

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [CENTRAL EXCISE]
ORIGINAL SIDE

CEXA/9/2020
COMMISSIONER OF CGST & CENTRAL EXCISE,
KOLKATA SOUTH, GST BHAWAN
VS
M/S. DIAMOND BEVERAGES PVT. LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
AND
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : MAY 7, 2025.

Mr. Bhaskar Prasad Banerjee, Adv.
Mr. Abhradip Maity, Adv.
...for Appellant

Mr. Ankit Kanodia, Adv.
Ms. Megha Agarwal, Adv.
Mr. Piyush Khaitan, Adv.
...for Respondent

The Court :- This appeal has been filed by the revenue under Section 35G of the Central Excise Act, 1944 challenging the order passed by the Customs Excise and Service Tax Appellate Tribunal, Kolkata Eastern Zonal Bench (Tribunal) in Excise Appeal No. 75328 of 2019. The said appeal was preferred by the assessee challenging the Order-in-original dated December 3, 2018 passed by the Commissioner, CGST & Central Excise, Kolkata South Commissionerate. By the said order, the adjudicating authority disallowed CENVAT credit and ordered for recovery from the assessee under Rule 14(1)(i)

of the CENVAT Credit Rules, 2004, read with Section 11A of the Central Excise Act, 1944 and also imposed penalty in terms of Rule 15(1) of the Rules read with Section 11AC(1) of the Act. The learned Tribunal took note of the decision in the case of Commissioner of Central Excise, Customs and Service Tax, Belgaum vs. Shree Renuka Sugars Ltd., [2014 (302) ELT 33(Kar.)] and allowed the assessee's appeal.

Aggrieved by the same, the revenue has preferred the present appeal which was admitted on July 4, 2024 on the following substantial questions of law :

- “i) Whether the Learned Tribunal erred in not deciding as to whether payment of duty under Sugar Cess Act, 1982 can be claimed as Cenvat Credit when the Cenvat Credit Rules does not provide payment of cess under the Sugar Cess Act, 1982 as not being eligible under Rule 3 of the said Rules ?
- ii) Whether the Learned Tribunal erred in misinterpreting the provisions of the Sugar Cess Act, 1982 vis-à-vis the Central Excise Act, 1944 since the Sugar Cess imposed under the provisions of the Cess Act cannot assume the characteristic of the Central Excise Duty ?
- iii) Whether the Learned Tribunal erred in not considering the provisions of sub-section (4) of Section 3 of the Cess Act, which is for the purpose of levy and collection of cess relating to Sugar and that the cess paid under a different statutory provisions which is not related or connected with the duties payable under the Central

Excise Act cannot qualify as a credit component under the Cenvat Excise Act and as such, since the Sugar Cess does not qualify the eligibility criteria fixed in the said Rules ?”

We have elaborately heard Mr. Bhaskar Prasad Banerjee, learned senior standing counsel appearing with Mr. Tapan Bhanja, learned advocate for the appellant/revenue and Mr. Ankit Kanodia, learned counsel appearing for the respondent/assessee.

Before we proceed to discuss further, it needs to be pointed out that the appeal filed by the revenue before the Hon’ble Supreme Court against the decision in Shree Renuka Sugars Ltd. (supra) in Civil Appeal 1531/2016, has been disposed of as not pressed on the ground that the appeal falls below the threshold contained in the Circular dated August 22, 2019 of the Central Board of Indirect Tax and Customs. Thus, as on date, the decision rendered by the Hon’ble Division Bench of the High Court of Karnataka in the case of Shree Renuka Sugars Ltd. (supra) holds the field. The issue which came up for consideration in the case of Shree Renuka Sugars Ltd., is identical to the questions of law raised in this appeal which have been admitted, they being whether the entitled for Cenvat Credit on Sugar Cess levied under section 3(4) of the Sugar Cess Act, 1982 on the ground that the revenue contended that it is not one of the duties allowed for Cenvat Credit under Rule 3(1) of the CENVAT Credit Rules, 2004.

The contention of the revenue in Shree Renuka Sugars Ltd. is identical to the contention raised by the revenue before us, namely, that the cess levied under the Cess Act, 1982 and collected under the Act does not partake the character of a duty of excise. It is in the nature of a fee for rendering specific service as contemplated under the Sugar Development Fund Act, 1982 and therefore the assessee is not entitled to the benefit of CENVAT credit.

The assessee, on the other hand, contended that the cess levied and collected under the Act is nothing but a duty of excise on sugar produced by the assessee; the levy of such cess is in addition to the duty of excise leviable on sugar under the Central Excise Act or any other law for the time being in force. Further, it was contended that sub-section 4 of section 3 of the Act incorporates the provisions of the Central Excise Act and Rules made thereunder in relation to the levy and collection of the duty of excise on sugar in the Act. Therefore, by virtue of Section 2A of the Central Excise Act, 1944, the cess paid under the Act which is in the nature of a duty of excise shall be construed to include Central Value Added tax, that is, CENVAT and therefore the assessee is entitled to the benefit of CENVAT Credit.

The Hon'ble Court after taking note of the above submissions proceeded to first take up for consideration the question as to whether the cess paid under the Act is a fee or tax. After elaborate discussions and after referring to several decisions of the Hon'ble Supreme Court including the Constitutional Bench of the Hon'ble Supreme Court it was held that the traditional view that

there must be actual *quid pro quo* for fee has undergone a sea change in the recent years. The tax recovered by a public authority invariably goes into the Consolidated Fund, which ultimately is utilized for public purposes; whereas a cess levied by way of fee is not intended to be and does not become a part of the Consolidated Fund. Thereafter, the Court took into consideration Article 266 ad 270 of the Constitution of India and with the following reasoning it was held that the sugar cess paid under the Act is tax and to be precise it is duty of excise and not fee. Paragraph 27 of the judgment is quoted hereinbelow :

“In the instant case, Section 4 of the Act explicitly provides that the proceeds of the duty of excise levied under Section 3 shall be credited to the Consolidated Fund of India. Sub-section (2) of Section 3 of the Sugar Development Fund Act, 1982, provides that the amount so credited, shall after due appropriation made by Parliament by law be credited to the Sugar Development Fund. Thus the cess collected under the Act invariably goes to the Consolidated Fund, which ultimately is utilized for all public purposes. Therefore, there is no quid pro quo between the cess levied and collected and the services rendered for such payment. On the contrary, the proceeds are credited to the Consolidated Fund of India which is meant to be utilized for all public purposes, may be including the purpose contemplated under the Sugar Development Fund Act, 1982. In the light of the aforesaid statutory provisions, the cess imposed under the Act is a duty of excise or a tax. The contention that it is a fee and the assessee is not entitled to Cenvat credit has no substance. Therefore, the sugar cess paid under the Act is tax, and to be precise it is Duty of Excise and not fee.”

The other contention which was raised by the revenue in Shree Renuka Sugars Ltd. which is also argued before us is that to be eligible for Cenvat credit, it is necessary that the Act should have been mentioned in Rule 3 of the Cenvat Credit Rules. This issue was answered by the Court after taking into consideration Section 3 of the Central Excise Act, 1944 which is the charging section and the other provisions of the Act and the Cenvat Credit Rules and it was held that excise duty is leviable under the Central Excise Act and also the Sugar Cess Act, 1982. Paragraph 35 of the judgment is quoted below :

“In view of the aforesaid provisions, when an assessee imports goods into India in addition to payment of basic Customs Duty, he shall be liable to pay additional duty of customs equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article. Therefore, on imported goods or articles, in addition to basic Customs Duty, an assessee is also liable to additional duty of customs, equivalent to excise duty. The excise duty is leviable under the Central Excise Act, 1944 and also the Sugar Cess Act, 1982”.

Ultimately, the Court held that 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 and, therefore, the cess leviable and collected is at 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.

In light of the above decision, the view taken by the learned Tribunal was perfectly right and the learned Tribunal partly set aside the order passed by the commissioner and granted consequential relief, namely, the refund claim by the assessee.

For the above reasons, the appeal filed by the revenue is dismissed and the substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)