CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD
REGIONAL BENCH, COURT NO. 2

EXCISE APPEAL NO. 11590 OF 2013

[Arising out of OIO-35/ COMMISSIONER/ 2013 dated 15/03/2013 passed by Commissioner of Central Excise-RAJKOT]

SHREE RENUKA SUGARS LIMITED **Appellant**
Gujarat Refinery, Bharapar,
Taluka : Gandhidham, Kutch, Gujarat

Vs.

COMMISSIONER OF CENTRAL EXCISE-RAJKOT **Respondent**
Central Excise Bhavan, Race Course Ring Road,
Income Tax Office, Rajkot,
Gujarat-360001

Appearance:
Shri Rahul Patil, Accountant for the Appellant
Shri M G Rayka, Additional Commissioner (AR) for the Respondent

CORAM:

HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10623/2025

Date of Hearing : 10.02.2025
Date of Decision: 05.08.2025

Dr. AJAYA KRISHNA VISHVESHA :

This appeal is directed against the Order-in-Original No. 35/Commissioner/2013 dated 12th March, 2013 through which the learned Commissioner disallowed the wrongly availed Cenvat Credit of Rs. 6,47,81,642/- to the appellant under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11 A (1) of Central Excise Act, 1944 and also ordered for its recovery. He also imposed a penalty of Rs. 6,47,81,642/- under Rule 15 (1) of Cenvat Credit Rules, 2004 read with Clause (a) of sub-Section (1) of Section 11 AC of Central Excise Act, 1944.

2. The facts of the case in brief are that during the course of audit it was noticed that the noticee (appellant) has availed Cenvat Credit in respect of

"Cess on Sugar" in their Cenvat Credit account, and have utilized the same for payment of "Cess on Sugar" on their finished goods viz. Sugar cleared for domestic clearance.

2.1 The said availment of Cenvat Credit on Sugar Cess appeared to the department as irregular since it was not specified in Rule 3 of Cenvat Credit Rules, 2004. Thus, it was not a specified duty on which the Cenvat Credit can be availed. Sugar Cess Act, 1982 was enacted to provide for the imposition of 'Cess on Sugar' for the development of sugar industries. Sugar Cess is levied under Section 3 of the Sugar Cess Act, 1982. Section 3 and 4 of the said Act show that Sugar Cess is described as duty of Excise only for the sake of administrative convenience for the limited purpose of levy and collection of the Cess in the said Act. CBEC vide its letter dated 10th August, 2024 clarified that Education Cess is to be calculated on the aggregate duties of Excise / Customs (excluding certain duties of Customs like Anti-Dumping Duty, safeguard etc. levied and collected by the Department of Revenue) and only such duties which are levied and collected as duties of Excise / Customs and are both levied and collected by the Department of Revenue should be taken into account for calculating Education Cess. It further appeared that Education Cess and SHE Cess shall be calculated on the aggregate of all duties of Excise including Special Duty of Excise or any other duty of Excise but excluded Education Cess leviable under Section 93 of the Finance Act, 2004 and Secondary and Higher Education Cess levied under section 136 of the Finance Act, 2007 on excisable goods which are levied and collected by the Central Government in the Ministry of Finance (Department of Revenue) under the provisions of the Central Excise Act, 1944 or under any other law for the time being in force.

2.2 The Revenue was of the view that from the relevant provisions narrated in Section 3 and 4 of the Sugar Cess Act, 1982 and the letter of CBEC dated 10th August 2004, there were no provisions in the Cenvat Credit Rules, 2004 as amended for availment of credit of "Cess on sugar" (collected as duty of Excise) under Sub-section (1) of Section 3 of Sugar Cess Act, 1982. However, the notice (Appellant) has wrongly availed credit of "Cess on sugar" collected as a duty of excise under Sub-section (1) of Section 3 of Sugar Cess Act, 1982 to the tune of Rs. 6,47,81,642/- which was required to be recovered under Rule 14 of Cenvat Credit Rules, 2004, read with Section 11 A (1) of Central Excise Act, 1944 along with interest under Section 11 AA (earlier Section 11 AB) of the Central Excise Act, 1944 and penalty was also imposable under Rule 15 (1) of Cenvat Credit Rules, 2004.

2.3 In these circumstances, a Show Cause Notice dated 5th November, 2012 was issued to the appellant wherein it was proposed to recover wrongly taken Cenvat credit on "Cess on sugar" of Rs. 6,47,81,642/- under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11 A of Central Excise Act, 1944 along with interest under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11 AA (earlier Section 11AB) of the Central Excise Act, 1944. It was also proposed to impose penalty under Rule 15 (a) of Cenvat Credit Rules, 2004 read with Section 11 AC of Central Excise Act, 1944.

2.4 The learned Adjudicating Authority, the Commissioner, after hearing both the parties framed following issues for determination :-

(a) Whether the noticee / appellant is eligible for the Cenvat Credit of Sugar Cess along with Education Cess and Secondary and Higher Education Cess leviable thereon or otherwise?

(b) If the noticee is not eligible for the Cenvat Credit, whether the said amount of wrongly availed Cenvat credit can be recovered along with interest?

(c) Whether the penalty under Rule 15 (1) of Cenvat Credit Rules, 2004 read with section 11 AC of the Central Excise Act, 1944 can be imposed upon the noticee?

2.5 The learned adjudicating authority, the Commissioner concluded regarding the first issue that Rule 3 of Cenvat Credit Rules, 2004 clearly stipulates the duties of Excise, leviable under different statutory provisions which will be available to the manufacturer to take Cenvat Credit. The 'Sugar Cess' under reference has been levied under the provisions of Sugar Cess Act, 1982 and the same is not appearing in Rule 3 (1) of Cenvat Credit Rules, 2004 and therefore, Cenvat Credit of Sugar Cess is not admissible.

2.6 As far as, the second issue is concerned, the Adjudicating Authority, the Commissioner, concluded that in **Sahkari Khand Udhyog Mandali Limited** -2011 (263) ELT 34 (Guj.), Hon'ble High Court of Gujarat at Ahmedabad held that it cannot be inferred or stated that the 'Sugar Cess' imposed under the provisions of the Cess Act assume the characteristic of Central Excise Duty so as to warrant calculation of Education Cess on the amount of Cess so collected. Hon'ble Gujarat High Court further held that the Cess Act and the Sugar Development Fund Act, both have been brought on the statute simultaneously on the same date and operate as a consolidated scheme and the provisions of both the Acts have to be read together. On such conjoint reading, it is apparent as the plain reading by itself would indicate that the 'Sugar Cess' levied and collected cannot be equated with duty of Central Excise and therefore, cannot be treated to be part and portion of the amount on which Education Cess has to be calculated. The Adjudicating Authority relying upon the law laid down in the case of **Sahakari Khand Udhyog Mandali Limited** (supra) held that Cenvat Credit of 'Sugar Cess' is not available under the provisions of Rule 3 (1) of Cenvat Credit Rules, 2004. Therefore, the noticee/ appellant is not eligible for Cenvat Credit of the Education Cess and Secondary and Higher Education Cess thereon even if paid.

2.7 The learned Adjudicating Authority, the Commissioner, concluded regarding point (c) that noticee / appellant has taken irregular Cenvat Credit of Sugar Cess, which till date has not been paid by them along with interest, therefore, the noticee appellant are liable for penalty equal to the irregular Cenvat Credit of Sugar Cess availed.

2.8 In view of the above observation and conclusion, the Adjudicating Authority, the Commissioner, disallowed the wrongly availed Cenvat Credit of Rs. 6,47,81,642/- to M/s. Shree Renuka Sugar Mills Limited, the Appellant under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A(1) of Central Excise Act, 1944 and ordered for its recovery. He also imposed penalty of Rs. 6,47,81,642/- under Rule 15 (1) of Cenvat Credit Rules, 2004 read with clause A (a) of Sub-section 1 of Section 11 AC of Central Excise Act, 1944.

2.9 Feeling aggrieved from the above impugned order, the present appeal has been filed before this Tribunal.

3. It is pertinent to note here that earlier an order was passed in this appeal by this Tribunal on 07.02.2023 and by way of that order, the impugned order passed by learned Commissioner was set-aside and the appeal was disposed of by way of remand to the Adjudicating Authority for passing a fresh order in the light of recent judgment of Hon'ble Supreme Court in **Unicorn Industries** vs. **Union of India** – 2019 (370) ELT 3 (SC). Aggrieved by the final order of

this Tribunal dated 07.02.2023, the appellant preferred Special Civil Application bearing No. 6897 of 2023 before Hon'ble Gujarat High Court. The Hon'ble Gujarat High Court, after hearing both the parties, remanded the matter back to this Tribunal for reconsideration.

4. Shri Rahul Patil, Constituent Attorney and Authorised Signatory representing the appellant submitted that in the order dated 07.02.2023, the Division Bench of this Tribunal has held in this appeal that there is no specific mention of Sugar Cess and Education Cess paid under Rule 3 of Cenvat Credit Rules, 2004. However, the Hon'ble Karnataka High Court decided the matter in favour of the assessee. On perusal of the said judgment, it is observed that the Cenvat credit was allowed on the ground that 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 Excise Act, 1944. However, the Hon'ble Supreme Court in the recent judgment of **Unicorn Industries** vs. **Union of India** – 2019 (370) ELT 3 (SC), held that Education Cess is not a duty of excise. As regards the Sugar Cess, the same is not levy of Central Excise duty whereas the 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 reconsidered in the light of recent of Hon'ble Supreme Court judgment in **Unicorn Industries** vs. **Union of India** (supra).

4.1 Learned Authorised Representative for the appellant also submitted that the appellant preferred Special Civil Application bearing No. 6897 of 2023 before the Hon'ble Gujarat High Court at Ahmedabad against the Tribunal order dated 23.01.2023 on the ground that Tribunal has not decided the issue on merit of the case in spite of detailed judgment of Hon'ble Karnataka High

Court which is directly applicable on Sugar Cess matter. The Hon'ble Gujarat High Court considered the fact that while passing the final order dated 28.06.2023in appellant's own case, the Tribunal has followed the decision of Hon'ble Karnataka High Court and finding two contrary orders of the Tribunal in appellant's case, remanded the matter to the Tribunal for reconsideration.

4.2 The learned AR for the appellant also submitted that the Hon'ble Karnataka High Court dealt with the issue of Cenvat credit of Sugar Cess in case of **CCE vs. Shree Renuka Sugars Limited** – 2014 (302) ELT 33 (Kar.) and held that Sugar Cess is duty of excise and not fee because levy and collection of Cess under Central Excise Act, 1944 is treated as levy and collection of duty of excise on Sugar- Cess levied and credited to the Consolidated Fund of India and it has to be appropriated by the Parliament by law and then only Cess could be credited to the fund. Hence, ceases to be a fee and partakes the character of a 'duty' or a 'tax'. Further, Hon'ble Karnataka High Court has held that once the payment of duty is established, the assessee is entitled to the Cenvat credit as per Rule 3 of Cenvat Credit Rules, 2004 and therefore, in the instant case the appellant has rightly availed Cenvat credit of Sugar Cess portion including the Education Cess and S&H Cess of Sugar Cess portion.

4.3 The learned AR for the appellant further cited the following cases in which a similar view has been taken:-

(a) **UOI vs. Cairn Energy India Pvt. Limited** – 2017 (345) ELT 17 (Raj.)

(b) **Hindustan Coca Cola Beverages Pvt. Limited** (Tri. Del.)

(c) **Shivashakti Nutrifoods Pvt. Limited vs. CCE** (Tr. Bang.) (in Appeal No. E/338/2020)

(d) **Bengal Beverages Pvt. Limited vs. CCE, Howrah** – 2022 (381) ELT 84 (Tri. Kol.)

4.4 The learned AR for the appellant also submitted that availment of Cenvat credit on Sugar Cess portion is no more *res-integra* and has been settled in favour of the appellant. He cited following decided cases in which a similar view has been taken by Hon'ble Supreme Court, Hon'ble Karnataka High Court, Hon'ble Gujarat High Court, Hon'ble Rajasthan High Court, CESTAT Ahmedabad and CESTAT, Principal Bench, New Delhi :-

(a) **Barnagore Jute Factory Company** – 1992 (57) ELT 3 (SC)

(b) **Commissioner vs. R.A. Shaikh Paper Mills Pvt. Limited** – 2008 (228) ELT 59 (Tri. Ahmd.)

(c) **TVS Motor Company Limited** – 2013 (295) ELT 42 (Kar.) & 2015 (323) ELT 57 (Kar.)

(d) **Commissioner vs. Shree Renuka Sugars Limited** – 2014 (302) ELT 33 Kar.)

(e) **Vareli Textile Industries Limited vs. UOI** – 1997 (91) ELT 279 (Guj.)

(f) **T.T.K-LIG Limited vs. Commissioner of Customs** – 2006 (193) ELT 169 (Tri. LB)

(g) **UOI vs. Cairn Energy India Pvt. Limited** – 2017 (345) ELT 17 (Raj.)

4.5 Learned AR for the appellant also submitted that there is no specific restrictions to discharge the Sugar Cess liability through accumulated credit of Sugar Cess therefore payment through Cenvat credit which is recognized and valid mode of payment and accordingly there is no question of payment of interest arise even after discharge of sugar Cess liability through credit ledger, he relied on Supreme Court Judgement in the matter of **Jayaswal Neco Limited**, 2015 (322) ELT 587 (SC), in which it was held that it was self-contained scheme dealing with various aspects-with its introduction, assessee has option to pay excise duty by availing credit of duty paid on inputs provided he had manufactured finished products making use of such inputs, further there is no specific prohibition in Rule 173G (1) for payment through Cenvat

Credit, which was recognized and valid mode of payment. We agree with the submission made by the learned AR for the appellant.

4.6 As regards the penalty under Section 11AC of Central Excise Act, 1944, learned AR for the appellant submits that learned Commissioner has imposed penalty amounting to Rs. 6,47,81,642/- under Rule 15(1) of Cenvat Credit Rules, 2004 read with clause (a) of sub section (1) of section 11AC of Central Excise Act, 1944. While doing so, the learned commissioner ignored the vital fact that the penalty under Section 11AC(1)(a) can be imposed, only if availment of credit with contravention of provisions of law, or has been short levied or short paid or erroneously refunded, for any reason other than fraud/collusion/willful mis-statement/suppression of facts/contravention of any of the provisions of this Act, Rules made there under with intent to evade payment of duty, where as in the instant case as per Circular No. 883/3/2009-CX dated 26.02.2009 no need to levy Cess on sugar manufactured out of Cess paid raw materials/inputs. There are no disputes that the white refined sugar manufactured is out of raw sugar imported/procured from domestic market, is already paid the sugar Cess therefore, the question of payment of once again the Sugar Cess against said clearance of white sugar does not arise, therefore in the instant case the question of intension of evasion of duty does not arise and accordingly question of levy of penalty. We agree with the submission made by learned AR for the Appellant.

4.7 Learned AR for the appellant prayed that the appeal may be allowed and the impugned order passed by learned Commissioner may be set-aside.

5. Shri Mihir G Rayka, learned Addl. Commissioner (AR) for the department reiterated the impugned order passed by learned Commissioner. He placed

reliance on the decision in **Commissioner vs. Sahakari Khand Udyog Mandli Limited** – 2011 (263) ELT 34 (Guj.).

6. After hearing the learned Authorised Representative of the appellant and learned AR for the department, we are of the view that facts of this case are covered by the decision of Division Bench of this Tribunal pronounced in appellant's own case in Excise Appeal No. 13979 of 2014-DB **Shree Renuka Sugars Limited vs. CCE & ST, Rajkot** in which this Tribunal has held that in view of the Hon'ble Karnataka High Court judgment in favour of the appellant **Shree Renuka Sugars Limited –** 2014 (302) ELT 33 (Kar.), 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 was set-aside and the appeal was allowed.

7. We have gone through the final order No. A/11402/2023 passed in Excise Appeal No. 13979/2014 (**Shree Renuka Sugars Limited vs. CCE & ST, Rajkot**). Division Bench of this Tribunal held that on careful consideration of the submissions made by both sides and perusal of 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.LT. 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 duly 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**"**

7.1 We agree with the learned Authorised Representative of the appellant that the issues in the present appeal are covered by the order passed by Division Bench in Appeal No. E/13979/2014 and the judgment delivered by Hon'ble Karnataka High Court in **Shree Renuka Sugars Limited –** 2014

(302) ELT 33 (Kar.). Therefore, taking into consideration the law laid down by Hon'ble Karnataka High Court in **Shree Renuka Sugars Limited** (supra) and order of this Tribunal, we are of the view that the impugned order passed by learned Commissioner cannot be sustained and the appeal has to be allowed.

Consequently, the appeal is allowed. The impugned order passed by learned Commissioner is set-aside.

(Pronounced in the open Court on 05.08.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

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