**(1988) 03 KAR CK 0034**

**In the Karnataka High Court**

**Case No :** Writ Appeal No''s. 1782, 1910 of 1983 and 2603 of 1985

Union of India APPELLANT

Vs

Mysore Sugar Company Ltd. RESPONDENT

**Date of Decision :** 25-03-1988

**Acts Referred:**
Central Excise Act, 1944 — Section 12 B
Central Excise Rules, 1944 — Rule 173C, 53, 8 (1)

**Citation :** (1988) 17 ECC 134 : (1992) 61 ELT 574 : (1988) ILR (Kar) 2276

**Hon'ble Judges :** P.P. Bopanna, J;M. Ramakrishna, J

**Bench :** Division Bench

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

## Judgement

Bopanna, J.—These appeals are disposed of by a common order since a common question touching the interpretation of the relevant provisions of the notification dated 4-10-1973 (Annexure A produced in W.A. No. 1910/83) as amended by the notification dated 20-4-1974 arises for consideration in these appeals. The notifications were made by the Central Government in exercise of the power under sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 granting certain percentage of rebate on the payment of excise duty for the manufacture of sugar for the period 1-10-1973 to 30-9-1974. The amendment of Annexure A notification by Annexure B notification is not very material for the purpose of these appeals since the point for consideration is the effect of the proviso to the notification (Annexure A) on the quantum of rebate that was admissible to the sugar factories for the period 1-10-1973 to 30-9-1974. The interpretation of this notification has given rise to conflicting judgments in other High Courts and two learned Judges of this Court have adopted the view favouring the sugar factories following the decision of the Andhra Pradesh High Court reported in Etikoppaka Co-operative Agricultural Society Ltd. v. Union of India - I.L.R.1979 2454. The terms of the notification which came up for consideration before the Andhra Pradesh High Court are identical to that of Annexure A notification in these appeals. The Andhra Pradesh High Court has taken the view that the proviso in Annexure A indicates the true scope of Items 1 to 4 in Annexure A. If that proviso is kept in view, sugar factories though they have not produced sugar during the corresponding period in the base year would be entitled to rebate at the rates mentioned in column 3 of the notification on the quantum of sugar produced during the relevant period of the sugar year.

2. Before we proceed further, we must clarify what the sugar year means and what the base year means in relation to the claim for rebate n excise duty.

3. It was the policy of the Central Government in order to encourage the sugar factory owners to produce more sugar during the lean periods of production, to allow rebate at a certain rate in excise duty on the quantum of sugar produced by the owners in excess of the sugar produced during the base year. The "base year" for the purpose of claiming rebate is defined in the explanation to the notification (Annexure A) and it reads as :

"The expression ''base period'' means the period commencing from the 1st day of October, 1972 and ending with the 30th day of September, 1973."

"Sugar year" means, the year following the "base year" and in these appeals, it is not in dispute that "sugar year" is the year commencing from the 1st day of October, 1973 and ending with the 30th September, 1974. Earlier, a similar question arose in regard to the admissibility of the rebate on excise duty for the period 1-10-1970 to 30-9-1971. The sugar factories had not produced sugar during the period 1-10-1970 to 30-11-1970. However, rebate was allowed for the months of October and November, 1971 on the basis of the notification existing at that time. There was some doubt about the admissibility of rebate for those two months under the earlier notification. But those doubts were resolved by the department by issuing a confirmation letter to the effect that the claim for rebate made by the sugar factories for the months of October and November, 1971 was correct. Likewise, under the notification (Annexure A), the sugar factory owners claimed rebate and the claim for rebate was allowed by the Department. Further, the auditors attached to the Excise Department confirmed the correctness of the rebate allowed to the sugar factories. However, sometime in the year 1976 the Government of India re-examined the whole matter and issued instructions to the various Collectors of Central Excise in all the States to the effect that the rebate allowed for the production of sugar during a particular period in the sugar year was not legally admissible where there was "nil" production during the corresponding period in the base year. Accordingly, the department was instructed by the respective Collectors of Excise to recover the payments already made towards the rebate claimed by the sugar factories. All these factories were asked to credit the amounts of rebate allowed to them to the Department. But these factories having protested in vain, they filed writ petition and were successful in challenging the validity of the notices issued in the year 1976 calling upon them to refund the rebate. Now the notification under which the respondents-owners claimed the rebate should be reproduced in full since a decision either way would depend on the proper construction of this notification. It reads as :

"New Delhi, dated the 4th October, 1973 12th Ashvina, 1895 (Saka)

NOTIFICATION (CENTRAL EXCISE)

G.S.R. 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 (i) 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 column (3) of the said Table.

TABLE ------------------------------------------------------------------------ Sl. Description of Sugar Duty of Excise No. ------------------------------------------------------------------------ 1. Sugar produced in a factory during the period Forty rupees per commencing from the 1st day of October, 1973 quintal and ending with the 30th day of November, 1973 which is in excess of the quantity of sugar produced during the corresponding period in 1972. 2. Sugar produced in a factory during the period Thirty rupees per commencing from the 1st day of December, 1973 quintal and ending with the 30th day of April 1974, which is in excess of 110% of the quantity of sugar produced during the period commencing from the 1st day of December, 1972 and ending with the 30th day of April, 1973. 3. Sugar produced in a factory during the period Thirty rupees per commencing from the 1st day of May, 1974 and quintal ending with the 30th day of June, 1974 which is in excess of 110% of the quantity of sugar produced during the corresponding period in 1973. 4. Sugar produced in a factory during the period Twenty rupees per commencing from the 1st day of July, 1974 and quintal ending with the 30th day of September, 1974 which is in excess of 110% of the quantity of sugar produced during the corresponding period in 1973. 5. Sugar produced during the period commencing Thirty rupees per from the 1st day of October, 1973 and ending quintal with the 30th day of September, 1974 by a factory which commenced production on or after the 1st day of October, 1972, which is in excess of ten thousand metric tonnes. 6. Sugar produced during the period commencing Thirty rupees per from the 1st day of October, 1973 and ending quintal with the 30th day of September, 1974, by a factory which commenced production for the first time on or after the 1st day of October, 1973, which is in excess of five thousand metric tonnes. ------------------------------------------------------------------------ Provided that the exemption mentioned against serial numbers 1 to 4 of the said Table shall not be admissible to a factory which did not work during the base period.

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. 1 prescribed in Appendix 1 to the Central Excise Rules, 1944 or in such other record as the Collector may prescribe under Rule 53 or Rule 173C 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 to 4 of the said table :

(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.

Explanation. - In this notification, the expression ''base period'' means the period commencing from the 1st day of October, 1972 and ending with the 30th day of September, 1973. (No. 199/73)

Sd/- S. R. Narayanan, Under Secy. to the Govt. of India."

4. The first four items in Annexure A relate to admissibility of rebate for the quantities of sugar produced during the relevant period in the sugar year, i.e., 1973 in excess of the sugar produced during the corresponding period in 1972. The first item under Annexure A relates to only two months in the year 1973, i.e., October and November, 1973 and if the owners had produced sugar in excess of the quantities produced during the corresponding period i.e., October and November, 1972, they were entitled to the rebate on the excess quantity produced at the rate of Rs. 40 per quintal. The second item in Annexure A provides for rebate for rebate for the period commencing from 1st December, 1973 and ending with the 30th day of April, 1974 if the production was in excess of 110% of the quantity of sugar produced during the period commencing from the 1st day of December, 1972 and ending with the 30th day of April, 1973. So under Item 2 the period of rebate is extended over a period of five months. Under Item 3, the period of rebate is extended to two months, viz., May and June, 1974 if the factories produced sugar in excess of 110% of the quantity during the corresponding period in 1973. The corresponding period could only be the months of May and June, 1973. Under Item 4, rebate is allowed for the months of July, August and September, 1974 if the production was in excess of 110% of the quantity of sugar produced during the corresponding period in 1973. The corresponding period is the period commencing from the 1st day of July, 1973 and ending with the 30th day of September, 1973. So the aggregate of the sub-periods mentioned in Items 1 to 4 comes to 12 months, i.e., to say the base year is divided into four sub-base periods and rebate is permitted on the excess quantity of sugar produced at a certain percentage. The proviso indicates that the exemption mentioned against Item Nos. 1 to 4 in Annexure A would not be admissible to a factory which did not work during the base period.

 

The change in the language of the proviso should be noticed in order to bring out the true effect of the proviso. Whereas Items Nos. 1 to 6 of the notification refers to production in a factory during the base year and the sugar year, the proviso refers to no work during the base period. What is the meaning of the words "did not work" in the proviso in relation to Items Nos. 1 to 4 in the notification arises for consideration in these appeals, since in our view, the Andhra Pradesh High Court did not take into consideration the meaning of the word "work" as it appears in the proviso in contradistinction to the words "production in excess of the quantity of sugar produced" during the corresponding period in the base year.

5. On the plain language of Items 2 to 4 in the notification (Annexure A) as amended by notification Annexure B rebate is admissible to the sugar factories only if they produce sugar during the relevant period in the sugar year in excess of the production during the corresponding period in the base year. To illustrate under Item 1, to claim rebate for the months of October and November 1973 the factory should have produced sugar in excess of what was produced during the months of October and November, 1972. Under Item 2 the factory should have produced sugar in excess of 110% of what was produced during the period commencing from the 1st day of December, 1972 and ending with the 30th day of April, 1973. Under Item No. 3, the factory should have produced sugar in excess of 110% of the quantity of sugar produced during May and June, 1973. Under Item 4, the factory should have produced sugar in excess of 110% of the quantity produced during the period July, August and September 1973.

6. In the cases before us, the respondent in W.A. No. 1910 of 1983 claimed rebate for the month of May, 1974 though it did not produce sugar during the corresponding month of May, 1973. It also did not produce sugar in the months of June, July, August and September, 1973. However, it claimed rebate for the sugar produced in May, 1974 on the basis of the notification Annexure A.

7. In W.A. No. 2603/85, the respondent-sugar factory had claimed rebate for the months of October and November, 1973. But it is not in dispute that the respondent did not produce any sugar during the corresponding period of October and November in the base year 1972.

8. In W.A. No. 1782/83, respondent-sugar factory had claimed rebate for the month of April, 1974. But it is not in dispute that the sugar factory did not produce any sugar in the corresponding period i.e., April, 1973 nor in the months of March, May and June 1973. However, on the basis of the earlier view of the department and the judgment of the Andhra Pradesh High Court, the sugar factories approached this Court and successfully challenged the impugned demand notices made on them.

9. The learned Standing Counsel for the Central Government contended that the interpretation put by the Andhra Pradesh High Court on the proviso to the notification, Annexure A is wholly erroneous since by that interpretation the Courts would be doing violence to the plain language of Items 1 to 4 in Annexure

A. What is necessary to claim rebate is that there should be production of sugar during the corresponding period in the base year and there should also be production of sugar during the relevant period in the sugar year and if there was excess of sugar production during the relevant period in the sugar year up to the levels mentioned in Items 1 to 4, then only the sugar factories would be entitled to rebate. That is so, on the plain language of Items 1 to 4 in Annexure A. But the Andhra Pradesh High Court has taken the view that the proviso which we have excerpted above indicates the meaning to be given to the terms of Items 1 to 4. What is the effect of a proviso on the main provisions in any enactment or rule or notification has to be noticed first since we are inclined to differ from the judgment of the Andhra Pradesh High Court. It is well settled that the proviso does not control the provisions of the main section.

10. In MAXWELL ON THE INTERPRETATION OF STATUTES at page 189, it is said that :

"It will, however, generally, be found that inconsistencies can be avoided by applying the general rule that the words of a proviso are not to be taken ''absolutely in their strict literal sense'', but that a proviso is ''of necessity limited in its operation to the ambit of the section which it qualifies''. And, so far as that section itself is concerned, the proviso again receives a restricted construction; where the section confers powers, ''it would be contrary to the ordinary operation of a proviso to give it an effect which would cut down those powers beyond what compliance with the proviso renders necessary."

To quote Maxwell again -

"If a proviso cannot reasonably be construed otherwise than as contradicting the main enactment, then the proviso will prevail on the principle that ''it speaks the last intention of the makers''."

In this case, the proviso, in our view, does not in any way contradict the intendment of Items 1 to 4 in Annexure A. What all the proviso says is that the rebate under Items 1 to 4 would not be applicable to a factory which had not worked during the base year. That means to say, if the factory had not worked during the base period 1-10-1973 to 30-9-1974, then the rebate of Items 1 to 4 would not be available to the factory. That is to say, if the factory had not produced any sugar at all during the entire period of the base year, then the benefit of Items 1 to 4 would not be available to the sugar factory owners. However, if the factory had produced sugar during the corresponding period in the base year, i.e., during the corresponding sub-base period in the base year and has also produced sugar during the relevant period in the sugar year, then the sugar factory owners would be entitled to rebate if there is production of sugar in excess of the production of sugar in the sub-base year. In our view, the proviso does not take away the right of the sugar factory to claim rebate for the truncated periods in the sugar year if the factory had produced sugar during the corresponding months in the base year. That is to say, if the factory had produced sugar in the months of May and June, 1973, then it is entitled to rebate on the production of sugar in excess of the prescribed percentage if it had produced sugar in the months of May and June, 1974. This is the plain intendment of Items 1 to 4. As observed by the Supreme Court in Commissioner of Income Tax, Madras Vs. Madurai Mills Co. Ltd.,

"It appears to us that the cases of the distribution of capital assets on dissolution of a firm or other association of persons or liquidation of a company were mentioned in the third proviso under the earlier Act, as a matter of clarification to allay fears even though the language of sub-section (1) of S. 12B was not intended to apply to such cases. Provisos, as mentioned on page 221 of Craies on Statute Laws, Sixth Edition, are often inserted to allay fears. A proviso is inserted to guard against the particular case of which a particular person is apprehensive, although the enactment was never intended to apply to his case or to any other similar case at all."

11. Having said so, let us examine the decision of the Andhra Pradesh High Court since the other High Courts in India and two learned Judges of our High Court have followed the view of the Andhra Pradesh High Court. The Andhra Pradesh High Court reached a contrary a conclusion on the basis of the submission made by the learned counsel for the Department. It has observed that "nil" production during the corresponding period in the base year would not disentitle the claim for rebate if there is some production during the relevant period in the sugar year.

12. In para 5 of the judgment of the Andhra Pradesh High Court, it observed as follows :

"The interpretation of the Central Government Counsel would lead to absurd result. It would mean that if a manufacturer produced even one ounce of sugar during the relevant period in 1972-73 he would be entitled to rebate, but not if he produced ''nil'' sugar. The proviso to the notification, in my opinion, makes matters clear. It says that the exemption mentioned against serial Nos. 1 to 4 shall not be admissible to a factory which did not work during the base period. In other words it was only, when a factory did not work at all during (''base period'' is defined in the explanation to the notification as the period from 1-10-1972 to 30-9-1973) that period the exemptions would not be admissible. The proviso did not make exemptions inadmissible if the factory did not work during the relevant periods mentioned against Sl. Nos. 1 to 4. If the object of the notification was not to grant any exemption in respect of the sugar produced during any one of the four periods mentioned against Sl. Nos. 1 to 4 if no sugar was produced during the corresponding period in the base year, the proviso to the notification would have been worded differently. In the face of the proviso, I find it difficult to accept the arguments of the learned Counsel for the Central Government."

13. A hypothetical question was put before the Andhra Pradesh High Court and that is, if there is one ounce of production during the corresponding period in the base year, could that be taken into consideration to ascertain the excess

 

production during the relevant period in the sugar year. In our view, such a hypothetical contention is also not possible on the plain terms of Items 1 to 4. They do not permit such fractional minuscule quantifications in the production of sugar for the purpose of claiming rebate. What the notification contemplates is that there should be excess production of sugar under the circumstances similar to those existing during the lean months in the base year or circumstances less favourable than those that existed during the lean months in the base year. A conscious effort to produce something more than what was produced during the corresponding period in the base year is posited in the notification. Supposing the sugar factory did not make any effort to produce sugar in the sub-base period in the base year and it shows "nil" production during that period, we are unable to understand how that sugar factory can say that it produced excess sugar in the sugar year by reckoning the difference between zero production and production during the relevant period in the sugar year. The words "excess production of sugar" should be understood in their ordinary sense. We are familiar with the words like, "excess fare, excess mileage and excess baggage". These words mean a quantitative scale and for measuring the quantum of excess that there should be some corresponding earlier figure indicating the mileage, fare or baggage as the case may be. Thus understood, excess production is production in excess of what is usual, reasonable or lawful. If the interpretation put by the Andhra Pradesh High Court were to be accepted we will be putting a premium on inertia and lack of enterprise in the sugar industry and we will be defeating the very object of the policy of giving rebate to sugar factories. There should be a conscious effort to produce sugar during the base year and more serious effort to produce more sugar in the sugar year and then only, the factories would be entitled to rebate. The Andhra Pradesh High Court did agree with the arguments of the learned counsel for the Department on this point. The Andhra Pradesh High court also agreed with the observations of the Patna High Court as under :

"The rebate being for excess production, it postulates production for the base period also."

After expressing so, it further observed :

"This is correct with this qualification that under the present notification the base period is the year 1-10-1972 to 30-9-1973 and not the smaller periods mentioned against Serial Nos. 1 to 4 in the notification. I am not inclined to agree with the view of the Patna High Court."

With great respect we cannot agree with the view of the Andhra Pradesh High Court. That view shows that the Andhra Pradesh High Court was not concerned with the smaller sub-base periods mentioned in Items 1 to 4 in the notification, but was influenced by the definition of the words "base period", i.e., 1-10-1972 to 30-12-1973. We are at a loss to understand as to how the definition of the words "base period" would be relevant to determine the production during the smaller period mentioned in Items 1 to 4 in the notification for the purpose of claiming rebate for excess production in the sugar year.

14. As noticed earlier, this reasoning of the Andhra Pradesh High Court is totally opposed to the ordinary cannot of construction of the proviso and also to the plain language of Items 1 to 4 of the notification. In these cases, we need not trouble ourselves with the meaning of the words in the proviso since it is not the case of the department that the respondent-factories did not work at all during the base period. Once it is held that the proviso does not control the plain meaning of the language of Items 1 to 4, the Court must give full effect to the intention of the Legislature by giving rebate to the factory owners only if they had produced sugar in excess of what was produced during the corresponding period in the base year. Admittedly, in the months of April, 1973, May, 1973 and also in the months of September and October, 1973 there was no production by these three sugar factories and that being so, a "nil" production during those months did not give them a right to claim rebate since there was no excess production at all during the relevant period in the sugar year. The argument that if one ounce of sugar had been produced there would be excess does not impress us since in the very nature of things, regard being had to the installed capacity of sugar factories, they are fed with certain optimum loads of sugarcane and there is no scope for production of sugar in kilograms and ounces however adverse the seasonal conditions are. With great respect, the decision of the Andhra Pradesh High Court and those of Orissa, Madras and Punjab High Courts which adopted the ruling of the Andhra Pradesh High Court without examining the scope of the proviso on the plain terms of the main notification and without ascertaining the true intention of the Legislature do not lay down the law correctly and the opinion expressed by the Patna High Court appears to be the correct view, though its reasoning may not be the same expressed by us and notwithstanding the fact that there was no proviso to the notification of the year 1970 which came up for consideration by the Patna High Court.

15. Learned counsel appearing for the sugar factories relied on the explanation in Annexure A. What all the explanation says is that the base period means the period commencing from 1-10-1972 to 30-9-1973, shall be the base year for the sugar year commencing from 1-10-1973 to 30-9-1974. In our view this definition was inserted in order to make it clear what the base year is for the sugar year 1973-74. That does not mean that if no sugar is produced in any one of the months during the base year, the benefit of "nil" production should be given under Items 1 to 4 for the production during the relevant period in the sugar year. So, the explanation to the notification does not in any way come to the aid of the sugar factories.

16. For the reasons aforesaid, these appeals are allowed, the orders of the learned Judges are reversed and the writ petitions are dismissed.

17. After the pronouncement of this order, the learned Counsel for the respondents made an oral submission for staying the operation of our judgment by 8 weeks. We, accordingly, stay the operation of our judgment for a period of 8

weeks.

18. He also made an oral application praying for issue of certificate of fitness to appeal to the Supreme Court. In our view, no substantial question of law of general importance arises for consideration all because there are conflicting judgments of other High Courts on the point. Accordingly, the prayer sought for is rejected.

 