

PETITIONER:
COLLECTOR OF CENTRAL EXCISE ETC. ETC.

Vs.

RESPONDENT:
NEOLI SUGAR FACTORY ETC. ETC.

DATE OF JUDGMENT 30/03/1993

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
VENKATACHALA N. (J)

CITATION:
1993 AIR 1921 1993 SCR (2) 758
1993 SCC Supl. (3) 69 JT 1993 (2) 587
1993 SCALE (2) 295

ACT:
Central Excise Rules, 1944: Rule 8(1)--Notifications dated 28.9.1972, 4.10.1973, 12.10.1974 and 30.9.1976--Construction--Rebate provided in clause (1) of Table of the Notifications--Whether sugar factories entitled to though they did not produce any sugar in the base year but produced certain quantity of sugar during current sugar year--Method to work out clause (2) of Notification dated 12-10-74.

HEADNOTE:

In a Notification dated 28.9.1972, with a view to induce the sugar factories (respondents) to produce more and also to commence their operations early in the sugar year (the year commencing on and with 1st October and ending with the 30th of September of the following year) a rebate was provided.

The scheme of the Notification was

(1) If during the months of October and November 1972 (in the Sugar Year 1972-73), a factory produced sugar in excess of the quantity of sugar produced by it during the months of October-November 1971, such factory was granted rebate in the Excise Duty at the rate of rupees forty per quintal in so far as the excess production is concerned.

(2) Rebate for the period 1st December 1972 to 30th April, 1973 was available at the rate of rupees twenty per quintal provided the production of sugar during the said period was in excess of 115% of the quantity of sugar produced by the said factory during the corresponding period in the previous Sugar Year, in so far as the excess production is concerned.

(3) For the months of May and June 1973 rebate at the rate of rupees twenty per quintal was available provided the factory produced more sugar than it produced during the corresponding months in the previous Sugar Year. The said rebate was available again only with respect to the excess production.

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(4) For the period commencing from 1st July, 1973 and ending with 30th of September, 1973, rebate was available at the rate of rupees twenty per quintal provided the factory produced sugar in excess of the quantity produced during the corresponding period in the previous Sugar Year. This

rebate too was confined to the excess production. However, the benefit of the rebate mentioned in any of the clauses aforesaid was not available to a factory which inter alia did not work during the 'base period'.

The other three Notifications dated 4.10.73, 12.10.74 and 30.9.76 were similar. All the four Notifications were applicable to the Sugar years 1972-73, 1973-74, 1974-75 and 1976-77, respectively.

The respondents sugar factories did not produce any sugar in one or the other of the four blocks (mentioned in the Table contained in the Notification) in the base year (previous sugar year). During the current sugar year, they produced certain quantity of sugar during that block period. The respondents contended that they were entitled to the benefit of rebate provided in clause (1) of the Table contained in the Notification, whereas the Revenue submitted that they were not entitled to the benefit of rebate.

The claim for rebate made by the respondents was allowed in the first instance, but later proceedings were initiated to recover back, or re-adjust, the benefit already allowed. These disputes were carried to the High Courts.

Almost all the High Courts except Karnataka held in favour of the respondents. In Patna High Court, there was a conflict of opinion.

Hence this batch of appeals by the Revenue contending that the benefit of rebate was available only where the "sugar produced in a factory during the period commencing from the 1st day of October, 1972 and ending with the 30th day of November, 1972 which is in excess of the quantity of sugar produced during the corresponding "period in 1971"; that nil production could not be equated to "the quantity of sugar produced" in clause (1); that clause (1) of the first proviso in the 1972 Notification has

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to be harmonised with the several clauses in the table; and that no interpretation should be adopted which rendered any part of the Notification superfluous.

Dismissing all the civil appeals, except Civil Appeal Nos. 3831-32 of 1988, this Court,

HELD : 1.01. The several clauses in the Notification must be read together, harmonised and reasonably understood without ignoring the underlying object and purpose of the notification. An interpretation which leads to absurd consequences should be avoided. [770 E]

1.02. The object behind the notification was evidently not only to induce the factories to produce more sugar but also to induce them to start their production early in the sugar year. The object appears to be also to induce the factories to keep on producing the sugar all the year-round, which they may perhaps not have done otherwise. Running the factories during the off-season (off-season means October-November period and then again the period from May June to September), may have its own problems which may increase the cost of production. [770 F]

1.03. The main issue is whether the words "the quantity of sugar produced during the corresponding period.." do not take in the case of a factory which has not produced any sugar whatsoever during the relevant corresponding period? It does take in. Holding otherwise would have this absurd consequence: a factory which has produced, say, just one quintal of sugar during the relevant corresponding period and has produced 1000 quintals during October-November, 1972 would qualify for the rebate on 999 quintals while another factory which has not produced any sugar nil production but has produced 1000 quintals during October- November,

1972, would not qualify. [770 G-H]

1.04.The Idea behind the notification is to induce the manufacturers to produce more in the current sugar year than what they have produced in the previous sugar year or during the previous corresponding period in the previous sugar year, as the case may be. Where a factor; has not produced any sugar or has produced a particular quantity of sugar during the said period in the previous sugar year but produces a larger quantity during the said period in the current sugar year, it must be rewarded. [771 B-D]

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1.05.The case of October-November appears to be rather an exception. Normally, it appears, no factory owner commenced the production of sugar in these months because of several unfavorable factors. Indeed, these unfavorable factors appear to be present to a large extent even during the 'months June to September. The notifications were evidently meant to compensate the factory-owners for producing during these months as well. 1772 C-D]

1.06.One must proceed on the assumption that every industrialist and businessman would, ordinarily, like to produce as much more as possible, since, normally speaking, more production means more profits. [772 E]

1.07.No manufacturer produces sugar merely for the sake of rebate. Rebate is an inducement, an additional attraction. It is not as if without rebate provided by these notifications, no one would have produced sugar. [771 D]

1.08.There is no arithmetical difficulty in working out 115% of zero; it is zero. What applies to clause(1) applies equally to clauses (2), (3) and (4). It is only that the factory need not necessarily have worked during each of the corresponding periods in the base year; it is enough if it has worked in the base year. [771 E-F]

1.09.The interpretation placed upon the said notifications by the majority of the High Courts is the correct one. The view taken by the Karnataka High Court in its Judgment under appeal in Civil Appeal Nos. 3831-32 of 1988 and the view taken by the Patna High Court in ill Civil Writ Jurisdiction Case No. 865 of 1966 are not correct. [772 F]

1.10.The basis for the percentages prescribed in the Notification dated 12th October. 1974 the average production of the previous five years and not the excess production. By way of illustrates, take a factory which produces 2500 tons during the period Dec.1, 1974 to Sept. 30, 1975 as against the average production of 1000 tons during the corresponding periods in the five previous sugar years. Out of 2,500 quintals produced during the said period in the current sugar year (December 1, 1974 to September 30, 1975), the average of the corresponding periods of the five previous sugar years ie., 1000 quintals should be deducted first, which means the excess production during the said period during the current year is 1500 quintals. 7.5% of 1000 quintals is 75 quintals. On this quantity

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of 75 quintals, the rate of rebate as per sub-clause (a) will be Rs. per quintal in the case of free sale sugar and Rs. 5 per quintal in the case of levy Sugar. Next 10% of excess production means 100 quintals which would be eligible for rebate under sub-clause (b) at the rate of Rs. 40 per quintal In the case of free sale sugar and Rs. 10 per quintal in the case of levy sugar. The next 100 quintals would be eligible for rebate under sub-clause (c) at the rate of Rs. 50 per quintal in the case of free sale sugar and Rs. 14 per quintal in the case of levy sugar. Then again the next 100 quintals would be eligible for rebate

under sub-clause (d) at the rate of Rs. 60 per quintall in the case of free sale sugar and Rs. 18 per quintal in the case of levy sugr. The balance of 1125 quintals would qualify for rebate under sub-clause (e) at the rate of Rs. 82 per quintal in the case of free sale sugar and Rs. 22 per quintal in the case of levy sugar. [774 B-E]

Etikoppaka Co-operative Agricultural Society v. Union of India, 1982 E.L.T. 19 (A.P.); 1986 (26) E.L.T. 904 (Bombay); 1982 (59) E.L.T. 409 (Allahabad); 1982 E.L.T. 19 (Punjab & Haryana); 1986 (24) E.L.T. 259 (Madras) and 1987 (30) E.L.T. 260 (Orissa), approved. [768 H, 769 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1718 of 1984. From the Order dated 17.11.83 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. ED (SB) (T) 338/78-D (Order No. 698/83-D).

A.K. Ganguli, B. Sen, A.K. Chitale, B.R.L. Iyengar J. Ramamurti, Mrs. Radha Rangaswami, P. Parmeswaran, C.V. Subba Rao, C. Ramesh, Virender Kaushal, Praveen Kumar, Vivek Gambhir, S.K. Gambhir, P.H. Parekh, B.N. Agarwal, A.V. Phadnis, Kh. Nobin Singh, M. Veerappa, Ashok Sagar, Ravinder Narain, D.N. Misra (For JBD & Co.,) E.C. Vidyasagar for L.R. Singh, R. Vaigai and R.K. Maheshwari for the appearing parties.

The Judgment of the Court was delivered by B.P. JEEVAN REDDY, J. With a view to induce the Sugar Factories in the country to produce more and also to commence their operations early in the year, the Government of India have been issuing notifications, from time to time, providing for rebate in the Excise Duty in certain circumstances. These notifications were issued by the Central Government

763 in exercise of the power conferred by Sub-Rule (1) of Rule 8 of the Central Excise Rules, 1944. We are concerned in these appeals with four such notifications namely (1) the Notification dated 28.9.72 (applicable to the Sugar Year 1972-73), (2) Notification dated 4.10.73 (applicable to the Sugar Year 1973-74), (3) Notification dated 12.10.74 (applicable to the Sugar Year 1974-75) and (4) the Notification dated 30.9.76 (applicable to the Sugar Year 1976-77). 'Sugar year' means the year commencing on and with 1st October and ending with the 30th of September of the following year. The interpretation of these notifications is involved in this batch of appeals.

In so far as it is material, the notification dated 28.9.72 and the notification dated 4.10.73 are similar. So are the notifications dated 12.10.74 and 30.9.76. It would be appropriate if we set out the notification dated 28.9.72 in its entirety

"Notification No. 203172 dated 28.9.1972

In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts sugar, described in column(2) of the Table below and failing under sub-item (1) of Item No.1 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from so much of the duty of excise leviable thereon as is specified in the corresponding entry in column (3) of the said Table.

TABLE

S. No. (1)	Description of Sugar (2)	Duty of Excise (3)
1.	Sugar produced in a factory during the period commencing from the 1st day of October, 1972 and ending with the 30th day of November, 1972 which is in excess of the quantity of sugar produced during the corresponding period in 1971.	Rupees forty per quintal
764	2. Sugar produced in a factory during the period commencing from the 1st day of December, 1972 and ending with the 30th day of April, 1973 which is in excess of 115% of the quantity of sugar produced during the period commencing from the 1st day of December, 1971 and ending with the 30th day of April, 1972.	Rupees twenty per quintal
	3. Sugar produced in a factory during the period commencing from the 1st day of May, 1973 and ending with 30th day of June, 1973 which is in excess of the quantity of sugar produced during the corresponding period in 1972.	Rupees twenty per quintal
	4. Sugar produced in factory during the period commencing from the 1st day of July 1973 and ending with the 30th day of September, 1973 which is in excess of the quantity of sugar produced during the corresponding period in 1972.	Rupees twenty per quintal

Provided that the exemption under this notification shall not be admissible to a factory

(a) which did not work during the base period, or

(b) which had only a trial run in the base period, or

(c) which commences production for the first time on or after the 1st day of October, 1972 :

Provided further that in computing the production of sugar during the periods mentioned in column (2) of the said Table,

(a) the data, as furnished in Form R.G. 1 prescribed in Appendix I to the Central Excise Rules, 1944, or in such other record as the Collector may prescribe under rule 53 or rule 173G of the said rules, shall be adopted :

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(b) any sugar obtained from reprocessing of sugarhouse products left over in process at that end of the base period or earlier shall b

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taken into account ; and

(c) any sugar obtained by refining gur or Khandasari sugar, or any sugar obtained by reprocessing of defective or damaged sugar or brown sugar, if the same has already been included in the quantity of sugar produced, shall not be taken into account.

Explanation I- A factory shall be deemed to have had a trial run during the base period only if, on first going into production, the period during which actual crushing was done during the base period was less than 40 per

cent of the average duration of the-season in the State in which the factory is situated.

Explanation 11 In this notification, the expression, 'base period', means the period commencing from the 1st day of October, 1971 and ending with the 30th day of September, 1972."

Though the Sugar Year extends over a period of twelve months commencing from 1st of October, the period commencing with 1st December and ending with 30th April is said to be the peak production period. Most of the sugar factories were commencing their operations only in the month of December. Either with a view to induce these sugar factories to produce more or with a view to induce them to commence their operation early in the sugar year, the rebate provided for producing sugar in the months of October and November in excess of the corresponding period in the previous sugar year was kept relatively high. The scheme of the notification dated 28.9.72 appears to be this

(1) If during the months of October and November 1972 (in the Sugar Year 1972-73), a factory produced sugar in excess of the quantity of sugar produced by it during the months of October- November 1971, such factory was granted rebate in the Excise Duty at the rate of rupees forty per quintal in so far as the excess production is concerned.

(2) Rebate for the period 1st December 1972 to 30th April, 1973 was

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available at the rate of rupees twenty per quintal provided the production of sugar during the said period was in excess of 115% of the quantity of sugar produced by the said factory during the corresponding period in the previous Sugar Year, in so far as the excess production is concerned.

(3) For the months of May and June 1973 rebate at the rate of rupees twenty per quintal was available provided the factory produced more sugar than it produced during the corresponding months in the previous Sugar Year. The said rebate was available again only with respect to the excess production.

(4) For the period commencing from 1st July, 1973 and ending with 30th of September, 1973, rebate was available at the rate of rupees twenty per quintal provided the factory produced sugar in excess of the quantity produced during the corresponding period in the previous Sugar Year. This rebate too was confined to the excess production.

However, the benefit of the rebate mentioned in any of the clauses aforesaid was not available to a factory which inter alia did not work during the 'base period'. The expression 'base period' was defined in Explanation 11. It meant the period commencing from the 1st day of October 1971 and ending with the 30th day of September, 1972 (Previous Sugar Year).

The sugar factories (concerned with the sugar year 1972-73) did not produce any sugar in one or the other of the four blocks (mentioned in the table contained in the Notification) in the base year (previous sugar year). During the current sugar year, however, they produced certain quantity of sugar during that block-period. To be more precise, take factory A. It produced 1000 quintals of sugar in the months of October-November, 1972 (Block-period (1) but had not produced any sugar whatsoever in the corresponding period (October-November, 1971) in the base year. The question arose whether in such a situation, Factory A was entitled to the benefit of rebate provided in Clause (1) of the Table contained in the aforesaid

notification with respect to the said 1,000 quintals ? The contention of the factory was that it was so entitled, whereas according to the Revenue, it was not.

It is brought to our notice that even before the controversy actually arose between the parties, the Committee of the Sugar Mill Owners' Association addressed a letter to the Ministry of Finance, Government of India seeking a clarification as to the meaning and purport of the aforesaid notification. The letter written by the Committee read as follows

"I am to refer to the Notification No. G.S.R. dated 28th September, 1972, issued by the Union Ministry of Finance (Department of Revenue & Insurance), New Delhi, on the above subject (copy enclosed for ready reference). In this connection, the Government had issued a similar Notification on 13th Oct. 1971, on the same subject. On this Notification, in response to an enquiry made by the Committee of the Association, the Board had clarified as per their letter No. F. No.14/33-71/CX. 1 dated 26th November, 1971, that a factory which had worked during the base period i.e. during the period commencing from 1st day of October, 1970 and ending with 30th day of September, 1971, though it had not worked during the period from 1st October, 1970 to 30th November, 1970, and the production during this period was nil, would be entitled to the excise rebate at the notified rate on its entire production achieved during the month of October and November, 1971. As th

Notification issued this year is also on similar lines, the Committee presume that the clarification given by the Board last year will apply to the Notification issued this year also, i.e., where a factory has worked in the base period (1st October, 1971 to 30th September, 1972) it will be entitled to the full rebate on its entire production during the various periods mentioned in the Notification, although during the corresponding periods in the last season, the production may be nil.

The Committee shall be glad if you kindly confirm whether their above presumption is correct.

Thanking you for a line in reply'.

In this letter dated 1st November, 1972 the Ministry of Finance intimated the Committee that the presumption made by the Committee is confirmed in respect of the established factories only. Later on, however, the Government of India revised their opinion which has led to the present controversy.

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It is brought to our notice that the sugar factories are governed by and follow the procedure prescribed by Rule 173-G of the Central Excise Rules, which rule occurs in Chapter VII-A 'Removal of Excisable Goods on Determination of Duty by producers, Manufacturers or Private Warehouse Licencees.' Rule 173 G requires every assessee to keep an account current with the Collector separately for each excisable goods, in the suc form and manner, as the Collector may require. The

rule requires the assessee to make credit periodically in such account-current, by cash payment into the treasury, so as to keep the balance in such account-current sufficient to cover the duties due on the goods intended to be removed at any time. Every such assessee has to pay the duty determined for each consignment by debit to such account current before removal of goods. The Rules further require every assessee to furnish a monthly return in the prescribed form, on the basis of which, assessment is completed by the appropriate officer.

Coming back to the facts of these appeals, the claim for rebate made by these factories was allowed in the first instance but later proceedings were initiated to recover back, or re-adjust, as the case may be, the benefit already allowed. This was the phenomenon all over the country. These disputes were carried to High Courts. The main dispute was the same as indicated hereinabove. The factory has produced a certain quantity of sugar in block-period (i) (or, for, that matter, any other block-period) in the sugar year 1972-73, but had not produced any sugar whatsoever in the corresponding period in the base year (previous sugar year) but has produced some quantity of sugar during the base year as such; whether such factory is entitled to the rebate prescribed in clause (i) (or such other clause, as may be applicable) of the said Notification ? Since the Notifications for 1972-73 and 1973-74 are more or less similar, disputes raised before High Courts pertained to both these years. (Indeed, the said issue is common to the other two notifications concerned herein as well, with some difference, as we shall indicate at the proper stage). It appears that almost all the High Courts except Karnataka have held in favour of the factories. In Patna High Court, there appears to be a conflict of opinion. Karnataka High Court has, however, held in favour of the Union of India. The first of the reported decisions is of the Andhra Pradesh High Court (Chinnappa Reddy, J., as he then was) in Etikoppaka Co-operative

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Agricultural Society v. Union of India, 1982 E.L.T. 19. The reasoning in the said Judgment has been followed by most of the other High Courts. See 1986 (26) E.L.T. 904 (Bombay); 1982 (59) E.L.T. 409 (Allahabad) ; 1982 E.L.T. 19 (Punjab & Haryana); 1986 (24) E.L.T. 259 (Madras) and 1987 (30) E.L.T. 260 (Orissa).

Shri Ganguli, learned counsel for the Union of India contends as follows : Language of the Notifications (pertaining to the year 1972-73 and 1973-74) is quite clear and unambiguous. The benefit of rebate is available only where the "sugar produced in a factory during the period commencing from the 1st day of October, 1972 and ending with the 30th day of November, 1972 which is in excess of the quantity of sugar produced during the corresponding period in 1971" to take clause (i) of the Notification relating to 1972-73. The clause contemplates and is based on the premise that sugar is produced during October- November, 1972 as well as October-November, 1971. If no sugar was produced during the corresponding period in the previous sugar year (October-November, 1971), the very clause is inapplicable. The contention of the factory-owners, which has no doubt been accepted by a majority of High Court, does violence to the plain language of the clause. The interpretation placed by the factoryowners leads to certain absurd consequences. Learned counsel gave more than one illustration to emphasise his submission. Take a case where a factory has produced one thousand quintals of sugars

in October-November 1971 and has also produced one thousand quintals in October-November 1972. In such a situation the factory would not get any rebate in terms of the notification dated 28.9.72, whereas another factory which may not have produced any sugar whatsoever in October-November 1971 but has produced one thousand quintals of sugar in October-November 1972, gets the rebate at the rate of rupees forty per quintal. This would really amount to, says the counsel, punishing the first factory more efficient factory for producing the sugar in the previous year And to rewarding the second one the indolent factory which did not produce any sugar during OctoberNovember, 1971. Another illustration given by the learned counsel is this; a factory had produced five thousand quintals of sugar during the period 1st December, 1971 to 30th April, 1972; it produces the very same quantity again during the period 1st December 1972 to 30th April, 1973; such a factory would not be entitled to any rebate under clause (2) of the said notification; but another factory which had produced, say, just 1000 quintals during the period December 1, 1971 to April 30, 1972 but produces

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five thousand quintals during the period December 1, 1972 to April 30, 1973 would get the benefit of rebate on 4000 quintals. This again amounts to, says the counsel, rewarding the inefficient and indolent and punishing the efficient. The learned counsel seeks to reinforce his argument by referring to clause (2). It relates to the period 1st December 1972 to 30th April 1973. Rebate in the sugar produced during this period is available only if it is in excess of 115 per cent of the quantity of sugar produced during the period December 1, 1971 to April 30, 1972. If the production is nil during the corresponding period in the previous sugar year, asks the counsel, how is one to work out 115% of it. What is 115% of zero ? asks he. For all these reasons counsel says, nil production cannot be equated to "the quantity of sugar produced..... in clause (1). Counsel also says that Clause (1) of the first Proviso in the said notification should be harmonised with the several clauses mentioned in the Table and that no interpretation should be adopted which renders any part of the said notification superfluous.

We find ourselves unable to agree with the learned counsel for the Union of India. While we agree that the several clauses in the Notification must be read together, harmonised and reasonably understood, we cannot also ignore the underlying object and purpose of the notification. We Also agree that an interpretation which leads to absurd consequences should be avoided. Even so, we are afraid, we cannot agree with the learned counsel. The object behind the notification was evidently not only to induce the factories to produce more sugar but also to induce them to start their production early in the sugar year. The object appears to be also to induce the factories to keep on producing the sugar all the year-round, which they may perhaps not have done otherwise. Running the factories during the off-season (we are told, off-season means October-November period and then again the period from May-June to September), may have its own problems which may increase the cost of production. Be that as it may, the main issue is whether the words " the quantity of sugar produced during the corresponding period..... do not take in the case of a factory which has not produced any sugar whatsoever during the relevant corresponding period ? On a consideration of the rival points of view, we are of the

opinion that it does take in. Holding otherwise would have this absurd consequence : a factory which has produced, say, just one quintal of sugar during the relevant corresponding period and has produced 1000 quintals during October-November, 1972 would qualify for the rebate on 999 quintals while another factory which has not produced any sugar nil production but has produced 1000 quintals during October- November, 1972, would not qualify. How does this interpretation advance the purpose of the notification, is difficult to appreciate.

Coming to the second illustration given by the learned counsel, we must say that the idea behind the said notification is to induce the manufacturers to produce more in the current sugar year than what they have produced in the previous sugar year or during the previous corresponding period in the previous sugar year, as the case may be. If this is the object there is nothing absurd in saying that a factory which has produced five thousand tons during December 1, 1971 to April 30, 1972 and produces the very same quantity during the period December 1, 1972 to April 30, 1973, does not qualify for rebate under clause (2). There is no reason or occasion for granting him any rebate. But where a factory has not produced any sugar or has produced a particular quantity of sugar during the said period in the previous sugar year but produces a larger quantity during the said period in the current sugar year, it must be rewarded. It may be remembered that no manufacturer produces sugar merely for the sake of rebate. Rebate is an inducement, an additional attraction. It is not as if without rebate provided by these notifications, no one would have produced sugar. We are also unable to see any difficulty in operating clause (2) of the said notification. There is no arithmetical difficulty in working out 115% of zero; it is zero. What applies to clause (1) applies equally to clauses (2), (3) and (4). Our understanding is reinforced and supported by clause (a) of the first proviso. It says that the benefit of the said rebate would not be available to a factory 'which did not work during the base period.' Why does it say so? What is its meaning and implication? It is only that the factory need not necessarily have worked during each of the corresponding periods in the base year; it is enough if it has worked in the base year.

We may point out that a majority of the High Courts in the country have adopted the very same interpretation as has been placed by us. It is then argued by the learned counsel for the appellant that exemption notifications should be strictly concluded. There is no quarrel with the proposition but there is another equally valid principle that such notifications should be given their due effect, keeping in view the purpose

underlying. We must reiterate that no factory owner would keep his factory idle during a particular period only with a view to produce sugar during the same period in the next sugar year and earn rebate in the next year. More particularly, it can not reasonably be expected that a factory-owner would deliberately keep his factory idle during the peak production period (December to April) only with a view to produce sugar during that period next year and earn rebate in such next year. It would be unrealistic to say so. Actually these notifications were being issued every year confined to that year. They were being issued

just on the eve of the sugar year or a few days after the commencement of the sugar year and there were variations in the relevant clauses from year to year. Construed realistically, we see no room for any absurdity resulting from our interpretation' The case of October-November appears to be rather an exception. Normally, it appears, no factory-owner commenced the production of sugar in these months because of several unfavorable factors. Indeed, these unfavorable factors appear to be present to a large extent even during the months June to September. These notifications were evidently meant to compensate the factory-owners for producing during these months as well. As stated already, one must proceed on the assumption that every industrialist and businessman would, ordinarily, like to produce as much more as possible, since, normally speaking, more production means more profits.

For the above reasons, we are of the opinion that the interpretation placed upon the said notifications by the majority of the High Courts is the correct one. We do not agree with the view taken by the Karnataka High Court in its Judgment under appeal in Civil Appeal Nos. 3831-32 of 1988. For the same reason, we do not also agree with the view taken by the Patna High Court in Civil Writ Jurisdiction Case No. 865 of 1966.

Now coming to the Notifications for the years 1974-75 and 1976-77, the concept of base year is not to be found here; otherwise they are similar to those relating to 1972-73 and 1973-74. In the notification dated 12.10.74 (relating to the sugar year 1974-75) the sugar year is divided into two blocks/periods. The first block comprises October and November 1974 whereas the second block takes in December 1974 to September 1975. Here too, the question is identical to that arising in the years 1972-73 and 1973-74. The answer too will naturally be the same.

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In view of the aforesaid conclusion, it is not necessary for us to go into the other questions raised by the factory-owners except the following:

There is a minor controversy with respect to the working of Clause (2) in Notification No. 146/74 dated 12.10.74 relating to the sugar year 1974-75. Clause (2) the table contained in the notification reads as follows:

TABLE

No.	Description of Sugar	Duty of excise	
1	2	Free Sale Sugar 3	Levy of Sugar 4

1.....

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/- per quintal	Rs. 5/- per quintal
(b)	on excess production on the next 10%	Rs. 40/-per quintal	Rs. 10/- per quintal
(c)	on excess production on the next 10%	Rs.50/-per quintal	Rs. 14/- per quintal
(d)	on excess production on the next 10%	Rs.60/-per quintal	Rs. 18/- per quintal
(e)	on excess production beyond	Rs. 82/-per	Rs. 22/- per

37.5%

quintal

quintal

Mr. Ganguli, learned counsel for the Union of India says that some of the Courts have applied the percentages mentioned in sub-clauses (a) to (e) to the excess production and not to the average production of the preceding five sugar years. We may take an illustration to explain what the learned counsel says. Take a case. where the average production of a factory during the corresponding period (December 1 to September 30) of

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the preceding five sugar years is 1000 quintals. That factory produces 2,500 quintals during the period December 1, 1974 to September 30, 1975. In such a case, the ascending percentages mentioned in sub-clauses (a) to (e) of clause (2) have to be applied for working out the rebate. According to us, it must be done in the following manner, keeping in mind that the basis for these percentages in the average production of the previous five years and not the excess production. Out of 2,500 quintals produced during the said period in the current sugar year (December 1, 1974 to September 30, 1975), the average of the five previous sugar years i.e., 1000 quintals should be deducted first, which means the excess production during the current year is 1500 quintals. 7.5% of 1000 quintals is 75 quintals. On this quantity of 75 quintals, the rate of rebate as per sub-clause (a) will be Rs. 20 per quintal in the case of free sale sugar and Rs. 5 per quintal in the case of levy sugar. Next 10% of excess production means 100 quintals which would be eligible for rebate under sub-clause (b) at the rate of Rs. 40 per quintal in the case of free sale sugar and Rs. 10 per quintal in the case of levy sugar. The next 100 quintals would be eligible for rebate under sub-clause (c) at the rate of Rs.50 per quintal in the case of free sale sugar and Rs. 14 per quintal in the case of levy sugar. Then again the next 100 quintals would be eligible for rebate under sub-clause (d) at the rate of Rs. 60 per quintal in the case of free sale sugar and Rs. 18 per quintal in the case of levy sugar. The balance of 1125 quintals would qualify for rebate under sub-clause (e) at the rate of Rs. 82 per quintal in the case of free sale sugar and Rs. 22 per quintal in the case of levy sugar. This is the interpretation and understanding contended for by Shri Ganguli and we must say that none of the counsel for the factory-owners' disputed the same. It is accordingly directed that the above method shall be followed in working out clause (2) of the notification dated 12.10.74.

Accordingly all the civil appeals except Civil Appeal Nos. 3831- 32 of 1988, fail and are dismissed. Civil Appeals No. 3831-32 of 1988 are allowed. The authorities will take action in accordance with this judgment. There will be no order as to costs.

V.P.R.

CA Nos. 3831-32/88 allowed.

Rest of the appeals dismissed.

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