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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 04/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71213/2016-SM[BR] dated 30/12/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/51950/2015	**Bajaj Hindusthan Sugar Ltd** Kundarki GONDA UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

Copy To

3Advocate(s) / Consultant(s):

BIPIN GARG & CO.
ADVOCATES(ALLD)
102, MAHALAXMI
ENCLAVE (ADJ. INCOME
TAX OFFICE), STANLEY
ROAD, CIVIL LINES,
ALLAHABAD (U.P.)-211001

4 Bar Association, CESTAT, Allahabad
5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL No. E/51950/2015-EX[SM]

(Arising out of Order-in-Appeal No. 58-CE/APPL-LKO/LKO2015 dated 19/02/2015 passed by Commissioner of Customs. Central Excise & Service Tax (Appeals). Lucknow)

M/s Bajaj Hindustan Sugar Ltd. — **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Lucknow — **Respondent**

Appearance:

Ms. Stuti Saggi. Advocate. — for Appellant
Shri D.K. Deb, Assistant Commissioner (AR). — for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 30/12/2016

FINAL ORDER NO. 71213/2016

Per: Anil G. Shakkarwar

The present appeal is filed by the appellant, M/s Bajaj Hindustan Sugar Ltd., against Order-in-Appeal No. 58-CE/APPL-LKO/LKO2015 dated 19/02/2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow.

2. Brief facts of the case are that the appellants, M/s Bajaj Hindustan Sugar Ltd., are engaged in the manufacture of Sugar & Molasses both falling under chapter 17 of schedule to Central Excise Tariff Act, 1985. They were issued with a

Show Cause Notice No.44-Joint Commissioner/Alld./2010 dated 24/02/2010, proposing to reverse Cenvat credit taken during the period from August, 2006 to September, 2008 on M.S. Angles, M.S. Channels etc. contending that such goods were neither input nor capital goods as defined in Rule 2 of Cenvat Credit Rules, 2004. After the matter was adjudicated ultimately it reached the ld. Commissioner (Appeals). The ld. Commissioner (Appeals) decided the matter through impugned Order-in-Appeal No. 58-CE/APPL-LKO/LKO2015 dated 19/02/2015 and has held that out of the Cenvat credit of Rs.40,80,699/- proposed to be denied and recovered, Cenvat credit amounting to Rs.27,17,015/- qualified the definition of input in terms of Rule 2(k) of Cenvat Credit Rules, 2004 allowed the said credit and in respect of balance credit of Rs.12,55,855/-, he has held that the said credit was inadmissible in terms of definition of input since the same was pertaining to Steel items used for supporting structures of capital goods and was not admissible as held by Larger Bench of this Tribunal in the case of Vandana Global. Aggrieved by the said order appellant is before this Tribunal.

3. Heard, ld. Counsel, Ms. Stuti Saggi, for the appellant who has contended that the period involved in the Show Cause Notice is August, 2006 to September, 2008, and the Show Cause Notice was issued in February, 2010 and the said Show Cause Notice does not give any grounds on the basis of which extended period was invoked. She has

contended that during the period, August, 2006 to September, 2008, when credit was availed neither the amendment of Cenvat Credit Rules with effect from 07/07/2009 that Cenvat credit on Steel items used for supporting structures are not admissible nor the pronouncement of this Tribunal in the case of Vandana Global, was available therefore, there was no intention to avail inadmissible Cenvat credit.

4. Heard, the ld. D.R., Shri D.K. Deb, for the respondents who has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of records, I find that during the period i.e. August, 2006 to September, 2008, appellant availed Cenvat credit of Rs.12,55,855/- which was subsequently held to be inadmissible by ld. Commissioner (Appeals) for the reason that the said credit was in respect of items ~~as~~ Iron & Steels used for fabrication of supporting structures. I find that during the material period there was no intention to take inadmissible Cenvat credit because provision prohibiting such credit was not on the Statute before 06/07/2009. Therefore, there was no intention to avail inadmissible Cenvat credit and since intention could not be established proviso to Sub-section 1 of Section 11A of Central Excise Act, 1944 was not invokable in the present case. Therefore, I allow the appeal and setting aside that part of the impugned

Order-in-Appeal by which Cenvat credit of Rs.12,55,855/- was held to be inadmissible.

(Dictated and pronounced in Court)

(Anil G. Shakkarwar)
Member (Technical)

Ansari

प्रमाणित प्रति / Certified True Copy
16.1.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001