(1988) 11 KAR CK 0049

In the Karnataka High Court

Case No : Writ Petition No. 7468/87

Tungbhadra Sugar Works Private Ltd. APPELLANT

Vs

Collector of C. Ex. RESPONDENT

Date of Decision : 03-11-1988

Acts Referred:

Central Excise Act, 1944 — Section 35, 36

Citation : (1989) 19 ECC 94 : (1990) 26 ECR 202 : (1992) 61 ELT 592

Hon'ble Judges : H.G. Balakrishna, J

Bench : Single Bench

Advocate : H.K Vasudeva Reddy, for the Appellant; M.S. Padmarajaiah, C.G.S.C., for the Respondent

Judgement

1. This writ petition is directed against the order passed by the Assistant Collector of Central Excise, Davanagere dated 9-3-1987 rejecting the representation made by the petitioner dated 27-2-1987 not considering the claim for payment of balance amount of Rs. 3,43,203.55 under rebate in respect of sugar produced by the petitioner-factory in excess of the average production of the corresponding period of preceding three sugar years vide Notification dated 28-4-1978, a copy of which is produced as Annexure-A.

2. The petitioner is a company registered under the Companies Act. It manufactures sugar at its factory situated at Harige, Shimoga Taluk and District. A Notification was issued by the Central Government on 28-4-1978 in exercise of its power under Rule 8(1) of the Central Excise Rules, 1944 (in short "the Rules"). The said notification conferred exemption on the sugar produced by any factory during the period commencing from 1st May, 1978 and ending with 30th day of September, 1978 provided the production of sugar exceeded the production during the corresponding period of the preceding three years. Another notification was published on 14-8-1978, modified as having been issued on 15-8-1978 instead of 30-9-1978. The petitioner having satisfied the requirements for grant of rebate, preferred a claim in respect of 40,688 quintals

of sugar produced during the relevant period of the rebate value of Rs. 10,22,905.20 on 9-10-1978.

3. There was an exchange of correspondence regarding the claim between the Superintendent of Central Excise, Shimoga and the petitioner, with the petitioner furnishing clarifications from time to time in support of the claim. The Superintendent of the Central Excise by his letter dated 17-2-1979 addressed to the petitioner on behalf of the Assistant Collector of Central Excise, Davanagere, that the petitioner is entitled only to a total rebate of Rs. 5,54,180.46 for the relevant period from 1-5-1978 to 15-8-1978. It was mentioned therein that what was payable was by way of proforma credit in the personal ledger account to be utilised towards payment of basic excise duty and [on] sugar only. Thereafter the petitioner addressed a letter to the Chief Accounts Officer, Central Excise, Bangalore, on 22-3-1979 reiterating the claim for payment of rebate of Rs. 10,22,896.32 calculated on the basis of the Notification dated 28-4-1978 subsequently amended by Notification dated 14-8-1978. The petitioner claimed for payment of the balance of the rebate amount of Rs. 4,68,715.86. The Chief Accounts Officer, by his letter dated 24-3-1979 replied that the exemption amount cannot exceed the duty payable by the sugar factories, since the notifications were issued under Rule 8(1) of the Rules. According to the Chief Accounts Officer what was payable to the petitioner was only a sum of Rs. 5,54,180.46, as rebate.

4. Once again the petitioner wrote to the Assistant Collector of Central Excise, Davanagere on 5-4-1979 pressing the claim for payment of the total rebate amount of Rs. 10,22,896.32 and for payment of the balance due to the petitioner. Once more a letter was addressed by the petitioner on 30-5-1979 to the same authority claiming the difference rebate amount of Rs. 1,78,944.50 without prejudice to the claim made earlier for the reason there was some wrong calculation even adopting the basis of calculation made by the Department. The Assistant Collector of Central Excise, Davanagere by his letter dated 22-8-1979 wrote to the Superintendent of Central Excise, M.O.R. Shimoga, endorsing a copy to the petitioner that a further proforma credit of Rs. 1,25,512.31 had been allowed to the petitioner in its personal ledger account. However, neither the Chief Accounts Officer nor the Assistant Collector of Central Excise, Davanagere sanctioned the entire amount claimed by the petitioner and therefore the petitioner was constrained to appeal to the Appellate Collector of Central Excise, Madras by its representation dated 23-7-1981. The appellate authority by its communication dated 5-9-1981 passed in Appeal No. 230 of 1981 rejected the appeal as barred by limitation. The Collector of Central Excise and Customs, Bangalore by its letter dated 20-4-1982 in response to the representation of the petitioner urging initiation of proceedings de novo invoked the provisions of Section 36 of Central Excises and Salt Act, 1944 (in short "the Act"). Thereafter, the petitioner presented a revision application to the Government of India, New Delhi by registered post dated 12/13th March, 1982. The Central Government in turn transferred the said revision application to the Customs, Excise and Gold

(Control) Appellate Tribunal, South Regional Bench at Madras for disposal of the application. On 4-12-1986 in S.R.S.B. Order No. 52 of 1986 - Oral, the Tribunal rejected the revision application for the reason that the impugned order of the Chief Accounts Officer, Central Excise, Bangalore was not an order passed by an adjudicating authority and that the petitioner was not invested with any right of appeal in terms of Section 35 of the Act. It also held that even assuming that an appeal lay to the Tribunal, it was barred by limitation and rejected the revision petition.

5. On 27-2-1987 the petitioner approached the Assistant Collector of Central Excise, Davanagere for an order of adjudication regarding the claim for rebate particularly in view of the finding of the appellate authority that the Chief Accounts Officer was not competent to pass an adjudicatory order on the matter in dispute. However, the Assistant Collector of Central Excise, Davanagere communicated his decision to the petitioner by a letter dated 9-3-1987, as follows :

"Customs, Excise and Gold (Control) Appellate Tribunal, Madras has rejected your appeal. Hence no action needs in this regard. This is for your kind information."

It is this order which is challenged in this writ petition.

6. The short point for consideration is, whether the Assistant Collector of Central Excise, Davanagere was in error in not passing an order on merits in respect of the representation submitted to him by the petitioner dated 27-2-1987.

7. The petitioner has sought to enforce his right to recover the balance of the rebate amount stated to be due to the petitioner based on the notification issued on 14-8-1978, subsequently modified as notification dated 15-8-1978. The claim of the petitioner is for payment of the balance of Rs. 3,43,203.55. But according to the Chief Accounts Officer, the petitioner is not entitled to the amount claimed. Hence there is a dispute with regard to the sum of money payable to the petitioner. When a representation is made to the Administrative Authority to consider the claim, to verify the same and to decide upon it, it is not open to the decision making authority and in this case, the Assistant Collector of Central Excise to express unwillingness to pass a considered order by seeking refuge under the order of the Customs, Excise and Gold (Control) Appellate Tribunal, Madras, which had rejected an earlier appeal on the same subject matter solely on the ground of limitation and not on merits. It is relevant to note that the Assistant Collector of Central Excise, who passed an order dated 9-3-1987 rejecting the representation of the petitioner dated 27-2-1987 did not notice the observation made by the Tribunal that the Chief Accounts Officer of the Central Excise Department did not have the competence to pass an adjudicatory order by virtue of the fact that the Chief Accounts Officer is not an executive authority at all. The Assistant Collector of Central Excise has failed to notice an important aspect in this case that the petitioner did not derive the right of appeal against the order communicated by the Chief Accounts Officer to the petitioner rejecting

the claim for payment of balance of rebate amount only because the Chief Accounts Officer was not statutorily empowered either to adjudicate or to render his decision on the question. If the Assistant Collector of Central Excise had applied his mind and had comprehended the implications of the observation made by the Tribunal, I do not think he would have passed the impugned order. The impugned order is an order passed without going into the merits of the case and is in the nature of a mere endorsement issued without exercise of mind. In a way, I have to say that the order passed by the 2nd respondent is not only misconceived but also an off-shoot of lack of awareness of the powers that the 2nd respondent himself enjoyed. Non-exercise of the discretion vested in the Assistant Collector, who is undoubtedly a decision making authority, would amount to non-exercise of jurisdiction and warranting the issue of a mandamus.

8. Accordingly, I allow this writ petition and quash the impugned order dated 9-3-1987 passed by the 2nd respondent. I further direct the 2nd respondent to consider the representation made by the petitioner on 27-2-1987 afresh and after affording a reasonable opportunity of hearing to the petitioner, dispose of the same on merits and in accordance with law, expeditiously.

9. In the circumstances of the case, there will be no order as to costs.

