Raj Bahadur Narain Singh Sugar M. Ltd. vs Union Of India (Uoi) And Ors. on 31 July, 1996

Equivalent citations: 1996(88)ELT24(SC), (1997)6SCC81, AIRONLINE 1996 SC 1139

Bench: S.P. Bharucha, S.B. Majmudar

ORDER

1. This is an appeal against the judgment and order of a Division Bench of the High Court at Allahabad dismissing a Writ Petition filed by the appellants.

2. The appellants manufacture sugar at a factory at Laksar in Saharanpur District of the State of Uttar Pradesh. They are liable to pay excise duty and additional and special duties of excise. They made a claim for exemption within the provisions of an Exemption Notification dated 28th April, 1978, issued under Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, whereby free sugar and levy sugar produced in a sugar factory during the period 1st May, 1978 to 30th September, 1978 was exempt at the rate therein specified if it was in excess of the average production of the corresponding period of the preceding three sugar years. On 6th October, 1978 an order was made by the Chief Accounts Officer, Central Excise, Kanpur, which stated that the appellants' rebate claim had been pre-audited as admissible under the said Notification and, on the excess production of sugar eligible for rebate of 62022.76 quintals, rebate was admissible for the sum of Rs. 15,59,252.18.

3. On 30th July, 1979 the Superintendent, Central Excise, Hardwar issued to the appellants a notice. It stated that the appellants were erroneously sanctioned rebate of Rs. 15,59,252.18 ... as against Rs. 12,90,906.42 on excess production of 62022.76 quintals of sugar achieved during the period from 1-5-1978 to 15-8-1978...." The notice set out the details of the rebate granted and the details of clearances and stated that, from these details, "it is obvious that the factory has availed exemption in excess by Rs. 2,68,285.76 which was not admissible to them". The appellants were required to show cause why such excess rebate "granted to them erroneously should not be recovered from them under Rule 10 of Central Excise Rules, 1944."

4. The appellants showed cause and contended that the notice was time-barred under Rule 10. The period of six months by which time the notice to demand the amount back should have been issued expired on 17th April, 1979. Since the notice had been issued on 30th July, 1979, which was beyond the period of six months, the demand was time-barred. The notice did not mention that the refund of duty had been obtained by fraud, collusion, wilful mis-statement or suppression of fact, which attracted the limitation period of five years. The entire data having been divulged to the authorities at the time the claim was preferred, there was no justification for the notice after the period of six months. The reply to the notice also dealt with the merits of the claim to the rebate.

5. On 10th February, 1983 the Assistant Collector of Central Excise, Saharanpur, confirmed the demand made by the notice. He dealt first with the merits of the claim to rebate and then stated:

> Since the amount of rebate was much more than the duty actually paid the party should have informed the department about this fact arid also should have them self paid the excess amount by making a debit entry in the P.L.A. and the 206 free sale sugar which they have cleared as levy sugar and enjoyed the rebate @ Rs. 54/- instead of Rs. 9.60 was incorrect,. This fact they should have also informed the department and by concealing all these facts they have made wilful mis-statement and suppressed the fact with the intention to evade payment of duty. The show cause notice issued under Rule 10 was also correct as the same was in force at the time of issue of show cause notice.

6. The order of the Assistant Collector of Central Excise, Saharanpur, was impugned by the appellants in the Writ Petition. It was, inter alia, con tended on behalf of the appellants that the demand for Rs. 2,68,285.76 could not have been raised against the appellants in view of the prohibition contained in Rule 10; the demand based on an erroneously allowed proforma credit amounted to a short levy and such demand could be raised only within six months from the relevant date and not thereafter. The High Court did not accept the contention. It took the view that the proviso to Rule 10 stipulated that in a case where duty had not been levied or paid or had been short levied or had not been paid in full by reason of fraud, collusion or any wilful misstatement or suppression of fact, a proper officer could, within five years from the relevant date, serve notice on the person chargeable with the duty, requiring him to show cause why he should not pay the amount specified therein. The Assistant Collector had recorded a clear-cut finding that the appellants had cleared free sale sugar as levy sugar, that they had got credited as the amount of rebate much more than the duty that had been paid and that the appellants had concealed relevant facts and been guilty of wilful mis-statement with the intention to avoid the payment of duty.

7. Learned Counsel for the appellants argued that, in the circumstances of the case, the demand was time-barred. He also argued that, in any event, the demand was unjustified. We are not inclined to go in the second aspect for we are satisfied on the first.

8. In reply to the first contention aforestated, learned Counsel for the authorities submitted that the appellants had not taken the ground that the show cause notice was ultra vires before the High Court; they had only contended that it was time-barred.

9. We have set out the relevant parts of the show cause notice. It speaks of an erroneously granted rebate. There is no mention in it of any collusion, wilful mis-statement or suppression of fact by the appellants for the purposes of availing of the larger period of five years for the issuance of a notice under Rule 10. The party to whom a show cause notice under Rule 10 is issued must be made aware that the allegation against him is of collusion or wilful misstatement or suppression of fact. This is a requirement of natural justice. It is also the law, laid down by this Court in Collector of Central Excise v. H.M.M. Limited . It has been said there with reference to Section 11A of the Central Excises and Salt Act, 1944, which replaced Rule 10, that if the authorities propose to invoke the proviso to

Section 11A(1), the show cause notice must put the assessee to notice which of the various commissions and omissions stated in the proviso is committed to extend the period from six months to five years. Unless the assessee is put to notice, the assessee would have no opportunity to meet the case of the authorities. The defaults enumerated in the proviso were more than one and if the authorities placed reliance on the proviso, it had to be specifically stated in the show cause notice which was the allegation against the assessee falling within the four corners of the said proviso.

10. In view of the fact that the notice fails to refer to any of the acts of commission or omission enumerated in the relevant proviso to Rule 10, the notice, given more than six months after the date of the order of refund, is time-barred. Put differently, the Superintendent who issued it had no authority to do so.

11. The appeal is allowed. The judgment and order under appeal is set aside. The Writ Petition filed by the appellants in the High Court at Allahabad is made absolute. The respondents shall refund to the appellants the sum of Rs. 2,68,285.76 paid in satisfaction of the demand made by the impugned show cause notice.

12. There shall be no order as to costs.