

Union of India and ors. Vs. Aruna Sugars Limited and ors.

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Court : Chennai

Decided On : Aug-12-1985

Reported in : 1986(8)ECC78; 1986(24)ELT492(Mad)

Judge : M.N. Chandurkar and ;Venkataswami, JJ.

Acts : Central Excise Rules, 1944 - Rule 8(1)

Appeal No. : Writ App. Nos. 303, 309 and 311 of 1980

Appellant : Union of India and ors.

Respondent : Aruna Sugars Limited and ors.

Advocate for Def. : T.T. Vijayaraghavan, Adv.

Advocate for Pet/Ap. : T. Somasundaram, Additional Central Government Standing Counsel

Judgement :

1. This judgment will dispose of W.A. Nos. 303, 309 and 311 of 1980 which respectively arise out of W.P. Nos. 550, 2467 and 436 of 1977. All these three petitions along with some other petitions have been disposed of by a common judgment of this Court delivered on 28th of September, 1979. The appeals involve the construction of a notification issued by the Central Government in exercise of its powers under sub-rule (1) of Rule 8 of the Central Excise Rules, 1944,

hereinafter referred to as 'the rules'. The relevant part of the notification reads as follows -

'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 (2) of the Table below and falling under sub-item (1) of Item No. 1, from so much of the duty of excise leviable thereon as is specified in the correspondent entry in clauses (3) and (4) of the said Table.

excise	Levy	sugar	free	sale	sugar	S.No.	Description of Duty of
sugar						* * * *	2. Sugar produced in factory during the period commencing on the 1st day of December, 1974, and ending with the 30th day of September, 1975 which is in excess of the average production of the corresponding period of the preceding 5 sugar years, that is -

- (a) On excess production Rs. 20 per Rs. 5 per upto 7.5% quintal quintal (b) On excess production Rs. 40 per Rs. 10 per on the next 10% quintal quintal (c) On excess production Rs. 50 per Rs. 14 per on the next 10% quintal quintal (d) On excess production Rs. 60 per Rs. 18 per on the next 10% quintal quintal (e) On excess production Rs. 82 per Rs. 22 per beyond 37-5% quintal quintal
- Explanation. - In this notification, -

(a) 'average production' in relation to sugar produced in a period by a factory which had gone into production for the first time in 1967-68 or earlier, means, the simple average production during the corresponding period of the preceding five sugar years.

4. Where production in one or more sugar years among five sugar years was nil, the production in such year or sugar years shall be ignored and the average production shall be the average production of the corresponding period of the remaining sugar years.'

2. The sugar year admittedly commences from the first day of October and ends on the 30th day of September next following. The three petitioners in the three writ petitions are manufacturers of sugar and their claim for incentive in accordance with the above-mentioned notification in all the cases is for the period 1-10-1974 to 30-9-1975. In respect of each of these petitioners, for the above incentive period, their production of sugar exceeded the average production of the base period which is the corresponding period of the preceding five sugar years. All the three petitioners have originally claimed certain amounts representing the duty of excess from which sugar manufactured by them was exempted. Later on, however, each of the three petitioners made a claim of additional rebate because according to them if the notification is construed in the manner in which they wanted to construe it, they were entitled to a large amount of additional rebate. The original rebate and the additional rebate claimed by each of the petitioners were as follows -

Original claim	Name of the petitioner	Additional claim
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1. Aruna Sugars Ltd.(W.P. 550/77) Rs 15,24,314.00	1. Aruna Sugars Ltd.(W.P. 550/77)	11,10,828.00
2. M/s. E.I.D. Parry (India)(W.P. 2467/77) 20,57,201.68	2. M/s. E.I.D. Parry (India)(W.P. 2467/77)	13,96,968.81
3. M/s. Sakthi Sugars Ltd.(W.P. 436/77) 33,35,803.76	3. M/s. Sakthi Sugars Ltd.(W.P. 436/77)	20,64,531.00
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The claim made by the petitioners for additional rebate having remained undetermined for a long period the petitioners had filed three writ petitions in this Court. The petitioners' case before the learned Single Judge and in these appeals is that the quantity indicated in Clauses (a), (b), (c), (d) and (e) of the Notification dated 12-10-1974, for the purpose of computation of the rebate in excise duty is to be determined with reference to the excess production. Their case is that when Clauses (a), (b), (c) and (d) refer to 7.5%, 10%, 10% and 10%, the quantity of sugar which qualifies for the rebate is to be determined as the percentage of the excess production over the average production of the corresponding period of the preceding five sugar years. For example, when the total production is 7000 quintals of sugar and the average production for the preceding five years is 3000 quintals the rates at which the rebate is to be calculated should be on the basis of the percentage of the excess production of 4000 quintals. According to the

department, however, when the quantity qualifying for rebate under the different clauses is to be determined it is with reference to the average production that the percentage has to be applied. In short, the difference lies in whether it is the figure of excess production of which the percentage is to be calculated or whether it is the figure of average production of which the percentage is to be taken. To put it differently, in the illustration given whether 7.5%, 10% and 10% has to be with reference to the four thousand quintals or with reference to the average production of 3000 quintals. The learned Judge has taken the view that the percentage has to be taken with reference to the total excess production and not with reference to the average production. The learned Judge has approved of the time taken in a notice which was issued by the Government of India being Trade Notice 51/76, dated 4-3-1976, with reference to Central Excise Sugar incentive rebate and the method of calculation of the rebate for 1974-75. This Trade Notice superseded an earlier Trade Notice dated 3-9-1975 in which a clarification was issued with regard to Notification dated 12-10-1974, in the following words -

'It is clarified that the expressions like the one such as 'on excess production upto 7.5%' refer to percentage of the average production during the relevant period, and not to the percentage of excess production.'

By the Trade Notice dated 4-3-1976 a modification was made in this Trade Notice dated 3-9-1975 by stating as follows -

'In paragraph 2 of the said notice the words refer to percentage of the average production during the relevant period, and not to percentage of the excess production may be substituted to read as refer to the percentage of excess production and not to the average production during the relevant period.'

The learned Judge therefore allowed the petitions and held that all the petitioners were entitled to the larger amounts of excise duty rebate as claimed by them.

3. In these three appeals filed on behalf of the Department the stand now taken is that the interpretation contained in the Trade Notice dated 3-9-1975 was the correct interpretation and a reference has been made to a Press Communique which was issued contemporaneously with the Notification dated 12-10-1974. In

this Press Note the working of the notification was explained as follows -

'Incentives for excess production for the period from December 1974 to September 1975 are being provided on a slab basis. On excess production of sugar upto 7.5% of the average production of the preceding five years, the rate of rebate would be Rs. 20 per quintal on free sale sugar and Rs. 5 per quintal on levy sugar. On the next 10% of the excess production the rate of rebate would be Rs. 40 and Rs. 10 per quintal respectively. Excess production beyond 17.5% but not above 27.5% would get a rebate of Rs. 50 and Rs. 14 per quintal respectively. Production exceeding 27.5% but not exceeding 37.5% of the base production would be entitled to a rebate of Rs. 60 and Rs. 18 per quintal respectively. On production exceeding 37.5% of the base production a factory would be entitled to Rs. 82 and Rs. 22 per quintal as rebate for free sale and levy sugar respectively.'

4. Mr. Somasundaram, appearing on behalf of the department also contends that in a judgment delivered by the Andhra Pradesh High Court the construction of the notification canvassed by the Department has been accepted. That judgment is in W.P. 4039 and 3502 of 1976, decided on 16-2-1978. According to Mr. Vijayaraghavan who appears on behalf of the original petitioners, if the notification dated 12-10-1974, is to be read in the manner desired by the Department then we shall have to add the words 'of average production' after the percentage of 7.5%, 10%, 10% and 10% in Clauses a, b, c and d of the second paragraph of the Table. The further argument is that if in Clause (e) we read the words 'of average production' after 37.5% and if this 37.5% is with reference to average production, then this clause will only cover the balance of 62.5% of the average production with the result that any excess production beyond 62.5% of the average production will not be entitled to rebate at all. Therefore, according to the learned counsel since the notification must be read having regard to the express words used in the notification and there is no justification for the Court to add any additional words in the notification, and further, if the construction placed on the notification by the Department deprives a part of the excess production of the rebate which was intended to be given, that construction has to be rejected.

5. After hearing the learned counsel for the Department, and the petitioners, we find that the view which the Government of India had taken when they issued the Trade Notice dated 4-3-1976 contained the correct construction of the notification. The fact that the department now wants to go back on that construction and adopt a construction which was originally placed on the notification in the Trade Notice dated 3-9-1975, or the fact that they issued contemporaneously with the notification a Press Note does not affect the construction which we are called upto to place on the notification in accordance with the plain language and the words of the notification.

6. It has to be remembered, and it is not disputed, that the policy behind granting rebate in excise duty was to induce the manufacturers to increase the production of sugar. The notification has, therefore, to be so construed as will achieve this object and the rebate in duty of excise will result as an incentive on produce more sugar. Only if the sugar manufacturers benefit more as they produce more, there will be an incentive to increase the production of sugar. That apart, on the plain words of the notification if the notification is capable of a construction that it can make it effective, it will not be proper for the Court to add any additional words in the notification. If in this background, now we look at the notification, it will appear that when Clause (a) reads 'on excess production upto 7.5%' it is intended to indicate that part of excess production which will be entitled to rebate. When clause (a) refers to 7.5% it necessarily refers to the excess production. The entire excess production is equated to 100% and then on a slab basis this excess production is subjected to rebate at different rates, according as whether it is free sale sugar or it is levy sugar. The rebate is more in the case of free sale and less in the case of levy sugar. Admittedly, free sale sugar is 35% of the total production, and levy sugar is 65% of the total production Clause (2) of the Table clearly says that sugar which is in excess of the average production is exempted from a part of excise duty. When Clause (a) reads 'on excess production upto 7.5%' it is just another way of saying 'on 7.5% of excess production.' When it is construed this way, we need not add any additional words. There is another difficulty in accepting the argument advanced on behalf of the Department. If the percentage is to be worked on the basis of average production then the total average production has to be equated with 100%. Let us take a case where the

excess production is more than the average production. In such a case if the different percentages are calculated with reference to the average production, then a part of the excess production beyond the average production will not get the benefit of the rebate from excise duty. Supposing the total production is 7000 quintals, the average production is 300 quintals and, therefore, the excess is 4000 quintals. If we adopt the construction canvassed on behalf of the Department, then the maximum excess production in respect of which rebate can be claimable cannot exceed 3000 quintals. The learned counsel appearing on behalf of the Department, however, contended that the remaining 1000 quintals of sugar which is a part of the excess production will be covered by Clause (e) which refers to 'on excess production beyond 37.5%'. The argument is that though the earlier clauses may cover part of 37.5% production in excess of average production, when excess production is more than the average production, the entire balance of excess sugar beyond 37.5% out of the excess over average production will fall under the residuary Clause (e). This argument proceeds on a mis-apprehension that Clause (e) will cover production that is in excess of the average production and not covered by Clauses (a) to (d). If Clause (e) is properly read by making it a positive provision instead of the residuary provision, that is, at present is, then it will read as 'on the balance of 62.5% of excess production'. The first four clauses a, b, c and d take care of 37.5% of the excess production. If the argument of the department that clause (e) which is a residuary clause takes care of the entire balance of production in excess of the average production which is not covered by the earlier sub-clause, is accepted, the effect is that for the purpose of the first four clauses, though the entire average production is to be equated to 100%, the total percentage converted by all the clauses will exceed 100% in a case where the excess production is more than the average production. Such a position is mathematically not permissible.

7. The learned counsel appearing on behalf of the department has fairly not disputed before us that where the excess production is less than the average production, the rebate will be more if the notification is construed in the manner in which the petitioners wanted it to be construed. Similarly, it is not in dispute that where the excess production and the average production are the same, such as for example, in a case where the total production is 6000 quintals, and the average

production is 3000 quintals, the excess production is therefore, 3000 quintals and equal to the average production, there will be no difference in the amount of rebate to which the petitioners will be entitled. Further, when we go to a case where the excess production is more than the average production, it is obvious that if 100% is equated to the average production, then in accordance with the construction canvassed on behalf of the department, a part of the excess production will be left out as being disentitled to relief and the construction will obviously adversely affect the petitioners inasmuch as while the notification says that the entire excess production will be subjected to rebate but at different rates, according to the construction canvassed on behalf of the department, a part of the excess production will not be taken into account for the purpose of rate. We may illustrate this by giving one illustration. We are taking a case where the total production is 7000 quintals, the average production is 3000 quintals and, therefore, the excess production is 4000 quintals. According to the computation made as canvassed by the department, the computation both for the purpose of free sugar and levy sugar at the rates specified in the notification will be as follows -

Rebate Clause (a) 7.5% of 3000 Rs. 2,306.25 (b) 10% of 3000 Rs. 6,150.00 (c) 10% of 3000 Rs. 8,080.00 (d) 10% of 3000 Rs. 9,810.00

The total number of bags covered by clauses a, b, c and (d) will be 1500 out of the 3000. On the footing that 3000 is to be equated with 100%, the number of quintals which will fall under Clause (e) will be only 1500. In respect of this, under Clause (e) the total rebate will be Rs. 18625. The total of Clauses a, b, c and d will thus be Rs. 1,06,971.25. The calculation according to the construction canvassed on behalf of the petitioners will be as follows -

Rebate (a)	7.5%	of	4000	Rs.	3025.00	(b)	10%	of	4000	8200.00	(c)	10%	of	4000	10640.00	(d)	10%	of	4000	13080.00	Balance	2500	quintals	107500.00
-----Rs. 1,42,445.00-----																								

These figures will indicate that the rebate is more if it is calculated on the basis that the percentage of quintals entitled to rebate is calculated with reference to the excess production. The learned counsel for the department, however, contended that the figure Rs. 1,06,971.25 which is arrived at as indicating the total rebate

according to the method suggested by the department is not correct, but that the figure should really be Rs. 1,49,971.25. Undoubtedly, this would be so if in the residuary Clause (e) the entire quantity of excess sugar manufactured remaining after 37.5% of the average production is made eligible for the rebate. But as we have already indicated, if the argument of the learned counsel for the department is accepted and if the average production of 3000 quintals is to be equated to 100%, then anything in excess of the average production will not be covered by the residuary clause with the result that the construction would not be proper.

8. We are, therefore, inclined to take the view that the quantity of excess sugar is to be calculated under the said clauses of the second paragraph of the Table with reference to the production in excess of average production and not with reference to the average production.

9. Undoubtedly, the learned Single Judge of the Andhra Pradesh High Court has accepted the construction which was placed on behalf of the department. The learned Judge himself has observed in the judgment that 'the question is probably one of first impression. My first impression was that on a fair reading of the notification, it should be interpreted as first stated by me.' The learned Judge, therefore, on his first impression has taken the view which was canvassed by the department. One of the reasons which the learned Judge has given while rejecting the view which was canvassed on behalf of the Sugar factories was that even if a manufacturer produces one quintal of sugar in excess of the average production of sugar for the previous five years, rebate will have to be given at the lowest rate of Rs. 20 per quintal for .075 quintal and at the highest rate of Rs. 82 for 0.625 quintal. Thus, according to the learned Judge 'could never have been the intention of the rule making authority'. The learned Judge then expressed as follows :-

'It is to be noted that the notification mentions that rebate will be granted on excess production upto 7.5 etc. The notification does not say upto 7.5% of excess production or upto 7.5% of average production. Since excess production is reckoned in relation to average production, it is reasonable to hold that 'on excess production upto 7.5' means 'on excess production upto 7.5% on average production.'

10. With great respect to the learned Judge, we are not able to agree with the view which he has taken. That view necessitates the addition of the words 'of average production' in each of the Clauses (a), (b), (c) and (d) of paragraph 2 of the Table. We have already pointed out that it is possible to give effect to the notification without addition of these words and if a notification or a law can be properly given effect to without defeating its object as it has been worded, it would not be permissible for courts to make any addition of words to either the law or to the notification. We have already indicated that the addition of these words will not fit in with the purpose and the intent of Clause (a) of the second paragraph of the Table.

11. We may point out that the view which we have taken finds support in a decision of the Karnataka High Court in which the learned Judge has accepted the view which is now under challenge. In W.P. No. 5731 of 1976 by order dated 8th November, 1979 (Messrs. India Sugars and Refineries Ltd. v. Union of India and Others) 1983 E.L.T. 209 Srinivasa Iyengar J. observed as follows -

'As is clear from the notification, what is entitled to relief is the excess production of the previous years. Once the excess is computed, the figure of average production for the previous five years has no bearing on the rebate to be allowed. If the intention was to allow the rebate to the extent of or certain percentages of the average of the previous five years, it was open to the authorities to specifically state so. When the expression used is plain and meaningful there is no scope for assuming an ambiguity and trying to interpret it on a supposed intention of the makers of the notification'.

12. Referring to the view of the Andhra Pradesh High Court and this Court, the learned Judge in paragraph 8 of the judgment has observed as follows -

'The learned Judge of the High Court Madras who decided the matter took a different view and did not agree with the view taken by the High Court of Andhra Pradesh. With great respect. I am unable to agree with the interpretation sought to be made on the working of the notification by High Court of Andhra Pradesh. There is no warrant for reading the words 'average production of previous years' into the notification which is otherwise plain and conveys full meaning and which

also subserves the purpose and objects for which the relief was being given'.

13. We are, therefore, satisfied that the learned Judge was right when he took the view that the percentage of excess production which is entitled to rebate under the third and fourth columns has to be computed on the basis of excess production and not on the basis of average production. There is thus no infirmity in the view taken by the learned Judge and the appeals therefore have to be dismissed.

14. It appears to us that the argument of the learned counsel for the department that they had no opportunity to ascertain the correctness of the demand in so far as the actual figures of average production and excess production were concerned, is well founded, Though the objection taken in the counter was that the writ petitions were premature because the petitioners have not awaited decision from the departmental authorities, that objection is now futile. Apart from that fact it appears to us that if the departmental authorities did not promptly deal with the matter, there was justification for the petitioners to approach this Court. However, since the figures of excess production and average production are matters of record it would be advisable for the department to determine these figures after going through the records of the petitioners and given them a complete and full opportunity to justify the quantum of their claim.

15. The appeals are dismissed with the direction that the Department will now determine whether the quantum of claim made by the petitioners is correct on the basis of the figures to be supplied by them. This department will do within a period of three months from today. The respondents will be entitled to costs in one set in respect of these appeals. Counsel's fee Rs. 1000/-.

16. The learned counsel for the appellants requests that since similar matters are pending before different High Courts, this is a fit case in which they should be granted leave to appeal to the Supreme Court. As we have already pointed out, we do not think that on a proper construction, any other view of the construction of the notification is possible. The construction did not pose any difficulty to us. We do not, therefore, think this is a matter in respect of which leave can properly be granted to appeal to the Supreme Court. The oral application for leave is thus rejected.

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