

Collector of Central Excise Vs. Kichha Sugar Co. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-02-1985

Reported in : (1985)(5)LC1818Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Kichha Sugar Co. Ltd.

Judgement :

1. This appeal, filed under the orders of the Collector of Central Excise, Meerut, is against the order of the Collector of Central Excise (Appeals), New Delhi, in which he had set aside the order dated 16-2-1984 of the Assistant Collector of Central Excise, Rampur.

2. The appeal arises out of the provisions of Notification No.132/82-C.E., dated 21-4-1982, which granted a partial exemption (loosely known as "rebate") of duty on excess sugar produced during the period 1-5-1982 to 30-9-1982. The parts of the notification which are relevant to the present case are reproduced below :- "In exercise of the powers conferred by Sub-rule

(1) of Rule 8 of the Central Excise Rules, 1944, read with Sub-section

(4) of Section 50 of the Finance Act, 1982 (14 of 1982), the Central Government hereby exempts sugar, described in column

(1) of the Table below and falling under sub-item

(1) 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 and special duty of excise leviable thereon as is specified in the corresponding entry in columns

(2) and

(3) _____ of _____ the _____ said Table. _____

of sugar Duty of excise and special duty of excise

(1)

(2)

(3) _____
(Rupees per quintal) Sugar produced in a factory during 40.00 24.50 the period commencing on the 1st * * * *Explanation :-In this notification-

2. In computing the production of sugar during the period mentioned in column

(1) of the Table in respect of a factory mentioned therein- (i) the data, as furnished in Form R.G.I prescribed in Appendix I to Central Excise Rules, 1944, or in such other record as the Collector may prescribe under Rule 53 or Rule 173-G of the said rules, shall be adopted ; (iii) any sugar obtained by refining gur or khandsari sugar shall not be taken into account ; (iv) 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.

3. Where during the period mentioned in column (1) of the said Table, production in any of the preceding three sugar years was nil, the average production shall be determined as under,- The average shall be the average of the corresponding periods among the preceding three sugar years in which the factory had actually produced and the period or periods in which it did not produce during the said three sugar years shall be ignored while arriving at the average.

3. According to the respondents, the quantity of sugar produced by them and entitled to consideration in terms of the notification during the exemption period

and the corresponding period of the three previous years was as under :- Period Quantity in Quintals May-July 1979 44,768.22 May-July 1980 Nil May-July 1981 2,260 May-July 1982 82,795.26 (In terms of the notification the relevant period would be May - September of each year : however, we were given to understand that there was production only in the period May-July of the relevant years and therefore, only these have been mentioned. The production in May-July of each year would also be the production in May-September of that year). On the basis of these figures, the "average production of the corresponding period of the preceding three sugar years" was $44,768.22 + 2,260/2$, i.e. 23,514.11 quintals (the period May-July 1980 during which there was no production being ignored, in terms of Explanation 3 to the notification). Therefore, the excess production in 1982 was 82,795.26 minus 23,514.11 or 59,281.15 quintals, on which the respondents were entitled to a "rebate" of Rs. 17,73,978.50.

4. As against this, according to the Assistant Collector, the respondents did not have any production of sugar during May-July 1981, Therefore, both the periods May-July 1980 and May-July 1981 had to be ignored in terms of Explanation 3, and the "average production of the corresponding period of the preceding three sugar years" was the same as the actual production in May-July 1979, namely, 44,768.22 quintals.

The net excess production, thus, came to 82,795.26 minus 44,768.22 or 38,027.04 quintals. This quantity, after making some adjustment and deducting re-processing losses, was brought down to 37,082.30 quintals.

According to the Assistant Collector this was the quantity on which the rebate was admissible, the admissible amount being Rs. 9,93,740.10.

Thus, the controversy centres round the production in May-July 1981.

5. In support of his decision, the Assistant Collector informed the respondents as follows, in his letter dated 16-2-1984 :- "In this connection it is to inform you that 2260 qtls. sugar was produced in April, 1981 as your factory had stopped cane crushing on 28-4-1981 and two or three day's time was sufficient for finalisation of sugar. Hence, 2260 qtls. of sugar cannot be "treated as production of May, 1981."

6. Against this order the respondents went in appeal to the Collector (Appeals). The Collector allowed the appeal with the following observations :- "The appellant has urged that the R.G-1 record clearly shows the regular production from 1st May to 7th May 1981 totalling 2260 qtls.

Reason for slowing of operations is attributed to lesser availability of bagasse after stoppage of crushing thereby reducing steam pressure which runs the various manufacturing machines. I am unable to appreciate the reasoning and approach adopted by the adjudicating authority. Notification No. 132/82, dt. 21-4-1982, clearly envisages that for computing sugar production in different years, figures in R.G.-I are to be taken into account. No charge of manipulating R.G.-I for April-May 1981 can be laid against the appellant company because it could not be anticipated by the appellant that a notification 132/82 would be issued next year.

Ground for reducing the rebate claim is purely hypothetical and untenable." It is against this order of the Collector (Appeals) that the present appeal has been filed.

7. In the Appeal, it has been submitted that the order of the Collector (Appeals) was wrong for the following reasons :- (1) The statutory records showed that the factory had stopped crushing at 4 A.M on the 28-4-1981. Generally 48 hours are required to finish the entire process of production and therefore, in this case the production of sugar must have been completed by 4 A.M. on 30-4-1981 and therefore, no sugar could have been produced during May 1981; (2) The R.G. 1 production register for the month of May, 1981 showed that in May 1981 only brown sugar was bagged, and the bagging had commenced on 1-5-1981 itself. Therefore, the entire amount of sugar, including brown sugar, must have been produced only in April 81 and in May 81 only bagging of the brown sugar was done. As such there was no production of sugar in May, 1981 on the basis of which the incentive could be given; (3) The Notification No. 132/82 no doubt stipulates that in computing the production of sugar the data as furnished in the form R.G. 1 shall be adopted. However, sugar is entered in the R.G. 1 register only when it is bagged, and the bagging depends upon convenience, labour and efficiency of the factory. It may even be postponed. If it is postponed, and production is allocated to the month in which the sugar is bagged, the real position

would not be represented by the R.G. 1 register.

8. Shri Sachar, the learned representative of the Department who appeared before us, reiterated the above grounds. He also drew our attention to a notice issued by the respondents in which it has been stated that the factory was "finally closed" on 28-4-1981 at 4 A.M.(This notice is not included in the papers filed before us, but has been referred to therein). Shri Sachar also submitted that in Notification No. 132/82 the requirement that the data furnished in form R.G. 1 should be adopted had reference to the production between May and September 1982 against which rebate was to be given, and not to the production in the corresponding periods of the preceding years.

9. On behalf of the respondents, certified extracts of a number of registers and statements, such as the R.G. 1 register and the R.G. 6 register, have been filed. For the purpose of our discussion it is not necessary to go into the details of these documents. Shri Verma, the representative of the respondents, repeatedly submitted that the reference in the closure notice to the factory having been "finally closed" had reference only to the crushing, which was completed on 28-4-1981 (he also tried to argue that the reference to 28-4-1981 should be interpreted as 29-4-1981, but it is not necessary to go into this point). He submitted that completion of the production took a few more days and the bagging was actually done only from 1-5-1981 onwards.

It was at the bagging stage that the sugar was required to be entered in the R.G. 1 register. The respondents had duly entered the quantities of sugar in the R.G. 1 register as and when they were bagged, and therefore, the production figure as given by them for May-July 81 was correct and they were entitled to the full amount of rebate as claimed by them.

10. We have given our careful consideration to the facts of the case and arguments advanced. We find that there is no dispute on the following points:- (1) It was only crushing of cane which was completed on 28-4-1981 : the further process of manufacture including bagging of sugar continued for a few more days thereafter ; (2) In accordance with the practice which was within the knowledge of the Central Excise authorities (and perhaps prescribed by them) the sugar was

being entered in the R.G. 1 register only when it was bagged ; (3) In this case the 2260 quintals of sugar (which was brown sugar as obtained at the end of the season) was bagged on or after 1-5-1981 ; and (4) Brown sugar is also sugar within the meaning of Item 1 of the Central Excise Tariff so long as its sucrose content is more than 90, and it is not disputed that the brown sugar which was bagged on or after 1-5-1981 was sugar within the meaning of the Tariff Item.

11. In the light of these facts and of the wording of Notification No.132/82, the conclusions are clear. The respondents no doubt completed their crushing by 28-4-81, but the process of manufacture of sugar continued thereafter and the bagging of 2260 quintals of sugar was done only in May 81. For the purpose of Tariff Item 1 and of Notification No. 132/82, it was immaterial whether the sugar was white sugar or brown sugar. The Notification is very clear that in computing the production of sugar the data as furnished in the form R.G. 1 shall be adopted. A point was, no doubt, raised by Shri Sachar that the reliance on the data in the R.G. 1 form was prescribed only for computing the production of sugar from May to September 1982, and not for computing the production in the corresponding period of the preceding three sugar years. On a literal interpretation of the wording, this may be so.

However, it appears to us that it could not be the intention, nor would it be correct, to adopt a different basis for computing the production of preceding years. The rebate was essentially based on a comparison of production in the current year with the production in the corresponding period of the preceding three years. Any comparison, to be correct, has to be between like quantities, or quantities computed on the same basis. It would be illogical to say that production during the current period should be based on one type of data and production during the corresponding period of the preceding three years should be based on a different type of data. We also find that in similar notifications issued for earlier periods-e.g. Notification No. 173/81 for the period 28-10-81 to 30-11-81, and Notification No. 134/80 for the period 1-10-80 to 30-11-80, the same criterion has been laid down, namely that the data as furnished in form R.G. 1 should be adopted. It is, therefore, clear that for the purpose of calculating production in terms of Notification No. 132/82, whether for the current period or for the corresponding

periods of the preceding three sugar years, the data in the R.G. 1 register had to be adopted.

12. We have already observed that the practice was to enter the production in the R.G. 1 register only when the sugar was bagged. This is clear from the statement in the appeal itself, to which we have referred in para 7(3) above. To make doubly sure, we asked the representatives of both parties whether they could show any specific authority to the effect that the R.G. 1 stage in the case of sugar was after bagging. Neither was able to show us any specific authority to this effect in the shape of a trade notice nor a departmental manual.

But for the purposes of this appeal, we found it to be clear that the accepted or approved practice was as stated above. Therefore, the Collector (Appeals) was justified in holding that for the purpose of Notification No. 132/82 the entries in the R.G. 1 register should be relied upon.

13. The arguments in the appeal amount to saying that on the basis of the view adopted by the Collector (Appeals), it would be possible for an assessee to manipulate the process of production so as to show the date of manufacture as whatever was most convenient or advantageous to him in terms of Notification No. 132/82. This may be so, but that does not mean that the view taken by the Collector (Appeals) was not correct in law. If Government had intended not to allow the assessee such an opportunity to "manipulate" their production, the notification could have been worded differently. Or-what was even more simple-the Collector could have prescribed the R.G. 1 stage for sugar in such a manner as to avoid such a possibility, e.g. by making it a point earlier than bagging. But in the circumstances which existed, and which have been set out by us in para 10 above, the assessee was clearly entitled to the benefit of the notification, and their appeal was correctly allowed by the Collector (Appeals). We accordingly confirm the order of the Collector (Appeals) and reject this appeal.

14. There is one another point which we feel necessary to mention before parting with this matter. At the end of the Collector's order under Section 35B(2), authorising the Assistant Collector to file this appeal, he has stated "The Assistant Collector, Central Excise, Rampur is also directed to stay the operation of the

Order-in-Appeal under reference". With all respect to the learned Collector, we must point out that the power to stay the operation of the Order-in-Appeal did not vest either with the Collector or with the Assistant Collector. Such a direction, which lacks legal basis, and which has no place in an order under Section 35B(2), should have been avoided.

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