CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 1905 of 2007

(Arising out of order-in-appeal No. 63-CE/MRT-I/2007 dated 29.03.2007 passed by the Commissioner (Appeals) Central Excise, Meerut-I)

DATE OF HEARING : 20.04.2017
DATE OF DECISION : 16.05.2017

M/s R.B.N.S. Sugar Mills Ltd. …. Appellants
(Rep by Shri Alok Arora, Adv.)

VERSUS

CCE, Meerut-I …. Respondent
(Rep. by Sh. H.S. Saini, DR)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 53315/2017

PER V. PADMANABHAN :

The Appellants were engaged in the manufacture of sugar & molasses. During the period December 1976 to June 1977 and May 1978 to 15th August, 1978, they had claimed incentive rebate on excess production under Notification No. 257/76-CE dated 30.09.1996 and Notification No. 108/78-CE dated 28.04.1978 respectively. The factual details of the case pertaining to the show cause notices are as under :

S.No.	Incentive period	Qty. Of Excess production (in Qtls.)	Excess production period	Qty. Of sugar exported (in Qtls.)	Rebate granted in PLA on	SCN No. & date	Erroneous refund as per SCN (in Rs.)	Notf. No. & date of rebate	Period of Sugar export
1.	Dec. 76 to June 77	11540.22	3.5.77 to 27.5.77	1041	15.9.77	80-81/110 dated 13.7.82	13080.29	257/76-CE dated 30.9.76	25.4.77 & 28.4.77
2.	Dec. 76 to June 77	11540.22	3.5.77 to 27.5.77	8875	15.9.77	80-81/159 dated 27.8.82	111137.42	257/76-CE dated 30.9.76	18.12.76 & 02.5.77 & 6.5.77
3.	1.5.78-15.8.78 (as per Corrigendum under even C.No. 163 dated 27.8.82	62022.76	16.12.77 to 10.3.78	3159	17.10.78	80-81/110 dated 13.7.82	79417.26	108/78-CE dated 28.4.78	30.6.78 & 18.7.78

The Department was of the view that excess rebate was paid to the Appellants since the quantity of sugar exported without payment of duty was not deducted from the quantum of excess production based on which the rebate was paid. Accordingly, proceedings were initiated for recovery of excess paid rebate, considering the same as erroneously refunded.

The original authority confirmed such demand amounting to Rs. 2,03,635/-. The same was also upheld by the Commissioner (Appeals). Aggrieved by the said order, the present appeal has been filed.

2. With the above background, we heard Shri Alok Arora, learned counsel for the Appellants and Shri H.C. Saini, learned DR for the Revenue.

3. The learned counsel for the Appellants submitted that the period of sugar export was prior to the excess production period in all the three show cause notices. Accordingly, he submitted that on

merit, the refund granted was in order and there is no justification for recall of the same. He also submitted that the demands in all the three show cause notices were liable to be set aside on the ground of limitation since the production and exports were shown in records and returns submitted to the Department and the rebate claim was granted by the Department only after scrutiny of records and details submitted by the Appellants. He also relied upon the following decisions :

(i) **CCE, Chandigarh vs Jagatjit Sugar Mills,** 1988 (34) ELT 387 (T); and

(ii) **Basti Sugar Mills Co. Ltd. vs CCE,** 1990 (46) ELT 482 (T).

4. Shri H.C. Saini, learned DR for the Revenue, supported the impugned order.

5. On perusal of records, we note that the Appellants have claimed incentive rebate on excess production under Notification No. 257/76-CE dated 30.03.2076 and Notification No. 108/78-CE dated 28.04.1978. The lower authorities have held that the Appellants were not entitled for such rebate claims. On a perusal of the relevant show cause notices, we note that the rebates were granted on 15.09.1977 as well as on 17.10.1978, whereas the relevant show cause notices were issued on 13.07.1982, 27.08.1982 and 13.07.1982. The show cause notices have also alleged suppression on the part of the Appellants and has invoked the extended period of limitation. On a perusal of case records, we find that the refunds involved in the present case were sanctioned by the Departmental

authorities after scrutiny of records and details submitted by the Appellants. The details regarding the production as well as exports made by the Appellants were already reflected in records and returns submitted to the Department. Accordingly, we are of the view that the charge of wilful suppression is unsustainable.

6. The Appellants have relied upon the case laws, as indicated above. We note that the decision of CESTAT in the case of **CCE, Allahabad vs Kashi Sahkari Chini Mills**, was rendered in circumstances which were similar to the present case. The decision of the CESTAT in that case has been upheld by the Hon’ble Supreme Court wherein it has been held that the Department cannot recover excess production rebate on the ground of time bar under Section 11-A. The decisions cited by the Appellants in the other two cases are also on similar circumstances.

7. By following the decision of the Apex Court, we come to the conclusion that the demands raised are not sustainable as they are hit by time bar. Accordingly, the impugned order is set aside and the appeal is allowed.

8. In the result, the appeal filed by the assessee-Appellants is allowed.

(Pronounced in the open court on 16.05.2017)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

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