CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

EXCISE Appeal No. 11590 of 2013-DB

[Arising out of Order-in-Original/Appeal No 35-COMMISSIONER-2013 dated 15.03.2013 passed by Commissioner of Central Excise-RAJKOT]

Shree Renuka Sugars Ltd ...Appellant
Gujarat Refinery, Bharapar,
Taluka : Gandhidham
Kutch, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot ...Respondent
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot,
Gujarat-360001

APPEARANCE:
Shri Rahul Patil, Senior General Manager Legal
Shri. Tara Prakash, Deputy Commissioner (Authorized Representative) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO.A / 10223 /2023

DATE OF HEARING: 23.01.2023
DATE OF DECISION: 07.02.2023

RAMESH NAIR

The issue involved in the present case is that whether the appellant being a sugar industry is entitled for the Cenvat Credit in respect of Sugar Cess and Education Cess paid on such Sugar Cess levied under Sugar Cess Act, 1982, the cess was paid as additional duty on the import of raw sugar.

2. Shri Rahul Patil, Senior General Manager Legal appearing on behalf of the appellant company submits that the issue is no longer *res integra*. The identical issue has been decided by the Tribunal at Banglore reported at 2007

(218) ELT 388 (T-Bang.) Shri Renuka Sugar Ltd against the said decision, the revenue filed appeal before the Karnataka High Court which was dismissed by judgment reported at 2014 302 ELT 33 (Kar.) Vs. Commr of C.Ex.St- Shri Renuka Sugars Ltd. Therefore, following the said decision the appeal deserves to be allowed. He placed reliance on the following judgments:

- M/s. Barnagore Jute Factory Co. Vs. Inspector of Ce.Ex.- 1992 (57) ELT 3 (S.C)
- M/s Hindustan Coca-Cola Beverages Pvt. Ltd. Vs. CCE, Jaipur- 2018 (7) TMI 325- CESTAT NEW DELHI

3. Shri Tara Prakash, Learned Deputy Commissioner (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that there is no specific mention of Sugar Cess And Education Cess paid on such Sugar Cess under Rule 3 of Cenvat Credit Rules, 2004. However, the Hon'ble Karnataka High Court decided the matter in favour of the assesse. On perusal of the said judgment, we observed that the Cenvat Credit was allowed on the ground that the sugar cess is nothing but duty of excise on the ground that levy of such cess is under levy and collection of sugar cess under Central Exicse Act, 1944. However, Hon'ble Supreme Court in a recent judgment of Unicorn Industies Vs. Union of India – 2019 (370) ELT 3 (S.C) held that the education cess is not a duty of excise. As regard the Sugar Cess the same is not a levy of Central Excise duty, whereas cess is levied under the sugar cess Act, 1982 . Therefore, the issue is that whether such cess and education cess paid thereon is duty of Central Excise or otherwise needs to be re-considered in the light of the recent

judgment of Hon'ble Supreme Court in the case of Unicorn Industies Vs. Union of India (Supra).

5. Accordingly, we set aside the impugned order and disposed the appeal by way of remand to the Adjudicating Authority for passing a fresh order.

(Pronounced in the open Court on 07.02.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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