

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

REGIONAL BENCH-COURT NO. 3

**Excise Tax Appeal No. 13979 of 2014- DB**

(Arising out of OIO-RAJ-EXCUS-000-COM-43-14-15 dated 13/11/2014 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-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, Rahul Patel, General Manager Taxation

Shri, R.K.Agarwal, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR  
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR**

**Final Order No. A/11402/2023**

DATE OF HEARING: 30.05.2023  
DATE OF DECISION: 28.06.2023

**RAMESH NAIR**

The issue involved in the present case is that whether the appellant is entitled for cenvat credit. In respect of sugar cess paid as CVD in respect of import of raw sugar.

2. Shri, Rahul Patel, Learned Senior General Manager Taxation of the appellant company submits 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 Nutrifoods 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)
3. 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.).

4. 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. The relevant para of the judgment is below :

*"This appeal is 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 leviable 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"*

5. 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.

Accordingly, the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 28.06.2023)

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

**(C L MAHAR)**  
**MEMBER (TECHNICAL)**