A SASWAD MALI SAHAKARI SAKHAR KARKHANA LTD.

v.

UNION OF INDIA AND ANR.

NOVEMBER 11, 1994

B [KULDIP SINGH, R.M. SAHAI AND B.L. HANSARIA, JJ.]

Central Excise Rules, 1944—Notification No. 146/74 dated 12.10.1994 issued by the Department of Revenue and Insurance, Ministry of Finance—Scope of—Whether percentage mentioned in sub-clauses (a) to (e) of Table to Notification are to be calculated on excess production or average C *production of sugar of the preceding five sugar years—Held, rebate being made rebatable on excess production, it is this production (beyond average) which has to be looked into.*

The matter is relatable to the interpretation of the Notification No. 146/74 dated 12.10.74 issued by the Department of Revenue and D **Insurance, Ministry of Finance, in exercise of powers conferred by Rule 8 (1) of the Central Excise Rules, 1944, whereby sugar described in column (2) of the Table to the Notification was exempted from so much of the duty of excise leviable thereon as is specified in the corresponding entry in columns (3) and (4) of the Table. The dispute is on the question as to whether the percentage mentioned in sub-clauses** E **(a) to (e) are to be calculated on the excess production or average production of the preceding five sugar years. An earlier Bench in *Collector of Central Excise* v. *Neoli Sugar Factory,* JT (1993) 2 SC 587, held that the percentage would not apply to the excess production, but would it be to the average production. This interpretation put on the** F **Notification has been questioned by the factory owners.**

According to the appellants, the sub-clauses of the Notification having mentioned about 'excess production', the percentage has to be calculated not on the average production but on the excess production. As against this, the respondents submitted that the concept of excess G **production being intimately related with average production because of what has been stated in the main part of column (2), the view taken in *Neoli Sugar Factory Case* is correct and sound. According to the respondents, the ascending percentage of rebate was offered to the manufacturers to induce them to produce more and more and if the interpretation put by appellants were to be accepted, the object behind** H **granting rebate would not be realised.**

Allowing the appeal, this Court A

HELD : On the language of the Notification No. 146/74 dated 12.10.1974, rebate being made relatable on the excess production, it is this production (beyond the average) which has to be looked into. This reading of the Notification would not defeat the object of granting of rebate. The quantum of rebate would increase with the rate of excess production going higher and higher. So, the manufacturer would have the impetus to produce more and more, as higher the percentage of excess, more would be quantum of rebate. (463-H, 464-A-B) B

Collector of Central Excise **v.** *Neoli Sugar Factory,* **JT (1993) 2 SC 587, overruled to this extent.** C

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 488-93 of 1979.

From the Order dated 4.10.78 and 6.10.78 of the Government of India, Ministry of Finance, Deptt. of Revenue, New Delhi in Order Nos. 1/27, 1125/78, 1129 and 1132 of 1979. D

G.L. Sanghi, and S.B. Wad, Manoj Wad and Mrs. J.S. Wad for the Appellants. E

K.T.S. Tulsi, Additional Solicitor General, M. Gauri Shankar, T.V. Ratnam, V.K. Verma and Rajiv Sharma, for C.V.S. Rao, for the Respondents.

The Judgment of the Court was delivered by F

HANSARIA, J. The short point which needs to be decided by us, on the matter being required to come before a larger Bench, is relatable to Notification No. 146/74 dated 12.10.74 issued by the Department of Revenue and Insurance, Ministry of Finance, in exercise of powers conferred by Rule 8 (1) of the Central Excise Rules, 1944, whereby sugar described in column (2) of the Table to the Notification was exempted from so much of the duty of excise leviable thereon as is specified in the corresponding entry in columns (3) and (4) of the Table. G

2. The relevant portion of the Notification reads as below :- H

TABLE

Sl. No.	Description of sugar	Duty of excise Free sale sugar	Levy sugar
1.	xxxx		
2.	Sugar produced in a 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 five sugar years, that is:-		
	(a) on excess production upto 7.5%	Rs. 20	Rs. 5 per quintal
	(b) on excess production on the next 10%	Rs. 40	Rs. 10 per quintal
	(c) on excess production on the next 10%	Rs. 5	Rs. 14 per quintal
	(d) on excess production on the next 10%	Rs. 60	Rs. 18 per quintal
	(e) on excess production beyond 37.5%	Rs. 82	Rs. 22 per quintal

3. It is not for the first time that this Court has been called upon to decide the purport of the aforesaid Notification inasmuch as in *Collector of Central Excise* v. *Neoli Sugar Factory,* JT (1993) 2 SC 587, a two-judge Bench had expressed its view on the same. On the appeals at hand, however, coming before another two-Judge Bench, it was felt that what was stated in *Neoli Sugar Factory's* case needed fresh look and it is because of this that the appeals have been placed before this Bench of three-Judges.

4. Let it first be seen as to what was held in *Neoli Sugar Factory's* case. In that case this Notification has been dealt in para 18 and 19 and the interpretation put by the counsel of the Union of India was accepted by the Court, inter alia, because none of the counsel of the factory owners had disputed the same. The factory owners in these appeals have, however, disputed the stand taken by the Union of India in that case, and the dispute is on the question as to whether the percentage mentioned in sub-clauses (a) to (e) are to be calculated on the excess production or average production of the preceding five sugar years. The earlier Bench held that the percentage would not apply to the excess production, but it would to the average production. This was illustrated in paragraph 19 by taking the hypothetical case where the average production of a factory during preceding five sugar

years is 1,000 quintals and that factory produces 2,500 quintals during December 1, 1974 to September 30, 1975. The Bench then stated that as "the basis of these percentage is the average production of the previous five years and not the excess production", what would be required to be done is that from the production of 2,500 quintals, the average (1,000 quintals) should be deducted first, which would mean that the excess production is 1,500 quintals. The next step is material and the same is that the percentage of 7.5% of which mention has been made in sub-clause (A) would be relatable to the average, which is 1,000 quintals; and so, rebate as per sub-clause (a) will be on 75 quintals (i.e. 7.5% of 1,000 quintals). The rebate mentioned in sub-clause (b) would then be given to 100 quintals which is 10% of the average; and so on.

5. The interpretation put on the Notification explained with the aid of the aforesaid illustration has been questioned by Shri Sanghi, appearing for the appellants. According to the learned counsel, the sub-clauses of the Notification having mentioned about "excess production", the percentage has to be calculated not on the average production but on the excess production, which means that for the factory of the type mentioned in the illustration given above, 7.5% rebate would become available not on 75 quintals (which is 7.5% of 1,000 quintals) but on 102.5 quintals, which is 7.5% of 1,500 quintals. On the next 10% of excess production, that is 150 quintals, the rebate would be as mentioned in sub-clause (b) and so on. This may also be illustrated by stating that if the excess production be, say 100 quintals, rebate on first 7.5 quintals (7.5% of 100 quintals) would be as mentioned in sub-clause (a); and on next 10 quintals (10% of 100 quintals) as per sub-clause (b); and so on.

6. As against the above contention, Addl. Solicitor General Shri Tulsi submits that the concept of excess production being intimately related with average production because of what has been stated in the main part of column (2), the view taken in the aforesaid decision is correct and sound. He states that the ascending percentage of rebate was offered to the manufacturers to induce them to produce more and more; and so, the factory whose production is, say 7.5% in excess of average production, should not gain so much as the one whose excess is, say 37.5%. He urges that if the interpretation put by Shri Sanghi were to be accepted by us, the object behind granting rebate would not be realised; indeed, get frustrated.

7. We have duly considered the rival submissions. According to us, on the language of the Notification, we have to agree with Shri Sanghi, because rebate being made relatable *on* the excess production, it is this

A production (beyond the average) which has to be looked into. This reading of the Notification would not defeat the object of granting of rebate, as the same would be Rs. 20 or Rs. per quintal, as the case may be, where the excess is only 7.5%; but on that slab of excess production which is beyond 7.5% upto 17.5%, the rebate available would be Rs. 40 or Rs. 10, as the case may be; and so on. The quantum of rebate would thus increase with
B the rate of excess production going higher and higher. So, the manufacturer would have impetus to produce more and more, as higher the percentage of excess, more would be the quantum of rebate.

8. We, therefore, say with respect that the view taken in *Neoli Sugar Factory's* case is not correct. May we add that in that case the Bench did
C not apply its mind much on the controversy as both the sides had taken a common stand, which being not so here, we felt called upon to find out the true purport of the Notification.

9. Before parting, it may be stated that though on 18.10.1994 a submission was made by Shri Tulsi that in case the contention of the
D appellants would be accepted, the amount of rebate most probably would be much more than the excise duty payable on the excess production; but when the cases were taken up for further hearing on 20.10.1994, it was stated on instruction that the submission made on 18.10.1994 was not correct.

E 10. The rebate would, therefore, be calculated as stated and illustrated above. Appeals are disposed of accordingly. No orders as to the costs.

A.G. Appeals disposed of.