SUPREME COURT OF INDIA

Sahyadri Sahakari Sakhar Karkhana Limited

Vs.

Collector of Central Excise, Pune

C.A.No.6634 of 1995

(Syed Shah Mohammed Quadri and Ashok Bhan JJ.)

25.02.2003

JUDGMENT

Ashok Bhan, J.

1. In these appeals the dispute relates to the method of calculation of average production of sugar for the purpose of grant of central excise concession in terms of the exemption Notification No. 135/83-CE dated 30th April, 1983.

> In these appeals the point of law is common and the facts are similar. Facts are narrated from Civil Appeal No. 6634 of 1995 being illustrative.

2. Sahyadri Sahakari Sakhar Karkhana Limited, District Satara (hereinafter referred to as `the appellant') is a registered co-operative Society, registered under the Maharashtra Co-operative Societies Act, 1960. It is carrying on the business of manufacturing sugar under tariff item No. 17.01 under the *Central Excise Traiff Act, 1985*. It is holding a registration in terms of Rule 174 of the *Central Excise Act, 1944* and *Central Excise Rules, 1944* (hereinafter referred to as `the Act & Rules, respectively').

3. Government of India issued a rebate notification No. 135/83 dated 30th April, 1983 with the intention to take more production of sugar in the lean period of the sugar year 198-83. The sugar year starts on 1st October and ends on 30th September each year. Normally sugar production season commences in November of each year and continues for six months, i.e., up to April next year. The incentive period from 1.5.1983 to 30.9.1983 in terms of the relevant notification No. 135/83 comes during the lean period (off season of the sugar year). In order to induce a sugar factory to produce more sugar, during the off season period, this incentive was given by way of rebate (refund) of central excise duties. The rebate was given on excess production of sugar produced during the incentive period as per notification on the basis of average production during the lean period of three preceding Sugar years 1979-80, 1980-81 and 1981-82. The excess production in this incentive period had to be worked out in terms of the notification. Relevant portion of the notification reads as under:

"Exemption to excess production during 1.5.1983 to 30.9.1983 - 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 (1) of the Table and falling under sub-item of the First Schedule to the Central Excise & Salt Act, 1944 (I of 44), from so much of the duty of excise leviable thereon under the said Act at the rate specified in the said First Schedule in the corresponding entry in columns (2) and (3) of the said table :

Description of sugar	Duty of Excise Free sale Sugar	Levy Sugar
(1)	(2)	(3)
(Rs. per quintal)	Sugar produced in a factory 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 1979-80, 1980-81 and 1981-82 sugar years.	31.80 19.00

Provided that the amount of exemption calculated at the rate of specified in column (2) or column (3) of the said Table shall not exceed the amount of duty of excise payable on free sale sugar or levy sugar, as the case may be.

xxx xxx xxx

3.Where during the period commencing on the 1st day of May and ending with the 30th day of September in any of the three sugar years 1979-80, 1980-81 and 1981-82 production of sugar in a factory was nil the average production of sugar of the corresponding period of 1979-80, 1980-81 and 1981-82 shall, for the purposes of this notification be determined by taking into account only such of the period of 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 the 1st day of May and ending with the 30th day of September, in all the three years 1979-80, 1980-81 and 1981-82, the production of sugar in factory was nil, the entire production of sugar of such factory during the period of commencing on the 1st May, 1983, shall be entitled to exemption under this notification."

4. Appellant had manufactured sugar between 18th of May to 30th of September of the sugar year 1978-79 to the extent of 43,434,400 quintals. Although the appellant had produced

sugar in the years 1979-80 and 1980-81, there was no production during the relevant period from 1st May to 30th September which is rebatable period under the notification. Appellant produced 69,784.00 quintals of sugar for the redatable period May 1983 to September 1983 for the sugar year 1982-83. For reference the sugar produced for the redatable period for the preceding three years is tabulated as below:

Base year	Periods	Production
1	2	3
1978-79	1.5.1978-30.9.1978	43434.00 quintals
1979-80	1.5.1979-30.9.1980	Nil
1980-81	1.5.1980-30.9.1981	Nil
Total 3 years	Total 3 periods	Total 43434.400 qtls

5. The dispute between the department and the appellant is restricted to the short point. In the above table three years, three periods and productions are shown. According to the department, out of three years, two years are to be ignored for determining the average production of the base years. According to the appellant the average is to be calculated on the basis of three years and the periods of which there is no production are to be ignored and as such there will be an average of three years by dividing the total production of 44,434.400 quintals by three years as shown in the above table and that figure will be the average for rebate in terms of notification No. 135/83. By dividing the figure of 43,434.00 by three it comes to 14644.80 quintals. According to the appellant on the basis of the said above average quantity the said rebatable quantity comes to 55333.00 quintals. Appellant claimed rebate to the tune of Rs. 12,99,218.84 thereon.

6. The Assistant Collector of Central Excise, Satara issued and served a show cause notice on the appellant dated 28th February, 1984 and called upon the appellant to show as to why the rebate claimed in excess of Rs. 6,66,948.60 under the notification be not rejected as not admissible. Appellant filed its reply to the show cause notice. Assistant Collector of Central Excise did not accept the reply filed by the appellant and by his order dated 26th June, 1984 restricted the rebate claimed to Rs. 6,66,948.60 as admissible and rejected the claim in excess of above amount as not admissible. Appellant preferred an appeal to the Collector of Central Excise (Appeals), Bombay. Collector by his order dated 10th October, 1986 set aside the Assistant Collector's orders and allowed the appeal with consequential relief. The department preferred an appeal against the order of Collector (Appeals) before the Central Excise & Gold (Control) Appellate Tribunal, Special Bench, New Delhi (for short `the Tribunal'). The Tribunal by the impugned order allowed the appeal and set aside the order of Collector (Appeals) and restored that of the Assistant Collector. According to the Tribunal the two years in which there was no production had to be ignored and the average could be worked out on the basis of the production of one year only during the relevant period. The Tribunal relied upon clause (3) of the notification which according to it clearly explained that the year in which there was no production of sugar was to be ignored and average production was to be determined by taking into account only such of the period of which sugar was produced in

the factory. The sugar years in which there was no production were to be ignored while working out the average production.

7. Exemption notification in question was issued to provide an incentive to the sugar factories to produce sugar during the lean period, i.e, 1st May, 1983 to 30th September, 1983. Enticement for exemption from paying the excise duty is to be calculated on the average production of sugar commencing on 1st day of May and ending with 30th day of September in the three sugar years 1979-80, 1980-81 and 1981-82. The method of arriving at the average production of sugar in the three years is provided in clauses 3 and 4. Clause 4 provides that if production of sugar in the lean period in the preceding three Sugar years 1970-80, 1980-81 and 1981-82 is `nil' then the entire production of sugar of such factory during the lean period between 1st May, 183 to 30th September, 1983 shall be entitled to exemption under the notification. This clause is not applicable in the present case as there was production in one of the sugar years, i.e., 1979-80. Clause 3 provides that if the production of sugar in any of the three preceding Sugar years 1979-80, 1980-81 and 1981-82 in a factory was `nil' then the average production of sugar of the corresponding period of 1979-80, 1980-81 and 1981-82 for the purpose of the notification would be determined by taking into account only such of the period of which sugar was produced in such factory and the period in which sugar was not produced therein shall be ignored.

8. The contention of the counsel for the appellant is that average has to be worked out on the basis of all the three base years and not only on the basis of production of one year during the corresponding period of which factory has produced sugar. It is his contention that clause 3 of the notification states that sugar production of more than one year has to be taken into consideration while determining the average and it does not expressly exclude the number of years in which there was no production. That average refers to more than one figure and since in this case production was only in one year; the question of taking average production did not arise as there was no production in other two years. He laid lot of emphasis on the word `any' occurring in clause 3. According to him, the use of the word `any' in clause 3 is of significance and indicative of the fact that clause 3 would apply in a case where there was production in at least two years out of three and not where the production was there only in one sugar year. Otherwise, according to him, the words used in the clause 3 of the notification would have been, in any one or more of the three preceding sugar years. As against this the stand of the Union of India is that if there was no production in any of the three years in the base period then the same is to be ignored while calculating the average production of the said three sugar years. According to it, clause 3 of the notification required that year or years of `nil production' have to be ignored while arriving at average production. Since `nil production' was there in two years, the period of two years shall be ignored for the purposes of calculation of average production.

9. The interpretation of the word `any' came up for consideration in *Shri Balaganesan Metals v. M.N. Shanmugham Chetty*[1] and referring to the meaning ascribed to the word in Black's Law Dictionary, 5th Edn., it was held that the word `any' has a diversity of meaning and may be employed to indicate `all' or `every' as well as `some' or `one' and its meaning in a given statute depends upon the context and the subject matter of the statute. The same

interpretation of the word `any' was reiterated by this Court in *Lucknow Development Authority v. M.K. Gupta*[2], and it was held :

> "...The word `any' dictionarily means `one or some or all'. The use of the word `any' in the context it has been used in clause (o) indicates that it has been used in wider sense extending from one to all....."

10. Clause 3 provides that period in which there is `nil production' has to be ignored while arriving at average production of the three sugar years. As there was no production in the two years, the period of two years has to be ignored for the purposes of calculating average production. Average production is to be arrived at notwithstanding that only one year out of the three preceding years is left for working out average. The use of the word `any' in clause 3 in the context of the notification has to be interpreted to mean in one or two years. Average production of the three preceding years where there was no production in two of the three preceding years cannot be arrived at by dividing the production of one year by three. Had that been the intention then it would not have been provided in clause 3 that the period in which there was no production is to be ignored. The use of the words *`any of the three sugar years'* and then the words `the average production of Sugar years of 1979-80, 1980-81 and 1981-82 for the purpose of the notification be determined by taking into account *`only such of the period of which sugar was produced'* coupled with the words *`the period in which sugar was not produced therein shall be ignored'* clearly indicates the intention that average production has to be arrived at by ignoring the period in which there was no production irrespective of the fact whether the period to be ignored is of one or two years. Clause 4 operates where there was `nil production' in all the three preceding sugar year. We can not assume that the Central Government was not conscious of the fact that production could have been only in one of the three preceding sugar years and did not provide to meet such a situation. Clause 3 governs the situation where there is a production in one or more than one year and average production of three preceding sugar years arrived at by ignoring the period in which there was no production while calculating the average production.

11. In our view, the Tribunal has correctly considered the rebate claim arising out of the three base years. Appellant had manufactured sugar between 1st May, 1979 to 30th September, 1979 only and since there was no production in the two periods, i.e., 1980-81 and 1981-82 the same are to be ignored and the sugar produced in the year 1979-80 would be taken to be the average for all the three years for determining the average production. In a case of factory where there was no production in any of the three years during the lean period then the sugar produced between 1st May, 1983 to 30th September, 1983 was to be taken as the average production for exemption from the payment of excise duty. In cases where there was a production in any of the three preceding years then the average had to be calculated by ignoring the periods in which there was no production. Since in this case there is no production in two out of the three years the average has to be the production in one year only.

12. Counsel for the appellant placed reliance on two judgments of the Tribunal, namely, *M/s Kalambar Vibhas Sahakari Sakhar Karkhana Ltd. and Collector of Central Excise,*

Aurangabad v. Niphad Sahakari Sakhar Karkhana Ltd. Pimplas[3], and the judgment of this Court in *Saswad Mali Sahakair Sakhar Karkhana Ltd. v. Union of India*[4]. Neither of these judgments are applicable in the present cases as the question of method of calculation of average production was not an issue in those cases. Moreover, the notifications involved in those cases were differently worded. A clause similar to clause 3 of present notification had not come up for consideration in those cases. The judgment of this Court is totally on a different point and has no application to the facts of the present cases or the point involved in these cases.

13. For the reasons stated above, we do not find any merit in these appeals and dismiss the same with no order as to costs.
Appeals dismissed.

[1]*1987(2) SCC 707*
[2]*1994(1) SCC 243*
[3]*1986(24) ELT 53 (Tribunal)*
[4]*1995(1) SCC 200*