

REGISTERED SPEED POST AD



**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. No. 195/71/WZ/2018-RA / 6392

Date of Issue: 29.08.2023

ORDER NO. 343 /2023-CX(WZ)/ASRA/MUMBAI DATED 28.08.23 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Dalmia Bharat Sugar & Industries Ltd.,  
Unit Shri Datta Sakhar Karkhana  
Asurle Porle, Tal Panhala,  
Dist. Kolhapur - 416229.

Respondent : The Commissioner of CGST & Central Excise, Kolhapur.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. PUN-EXCUS-001-APP- 1006/17-18 DATED 12.01.18 passed by the Commissioner of Central Excise(Appeals-I), Pune.

**ORDER**

These revision applications have been filed by M/s. Dalmia Bharat Sugar & Industries Ltd., Unit Shri Datta Sakhar Karkhana Asurle Porle, Tal Panhala, Dist. Kolhapur – 416229 (hereinafter referred to as “the applicant”) against Order-in-Appeal No. PUN-EXCUS-001-APP- 1006/17-18 DATED 12.01.18 passed by the Commissioner of Central Excise(Appeals-I), Pune.

2. Brief facts of the case is that the Applicant, having Central Excise Registration No. AAAAS4235IXM001 is a manufacturer of excisable goods viz. Sugar, Molasses falling under Chapter 17.01 and 17.03 of the Central Excise Tariff Act, 1985. They are availing Cenvat credit facility as provided under Cenvat Credit Rules, 2002 (hereinafter referred to as CCR). The Appellant allegedly had contravened the provisions of Rule 4(4) of the CCR as they had availed Cenvat credit of capital goods and also simultaneously claimed depreciation under Section 32 of the Income Tax Act, 1961. As per the said rule, Cenvat credit shall not be allowed to the assessee in respect of that part of the value of capital goods on which they have claimed depreciation under the Income Tax Act, 1961.

3. The Joint Commissioner, Central Excise & Service Tax, Kolhapur after following the process of law confirmed the demand of inadmissible Cenvat Credit amounting to Rs. 13,13,200/- in terms of Section 11A of the Act vide Order-in-Original No.01/CEX/JC/2010 dated 04.01.2010.

4. Being aggrieved by the Order-in-Original dated 04.01.2010 applicant filed appeal before the Commissioner(Appeals). The Commissioner(Appeals) Central Excise Pune-II vide his Order-in-Appeal No. PII/PAP/59/2010 dated 31.03.2010 held the Show Cause Notice to be time barred as the audit objection was raised on 10.03.2004 whereas, the demand was issued on 08.09.2005 and allowed the appeal by setting aside the Order-in-Original dated 04.01.2010.



5. Being aggrieved the Department filed an appeal with CESTAT, Mumbai. Hon'ble CESTAT vide Order No. A/87784/16/SMB dated 03.06.2016 remanded the case back to the Commissioner (Appeals) by holding that the period of limitation is to be measured from the relevant date in this case and the impugned order cannot sustain in so far as it sets aside the demand on the ground of time bar. It was further held that –

*“4.1 The fact regarding availment of Cenvat credit as well as depreciation is known only to the respondents and it is their duty to produce the same before the adjudicating authority. In absence of the same, credit cannot be allowed.*

*5. In view of the above, the appeal of the Revenue is allowed and the impugned order is set aside. The matter is remanded to the Commissioner(Appeals) for fresh adjudication.”*

6. The Commissioner(Appeals-I) Central Tax, Pune vide his Order-in-Appeal PUN-EXCUS-001-APP- 1006/17-18 DATED 12.01.18 upheld the Order-in-Original Dated 04.01.2010 and dismissed the appeal filed by the applicant.

7. Aggrieved by the said Order-in-Appeal dated 12.01.18 applicant has preferred Revision Applications mainly on the following grounds-

7.1. In the impugned order Commissioner Appeal has wrongly shown SDSSKL as a Unit of DBSIL. It is submitted that DBSIL is a company within the meaning of Companies Act of 1913, whereas SDSSKL is an existing cooperative society under the Maharashtra Cooperative Society Act 1960 (SDSSKL) therefore by any stretch of imagination SDSSKL cannot be said to be unit of DBSIL.

7.2. It is very much clear from the above that SDSSKL and the DBSIL are two separate and distinct legal entities from each other and there is no

commonality/similarity between promoters, management, and control over both the entities accordingly SDSSKL cannot be termed & treated as "a unit of Dalmia Bharat Sugar & Industries Limited".

7.3. The remand proceedings and impugned orders are also erroneous qua DBSIL because Auctioned Unit was acquired by DBSIL. in year 2011 and the appeal filed by Dept. was disposed of by Tribunal vide orders dated 03.06.2016 without any reference of DBSIL therefore it was not in the domain of Hon'ble Appellate Authority to make any observation on the liability of DBSIL or on inclusion of DBSIL in the remand proceedings that too when it was very much in the knowledge of Dept. and SDSSKL that Auctioned Asset has been acquired by DBSIL under the provisions of SARFAESI Act and through normal modes of transfer of property.

7.4. It is further submitted that since Hon'ble Appellate Authority has categorically refrained itself from fastening the liability therefore there was no occasion for him to include DBSIL in the remand proceedings and then to reflect DBSIL as proprietor of SDSSKL

7.5. The Auctioned Asset has been acquired by DBSIL under the provisions of the SARFAESI Act and thereafter it is being run by DBSIL under a new Central Excise Registration/ GST registration. Auctioned Asset is an entirely separate and distinct unit from that of SDSSKL, the Auctioned Asset had as such in no way related to SDSKKL and accordingly cannot be made liable for any acts or omissions of SDSSKL.

7.6. It is an admitted fact DBSIL has acquired the Auctioned Asset free of encumbrances, without any liability to pay arrears of excise duty /service tax liability, through a public auction conducted in pursuance of SARFAESI Act by Kolhapur District Co-operative Bank Ltd., Kolhapur and as such the DBSIL is not the successor-in-interest of the SDSSKL.



7.7. That after acquiring the auctioned assets of the appellant, DBSIL obtained a fresh license/registration under Central Excise/Service Tax, Industrial license, Factory license, and Crushing license for the existing sugar manufacturing Unit and started the crushing operations after substantial investment in the Auctioned Assets as altogether a new establishment/Undertaking, which is apparently separate and distinct from the appellant.

8. Personal hearing was granted in the matter on 21.12.2022, Shri Rahul Desai, Advocate appeared on behalf of the applicant and submitted that M/s. Dalmia Bharat Sugar Ltd. has nothing to do with the cenvat credit. He requested 15 days time to file additional submissions. Another Personal hearing was held on 16.02.2023, Shri Rahul Desai, Advocate appeared and submitted that Revisionary Authority may like to transfer the case to Hon'ble CESTAT if that is correct jurisdiction. He requested to pass an early order.

9. Government has carefully gone through the relevant case records, perused the impugned Order-in-Appeal, the Order-in-Original and the revision application filed by the applicant.

10. Government observes that the issue to be decided primarily in this case is whether Shri Datta Sakhar Karkhana Ltd. is a unit of M/s. Dalmia Bharat Sugar & Industries Ltd. and orders fixing liability of demands under impugned orders are sustainable. Government finds it proper to first examine the issue of jurisdiction. Hence, Government proceeds to discuss relevant statutory provisions.

10.1 Section 35EE of Central Excise Act, 1944.

**“Section 35EE. Revision by Central Government.** - (1) The Central Government may, on the application of any person aggrieved by any order passed under Section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of Section 35B, annul or modify such order :”

10.2 Section 35B(1) of Central Excise Act, 1944.

**“35B. Appeals to the Appellate Tribunal.** - (1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -

- (a) a decision or order passed by the [Commissioner of Central Excise] as an adjudicating authority;
- (b) an order passed by the [Commissioner (Appeals)] under section 35A;
- (c) .....
- (d) .....

[Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, -

- (a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;
- (b) a rebate of duty of excise on goods, exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;
- (c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;
- [(d) credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No. 2) Act, 1998:]

Provided further that the appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where -

- (i) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or
- (ii) the amount of fine or penalty determined by such order.”

11. From the above, it is clear that the Order-in-Appeal relates to decide whether Shri Datta Sakhar Karkhana Ltd. is a unit of M/s. Dalmia Bharat Sugar & Industries Ltd. and contravention of the provisions of Rule 4(4) of the CCR as they had purportedly availed Cenvat credit of capital goods and also simultaneously claimed depreciation under Section 32 of the Income Tax Act, 1961. The revision application has been filed by the applicant against the impugned orders passed by Commissioner(Appeals).



Government has no jurisdiction to pass order in this respect. In the result, the revision application filed by the applicant is not maintainable under Section 35EE of the Central Excise Act, 1944. Therefore, the remedy for the applicant who is aggrieved by the impugned order passed by Commissioner(Appeals) would lie before the Appellate Tribunal; i.e. the Hon'ble CESTAT. The appellant is at liberty to agitate the matter before appropriate forum.

12. In view of the above discussions, the revision applications filed by the applicant are dismissed as non-maintainable due to lack of jurisdiction.

  
( SHRAWAN KUMAR )  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. 343 /2023-CX (WZ) /ASRA/Mumbai DATED 28.08.2023

To,

M/s. Dalmia Bharat Sugar & Industries Ltd.,  
Unit Shri Datta Sakhar Karkhana  
Asurle Porle, Tal Panhala,  
Dist. Kolhapur - 416229.

Copy to:

- 1) The Commissioner of CGST & CX, Madurai
- 2) The Commissioner (Appeals), CGST & CX, Coimbatore
- 3) Sr. P.S. to AS (RA), Mumbai
- 4) Guard file

