

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 2696 of 2012

[Arising out of Order-in-Original No. 20/Ldh/2012 dated 06.06.2012 passed by the Commissioner of Central Excise, Ludhiana]

M/s A B Sugar Ltd

Chadha Estate, Village Randhawa,
PO Berchha, Tehsil Dasuya,
Distt Hoshiarpur, Punjab 144205

.....Appellant

VERSUS

**Commissioner of Central Excise and
Service Tax, Ludhiana**

GST Bhawan, F Block, Rishi Nagar,
Ludhiana, Punjab 141001

.....Respondent

APPEARANCE:

Mr. Yug Singhal and Mr. Shivansh Dhiman, Advocates for the Appellant

Mr. Aneesh Dewan, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60990/2025

DATE OF HEARING: 28.04.2025

DATE OF DECISION: 08.08.2025

S. S. GARG:

The present appeal is directed against impugned order dated 06.06.2012 passed by the Commissioner of Central Excise, Ludhiana, whereby the learned Commissioner has confirmed the demand of CENVAT credit of Rs.62,40,000/- along with interest under Rule 14 of

the Cenvat Credit Rules, 2004 and also imposed an equal penalty under Rule 15 of the Cenvat Credit Rules, 2004; further, the learned Commissioner has also confirmed the demand of sugar cess of Rs.23,68,872/- under Section 11A of the Central Excise Act, 1944 along with interest under Section 11AB of the Act and also imposed an equal penalty under Section 11AC of the Act.

2. Briefly stated facts of the present case are that the appellant is engaged in manufacturing of sugar. In year 2010, the appellant imported raw sugar under ex-bond bill of entry no. 219 dated 23.02.2010 and paid the sugar cess thereon at the rate Rs.24/- per quintal of sugar. The sugar cess was paid and collected as duty of excise under Section 3(1) of the Sugar Cess Act, 1982. Vide Notification No. S.O.102(E) dated 07.01.2009 and vide Circular No. 883/3/2009-CX dated 26.02.2009, though the sugar cess was exempted, but the appellant, not being aware of the same, paid the sugar cess after reprocessing the imported raw sugar and selling it to buyers. Further, the appellant availed the credit of sugar cess of Rs.62,40,000/- paid on the imported raw sugar under *bona fide* belief that such credit was admissible to them. The department entertained the view that the appellant is not entitled to avail the credit of the sugar cess paid by them on the imported raw sugar as the sugar cess is not a duty of excise. On these allegations, a show cause notice dated 06.05.2011 was issued to the appellant alleging that neither under the Sugar Cess Act, 1982 nor under the Cenvat Credit Rules, an assessee can avail credit of the sugar cess paid by them. After

following the due process, the learned Adjudicating Authority denied the CENVAT credit to the appellant and confirmed the demands, interest and penalties as proposed in the show cause notice. Hence, the present appeal.

3. Heard both the parties and perused the material on record.

4. The learned Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and binding judicial precedents.

4.1 The learned Counsel further submits that the appellant has paid the sugar cess on imported raw sugar under the Sugar Cess Act, 1982 where it is specifically mentioned that it is a duty of excise and all the provisions of Excise Act will be applicable to sugar cess. He also submits that the Cenvat Credit Rules are also applicable to the Sugar Cess Act, 1982. He further submits that the sugar cess was paid and collected as a duty of excise under Section 3(1) of the Sugar Cess Act, 1982.

4.2 The learned Counsel also submits that this issue is no more *res integra* and has been decided by the Tribunal in the case of **Shree Renuka Sugars Ltd vs. Commissioner of C.Ex., Belgaum – 2007 (218) ELT 388 (Tri. Bang.)** wherein the identical issue was dealt with by the Tribunal and it was held that the Cenvat Credit Rules are applicable to the sugar cess and the assessee is eligible to avail the credit of the sugar cess paid as countervailing duty. He further

submits that the department filed an appeal before the Hon'ble High Court of Karnataka against the decision of the Tribunal; the Hon'ble High Court has affirmed the decision of the Tribunal and dismissed the appeal of the department vide its judgment dated 06.08.2013 reported as **Commissioner of C.Ex., Belgaum vs. Shree Renuka Sugars Ltd - 2014 (302) ELT 33 (Kar.)**. He further submits that against the decision of the High Court, though the department has filed appeal before the Hon'ble Supreme Court which is pending before the Hon'ble Supreme Court, but the decision of the High Court has not been stayed. He also relies on decision of Hon'ble Apex Court in the case of **Barnagore Jute Factory Co. vs. Inspector of Central Excise - 1992 (57) ELT 3 (SC)** wherein it was held that the nature of cess is that, though it is levied and collected as a cess but it is to be considered as a duty of excise.

4.3 The learned Counsel further submits that when the demand of duty is not sustainable then the question of interest and penalty does not arise.

5. On the other hand, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order and submits that being aggrieved by the decision of the High Court of Karnataka in the case of **Commissioner of C.Ex., Belgaum vs. Shree Renuka Sugars Ltd** (supra), the Revenue has filed appeal before the Hon'ble Apex Court and the appeal has been admitted by the Apex Court as reported in **Commissioner vs. Shree Renuka Sugars Ltd - 2016 (335) ELT A77 (SC)**.

6. After considering the submissions made by both the parties and perusal of the material on record, we find that the only issue involved in the present case is whether the appellant is entitled to avail the CENVAT credit of the sugar cess paid on imported raw sugar or not? We find that this issue is no more *res integra* and has been settled by the Hon'ble High Court of Karnataka in the case of **Commissioner of C.Ex., Belgaum vs. Shree Renuka Sugars Ltd** (supra) wherein the Hon'ble High Court has held that levy and collection of cess under the Central Excise Act, 1944 is treated as levy and collection of duty of excise on sugar and not a fee; sugar cess is a duty of excise; the assessee is entitled to the CENVAT credit; manufacturer or producer of final products is eligible to CENVAT credit of the additional duty (CVD) leviable under Section 3 of the Customs Tariff Act, 1975 equivalent to the duty of excise. We may refer to the relevant observations/findings of the Hon'ble High Court of Karnataka, which are reproduced herein below:

"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 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.

39. The aforesaid discussion makes it very clear that a manufacturer or producer of final products shall be allowed to take credit of the additional duty which is commonly known as CVD leviable under Section 3 of the Customs Tariff Act equivalent to the duty of Excise

specified under sub-clause (i), (ii), (iii), (iv), (v) and (vi) of Rule 3(1) of the Cenvat Credit Rules, 2004. Though it is called as Excise Duty, this Excise Duty is paid under the Customs Tariff Act, which is described as an additional duty (CVD) under Section 3 of the Customs Tariff Act, 1975. Though the duty payable under Section 2 of the Customs Act is not eligible for Cenvat credit, the additional duty paid and payable under the Customs Tariff Act, 1975 are eligible for Cenvat credit as is clear from clause (vii) of sub-rule (1) of Rule 3 of the Cenvat Credit Rules, 2004. It is that additional customs duty collected under Section 3 of the Customs Tariff Act, 1975, which is referred to as the excise duty under the Central Excise Act, 1944 and also the Sugar Cess Act, 1982.

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.

41. Therefore, in the light of the above discussion, we are of the view that the assessee was entitled to claim Cenvat credit in respect of the cess paid as additional duty (CVD) on raw sugar imported under the Sugar Cess Act of 1982 read with Section 3 of the Customs Tariff Act, 1975. Therefore, the substantial question of law is answered in favour of the assessee and against the Revenue. There is no merit in this appeal.”

7. In view of our discussion above and by following the ratio of the above cited decision, we are of the considered opinion that the impugned order is not sustainable in law, therefore, we set aside the same by allowing the appeal of the appellant with consequential relief, if any, as per law.

(Order pronounced in the open court on 08.08.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)