THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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C.E.R.C.No.10 of 2003

ORDER: (Per the Hon'ble Sri Justice L.Narasimha Reddy)

The respondent is the manufacturer of sugar and the product is subject to levy of excise duty. As required under the Control Orders, the petitioner is under obligation to levy stipulated quantity of manufactured sugar and the rest can trade in free market. The excise duty for these two components is different.

In the year 1991, when duty of a particular rate is levied upon the free market sugar, the respondent claimed exemption under notification No.130/83-CE and 131/83-CE, dated 27.4.1983. The Assistant Collector of Central Excise, Division III, Visakhapatnam, passed an order, dated 24.06.1991, extending the benefit under the aforesaid notification. Aggrieved by that the department filed an appeal before the Collector of Central Excise & Customs (Appeals), Hyderabad. The appeal was allowed on 01.06.1992. Challenging the same, the respondent filed further appeal before the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT), New Delhi. A sum of Rs.3,69,600/- was remitted as a pre-deposit for filing the said appeal as required under the provisions of the Central Excises and Salt Act, 1944 (for short 'the Act'). The said appeal was ultimately allowed on 19.10.1993 and it was held that the respondent is entitled to the benefit under the aforesaid notification.

The respondent filed an application under Section 11-B of the Act before the Assistant Collector of Central Excise, Division III, Visakhapatnam, for refund of pre-deposit amount of Rs.3,69,600/-.
The Assistant Collector passed an order, dated 07.06.1994, holding that the respondent is not entitled for refund since the burden of duty

was passed on to the consumers. He, however, directed that the amount shall be deposited in the consumer welfare fund constituted under Section 12 C of the Act. Aggrieved by the same, the respondent filed an appeal before the Collector of Customs & Central Excise (Appeals), Hyderabad, and the same was rejected on 18.04.1995. Thereupon the respondent approached the CEGAT, Bangalore, by way of further appeal. That was allowed on 02.08.2002 following its own order passed earlier as well as the judgments rendered by Bombay and Allahabad High Courts in **Suvidhe vs. Union of India**[1] and **K.S.Steel Works vs. Union of India**[2]. Aggrieved by the said order that this CERC is filed by the department with a prayer to refer the following questions:

> "a) the benefit under Notification No.130/83 & 131/83 as amended were misused by the assessee by collecting the excess amounts from the buyers and retaining the same with them without depositing the same with the Department. Therefore, the refund claim under Section 11B appears to be not legal and proper. Therefore, the opinion of the CEGAT to refund the amounts under provisions of Section 11B, appears to be not proper, and hence may be set aside by the Hon'ble High Court.
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> b) Why the amount claimed as refund by M/s.Thandava Sugars Ltd., should not be credited to Consumer Welfare Fund under Sub-Section (2) of Section 11B of Central Excise Act, 1944 in as much as the incidence of duty of Excise was already passed on to the buyers by M/s.Thandava Sugars Cooperative Ltd., As per Sub-Section (3) of Section 11B the mandatory provision of law as contained in Sub-Section (2) has precedence over any judgment, decree, order of the Appellate Tribunal or any Court other than provisions of Central Excise and Salt Act, 1944 or rules made there under or any other law for the time being in force."

Heard Sri P.S.P.Suresh Kumar, learned standing counsel for the Central Excise Department and Sri V.Srinivas, learned counsel for the respondent.

The unreasonable and highhanded approach exhibited by the Assistant Collector has resulted in such a prolonged litigation and had in fact burdened the department to an additional liability, in the form of interest.

The respondent claimed benefit under the aforesaid notification and the same was extended by the original authority. The appeal filed by the department, no doubt, was allowed. However, the same order was reversed by the CEGAT, New Delhi. In case the department was of the view that the pre-deposit amount remitted by the respondent, as a condition precedent for filing the further appeal before CEGAT need not be refunded, necessary submission in that behalf ought to have been made before CEGAT itself. When the application is filed under Section 11 B of the Act, the Assistant Collector appears to have thought that he is not bound by the order passed by the CEGAT at all and virtually treated the adjudication that has taken thus far, as irrelevant. It is curious to note that the amount involved in this case is one, of pre-deposit and not the one recovered or collected from a manufacturer as excise duty. Another factor is that CEGAT has referred to a trade notification, which added strength and kept the entire issue beyond pale of doubt. Further, it was not pleaded before the CEGAT, New Delhi, that the burden of excise duty was passed on to the consumers. The benefit that has accrued to the respondent on the basis of long drawn adjudication was denied to him. We totally disapprove, the steps taken by the Assistant Collector in this behalf. Though the Collector of Customs & Central Excise (Appeals), Hyderabad, upheld such an act, the CEGAT, Bangalore, has taken the correct view and we do not find any substance in the questions that are framed in this CERC.

Hence, we reject the CERC.

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L.NARASIMHA REDDY, J.

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CHALLA KODANDA RAM, J.

14th October, 2014

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[1] 1996(82) ELT 177 (Bom)

[2] 1996(83) ELT 29 (All)