sugar during this period and that in order to encourage production during the lean period, the Government of India offers concessional rate of duty as an incentive for the sugar manufacturer on the principle of more production means more concession. It is on that basis the norms prescribed in the impugned Notification have been prescribed for providing exemption. Learned counsel further contended that there was no discrimination between the manufacturers who are equals and consequently the notification does not suffer from the vice of arbitrariness nor does it violate Art. 14 of the Constitution of India. Paragraph 4 provides concession which enables the manufacturers who did not produce sugar during the lean period of the preceding three years, to produce sugar during the incentive period and they may be fortuitous and that cannot be classified as discrimination.

7. Considering the aforesaid rival contentions of the respective parties, it is the intention of the Government of India to provide incentive in order to increase or maximise the sugar production during the lean period. During the lean period the sugar production is not that much as was produced or as is produced during the other period. The very object is to encourage production during the lean period. The manufacturers may not come forward to produce more sugar during the lean period for the avowed reason that the output of the sugar may not be that much economical. It is with the avowed object of increasing the production, an incentive is made by the impugned notification. However, by paragraph 3 the Government had prescribed that if the manufacturer produces more sugar than the average production of sugar during the corresponding lean period of preceding three years, they are entitled to exemption under the excise duty at the rate as specified in the said notification. Further, the Government of India prescribed norms to calculate average production. As per the notification the average production has to be calculated by dividing the total quantity of the production by the number of years of actual production, i.e., the year in which the manufacturer does not produce should be ignored. That formula is applicable to every manufacturer. Some may be fortuitous and some may be unfortunate persons. That does not mean that paragraph 3 is discriminatory. If the notification expresses a different treatment from among the persons equally placed, then it should be considered for being suffered as a result of the vice of discrimination. In the instant case, there is no such discrimination and the learned counsel for the petitioner is not in a position to point out any such discrimination among the equals. It is well settled that unequals cannot be compared with the equals. Consequently, the contention that the impugned

notification suffers as a result of discrimination and is violative of Art. 14 is not sustainable in law.

8. The next contention is that the impugned notification has no nexus to the object sought to be achieved. In the instant case, the object is very clear, i.e., to increase or to maximise the sugar production during the incentive period. While so, it cannot be said that the grant of exemption of excise duty has no nexus to the object that is sought to be achieved by the impugned notification. It may also be taken note of that the production of sugar from sugar house products is also taken into account for the purpose of grant of exemption. That means the manufacturers are made or persuaded to produce sugar even out of the sugar house products left over in process at the end of any preceding sugar year. While so, the contention that the grant of exemption of excise duty for production of sugar over and above the average production of sugar during the corresponding lean period of three years preceding thereto has no nexus is not sustainable.

9. With reference to the grant of exemption under paragraph (4), it may be said that as a result of the impugned notification, the manufacturers who were not producing sugar during the corresponding lean period of preceding three years, were encouraged to produce sugar during the incentive period and as such it cannot be said that paragraph (4) suffers from any vice of discrimination. Again, it can be said that the said paragraph is applicable equally to all the manufacturers who fall under paragraph (4) of the said notification. It may be that they are so fortunate to get exemption of excise duty for entire production and it cannot be said that there is no nexus to the object that is sought to be achieved. While so, the contention in this behalf has no merit. But the Government of India, has to take note of the fact that when an incentive is to be given to maximise the production during the lean period, the manufacturer should be informed in advance so that they could plan with reference to the extension of the area of sugarcane cultivation, to the extension of the increase of sugarcane plantations and consequential increase of sugarcane supply so that there can be increase in the sugar production. In the instant case, the Government of India had not taken note of all those relevant factors, which are absolutely necessary if the incentive is to increase production during the lean period. In future, the Government of India should take note of all the basic factors while granting exemptions. With this observation, and as a result of the aforesaid conclusion that are arrived at and as there is no warrant to interfere with the impugned notification, the writ petition fails and is dismissed. No costs.