BELAPUR SUGAR AND ALLIED INDUSTRIES LTD.

v.

COLLECTOR OF CENTRAL EXCISE, AURANGABAD

APRIL 13, 1999

[A.P. MISRA AND R.P. SETHI, JJ.]

Central Excise Rules 1944 : Rule 8(1) and 9A

Excise duty—Notification No. 132 of 1982 dated 21.4.1982—Amendment of—Subsequent notification No. 193 of 1982 dated 11.6.1982—Effect of Amendment—Applicability of Notifications—Sugar—Rebate in excise duty—Question whether the excess production of sugar by appellant during the designated period commencing on Ist May, 1982 but before the date of issue of Amending Notification No. 193 was entitled to duty reduction in terms of Notification 132 as substituted by Notification 193—Held—Appellant is entitled for the rebate under the substituted Notification No. 193/82 dated 11th June, 1982 even for a period of 1st May till 11th June, 1982—Appellant's case held covered by substituted para 4 of the Notification—If assessee is otherwise entitled for exemption he cannot be denied merely on the ground that he has already paid the duty for the period in question—Even if duty is paid under ignorance of law or otherwise, if by subsequent legislation or valid Notifications the obligation to pay the duty is withdrawn, it cannot be refused since it has already been paid.

Statutory interpretation—Taxing statute—Notification—Unless there is anything to the contrary in the Act, Rules or Notification, if there be two possible interpretation, it is that interpretation which subserve the object and purpose should be accepted.

Collector of Central Excise and Ors. v. *Neoli Sugar Factory and Ors.*, **[1993] Suppl. 3 SCC 69;** *Soutu Bihar Sugar Mills Ltd. etc.* v. *Union of India & Ors.*, **[1968] 3 SCR 21 and** *U.O.I.* v. *Wood Papers Ltd.*, **(1990) 47 ELT 500 S.C., referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 122 of 1986.

From the Judgment and Order dated 29.10.85 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in A. No. ED(SB) No. 370 of 1985-D.

A Dushyant Dave, Shri Narain and Sandeep Narain for the Appellant.

Anoop Chaudhary, Hemant Sharma and P. Parmeswaran for the Respondent.

The following Order of the Court was delivered :

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The short question raised in this appeal is, whether the excess production sugar by the appellant during the designated period commencing on 1st May, 1982 but before the date of issue of the amending Notification 193 of 1982 dated 11th June, 1982 was entitled to duty reduction in terms of the Notification 132 of 1982 dated 21st April, 1982 as substituted by C Notification 193.

It seems after the said Notification No.132 subsequent amendment was brought by the Notification No.193 under which the limitation in granting exemption only to those who had excess production for three consecutive preceding years were eliminated by substituting even that those who had nil D production in the preceding three years are also entitled for such exemption. In order to appreciate the issue it is necessary to reproduce relevant portion of the Notification No.132 of 1982 dated 21st April, 1982.

This Notification is issued under sub-rule (1) of Rule 8 of the Central E Excise Rules 1944 as it stood then read with sub-section (4) of clause 50 of the Finance Bill 1982 under the Provisional Collection of Taxes Act, 1981.

"*Table (1) Description of Sugar* : Sugar produced in a factory during the period commencing on the 1st day of May, 1982 and ending with the 30th day of September, 1982, which is in excess of the average production of the F corresponding period of the preceding three sugar years."

Under this Notification as aforesaid the exemption is only to such sugar producing factory which during the period commencing from 1st May, 1982 and ending on 30th day of September, 1982 produces sugar in excess over the average production of the corresponding three preceding sugar years. G Para 4 of the Notification exclude from this benefit to such sugar factories whose production during the period mentioned in column 1 of the said table in the preceding three years was nil. Relevant portion of para 4 is quoted hereunder :

H "4. - Nothing contained in this Notification shall apply to a sugar factory where production during the period mentioned in column I of

the said table, during all preceding three sugar years was nil." A

As this Notification stood in April, 1982, assessee was not entitled for any exemption. It is also not in dispute during this period the assessee paid the duty in terms of Sec. 3. The controversy has arisen in view of the subsequent Notification No. 193 of 1982 dated 11th June, 1982 which substitutes the aforesaid para 4 of the Notification dated 21st April, 1982, the B relevant portion is quoted hereunder :

"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 C September, 1982, will be entitled to exemption under this notification."

Thus by virtue of this substitution even where sugar production in a factory during May to September in all the preceding three years was nil, would be entitled for rebate in the excise duty for the entire production for the period May to September 1982 in terms of table I to the Notification D No.132. This is also not in dispute if this substitued Notification is applicable to the assessee he would be entitled for exemption. The dispute raised is that this later notification is not retrospective in operation, hence period prior to 11th June, 1982 would not be covered and since on the relevant date, the duty was payable by the assessee under No.132 and which was actually paid he E would not qualify for exemption.

It is also not in dispute that the qunatity of sugar in respect of which rebate was denied by the Assessing Collector to the appellant for the period in question the sugar production was in excess of the average sugar production. The period to which we are concerned is the period commencing F from 1st May and ending on 11th June, 1982. However, the Tribunal in view of Rule 9-A of the Central Excise Rules declined the relief to the appellant. It held rate of duty would be what is payable on the date of clearance of the excisable good for consumption. Revenue granted relief to the assessee for the period from 11th June, 1982 when Notification 192 came into force but G rejected for the preceding period, in view of the stand and the inerpretation which they applied as aforesaid. For the assessee the stand is the very Notification 192 dated 11th June, 1982 records to grant rebate for the entire excess average production from 1st May, 1982, which is a date prior to this Notification No. 192 coming into force. It cannot be denied, if the assessee admittedly otherwise qualify. It is submitted the Tribunal wrongly placed the H

A emphasis on Rule 9-A with reference to clearance as under the exemption Notification the emphasis is on the production.

Learned counsel for the assessee referred the case of [1993] Suppl. 3 SCC 69 *Collector of Central Excise and Ors.* v. *Neoli Sugar Factory and Ors.*, that while inertpreting a Notification the underlying object and the B purpose of the Notification should be kept in mind. For similar purpose he referred to the case [1968] 3 SCR 21 *Soutu Bihar Sugar Mills Ltd. etc.* v. *Union of India & Ors.*, (para 12). He also referred to (1990) (47) ELT 500 (S.C) *U.O.I.* v. *Wood Papers Ltd.*, that an exemption Notification should be liberally construed. We find, keeping this in mind, the Notification in question granting C rebate of the excise duty was with an object to give incentive for increasing the production for a period which is known in a sugar year to be very lean period of sugar production.

Before we proceed to scrutinise the Notifications, the law to interpret is setttled. Unless there is anything to the contrary in the Act, Rules or D Notification, if there be two possible interpretation, it is that interpretation which subserve the object and purpose should be accepted. The objective of this Notification is by conferring rebate in excise duty an incentive is given to a factory for increasing the sugar production during the lean period. It is with this in mind now we proceed to scrutinize the two Notifications. The only question is, whether benefit under Notification 192 dated 11.6.1982 is to be E understood only from the date on which this Notification came into force or for the entire period preceding that date which is conferred under Notification No.132. We find significantly the language used in the second Notification is "For para 4, following paragraph shall be subsituted. " It is significant while substituting this paragraph 4 on the 11th June, 1982, it admits to confer rebate F for the period preceding the date of this Notification *viz.* from May. So this Notification clearly indicates to confer benefit which is covered by the first Notification No.132. If the interpretation as sought by the Revenue is to be accepted the preceding period has to be excluded. Substituted para 4 has two parts, first 'where production during three preceding year was nil' and second part, 'the entire production during May to September 1982 will be exempted.' G Appellant case is covered under both parts. Its production in the last three preceding years was nil and interms of Notification 132 read with this substituted para 4, in terms of 2nd part the entire sugar produced during May to September, 1982 would exempt. Thus the interpretation for revenue cannot be accepted as it defeats the very object of the Notification.

H Next submission for the revenue is that atleast those assessees who

have cleared and paid the excise duty, as the appellant has done, it cannot claim benefit under the amended Notification. We do not find any meirt even in this submissions. When Notification granted exemption to such factories which produced in excess of average production and such assessee if otherwise is entitled for such exemption it cannot be defeated merely on the ground that such factory has already paid the duty for the period in question. Even if duty is paid under ignorance of law or otherwise, if by subsequent legislation or valid Notifications the obligation to pay the duty is withdrawn, it cannot be refused since he has already paid the duty. If duty paid is shown to be not leviable or entitled for rebate, the revenue has to refund, adjust, credit such amount to the assessee, as the case may be.

Hence for the reasons recorded above, we conclude that the present appeal has merit which is accordingly allowed. The impugned orders of the Tribunal dated 29th October, 1985 is hereby quashed and we hold that the appellant is entitled for the rebate under the substituted Notification No.193/82 dated 11th June, 1982 even for a period of 1st May till 11th June, 1982. Consequnetly, if the amount has already been credited to the appellant it shall not be withdrawn, if not, shall be credited to it.

Appeal is allowed with costs.

T.N.A. Appeal allowed.