

Saswad Mali Sahakari Sakhar Karkhana Ltd.

Vs.

Union of India and another

Civil Appeal Nos. 488-93 of 1979

KULDIP SINGH, R.M. SAHAI AND B.L. HANSARIA, JJ.

11.11.1994

JUDGEMENT

HANSARIA, J.

1. The short point which needs to be decided by us, on the matter being required to come before a larger Bench, is relatable to Notification No. 146/74 dated 12-10-74 issued by the Department of Revenue and Insurance, Ministry of Finance, in exercise of powers conferred by Rule 8(1) of the Central Excise Rules, 1944, whereby sugar described in column (2) of the Table to the Notification was exempted from so much of the duty of excise leviable thereon as is specified in the corresponding entry in columns (3) and (4) of the Table.

2. The relevant portion of the Notification reads as below : -

Sl.No. Description of sugar Duty of excise

Free sale sugar Levy sugar

1. x x x x

2. Sugar produced in a factory during the period commencing on the 1 st day of December, 1974 and ending with the 30th day of September, 1975, which is an excess of the average production of the corresponding period of the preceding five sugar years, that is : -

(a) on excess production up to 7.5% Rs. 20/- Rs. 5/-

per quintal

(b) on excess production on the next 10% Rs. 40/- Rs.10/-

Per quintal

(c) on excess production on the next 10% Rs. 5/- Rs. 14/-

per quintal

(d) on excess production on the next 10% Rs. 60/- Rs. 18/-

per quintal

(e) on excess production beyond 37.5%      Rs. 82/-      Rs. 22/-

per quintal

3. It is not for the first time that this Court has been called upon to decide the purport of the aforesaid Notification inasmuch as in *Collector of Central Excise v. Neoli Sugar Factory*, (1993) 2 JT (SC) 587 : (1993 AIR SCW 2198), a two-judge Bench had expressed its view on the same. On the appeals at hand, however, coming before another two-Judge Bench, it was felt that what was stated in *Neoli Sugar Factory's* case needed fresh look and it is because of this that the appeals have been placed before this Bench of three-Judges.

4. Let it first be seen as to what was held in *Neoli Sugar Factory's* case (1993 AIR SCW 2198). In that case this Notification has been dealt in paras 18 and 19 and the interpretation put by the counsel of the Union of India was accepted by the Court, *Inter alia*, because none of the counsel of the factory owners had disputed the same. The factory owners in these appeals have, however disputed the stand taken by the Union of India in that case, and the dispute is on the question as to whether the percentage mentioned in subclauses (a) to (e) are to be calculated on the excess production or average production of the preceding five sugar years. The earlier Bench held that the percentage would not apply to the excess production, but it would to the average production. This was illustrated in paragraph 19 by taking the hypothetical case where the average production of a factory during preceding five sugar years is 1,000 quintals and that factory produces 2,500 quintals during December 1, 1974 to September 30, 1975. The Bench then stated that as "the basis of these percentages is the average production of the previous five years and not the excess production", what would be required to be done is that from the production of 2,500 quintals, the average (1,000 quintals) should be deducted first, which would mean that the excess production is 1,500 quintals. The next step is material and the same is that the percentage of 7.5% of which mention has been made in sub-clause (a) would be relatable to the average, which is 1,000 quintals; and so, rebate as per sub-clause (a) will be on 75 quintals (i.e. 7.5% of 1,000 quintals). The rebate mentioned in sub-clause (b) would then be given to 100 quintals which is 10% of the average; and so on.

5. The interpretation put on the Notification explained with the aid of the aforesaid illustration has been questioned by Shri Sanghi, appearing for the appellants, According to the learned counsel, the sub-clauses of the Notification having mentioned about "excess production", the percentage has to be calculated not on the average production, but on the excess production, which means that for the factory of the type mentioned in the illustration given above, 7.5% rebate would become available not on 75 quintals (which is 7.5% of 1,000 quintals) but on 102.5 quintals, which is 7.5% of 1,500 quintals. On the next 10% of excess production, that is 150 quintals, the rebate would be as mentioned in sub-clause (b) and so on. This may also be illustrated by stating that if the excess production be, say 100 quintals, rebate on first 7.5 quintals (7.5% of 100 quintals) would be as mentioned in sub-clause (a); and on next 10 quintals (10% of 100 quintals) as per sub-clause (b); and so on.

6. As against the above contention, Addl, Solicitor General Shri Tulsi submits that the concept of excess production being intimately related with average production because of what has been stated in the main part of column (2), the view taken in the aforesaid decision is correct and sound. He states that the ascending percentage of rebate was offered to the manufacturers to induce them to produce more and more; and so, the factory whose production is, say 7.5% in excess of average

production, should not gain so much as the one whose excess is, say 37.5% . He urges that if the interpretation put by Shri Sanghi were to be accepted by us, the object behind granting rebate would not be realised; indeed, get frustrated.

7. We have duly considered the rival submissions. According to us, on the language of the Notification, we have to agree with Shri Sanghi, because rebate being made relatable on the excess production, it is this production (beyond the average) which has to be looked into. This reading of the Notification would not defeat the object of granting of rebate, as the same would be Rs.20 or Rs.5 per quintal, as the case may be, where the excess is only 7.5%; but on that slab of excess production which is beyond 7.5% up to 17.5%, the rebate available would be Rs.40 or Rs.10, as the case may be; and so on. The quantum of rebate would thus increase with the rate of excess production going higher and higher. So, the manufacturer would have impetus to produce more and more, as higher the percentage of excess, more would be the quantum of rebate.

8. We, therefore, say with respect that the view taken in Neoli Sugar Factory's case (1993 AIR SCW 2198) is not correct. May we add that in that case the Bench did not apply its mind much on the controversy as both the sides had taken a common stand, which being not so here, we felt called upon to find out the true purport of the Notification.

9. Before parting, it may be stated that though on 18-10-1994 a submission was made by Shri Tulsi that in case the contention of the appellants would be accepted, the amount of rebate most probably would be much more than the excise duty payable on the excess production; but when the cases were taken up for further hearing on 20-10-1994, it was stated on instruction that the submission made on 18-10-1994 was not correct.

10. The rebate would, therefore, be calculated as stated and illustrated above. Appeals are disposed of accordingly. No orders as to the costs. Order accordingly.

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