OD – 4

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Central Excise]

ORIGINAL SIDE

CEXA/24/2024
IA NO: GA/2/2024
COMMISSIONER OF CGST AND CX, KOLKATA SOUTH COMMISSIONERATE
VS
M/S. DIAMOND BEVERAGES PVT. LTD.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S SIVAGNANAM
And
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date : 7th May, 2025

Appearance :
Mr. Bhaskar Prasad Banerjee, Adv.
Mr. Abhradip Maity, Adv.
..for the appellant.

Mr. Ankit Kanodia, Adv.
Ms. Megha Agarwal, Adv.
Mr. Piyush Agarwal, 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, Central Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata, (Tribunal) in Excise Appeal No.75938/2022.

The revenue has raised the following substantial question of law for consideration :

"Whether the respondent is entitled to avail Cenvat Credit on Sugar Cess under Rule 3 of the Cenvat Credit Rules, 2004?"

The said appeal was filed by the assessee challenging the order-in-appeal dated 20th October, 2022 passed by the Commissioner, CGST & CX, Appeals – I, Kolkata by which the appellate authority held that the assessee is not entitled to refund of Cenvat credit on sugar cess. The learned Tribunal after taking note of the facts of the case and the submissions made before it held that the only issue to be decided whether the appellate authority was correct in rejecting the refund application of the assessee by holding that the earlier order of the Tribunal vide final order dated 7.8.2019 has been appealed against by the department and the same has not attained finality. The said appeal [CEXA/9/2020] filed by the revenue admitted on 4th July, 2024 was heard by us and by judgment and order dated 7th May, 2025 the appeal filed by the revenue was dismissed. The operative portion of the judgment and order reads as under :

"***** ***** **** ***** ****** *******

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."

In light of the above legal position, the assessee is entitled to succeed and the revenue has to necessarily fail.

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

(T.S SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)

S.Das/
AR[CR]