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

REGIONAL BENCH- COURT NO. 02

**Excise Appeal No. 10479 of 2017**

[Arising Out Of OIO-KCH-EXCUS-000-COM-22-16-17 Dated- 08/12/2016 passed by the Commissioner of Central Excise and Service Tax-KUTCH (GANDHIDHAM))

**Shree Renuka Sugars Ltd** **.....Appellant**
Bharapar, Taluka- Gandhidham,
Kutch, Gujarat

*VERSUS*

**C.C.E.-Kutch (Gandhidham)** **.....Respondent**
Central Excise & Service Tax Commissionerate,
Centeral Excise Bhavan ,Plot No. 82, Sector 8,
Gandhidham(Kutch), Gujarat

**APPEARANCE:**
Shri. Rahul Patil (Associate Vice President-Taxation) for the Appellant
Shri. Mihir G Rayka, Additional Commissioner (AR) for the Respondent

**CORAM: HON'BLE MR. SOMESH ARORA, MEMBER ( JUDICIAL )**
**HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER ( TECHNICAL )**

**Final Order No. 10243 /2025**

DATE OF HEARING:28.03.2025
DATE OF DECISION:28.03.2025

**SATENDRA VIKRAM SINGH**

The issue relates to availment of Cenvat Credit of Rs. 99,06,448/- by the appellant M/s. Shree Renuka Sugars Ltd, Gandhidham. The department has alleged that the appellant has availed Cenvat Credit against third party invoices which contained the name of the buyer as M/s. Shin Thermo Dynamic Engineering Pvt. Ltd. or Larsen &Toubro or M/s. Thermax Engineering Construction co. Ltd. and others and the name of consignee as M/s. Shree Runuka Sugars Ltd. Accordingly, Department issued a show cause notice at proposing to disallow above Cenvat Credit and its recovery along with appropriate interest and imposition of penalty under Rule 15 of the Cenvat Credit Rules, 2004. The period in dispute is from January, 2010 to September, 2012. The Learned Adjudicating authority vide order dated 08.12.2016. He confirmed the demand are recovery and Cenvat Credit of Rs. 99,06,448/- along with interest and also imposed equivalent penalty. Hence, the present appeal.

2. Shri. Rahul Patil (Associate Vice President-Taxation) of the appellant pleaded the case on behalf of M/s. Shree Renuka Sugars Ltd. He mentioned that the items such as Boiler Components, Gear Box, Lube Oil System, Tank, Flange/Valves, Gasket/condenser/Parts, Generator with Panel, Control Panel Transformer, Cable, Wire, Electrical mater, Gauges, Switch, Assembly, Paint/Refractory, Pipes & Fittings, Foil, Roller, Insulation etc., all fall under chapter heading 84, 85, 90 of the Central Excise Act, 1985 which are covered under the definition of capital goods. Despite this, the department has disallowed Cenvat Credit to them without considering their submissions and the relevant case law. He also referred to Para-5 (i) of the Board's Circular No. 1003/10/2015-CX dated 05.05.2015 to impress that Cenvat Credit is available to them as their name is covered as consignee in the invoices. Relevant Para of the said Circular dated 05.05.2015 is reproduced below:-

> *"5. Various specific issues referred to by the trade are clarified as follows -*
>
> *(i) Where a registered dealer negotiates sale of an entire consignment from a manufacturer or a registered importer and orders direct transport of goods to the consignee, credit can be availed by the consignee on the basis of invoice issued by the manufacturer or the registered importer. In such cases no Cenvatable invoice shall be issued by the registered dealer in favour of the consignee though commercial invoice can be issued. Where a registered dealer negotiates sale of goods from the total stock ordered on a manufacturer or an importer to multiple buyers and orders direct transportation of goods to the consignees and the manufacturer or the importer is willing to issue individual invoices for each sale in favour of the consignees for such individual sale, the same procedure shall apply.*

3. Learned AR on the other hand reiterates the findings of the adjudicating authority. He mentioned that the total purchase order is for Rs.

11,59,25,040/- out of which value of the Service Order is Rs. 1,09,19,700/. These details in no way prove that the Cenvat Credit availed by the appellant is proper. The invoices submitted by the appellant do not bear any co-relation with the purchase order nos. As an illustration, he gave example of invoice no. 45 dated 16.05.2010 issued by M/s. Anish Engineers, Pune which shows M/s. Thermax Ltd, Pune as buyer and M/s. Shree Renuka Sugars Ltd. Kutch, as the consignee. Learned AR submits that these invoices do not prove that the goods have been sold to the Appellant. It is only the purchaser who makes payment for the goods, is eligible to avail the Cenvat Credit involved therein. Since the goods are sold to other parties like M/s. Thermax Ltd or M/s. Shin Thermo Dynamic Engineering Pvt. Ltd. or L&T, the appellant is not entitled to avail the Cenvat Credit.

4. Heard both the sides. On one hand, Mr. Rahul Patil emphasizes that the invoices contain all the details required for availment of Cenvat Credit and as they have made full payment against them, Cenvat Credit should not be denied to them. The learned AR stresses that the invoices do not contain sufficient details for allowing the Cenvat Credit to the appellant. There is no denying fact that in the concerned invoices, Appellant's name is not shown as the buyer of the goods. Instead, they have been shown as consignee of the goods. The appellant has justified its claim of availing Cenvat Credit saying that they have given contract for erection and commissioning to their vendors viz M/s. Thermax and M/s. L& T and that they have made payment to those vendors for the goods as well as services. These are the factual things which need to verified by the department. We therefore, deem it fit to remit this matter to the adjudicating authority to verify:-

a) Whether the impugned goods are covered within the definition of capital goods.
b) Whether the impugned goods have been received by the appellant and used in their factory for manufacture of excisable goods?

c) Whether M/s. Shree Renuka Sugars Ltd made payment against the impugned goods to the supplier.

5. We further direct that the adjudicating authority should take decision on allowability of Cenvat Credit to the appellant after verifying the above facts. The appellant is directed to submit necessary invoices, contracts and other supporting documents within 45 days of this order to facilitate required verification by the Learned adjudicating authority. Upon receipt of these documents/records, the Learned Adjudicating Authority is expected to complete verification work and issue necessary order within 3 months from the date of submission of the required documents by the appellant.

6. The appeal is allowed by way of remand.

(Dictated & Pronounced in the open court)

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

**(SATENDRA VIKRAM SINGH)**
**MEMBER ( TECHNICAL )**

Prachi