

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.1041 OF 2002

M/S. NEW SWADESHI SUGAR MILLS  
t

Appellan

(s)

VERSUS

COMMNR. OF CENTRAL EXCISE, PATNA

Respondent(s)

(With office report)

Date : 29/03/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H.KAPADIA

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Appellant (s)

Mr. Vinay Garg, Adv.

For Respondent (s)

Mr. K. Radhakrishnan, Sr.Adv.

Ms. Shilpa Singh, Adv.

Mr. B. Krishna Prasad, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed with no order as to costs, in terms of the signed order.

(N. Annapurna)  
Court Master

(Madhu Saxena)  
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1041 OF 2002

M/s. New Swadeshi Sugar Mills

...Appellant(s)

Versus

Commnr. of Central Excise, Patna

...Respondent(s)

O R D E R

This civil appeal is filed by M/s. New Swadeshi Sugar Mills under Section 35-L of the Central Excise Act, 1944 against the judgment of the Customs, Excise & Gold (Control) Appellate Tribunal, dated 8th October, 2001. The appellant-assessee sold during the

relevant year sugar molasses at the rate of Re.1/- per quintal.

According to the Department, during the relevant year, the Bihar

Government had statutorily fixed the price of the said commodity at

Rs.15/- per quintal and, therefore, the assessable value ought to have

been calculated at the rate of Rs.15/- per quintal which was a

statutorily fixed price under the Bihar Molasses (Control) Act, 1947.

It needs to be stated that sugar is an essential commodity under the

Essential Commodities Act. The Tribunal has accepted the case of the

Department. Aggrieved by the said decision, the assessee has come in

appeal.

It is the case of the assessee that it has sold the molasses at

Re.1/- per quintal. That, was permissible under the Bihar Molasses

(Control) Act, 1947. According to the assessee, under the said Bihar

Molasses (Control) Act, 1947, it was stipulated that no owner,

manager or occupier of a factory shall sell molasses at a price

exceeding those prescribed in Schedule A and Schedule B. It is

contended on behalf of the assessee that under the said 1947 Act, the

State Government had not statutorily fixed the control price.

According to the assessee, under the said Act, an outer ceiling limit was prescribed and that the assessee was free to sell molasses at a price within the range of Rs.1/- to Rs.15/- per quintal. In the circumstances, according to the assessee, proviso (ii) to Section 4(1)(a) of the Central Excise Act was not applicable to the facts of the present case.

We find merit in this civil appeal. Sugar is an essential commodity under the Essential Commodities Act. The Bihar Molasses (Control) Act, 1947 is a regulatory measure enacted in order to regulate the supply, storage and pricing of molasses produced by factories in the State of Bihar. The relevant provision of the said Act which dealt with price of molasses has not fixed a particular price. It has merely fixed a range/ceiling within which the factory was entitled to charge the price of the molasses. We are informed that in the relevant year, on account of surplus, the price charged by the assessee was Re.1/- per quintal. It is well settled that Section 4(1)(a) of

the Central Excise Act, as it stood at the relevant time, seeks to value

the goods on the normal price. Generally, the normal price concept is

equated to the actual price charged except in three exceptional

circumstances indicated by the three provisos. In the present case,

proviso (ii) is not applicable since under the Bihar Molasses (Control)

Act, 1947, there is no fixed control price stipulated. As stated above,

under the said Act, a price range is demarcated subject to the ceiling

of Rs.15/- per quintal. In the circumstances, proviso (ii) to Section 4

(1)(a) of the Central Excise Act is not applicable to the present case.

For the afore-stated reasons, the impugned judgment of the

Tribunal is set aside. Accordingly, the appeal is allowed with no order

as to costs.

Since the assessee has succeeded in the appeal, we hereby

order refund of the amount to the assessee subject to the assessee

complying with the provisions of Section 11-B of the Central Excise

Act.

.....J.

(S.H. KAPADIA)

.....J.

(B. SUDERSHAN REDDY)

New Delhi,

March 29, 2007.