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**(2010) 07 AHC CK 0386**  
**In the Allahabad High Court**

Tulsi Sugar Mill (Excise )

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 06-07-2010

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2010) 180 ECR 35 : (2010) 258 ELT 193

**Hon'ble Judges :** Satish Chandra, J;Devi Prasad Singh, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

1. Heard Mr. S.M.K. Chaudhary, learned Senior Counsel, assisted by Mr. Rahul Srivastava, learned Counsel appearing for the petitioners and Mr. K.D. Nag, learned Counsel for the respondents.

2. Brief facts giving rise to the present controversy are discussed hereinafter:

The petitioner No. 1, which is a sugar mill, situated in district Gonda, now in district Balrampur, has approached this Court claiming benefit with regard to excise duty in pursuance to the notification dated 30.4.1983, contained in Annexure No. 1 to the writ petition.

3. It has been submitted by Mr. S.M.K. Chowdhary, learned Senior Counsel that while granting exemption in excise duty, the respondents have not considered the average production of three preceding years, namely 1978-79, 1979-80 and 1980-81 while calculating the excise duty of the period commencing from the 1st day of May, 1983 to 30th day of September, 1983.

4. It is admitted at bar that the production in the year 1978-79 during May to September 1979 was 41,214.26 quintals of sugar. However, the production in the years 1979-80 and 1980-81 during the period of May to September was nil. The submission of the petitioners' Counsel is that for grant of exemption in excise duty, the average production should have been considered by the respondents by

dividing the production of all the three years by three. Since the production in two years was nil, the production of the year 1978-79 should also have been divided by three.

5. On the other hand, Mr. K.D. Nag, learned Counsel appearing for the respondents submits that though, for calculating the average calculation of three preceding years, in ordinary course, there should have been production in all the three consecutive years and the division could have been done by three but since there was no production of sugar in the years 1979-80 and 1980-81, in view of the provisions contained in Clause (3) of the notification/Government Order dated 30.4.1983, the two years should have been ignored. Accordingly, while calculating the average production of three consecutive years, the respondents have ignored the two years, namely 1979-80 and 1980-81. Since there was production in one year(supra) i.e. 1978-79, it could have been divided by one and the result would have been the same on the basis of the actual production of the lone year.

6. While assailing the impugned order, Mr. Chowdhari has relied upon the judgments of Hon"ble Supreme Court reported in 1999 (66) ECC 20 (SC) a Division Bench"s judgment of this Court reported in L.H. Sugar Factories Ltd. Vs. Union of India (UOI) and Others, and one other judgment of Bombay High Court, reported in 1986(26) E.L.T. 904 (Bom.) Yashwant Sahakari Sakhar Karkhane Limited v. Union of India and Ors.

7. In the present case, controversy relates to interpretation of the notification dated 30.4.1983 (Annexure-1). A plain reading of the notification dated 30.4.1983 shows that the sugar produced in a factory during the period commencing on the 1st day of May 1983 and ending with the 30th day of September, 1983, which is in excess of the average production of the corresponding period of 1978-79, 1979-80 and 1980-81 sugar years shall be entitled for exemption as specified in Col. (3) or column (4) of the notification which is reproduced as under:

3. Where during the period commencing on Ist day of May and ending with the 30th day of September in any of the three sugar years 1978-79, 1979-80 and 1980-81, production of sugar in a factory was nil, the average production of sugar of the corresponding period of 1978-79, 1979-80 and 1980-81 shall, for the purpose of this notification, be determined by taking into account only such of the period in which sugar was produced in such factory and the period in which sugar was not produced therein, shall be ignored.

4. Where during the period commencing on Ist day of May and ending with the 30th day of September in all the three sugar years 1978-79, 1979-80 and 1980-81, the production of sugar in a factory was nil, the entire production of sugar of such factory during the period commencing on the Ist May 1983, and ending with the 30th day of September, 1983 shall be entitled to exemption under this notification.

8. From the bare reading of the aforesaid provisions contained in the notification shows that where during the period commencing on 1st day of May and ending with the 30th day of September in any of the three sugar years, i.e. 1978-79, 1979-80 and 1980-81, production of sugar in a factory is nil, the average production of sugar of the corresponding period 1978-79, 1979-80 and 1980-81 shall, for the purpose of this notification, be determined by taking into account only such of the period in which sugar was produced in such factory and the period in which sugar was not produced therein, shall be ignored. Meaning thereby, for the calculation of the average production of three years, i.e. 1978-79, 1979-80 and 1980-81, the cumulative total production of sugar shall be divided by three. However, there is a rider in Clause 3 of the notification as is evident from its plain reading that the period in which the sugar is not produced shall be ignored, meaning thereby in case out of three years, there is no production in some year, then that period should be ignored.

9. Much emphasis has been placed by Mr. Chowdhari over the judgment of this Court in *L.H. Sugar Factories (supra)*. Controversy in *L.H. Sugar Factories (supra)* relates to a notification issued in the year 1973. While dealing with the controversy in para 4 of the judgment, the Division Bench of this Court observed that the notification concerned does not contain a provision that exemption would be denied if no sugar is produced in the corresponding months of the base period. Relevant portion from the judgment of *L.H. Sugar Factories Limited (supra)* is reproduced as under:

4. ...It is significant to note that under the second proviso a factory is disentitled for claiming exemption otherwise admissible under the main Clause only if it is shown that it did not produce any sugar during the base period. It does not say that exemption would be denied if no sugar was produced in the corresponding months of the base period. We are accordingly of opinion, that the submission made by the respondents on the basis of proviso to the notification is not well founded.

10. Contrary to the observations made by the Division Bench of this Court in *L.H. Sugar Factories Limited (supra)*, the provisions contained in the notification in question as referred to hereinabove, contain a specific provision that the sugar year in which there was no production shall be ignored.

11. Reliance placed by the petitioners' Counsel in the case of *Neoli Sugar Products Factory Limited (supra)* seems to be not sustainable. In the case of *Neoli Sugar Products Factory Limited (supra)*, the controversy related to the notification of the year 1982. Their Lordships of Hon'ble Supreme Court while considering the notification of the year 1982 observed that the sugar mills is entitled for exemption under the notification even if the production is nil during three preceding years. The observation made by the Hon'ble Supreme Court is based on the interpretation of notification of the year 1982 which does not contain any provision to the effect that in case the production is nil, that year should be ignored.

12. Similarly the controversy before the Bombay High Court in the case of Yashwant Sahakari Sakhar Karkhane Limited(supra) was based on different notification.

13. It is settled law that every judgment should be read in reference to the context it is made and the judgment of Hon"ble Supreme Court or this Court should be looked into taking into account the controversy involved therein vide 2009(27) LCD 161 Grasim Industries Ltd. Vs. Collector of Customs, Bombay, Grasim Industries Limited v. Collector of Customs; 2003 SCC (1) 410 Easland Combines v. CCE; A.N. Roy, Commissioner of Police and Another Vs. Suresh Sham Singh, and Deewan Singh and Others Vs. Rajendra Pd. Ardevi and Others,

14. It has not been disputed by the learned Senior Counsel appearing on behalf of the petitioners that the language of the notification of the years 1973, 1982 and the present one issued in the year 1983 are different but submission is that the sum and substance of all the three notifications is the same.

15. The submission of the learned Senior Counsel does not seem to carry any weight. Merely because certain portion of the notification is identical with earlier one, it does not mean that the mandate of Clause (3) as contained in the notification (supra) may be ignored. Clause (3) categorically provides that the period in which the sugar was not produced therein shall be ignored.

16. Now it is trite in law that while construing an Act, Rule or Regulation each and every word, every line, para should be given meaning and considered in its totality and not in piecemeal vide Grasim Industries Ltd. Vs. Collector of Customs, Bombay, 2003 (1) SCC 410 Easland Combines v. CCE; A.N. Roy, Commissioner of Police and Another Vs. Suresh Sham Singh, and Deewan Singh and Others Vs. Rajendra Pd. Ardevi and Others,

17. According to Maxwell, any construction which may leave without affecting any part of the language of a statute should ordinarily be rejected. Relevant portion from Maxwell on the Interpretation of Statutes (12th edition page 36) is reproduced as under:

A construction which would leave without effect any part of the language of a statute will normally be rejected. Thus, where an Act plainly gave an appeal from one quarter sessions to another, it was observed that such a provision, through extraordinary and perhaps an oversight, could not be eliminated.

18. It is also settled law that the taxing statute should be construed strictly vide The State of West Bengal Vs. Kesoram Industries Ltd. and Others, Ordinarily Causus Omisus should not be supplied by judicial interpretative process. Court cannot read anything into a statutory provision or rewrite a provision which is plain and ambiguous vide Union of India (UOI) Vs. Rajiv Kumar, .The same principle has been reiterated in the cases reported in Vemareddy Kumaraswamy Reddy and Another Vs. State of A.P., ; Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others, ; Nalinakhya Bysack Vs. Shyam Sunder Haldar and Others,

and Dental Council of India and Another Vs. Hari Parkash and Others,

19. In the present case, there appears to be no ambiguity in Clause (3) of the notification in question which category provides that the period in which the sugar was not produced therein shall be ignored. In absence of any ambiguity in Clause (3) of the notification, there appears to be no ground to apply the principle of reading down as submitted by the learned Senior Counsel appearing for the petitioners. The principle of reading down could have been applied only in case there would have been some ambiguity in the provision contained in the notification dated 30.4.1983.

20. It cannot be lost sight of the fact that right from 1972, various notifications came U.P. for interpretation by this Court, other High Courts and Hon''ble Supreme Court. Every notification differs with each other to some extent. The Legislature to their wisdom has made certain changes from time to time. Once the words and language of the notifications are different, then no parity can be staked by the assessee with regard to tax exemption. Every notification should be read independently as each assessment year is independent in itself. In view of catena of judgments, it has been settled that each assessment year with regard to taxing matter should be considered independently while evaluating the tax. Things would have been different in case any of the notification of the years 1973 or 1982 as well as the present one of the year 1983 would have been the same language and accordingly, being para meteria provision, the petitioners would have been granted benefit with regard to tax exemption keeping in view the judgment of this Court as well as Hon''ble Supreme Court. Since the language of all the notifications placed before the Court are different, we are of the view that no case for interference under Article 226 of the Constitution of India is made out.

21. The writ petition is accordingly dismissed. No order as to costs.