

Delhi High Court

U.P. State Sugar Corpn. Ltd. vs Union Of India on 11 May, 1994

Equivalent citations: 1994 IIAD Delhi 757, 1994 (29) DRJ 424, 1999 (107) ELT 23 Del

Author: K S Bhat

Bench: K S Bhat, M J Rao

JUDGMENT K. Shivashankar Bhat, J.

1. The petitioner is aggrieved by the levy of excise duty by invoking Rule 49 of the Central Excise Rules, under the provisions of the Central Excises and Salt Act, 1944.

2. The petitioner is a manufacturer of the Vacuum Pan Sugar. In the process, commodity referred as brown sugar is produced containing 90% of the sugar. However, it is in a semi-finished form having very high percentage of molasses. This brown sugar shall have to be processed further to obtain sugar. Between the years 1981-82 to 1987-88 several quantities of brown sugar were kept in the godown unit of the petitioner without being processed further. According to the petitioner the further processing could not be done as the petitioner became a sick unit and its plant and machinery were old and the petitioner had no control over the events.

3. The respondents did not accept the stand of the petitioner. A show cause notice was issued to the petitioner on 24-10-1989 as to why the unprocessed brown sugar could not be subjected to the levy of excise duty under Rule 49 read with Rule 9. It was proposed to levy duty on 1044.81 quintals. The petitioner's explanation was rejected. The appeal filed by the petitioner was also dismissed. The revision application filed before the Government of India was also without any success.

4. The respondents mainly rely on Rule 49 which reads as follows :-

"Rule 49. Duty chargeable only on removal of the goods from the factory premises or from an approved place of storage - (1) Payment of duty shall not be required in respect of excisable goods made in the factory until they are about to be issued out of the place or removed from a store-room or other place of storage approved by the Collector under Rule 47 :

Provided that the manufacturer shall on demand pay the duty leviable on any goods which are not accounted for in the manner specifically provided in these rules, or which are not shown to the satisfaction of the proper officer to have been lost or destroyed by natural cause by unavoidable accident during handling or storage in such room or other approved premises.

Provided further that the proper officer may not demand duty due on any goods claimed by the manufacturer as unfit for consumption or for marketing subject to such conditions as may be imposed by the Collector by order in writing".

5. Relying on Rule 49 it was held that the petitioner failed to show to the satisfaction of the respondents that the non-conversion of brown sugar into sugar was for reasons beyond the control of the petitioner. In fact proviso to Rule 49 (1) was highlighted before us by the learned counsel for the respondent.

6. In the show cause notice there is a reference to Rule 9 also. In certain circumstances, as per the explanation added to Rule 9, an intermediate product also is treated as excisable goods. The respondent contends that when the brown sugar is processed and sugar is manufactured out of it, duty could have been levied on the ultimate sugar or on the brown sugar which has an independent market of its own.

7. We do not think that Rule 9 can be extended to the extent the respondents want us to extend it in the instant case. It is only when the intermediate product is converted into an end-product, the explanation to Rule 9 deems the intermediate product in question as having been removed from the premises. In the instant case there has been no such production of the end-product and if so the deeming provision cannot be attracted.

8. As per Rule 49 the duty is leviable on excisable goods. The term excisable goods is defined under the Act. It is not shown to us that brown sugar is one of the enumerated goods as falling within the term 'excisable goods'. However, it was contended that brown sugar comes within the concept of 'Sugar' which admittedly is an excisable goods.

9. The learned Counsel for the petitioner pointed out that brown sugar is not considered as sugar. In this connection the learned Counsel for the petitioner brought to our notice a decision of the Appellate Tribunal (CEGAT), Special Bench-D. The Tribunal's decision was rendered on 22-3-1993 in E/1566/85/D as well as D/1723/85/D/H/in New Swadeshi Co-operative Sugar Mills Limited. The said order refers to a decision of the Patna High Court as well as another decision of Andhra Pradesh High Court wherein the Courts held that brown sugar was not sugar. The CEGAT followed the said decisions. The appeal filed against the said order of the Appellate Tribunal was dismissed by the Supreme Court on 17-9-1993 in Civil Appeal No. 3852/1993.

10. It is, therefore, clear that the term 'sugar' would not normally include brown sugar. If so the assumption of the respondents that brown sugar is an excisable goods for the purpose of the proviso to Rule 49 cannot be accepted.

11. Consequently the writ petition is allowed. The impugned orders of the respondents are set aside. Rule made absolute.