(1998) 04 AP CK 0002

Andhra Pradesh High Court

Case No: Writ Petition No. 11311 of 1991

Sree Radhakrishna Vegetable, Oil Products Co.		APPELLANT
	Vs	
The Collector of Central Excise and Others		RESPONDENT

Date of Decision: April 28, 1998

Citation: (1998) 62 ECC 23

Hon'ble Judges: T.N.C. Ranga Rajan, J; S.V. Maruthi, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

T.N.C. Rangarajan, J.
This writ petition is directed against the order dated 31.7.1991/7.8.1991 passed by the Assistant Collector of Central Excise, Ananthapur.

2. The petitioner is a manufacturer of Vanaspati. Under a notification No. 27/87 dated 1.3.1987 the petitioner was entitled to credit of duty in respect of certain inputs which could be set-off against the finished products at Rs. 1,000/- per tonne. By a notification No. 39/89 dated 25.8.1989 this scheme was rescinded. The petitioner filed Writ Petition Number 15215 of 1989 claiming that in spite of the said notification the accumulated credit should be allowed to be utilized and cannot be taken to have lapsed. While the writ petition was pending, the scheme was revived by a notification No. 45/89 dated 11.10.1989. This Court by order dated 21.2.1991 held that in spite of the notification No. 39/89 the accumulated credit cannot be taken to have lapsed and the petitioner will be entitled to have the benefit of the same. This Court also noticed that the scheme had been revived and clarified that the petitioner would be entitled to the benefits of the notification Nos. 45 and 46 of 1989 dated 11.10.1989 in addition to the benefits of the accumulated credit. By the impugned order the Assistant Collector noted that the petitioner had been deducting credit of Rs. 1.000/- under the accumulated balance and an additional

thousand rupees under notification No. 45/89 simultaneously, whereas the conditions prescribed under both the notifications 27/87 and 39/ 89 that the credit accumulated shall not exceed Rs. 1,000/- per tonne of vegetable products cleared. He was. therefore, of the opinion that the simultaneous deduction under both the notifications was incorrect. He accordingly allowed the deduction only from the accumulated balance and raised the demand of Rs. 2.03,486.50 Ps.

3. The learned Counsel for the petitioner submitted that this issue is in contravention of the decision of this Court, particularly, the clarification that the petitioner is entitled to the benefit of both the accumulated balance as well as the scheme under notification No. 45/89. He submitted that the actual deduction is a matter of procedure and when the petitioner is entitled to the deduction under both the notifications, the impugned demand is untenable.

4. However, the learned standing counsel for the Department pointed out that under the specific condition stipulated in both the notifications the utilization cannot exceed rupees thousand per tonne and hence, by claiming credit under both the notifications simultaneously, the petitioner was contravening the notifications and hence, the resultant demand had to be raised.

5. We find that there is no prima facie contravention of the decision of this Court inasmuch as the petitioner has not been denying the utilization of the accumulated credit. The impugned order does not also say that the petitioner will not be given the benefit of the notification No. 45/89. We are satisfied that no question of jurisdiction arises because there is no contravention of the order of this Court by the impugned order. We, therefore, see no reason to interfere.

6. The writ petition is dismissed. No costs.