(2010) 03 GUJ CK 0004

In the Gujarat High Court

Case No : Tax Appeal No. 532 of 2009

Commissioner APPELLANT

Vs

Sahakari Khand Udyog Mandli Ltd. RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:
Sugar Cess Act, 1982 — Section 3

Citation : (2011) 236 ELT 34 : (2010) 2 GLH 500

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Gaurang H. Bhatt, for the Appellant;

Final Decision : Dismissed

Judgement

D.A. Mehta, J.—In this appeal filed by appellant-revenue challenging order dated 26-8-2008 [2008 (232) E.L.T. 161 (Tribunal)] made by Customs, Excise & Service Tax Appellate Tribunal (the Tribunal), following questions of law have been proposed stated to be substantial questions of law:

(A) Whether the Learned Tribunal is justified in the eye of law in holding that the Education Cess is not leviable upon the Sugar Cess as the Sugar Cess is levied by the Ministry of Consumer Affairs, Food & Public Distribution rather man by the Ministry of Finance, Government of India?

(B) Whether the Learned Tribunal is justified in the eyes of law in holding that the Sugar Cess is not the duty of excise, though collected by the Department of revenue, so as to attract the Education cess thereupon?

(C) Whether the Education Cess is leviable upon the Sugar Cess in view of Section 3 of the Sugar Cess Act, 1982 which is as under :

Section : 3 : Imposition of Cess : There shall be levied and collected as a cess, for the purposes of the Sugar Development Fund Act, 1982, a duty of excise on all sugar produced by any sugar factory in India, at such rate not exceeding

(xxxxx) per quintal of sugar, as the Central Government may, by notification in the Official Gazette, specify from time to time.:

Provided that until such rate is specified by the Central Government, the duty of excise shall be levied and collected at the rate of (xxxxx) per quintal of sugar.

(2) 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, 1944 (1 of 1944), or any other law for the time being in force.

(3) The duty of excise levied under sub-section (1) shall be payable by the occupier of the sugar factory in which sugar is produced.

(4) The provisions of the (Central Excise Act, 1944 (1 of 1944), 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.

(D) Whether the word ''levy'' could be understood and interpreted so as to include ''Assessment'' as per the established principle of harmonious construction for interpretation of the statutes in the context of the Sugar Cess Act, 1982 read with the Central Excise Act, 1944 in respect of the Education Cess?

2. Learned counsel for the appellant submitted that education cess is leviable at the prescribed rate on the aggregate of all duties of excise and therefore, would also include the cess levied and collected under the provisions of Sugar Cess Act, 1982 (the Cess Act). That the Tribunal has committed an error in law in placing reliance on the notification issued by Ministry of Consumer Affairs, Food & Public Distribution for holding that as the sugar cess is not levied by Department of Revenue, Ministry of Finance, sugar cess cannot be considered for the purpose of levying and computing education cess. That the Tribunal has wrongly placed reliance on decisions of Chennai Bench of the Tribunal referred to in the impugned order. Referring to provisions of sub-section (2) of the Cess Act, it was submitted that what is levied under sub-section (1) of the Cess Act is the duty of excise and hence, when read in conjunction with sub-section (3) and sub-section (4) of Section 3 of the Cess Act, it was apparent that the amount was collected as part and parcel of duty of excise under the provisions of the Central Excise Act, 1944 and the Rules made thereunder (the Excise Act).

3. As can be seen from the impugned order of Tribunal, it is recorded that the notification to levy sugar cess has been issued by Ministry of Consumer Affairs, Food & Public Distribution. The Tribunal has also referred to circular dated 10-8-2004 issued by Ministry of Finance clarifying that education cess is to be calculated on the aggregate duties of excise/customs levied and collected by Department of Revenue and only such duties which are levied and collected as duties of excise and customs and are levied and collected by Department of Revenue, should be taken into account for calculating education cess. The

Tribunal has thereafter referred to two different decisions of Chennai Bench. On the basis of aforesaid findings, it is held that though sugar cess is levied as duty of excise, the same is not levied by Ministry of Finance and hence in light of clarification by the Board, the same cannot be taken into account for calculating the education cess.

4. The reasoning adopted by Tribunal is not incorrect. Even a plain reading of the provisions of Cess Act would indicate that sugar cess levied and collected cannot be treated as central excise duty for the purposes of computing education cess.

5. Sections 3 and 4 of the Cess Act read as under:

SECTION 3 : Imposition of cess : - There shall be levied and collected as a cess, for the purposes of the Sugar Development Fund Act, 1982, a duty of excise on all sugar produced by any sugar factory in India, at such rate not exceeding [twenty five rupees] per quintal of sugar, as the Central Government may, by notification in the Official Gazette, specify from time to time.

(2) 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, 1944 (1 of 1944), or any other law for the time being in force.

(3) The duty of excise levied under sub-section (1) shall be payable by the occupier of the sugar factory in which sugar is produced.

(4) The provisions of the Central Excise Act, 1944 (1 of 1944), 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.

SECTION 4: Crediting proceeds of duty to Consolidated Fund of India. -The proceeds of the duty of excise levied u/s 3 shall be credited to the Consolidated Fund of India.

6. u/s 3(1) of the Cess Act, a provision is made for imposition of cess and it is specifically provided that "There shall be levied and collected as a cess". Meaning thereby, the levy and collection is of a cess for the purposes of the Sugar Development Fund Act, 1982. Thereafter, the provision goes on to state, what should be the rate at which the cess is to be levied and for sake of convenience, the same is described as duty of excise. In the event it was a central excise duty, as contended, the rate would have been provided in the Tariff Act and not in this provision.

7. Similarly, when one reads sub-section (2) of Section 3 of the Cess Act, it becomes clear that what is levied under sub-section (1) is in addition to the duty of excise leviable on sugar under the Central Excise Act, 1944, or any other law for the time being in force. Once again, pointing out to the Scheme which is distinct from the provisions of the Central Excise Act read with the Tariff Act.

When one reads sub-section (4) of Section 3 of the Cess Act, it becomes clear that for the purposes of levy and collection of the cess levied under sub-section (1) of Section 3 of the Cess Act, the procedural provisions relatable to levy and collection of the duty of excise, provisions relating to refund and exemption from duty, etc., are made applicable by invoking principle of incorporation. In other words, instead of bodily repeating the provisions of levy and collection of cess by this provision, the provisions under the Central Excise Act and the Rules thereunder have been incorporated and are to be read as part and parcel of the Cess Act. By adopting this legislative procedure, the legislature has used a well known legislative tool, but from the said exercise, 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.

8. Section 4 of the Cess Act is again an inherent indicator when it provides that the proceeds of the duty of excise levied u/s 3 (sugar cess) shall be credited to the Consolidated Fund of India. For the purposes of utilization of the said fund, one has to consider provisions of Sugar Development Fund Act, 1982 simultaneously to ascertain as to whether the sugar cess is in fact and in law only a cess or is a duty of central excise.

9. Under the Sugar Development Fund Act, 1982, ''fund'' means sugar development fund formed u/s 3 of the said Act, Under sub-section (2) of Section 3 of the Sugar Development Fund Act, 1982, it is provided that an amount equivalent to the cess collected under the Cess Act, reduced by the cost of collection, together with any moneys received by the Central Government for the purposes of the Sugar Development Fund Act, shall, after due appropriation made by parliament by law be credited to the sugar development fund. To put it differently, amount which was collected by way of sugar cess under the Cess Act is in the first instance, credited to the Consolidated Fund of India and thereafter, by due appropriation made by the parliament by law credited to the sugar de-

10. For the present, it is not necessary to consider other provisions of the Sugar Development Fund Act, 1982 relating to application of the sugar development fund etc. Suffice it to state that the Cess Act and the Sugar Development Fund Act both have been brought on the statute book simultaneously on the same day 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 that a 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 parcel of the amount on which education cess has to be calculated. In the circumstances, there is no infirmity in the impugned order of Tribunal to warrant interference.

11. Accordingly in absence of any substantial question of law, the appeal is dismissed.