

The Dharmapuri District Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-18-1986

Reported in : (1987)(11)LC429Tri(Delhi)

Judge : G Sankaran, T Vice, V Raghavachari, P A K.

Appellant : The Dharmapuri District

Respondent : Collector of Central Excise

Judgement :

1. By a letter dated 26.7.1978 the appellants, M/s. Dharmapuri District Co-operative Sugar Mills Ltd., preferred a supplementary claim for additional rebate amounting to Rs. 10.14,660.96 P. in addition to the rebate already claimed for the sugar year 1976-77 for the block period December, 1976 to September, 1977. This additional rebate was claimed with reference to the production of the sugar during the period 1st October, 1976 to 30th November, 1976. The claim was rejected by the Assistant Collector under letter dated 7.7.1981 pointing out that there had been no production of sugar at all during the preceding base period mentioned in notification No. 257/76-CE dated 30.9.1976 and hence the eligibility for the additional rebate claim was not made out. This order was upheld by the Appellate Collector under his order dated 21.12.1981. He also held that if there was no production of sugar during the corresponding period of the preceding five years as mentioned in the notification there was no question of any excess production during the incentive period and hence the rebate claimed was not made out. The appellants preferred a revision petition to the Central Government

against the said order. The same is now before us as a deemed appeal on transfer.

2. We have heard Shri Inbarajan, Advocate for the appellants and Shri Vineet Kumar, SDR. for the Department.

3. There is no dispute that the appellants had produced 27,587 Qtls. of sugar during the period 1st October, 1976 to 30th November, 1976. There is also no dispute that they had not produced any sugar during the corresponding period in the preceding 5 sugar years. Deducting 694.32 Qtls. of white sugar obtained out of reprocessing of brown sugar produced during the preceding year the appellants had claimed that they would be entitled to rebate in terms of notification No, 257/76-CE dated 30.9.1976 in respect of the balance of 26,892.68 Qtls. The Assistant Collector as well as the Appellate Collector have rejected this claim on the ground that when no sugar at all had been produced during the corresponding two months in any of the 5 preceding years the appellants were not entitled to any incentive rebate on the sugar produced during the said two months in 1976. Shri Inbarajan points out that this view is incorrect and relies upon several decisions of this Tribunal as well as the High Courts as supporting his contention. He relies upon the decision of the Bombay High Court in Balasaheb Desai Sahakari Sakhar Karkhana Ltd, v. Union of India and Ors. 1982 ELT 866 Bombay : 1982 ECR 812 and also two other decisions of this Tribunal in the case of Collector of Central Excise, Aurangabad v. Siddheshwar S.S.K. Ltd. Order No. D-62/86-dated 8.10.1986 in E-Appeal No. 1082/80-D and in the case of Collector of Central Excise, Punc v. Kannad S.S.K.Ltd. Order No. 327/85-D dated 8.10.1985 in E-Appeal No. 1080/1980D in this connection. These decisions are with reference to interpretation of the terms in notification No. 257/76 itself. These decisions have held that the fact that there had been no production of sugar during any one or all of the preceding 5 years during the corresponding lean period (1st October to 30th November of the corresponding years) would not disentitle the sugar factory from claiming rebate in terms of notification if sugar had been produced by the factory during the period 1st October, 1976 to 30th November, 1976.

4. In addition Shri Inbarajan relies upon various other decisions in which similar provisions in other notifications had to be construed and it had been held that the fact of nil production during the corresponding period of the preceding years would not dis-entitle the factory from claiming rebate if there had been production during the period in the sugar year in question. These decisions are: (a) L.H. Sugar Factories Ltd. v. Union of India and Ors. 1983 ELT 205 Allahabad; Janta Co-operative Sugar Mills Ltd. v. Union of India and Ors.

1983 ELT 334 Punjab & Haryana; (c) Sakthi Sugars Limited v. Union of India and Ors. 1983 ELT 484 Madras; Keshoraipatan Sahakari Sugar Mills Ltd. v. Collector of Central Excise, Delhi Krishna Sahakari Sakhar Karkhana Ltd. v. Collector of Central Excise, Bombay (f) The Kampli Co-operative Sugar Factory Limited v. Union of India and Ors. 1984 ECR 356-Karnataka.

We further find that the Bombay High Court also has held to similar fact in the case of Yashwant Sahakari Sakhar Karkhana Limited v. Union of India .

5. In view of this series of decisions of High Courts as well as this Tribunal we hold that the interpretation put upon the words of notification No. 257/76 by the lower authorities was incorrect.

Accordingly, we hold that the appellants were entitled to the additional rebate claimed by them. The appeal is accordingly allowed and the orders of the lower authorities are set aside and the appellants are declared entitled to the additional rebate as claimed by them.

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