

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad**

REGIONAL BENCH – COURT NO. 1

**Excise Appeal No. 10161 of 2015**

[Arising Out OIO-RAJ-EXCUS-000-COM-42-14-15 Dated- 13/11/2014 Passed Commissioner of Central Excise-RAJKOT]

**Shree Renuka Sugars Limited**

Gujarat Refinery, At & Post Bharapar,  
Gandhidham,  
Kutch, Gujarat

**.....Appellant**

*VERSUS*

**C.C.E. & S.T.-Rajkot**

Central Excise Bhavan,  
Race Course Ring Road...Income Tax Office,  
Rajkot, Gujarat-360001

**.....Respondent**

**APPEARANCE:**

Shri. Sunil Kadam, Advocates for the Appellant

Shri. Anoop Kumar Mudvel, Superintendent (AR) for the Respondent

**CORAM:**

**HON'BLE MEMBER (TECHNICAL), MR. RAJU**

**HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA**

**FINAL ORDER NO. A / 11723 / 2023**

DATE OF HEARING: 14.08.2023

DATE OF DECISION: 21.08.2023

**SOMESH ARORA**

M/s. Shree Renuka Sugar Limited, At and Post, Bharapar, Gandhidham (Kutch), (hereinafter referred to as the "Noticee") was industrial unit engaged in manufacture of excisable goods, viz., Sugar falling under Chapter No. 17 of the Central Excise Tariff Act, 1985, availing the Cenvat credit of duty paid on inputs, capital goods and input services under Cenvat Credit Rules, 2004, and holding Central Excise Registration No.AADCS1728BEM014 under rule 9 of the Central Excise Rules, 2002.

2. The Noticee-appellant was working under self assessment procedure as per Central Excise Rules, 2002, as amended and accordingly assessing the assessable value of the final product and determining the Central Excise Duty thereon as reflected in ER-1 monthly Returns. The Noticee availing the facility of payment of Central Excise Duty on monthly installments basis as per Rule 8 of CER, 2002 as amended.

3. The Noticee was importing raw sugar and after processing refined sugar was produced as their finished goods. The Noticee either exported or cleared the refined sugar in domestic tariff area. The Noticee paid the sugar cess, Education Cess and Secondary & Higher Education Cess, at the time of import of raw sugar.

4. During the course of, scrutiny of records of the Noticee, it was observed that the Noticee had availed Cenvat credit of the sugar cess, Education Cess and Secondary & Higher Education Cess (on Sugar cess), which has been paid by them at the time of import and utilized the said credit for the purpose of payment of sugar Cess, Education Cess and Secondary & Higher Education Cess on domestic sale of refined sugar.

5. Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution), , vide Notification No. S.O. 102 (E), dated, 07.01.2009, inter alia, exempted levy of sugar cess when such sugar was manufactured from other sugar. Relevant text of the said Notification is as under:

*"Sugar-Exemption from sugar cess*

*In exercise of the powers conferred by sub-section (4) of Section 3 of the Sugar Cess Act, 1982 (3 of 1982), the Central Government, being satisfied that it is necessary in public interest so to do, hereby exempts the levy of cess on sugar, collected as a duty of excise, under sub-section (1) of Section 3 of the said Act, on any sugar "manufactured from such other*

*sugar" on which cess, leviable under sub-section (1) of Section 3 of the said Act, has been paid." (emphasis Supplied)*

Board, vide Circular No. 883/3/2009-CX dated 26th February, 2009, inter alia, had clarified that the Ministry of Public Distribution and had since Consumer Affairs had since exempted the levy of cess on sugar, collected as a duty of excise, under subsection (1) of the Section 3 of Sugar Cess Act, 1982, on any sugar "manufactured from such other sugar on which cess is leviable under sub section (1) of Section 3 of the said Act has been paid already. Relevant text of Board's Circular is as under:

*"The Sugar Cess Act, 1982 provides that "There shall be levied and collected as a cess, for the purposes of the Sugar Development Fund Act, 1982, a duty of excise on all sugar produced by any sugar factory in India" for the development of sugar industry. References have been received from some field formations that some manufacturers purchase sugar, on which central excise duty and sugar cess is paid by sugar manufacturers. Such manufacturers use the duty paid sugar to manufacture products like Pharmaceutical grade sugar and Bura sugar. All the products, namely sugar pharmaceutical sugar and Bura sugar fall under the same tariff classification. The manufacturers have represented that both the raw material and final product fall under the same tariff heading, and as cess has been paid on raw material viz., sugar, they are not required to pay sugar cess on products as it amounts to double taxation.*

*2. The matter has been examined in consultation with the Ministry of Public Distribution and Consumer Affairs. The Ministry of Public Distribution and Consumer Affairs has now exempted the levy of cess on sugar, collected as a duty of excise, under subsection (1) of the Section 3 of Sugar Cess Act, 1982, on any sugar "manufactured from such other sugar" on which cess, leviable under sub section (1) of Section 3 of the said Act has been paid already. The copy of the Notification S.O.102 (E) published in Gazette of India on 7th January, 2009 is enclosed herewith. However, the said exemption is available for clearances made after the date of issue of notification and past cases, if any, are required to be decided based upon the law as in force during relevant time."*

In view of the above the Noticee was not required to pay Sugar cess manufactured from such other sugar on which cess is leviable under sub section (1) of Section 3 of the said Act has been paid already and other cesses on further clearance when they have already paid the Cess.

6. The Noticee was asked, vide letter F. No. CEX/AR-III/GIM/Con/2013 dated 16.08.2013, to furnish the details of credit of sugar cess taken and utilized during July 2011 to June 2013. The Noticee, vide letter dated 19.08.2013, furnished the summary of sugar cess credit taken and utilized during the period from July 2011 to June 2013 detailed as per Annexure-A to Notice. On scrutiny of said summary, it was observed that the Noticee had availed and utilized Cenvat credit of sugar cess amounting to Rs1,94,84,774/- of which they have filed rebate claim for Rs.1,20,44,820/- and the remaining amount as ten the of Rs 74,39,954/- was required to be recovered from them, as per the department. In fact, the Noticee were not allowed to avail and utilize the Cenvat credit of sugar cess and other levies as per Board's Circular (supra) and they were also not required to collect the same from the buyers/ customers.

7. Therefore as per the department, in the instant case, the Noticee availed the credit of said sugar cess and paid the sugar cess on clearance of refined sugar and collected the said sugar cess from their buyers/ customers which amounted to cascading of sugar cess. Thus, as per the department, the Noticee contravened the provisions of Notification No. S.O. 102(E), dated 7 - 1 - 2009 , and wrongly recovered from their customers/ buyers, and thereby, the Noticee has contravened the provisions of the Act. Therefore, it appeared to the department that wrongly collected sugar cess of Rs. Rs 1,94,84,774/- (of which they have claimed rebate for Bs, 1, 20 ,44,820/ - and the remaining amount of Rs 74,39,954/-, which has been not deposited by the Noticee to the Government exchequer is liable to be recovered under

section 11D of the Central Excise Act, 1944 read with Section 11 of the Central Excise Act, 1944, along with interest under Section 11DD *ibid*.

8. As per the department, noticee never informed the department regarding the wrong recovery of such sugar cess from their customers. The department acknowledged the said facts only when the Noticee was asked to furnish the details of such sugar cess collected from the buyers/ customers and unearthed the said facts.

Accordingly, a Show Cause Notice was issued to the Noticee bearing No. V.17/G'dham-AR-1/47/COMMR/2014-15 dated 09.05.2014, as to why:-

(i) The sugar cess Rs 74,39,954/- (Rupees Seventy Four Lac Thirty Nine Thousand Nine Hundred and Fifty Four only) wrongly collected from the customers should not be recovered from them under section 11D of the Central Excise Act, 1944 read with Section 11 of the Central Excise Act, 1944;

(ii) Interest at the appropriate rate on the aforesaid amount should not be recovered from them under Section 11DD *ibid*.

### **Case for the appellant**

9. The appellants, *inter alia*, raised the following points. The dispute raised by the department is in relation to "Sugar Cess Credit" availed & utilize by the Appellant towards clearance of final goods. As is claimed by the department, same amounts to double taxation. As alleged by the department, the Appellant has contravened the provisions of Notification bearing No S.O. 102 (E) dated 07.01.2009 issued by Department of Food and Public Distribution. Based on which the department has confirmed recovery amount of Rs. 74,39,954 along with applicable interest.

10. While doing so, the learned Commissioner of Central Excise, Rajkot has ignored the vital fact that the Appellant has availed Sugar cess credit on

raw sugar purchase/import and discharge sugar cess duty on sale of finished goods i.e., on white refined sugar. Same is disclosed under periodical returns filed with Central Excise. It is further submitted that the issue involved in the present case is mere technical and no revenue implication is involved. The transaction disputed by the Authority concerned is purely revenue neutral transaction.

11. The word "Cess" is generally used when the levy is allocated for particular purpose as name indicates. Cesses are in the nature of duty and not fees. The tax/duty is imposed for public purpose and is not/need not be supported by any consideration of service rendered in returns. Whereas the fee is levied for services rendered. There is quid pro quo between the person who pays the fees and public authority which impose it. The duty levied for public purpose invariable credited to consolidated fund of India which ultimately utilised for all public purposes. However, levy and collection of fees is not credited to consolidated fund.

12. The Sugar Cess is levied U/s 3 (1) of the Sugar Cess Act, 1982, being duty of Excise. As per the provision, there shall be levied and collected duty as Cess, for the purpose of the Sugar Development Fund, 1982, a duty of excise on all sugar produced by sugar factory in India. This Sugar Cess duty is in addition to the duty of Excise leviable on Sugar under the Central Excise Act, 1944. As per the provisions of section 3, sugar cess is levied under Sugar Cess Act as a duty of excise and has all the characteristics features of Central Excise Duty under the Central Excise Act, 1944. A copy of Sugar Cess Act, 1982 is enclosed herewith and marked as annexure I.

13. In the instant case, the appellant has availed the Sugar Cess Credit on raw sugar procured from the domestic/international market and same has been utilized towards discharging sugar cess liability on final goods i.e. White sugar Not satisfied with the explanation, the department has issued Show Cause Notice (SCN) demanding sugar cess +education/S & H Cess

amounting to Rs. 74.39.954 (Sugar cess Rs. 72, 23, 256 + Ed cess Rs. 1, 44.465 + 8 \* 8c H Cess Rs. 72,233) along with interest, relying on the notification issued by Department of Food and Public Distribution bearing No S O 102C dated 07.01.2009, which clarifies that the levy of Cess on sugar is exempted on any sugar manufactured from such other sugar on which cess leviable U / s \* 3(1) of Sugar Cess Act, 1982 has been paid already. The department ignore the fact that the disputed transaction is revenue neutral having no revenue implication.

14. In the present dispute, if the appellant would not have availed credit, then he is not liable for payment of sugar cess on finished goods which are manufactured out of cess paid raw sugar, as per the above said Notification OR assessee can avail the credit and discharge duty liability on final Goods through Cenvat Credit is one and the same. The law doesn't prohibit the Assessee from discharging sugar cess liability on final goods either through cash or Cenvat credit.

15. The term "Revenue Neutral" implies changes in the tax law that result in no change in revenue coming into the Government Treasury, in other words a tax proposal is revenue neutral if it neither increases nor decrease tax revenue be achieved with a commensurate increase or decrease in tax revenues. In the instant case as well the Doctrine of Revenue Neutrality is applicable, as no doubt there is contravention of provisions of notification dated 07.01.2009 however there is no revenue implications/no revenue loss to the Government.

16. The appellant has opted to avail the CENVAT credit against Sugar Cess on raw sugar which was procured from domestic/international market and utilise the same to discharge the sugar cess liability. This means the said transaction is Revenue Neutral hence there is no revenue loss to the Government Exchequer.

17. One has to consider the fact that sugar price is market driven and price remains fixed, the prices quoted by the customer includes basic price of sugar and taxes/duties as applicable. Hence, Customer is not paying any additional amount over and above the price of the sugar. Considering this fact, the department's view is incorrect, illegal, and vexatious that the appellant has collected the duty separately and fails to discharge the liability of the same.

18. Another fact in the case is that the appellant has collected the agreed total sale price from the customers. However, due to procedural requirement, it had no option but to split its sale price to accommodate Sugar Cess duty on the Excise Invoice. Hence, the sale price working was done on reverse basis to match the requirement of the law i.e., basic price of product, freight, and the taxes/duties separately. Sample copies of sales invoices along with copies of sales confirmation/deal confirmations enclosed with appeal memo supports this.

19. It is also a fact that Appellant has not collected any excess price by way of sugar cess, over and above the sale price. Alternatively, considering the notification dated 07.01.2009, if the Appellant would have not avail sugar cess credit on raw sugar and decided not to discharge the sugar cess liability on final goods i.e. White sugar, In that case also the scenario remains unchanged i.e the appellant would have been not bifurcated the sugar cess separately and same becomes part of basic price as cess paid at the time of procurement becomes cost to the appellant. (Even otherwise also, basic sugar price would have increase in proportionate to sugar cess and would have become cost to the appellant).

20. This clearly displays that it is a separate presentation of sugar cess portion just to take care of the provisions of law. In view therefore invocation of provisions of section 11D of Central Excise Act, 1944 is unwarranted and premature. Further it is not the case of the department

that the appellant has availed sugar cess credit in contravention of the provisions of law. Sugar Cess is duty and provisions of Rule 3 of Cenvat Credit Rules 2004 are equally applicable on Sugar Cess Credit.

20.1 The above contention is supported by following Judgments/orders:

- i. Hon'ble CESTAT Ahmedabad Final order bearing No A/11402/2023 in the matter of Shree Renuka Sugars Limited v / s C CE & ST Rajkot
- ii. Hon'ble CESTAT Bangalore in the matter of Shree Renuka Sugars Limited V/s Commissioner of Central Excise Belgaum, 2007(218) ELT-388 (Tri-Bang), Said Order is upheld by Hon'ble Karnataka High Court.
- iii. Order in Appeal bearing No RJT-EXCUS-000-APP-184 to 185-14-15 dated 16.09.2014, allowed the refund of Sugar Cess on export of goods.

21. It is settled law that once assessee derives no benefit by availing the Sugar Cess credit and utilizing the same to discharge sugar cess liability on final product then the doctrine of revenue neutrality is applicable. Further, the revenue cannot demand the liability once again after discharge of applicable liability by the appellant along with its periodical returns.

22. The Appellant would rely on the following Judgments/decisions wherein it is held that in Revenue Neutral Transactions, there will not be any evasion or contravention of the Provisions of law.

- i. Hon'ble Bombay High Court in the matter of Sanvijay Rolling & Engineering Private Limited V / s Commissioner of Central Excise, Nagpur, 2018(11) GSTL 344-
- ii. Hon'ble CESTAT Mumbai in the matter of Mahindra & Mahindra Limited, V / s Commissioner of Central Excise, Mumbai, 2019 (368) ELT 105.

23. It is not the aim of the government to discourage the assessee from discharging sugar cess liability through Credit. The Notification doesn't specify that the Assessee should not discharge sugar cess duty on final goods once he pays the sugar cess on raw material i.e. raw sugar. The assessee can either enjoy the exemption benefits or can avail the Cenvat Credit and discharge sugar cess liability on final goods which even otherwise is not liable for payment.

23.1 In this context, the Appellant relied on following Judgments /orders:

- i. Hon'ble Supreme Court in the matter of Commissioner of Central Excise (Appeals) Ahmedabad V/s Narayan Polyplast, 2005 (179) ELT 20 it is held that Exemption Vis a vis Cenvat Option-whether assessee bound to avail the exemption or can forgo the same in order to avail the Cenvat Credit-Revenue Neutral transactions.
- ii. Hon'ble Supreme Court in the matter of Commissioner of Central Excise & Cus Vadodara V/s Narmada Chematur Pharmaceuticals Limited, 2005 (179) ELT 276
- iii. Hon'ble CESTAT Mumbai in the matter of Parakh Food Limited, V/s Commissioner of Central Excise, Pune, 2018 (360) ELT 1017.
- iv. Hon'ble CESTAT Mumbai in the matter of Orbit bearing (1) Private Limited, V/s Commissioner of Central Excise, Rajkot, 2016(344) ELT 409.
- v. Hon'ble CESTAT Delhi in the matter of Balakrishna Industries Limited V/s Commissioner of Central Excise Jaipur, 2014 (309) ELT 354.

24. The appellant has paid the sugar cess while procuring the sugar from domestic market/import of raw sugar. The domestic suppliers who have collected the central excise duty including sugar cess from the Appellant, it is a fact that the said Suppliers have discharged the Sugar Cess liability

through PLA. This means the revenue department has already collected the Sugar Cess on raw sugar and now wanting to collect the same twice from the Appellant unnecessarily and for no reason. Such demand for collection of duty is violation of Article 265 of Constitution of India.

25. Submissions on Levy of Interest U/S 11DD of Central Excise Act, 1944. As stated earlier herein before, the intention of the department is to collect the sugar cess twice which is illegal and not permissible under the law. Once it is clear that Sugar Cess duty is not recoverable, then payment of interest on the sugar cess is also not tenable. A Copy of circular dated 26.02.2009 is enclosed and marked as annexure III.

26. Further, considering the Supreme Court Judgment in the matter of M/s. Narayan Polyplast and Narmada Chematur Pharmaceuticals Limited, the issue is no longer res integra. As per the said Judgment, the assessee can choose to pay the option of payment of duty instead of enjoying the benefits of exemption. Even otherwise also, there is no question of payment of interest arise even after discharge of sugar cess liability through credit ledger along with periodical return.

27. In this connection, appellants relied on Supreme Court Judgment in the matter of Jayaswal Neco Limited, 2015 (322) ELT 587 (SC), wherein It is held that "it was self-contained scheme dealing with various aspects-with its introduction, assessee has option to pay excise duty by availing credit of duty paid on inputs provided he had manufactured finished products making use of such inputs. Further there is no specific prohibition in Rule 173G (1) for payment through Cenvat Credit, which was recognized and valid mode of payment. In the instant case since there is no revenue loss to the Government hence the question of levy of interest U/s 11DD of Central Excise Act, 1944 does not arise.

28. Submissions on invocation of Extended period: The department has issued impugned SCN on 09.05.2014 and thereby invoked the extended period of limitations to cover the period July 2011 to June 2013 (Sugar cess credit last discharged through accumulated credit during February 2013) only on the ground that the appellant has not brought to the notice of department about the recovery of sugar cess from the customer. It is the department who acknowledged the said facts only when the appellant was asked to furnish the details of such sugar cess collected from the buyer/customers and unearthed the said facts.

28.1 The above said contention is totally wrong and incorrect. As the department was aware that Appellant was:-

- a. Having sugar refinery,
- b. Manufacturing of refined white sugar out of raw sugar,
- c. Procuring raw sugar from domestic market/import by payment of sugar cess.
- d. Not liable for discharge of sugar cess on its white refined sugar, as sugar is manufactured out of raw sugar on which sugar cess is already paid by its suppliers.
- e. Filing timely periodical return along with details of sugar cess.

29. In the instant case, since the department was aware the above facts, they sought the requisite information through their letter dated 16.08.2013 and not on its own as claimed. In response, the appellant has submitted the requisite information vide its letter dated 19.08.2013.

30. In view therefore, invocation of extended period was unwarranted & premature the said contention is afterthought as the data submitted by the Appellant is already available in periodical returns, therefore whole demand amounting to Rs. 74,39,954 barred by limitation of time.

31. Further, the department could not demonstrate the suppression of facts, wilful misstatement, and other ill-intention in the present case and therefore extended period of limitations is not applicable in present case.

32. The Appellant relied on the following Judgments/orders in support of its contention:

- i) Hon'ble CESTAT Larger Bench in the matter of Jay Yuhshin Limited V/s Commissioner of Central Excise, New Delhi, 2000 (119) ELT 718, it is held that extended period cannot be invoked in Revenue Neutral Transactions matters.
- ii) Hon'ble CESTAT Mumbai in the matter of Jain Irrigation System Limited V/s Commissioner of Central Excise Nashik, 2015 (40) STR 752, it is held that if the entire exercise is revenue neutral, no means rea is involved.
- iii) iii) Hon'ble Supreme Court in the matter of Nirlon Limited V/s Commissioner of Central Excise, Mumbai it is held that Extended period for raising demand is not available for revenue neutral transactions.
- iv) Hon'ble CESTAT Bangalore in the matter of Tally Solutions Private Limited V/s Commissioner of Central Excise, Bangalore, 2020 (41) GSTL 520, it is held that show cause notice issued based on records maintained by the assessee hence suppression of facts cannot be alleged.

33. Regardless of the fact, the Noticee had availed the credit of said sugar cess and paid the sugar cess on clearance of refined sugar and collected the said sugar cess from their buyers/ customers which amounted to cascading effect of sugar cess. Thus, the Noticee has contravened the provisions of Notification No. S.O. 102(E), dated 7 - 1 - 2009 , and wrongly recovered from their customers/ Buyers, and thereby the Noticee has contravened the provisions of the Act. Therefore, it appears that wrongly collected sugar cess

of Rs 1,94,84,774/- of which they have claimed rebate for Rs 1, 20,44,820/- and the remaining amount of Rs 74,39,954/-, which has been not deposited by the Noticee to the Government exchequer is liable to be recovered under section 11D of the Central Excise Act, 1944 read with Section 11 of the Central Excise Act, 1944, along with interest under Section 11DD.

34. The learned Advocate for the appellant submitted that this issue is no longer res-Integra as this issue has been considered and decided in favor of the assessee including in their own case of the appellant themselves. He placed reliance on the following:

- The High Court of Karnataka in the matter of Shree Renuka Sugars Ltd 2014(302) ELT 33 (Kar)
- CESTAT South Zonal Bench Bangalore order in the matter of Shree Renuka Sugars Ltd 2007 (218) ELT 388 (Tri Bang)
- CESTAT South Zonal Bench Bangalore order in the matter of Shree Renuka Sugars Ltd E/26700/2013-SM
- Hon'ble Supreme Court Judgment in the matter of Barnagore Jute Factory Co. 1992 (57) ELT 3 (SC)
- CESTAT New Delhi in the matter of M/s Hindustan Coca-Cola Beverages Pvt Ltd 2018 (7) TMI 325- CESTAT New Delhi
- CESTAT Hyderabad in the matter of M/s Hindustan Coca-Cola Beverages Pvt Ltd 2019-VIL-236-CESTA HYD-CE
- The High Court of Gujarat in the matter of Sahakari Khand Udyog Mandli Ltd 2011 (263) ELT 34 (Guj)
- CESTAT Eastern Bench, Kolkata in the matter of Bengal Beverages Pvt Ltd 2022 (381) ELT 84 ( Tri Kolkata)
- CESTAT Kolkata in the matter of M/s Diamond Beverages Pvt Ltd Final Order no.76356/ 2019

- CESTAT South Zonal Bench Bangalore order in the matter of M/s Shiv Shakti Nutrifooods Pvt Ltd E/338/2010
- CESTAT New Delhi in the matter of TT K LIG Ltd 2006 (193) ELT 169 (Tri-LB)
- The High Court of Gujarat in the matter of Vareli Textile Industries Ltd 1997(91) ELT 279 (Guj)
- CESTAT Ahmedabad in the matter of R A Shaikh Paper Mills Pvt Ltd 2008 (228) ELT 89 (Tri - Ahmd)
- The High Court of Rajasthan in the matter of Cairn Energy India Pvt Ltd 2017 (345) ELT 17 (Raj)

35. Shri, R.K Agarwal, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He placed reliance on the decision of the Guajrat High Court in the case of commissioner Vs. Sahakari Khand Udyog limited (2011) 236 ELT -34 (Guj.).

36 On careful consideration of the submission made by both the sides and perusal on record we find that the only issue to be considered by us in the present case is whether the appellant is entitled for cenvat credit on sugar cess paid as part of CVD in respect of import of raw sugar. This very issue has been considered by the Hon'ble Karnataka High Court in the appellant's own case (cited supra). The relevant para of the judgment is below :

*"This appeal has preferred against the order passed by the CESTAT [2007 (218) E.L.T. 388 (Tribunal)] holding that Sugar Cess being a duty of excise in terms of Section 3(4) of the Sugar Cess Act, Cenvat Credit Rules are also applicable to Sugar Cess and therefore Cenvat credit taken on Sugar Cess paid as countervailing duty or CVD is proper and the assessee is entitled to the said benefit of Cenvat credit.*

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 12. The wordings used in Section 3 of the Act makes it clear that although a cess is levied and collected for the purpose of the Sugar Development Fund Act, 1982, it is in the nature of a duty of excise on all sugar produced by any sugar factory in India. The duty of excise levied under sub-section (1) shall be in addition to the duty of excise eviable on sugar under the Central Excise Act or any other law for the time being in force as is clear from sub-section (2). The way sub-section (2) is worded makes it clear that what is levied and collected as a cess under sub-section (1) of Section 3 is characterized as a "duty of excise levied under "the Central Excise Act". Further, sub-section (4) makes it clear that the provisions of the Central Excise Act and the Rules made thereunder including those relating to refunds and exemptions from duty shall, so far as may be, apply in relation to the levy and collection of the said duty of excise as they apply in relation to the levy and collection of the duty of excise

*on sugar under that Act. In other words, the provisions of the Central Excise Act and the Rules made thereunder are read into the Act. Levy and collection of cess under the Act is treated as levy and collection of a duty of excise on sugar under the Central Excise Act.*

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 33. Rule 3 of the Cenvat Credit Rules provides that a manufacturer or producer of a final product shall be allowed to take credit of the duty of excise. Therefore, once a duty of excise is paid, the manufacturer or producer of the final product is entitled to take Cenvat credit. The reference to the Tariff Act is for the purpose of calculating the rate at which such a duty of excise is payable. But once it is established that what is paid is excise duty or in other words a tax and then under Rule 3, the assessee is entitled to the Cenvat credit

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 38. Section 3 of the Act provides for levy and collection as a cess for the purpose of Sugar Development Fund Act, 1982, a duty of excise on all sugar produced by any sugar factory in India. Therefore, the cess leviable and collected is the stage of production of sugar in the sugar factory. Because it is a tax on production, it is described as a duty of excise.

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 40. In the instant case, it is not in dispute that this duty of excise is not collected as a cess at the time of production of the sugar in the assessee's sugar factory in India. It is not also in dispute that it is also collected at the time of importing raw sugar. At the time of importing raw sugar the assessee has paid the additional Customs duty or CVD (countervailing duty) as prescribed under Section 3 of the Customs Tariff Act of 1975. If the article imported is a like article produced or manufactured in India and if excise duty on such like article is leviable, the assessee is liable to pay the additional duty. The Excise Duty on sugar is payable under two enactments, i.e. (1) Section 3 of Central Excise Act of 1944, at the rate prescribed in the Central Excise Tariff Act, 1985. In addition, the assessee is also liable to pay cess as a duty of excise under the Sugar Cess Act of 1982. On such additional duty or CVD paid at the time of import by the assessee, apart from the Basic Customs Duty, he is entitled to the Cenvat credit in terms of clause (vii) of Rule 3 of Cenvat Credit Rules, 2004"

36.1 In view of the above Karnataka High Court judgment which is in favor of the appellant in their own matter, the issue is no longer res-Integra. Accordingly the appellant is legally entitled for the cenvat credit on the sugar cess paid on import of raw sugar.

37. The issue has already been considered by this bench also in final order No. A/11402/2023 dated 28.06.2023 in above decision of the same party. The relevant portion of the decision giving benefit based on decision of Hon'ble Karnataka High Court is reproduced below:

*"In view of the above Karnataka High Court judgment in favor of the appellant themselves, the issue is no longer res-Integra. Accordingly the appellant is legally entitled for the cenvat credit on the sugar cess paid on import of raw sugar".*

37.1 In view of the forgoing and also the fact that Section 11D can be invoked only if duty is collected, but not paid, whereas in the instant case, same was paid from accumulated CENVAT Credit, we find the case of department has no legs to stand. Further, when levy i.e. Sugar Cess in this case has not been done away with, but has only been exempted vide Notification No. S.O. 102 (E), dated, 07.01.2009 by Ministry of Consumer Affairs, party always has the right to avail or not to avail exemption, as per the trite law relied upon by appellants. And all consequences regarding payment of duty as well as availing permissible credit will follow in such situation. Department cannot force availment of exemption as distinguished from withdrawal of levy in which case requirement of payment of tax becomes non-est.

38. Therefore, following above decision in party's own case, we allow the appeal by setting aside the impugned order. Appeal allowed.

(Pronounced in the open Court on 21.08.2023)

**(RAJU)**  
**MEMBER (TECHNICAL)**

**(SOMESH ARORA)**  
**MEMBER (JUDICIAL)**