



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.140 of 2016

M/s. Amaravathi Co-operative
Sugar Mills Ltd.,
Krishnapuram 642 111,
Coimbatore District

.. Appellant

Versus

1. Joint Secretary to the Government
of India, Ministry of Finance,
(Department of Revenue),
14, Hudco Vishala Bldg., B Wing,
6th Floor, Bhikaji Cama place,
New Delhi 110 066

2. Assistant Commissioner of Central
Excise, Pollachi Division,
Pollachi

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the order passed in W.P.No.8095 of 2008 on 30.04.2015 and
corrected as per order dated 30.10.2015.

Prayer in WP.No.8095 of 2008:

This Writ Petition is filed under Article 226 of the
constitution of India, praying for the issuance of a writ of
certiorarified mandamus, to call for the records on the file of
the first respondent in order No.487-488/2006 dated 19.06.2006
quash the same and direct the second respondent to grant rebate
excise duty to the tune of Rs.59,50,000/- in respect of Sugar
exported out of India.

For Appellant :Mr.T.R. Ramesh

For Respondents :Mr. A.P.Srinivas,
Senior Standing Counsel (R2)



JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

WEB COPY This intra-court Appeal is filed against the order passed by the learned Single Judge in WP.No.8095 of 2008, filed by the appellant herein.

2.For better understanding, the relief sought in the writ petition is reproduced below:

"To issue a writ of certiorarified mandamus, to call for the records on the file of the first respondent in Order No.487-448/2006 dated 19.06.2006, quash the same and direct the second respondent to grant rebate excise duty to the tune of Rs.59,50,000/- in respect of sugar exported out of India" .

3.The relevant facts leading to the filing of this intra court appeal would run thus:

3.1 The appellant is a cooperative society, engaged in the business of manufacture and sale of sugar, which is an excisable commodity. During the course of such business, they cleared 5000 MT sugar in 100 kgs bags on payment of duty of Rs.42,50,000/- and Rs.17,00,000/- under cover of invoices and the same were stored in M/s.Central Warehousing Corporation, Udumalpet. The appellant on receiving the orders for export of Sugar through Tuticorin Port from Merchant Exporters, due to non-availability of non-duty paid stock at their factory, has made arrangements to export the duty paid Sugar that was lying in the Central Warehousing Corporation Warehouse, Udumalpet.

3.2 Since the export market desired only 50kg sugar packed in poly propylene bags, the appellant after obtaining permission from the Maritime Commissioner of Tuticorin, repacked the stored sugar and exported the goods through two merchant exporters viz., M/s.Lakshmi Export, Coimbatore and M/s.ISEC, Coimbatore. Besides that, they wrote a letter to the jurisdictional Assistant Commissioner of Central Excise on 20.08.2002 stating that since they have already paid duty for the sugar stored in godowns and are proposing to move the sugar bags for export purpose, they are not supposed to pay excise duty.

3.3 Thereafter, the appellant filed applications for refund of duty of Rs.42,50,000/- and Rs.17,00,000/- before the Department, but the same were rejected by the second respondent by orders dated 05.05.2004 and 07.05.2004 on the ground that the appellant has not exported goods under the supervision of the Central Excise Officer and there was no evidence to prove that the same goods which were stored in the unapproved godown viz., Central Warehouse, Udumalpet, were cleared and exported, besides



that it has not fulfilled the conditions contained in Rule 19 of the Central Excise Rules, 2002 and Notification No.40/2001 dated 26.06.2001.

3.4 Feeling aggrieved by such rejection orders, the appellant filed appeals before the Commissioner of Central Excise (Appeals), which were also rejected by the appellate authority vide order dated 13.9.2004. As against the same, the appellant filed revision applications before the first respondent, who, by order dated 19.6.2006, rejected the said revisions filed by the appellant. Challenging the order dated 19.06.2006, the appellant filed WP.No.8095 of 2008, which was dismissed by the learned single judge, by order dated 30.04.2015. Therefore, this intra- court appeal by the appellant.

4. Mr. T.R.Ramesh, learned counsel appearing for the appellant would contend that the appellant has proved beyond doubt that the goods in respect of which rebate was claim to the tune of Rs.42,50,000/-, are the one which were sought to be exported. The permission letter dated 06.09.2002 obtained from the Merchant Exporter, besides form ARE2 categorically proved that the sugar bags of 100 kg each were converted into 50 kg of PP bags at Tuticorin, which were also certified to be in order by the Department. However, the respondent authorities rejected the claim of the appellant, observing that it was not proved that the central excise duty paid goods and the exported goods were one and the same; and the said finding was also affirmed by the learned Single Judge. It is the further contention of the learned counsel that the goods that were stored in the Warehouse by the Appellant were all duty paid, which fact is not in dispute and the export of the same from the warehouses was covered under the export invoices Form ARE1 and ARE2 etc, which was also duly certified by the Department. When that being the case, the denial of substantial benefit of rebate, which is granted in the interest of export promotion, on hyper technicalities by the Department cannot be accepted and the order passed by the learned single judge confirming the said denial, is also arbitrary, illegal and contrary to law. Therefore, the learned counsel sought to interfere with the order impugned herein by allowing this writ appeal.

5. Per contra, Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondent / Revenue submitted that the goods, for which rebate was claimed, were not exported from the appellant's factory or from the warehouse duly approved; and the appellant has not complied with the procedure as set out in the Notification No.40/2001-CE(N.T) dated 26.06.2001 and they have not produced satisfactory documentary evidence to show that

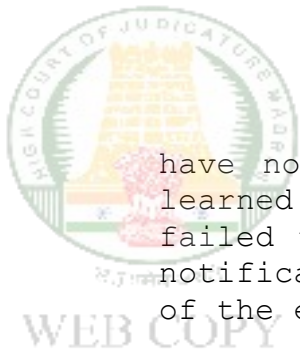


the goods under export, actually suffered duty. The learned counsel further submitted that the appellant exported the goods after payment of Central Excise Duty directly from the place of manufacture or warehouse in terms of Notification No.41, dated 22.09.1994 and the quantity and number of bags of the goods given in the document reflected no marks / numbers or identification marks of the goods to prove that the appellant exported the same goods which were cleared on payment of Central Excise Duty from the manufacturer's place. It is also submitted that there was no record to show that the appellant has repacked the goods in 50 kgs bags from 100 kgs bags in the presence of any competent authority. While so, the order of rejection passed by the Department, which was also affirmed by the learned single Judge, do not call for any interference by this court. Hence, the learned counsel prayed for dismissal of this writ appeal.

6.Heard both sides and perused the materials available on record.

7.The appellant claimed refund of excise duty paid in respect of export of sugar, which was rejected by the respondent authorities on the ground that the appellant has not proved beyond reasonable doubt that the central excise duty paid goods and the exported goods were one and the same. The said rejection was also affirmed by the learned single Judge. While dismissing the writ petition, it was observed inter alia that the appellant has committed serious lapses and miserably failed to comply with the conditions and procedures as set out in the notification no.40/2001-CE(NT) dated 26.06.2001. The goods were cleared on payment of duty for home consumption however, the same were subsequently exported through the shipping bills and thereby, it was proved beyond reasonable doubt that the goods exported were not the same, which were cleared on payment of duty and therefore, it was held by the learned single Judge that the appellant is not entitled to claim refund of duty.

8.A perusal of records would clearly reveal that the appellant has not proved by adducing satisfactory documentary evidence that the goods cleared from the factory on payment of duty and the goods exported through the merchant exporters were one and the same and hence, the duty paid character of the goods exported remained unsubstantiated. As rightly pointed out by the learned Single Judge, the benefits envisaged in the notification no.294/10/1997-CE dated 30.01.1997 was in the nature of a concession and to avail the same, certain strict compliance was put in place by the Department, which the appellant did not follow, while exporting the goods viz., sugar bags. Therefore, we



have no other option except to concur with the finding of the learned Single Judge that the appellant herein has miserably failed to comply with the very basic condition of the aforesaid notification, as regards the identity of the goods paid with that of the exported goods.

9. In such view of the matter, we refrain from interfering with the order passed by the learned single Judge. Accordingly, we dismiss the writ appeal. However, there is no order as to costs.

Sd/-

Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

msr/rsh

To

1. Joint Secretary to the Government
of India, Ministry of Finance,
(Department of Revenue),
14, Hudco Vishala Bldg., B Wing,
6th Floor, Bhikaji Cama place,
New Delhi 110 066

2. Assistant Commissioner of Central
Excise, Pollachi Division,
Pollachi.

+1cc to Mr. A.P. Srinivas, Advocate SR.No.63211

+1cc to Mr. T.R. Ramesh, Advocate SR.No.63071

Writ Appeal No.140 of 2016

MT (CO)
CB(22/02/2022)