FAX : 0532-2400149

REGISTERED / AD

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

Dated: 12/07/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70392/2016-EX[DB] dated 26/05/2016

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/MISC/51849/2015,	E/52952/2015	**BAJAJ HINDUSTHAN SUGAR LTD** UNIT: RUDHAULI BASTI,U.P
			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):

PRADEEP K MITTAL AND
PRAVEEN K MITTAL
171-CHITRA VIHAR, DELHI-110092

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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. I
E/Misc/51849/2015
APPEAL No.E/52952/2015 (DB)

(Arising out of Order-in-Original No. 57/Commr./Lko/CX/2014-15 dated 31/03/2015 passed by Commissioner of Central Excise & Customs, Lucknow)

For approval and signature:

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

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/S Bajaj Hindusthan Sugar Ltd **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Shri P.K. Mittal, Advocate for Appellant
Shri Amit Mahajan, Advocate, for Respondent

CORAM:

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

Date of Hearing : 26/05/2016
Date of Decision : 26/05/2016

ORDER NO.70392/2016..........

Per: Anil G. Shakkarwar

Miscellaneous Application No. E/Misc/51849/2015 is filed in APPEAL No.E/52952/2015 (DB) preferred by Bajaj Hindustan Sugar Ltd. The said miscellaneous application was filed with a prayer for out of turn early hearing. Heard the said miscellaneous application. Learned counsel for the appellant pleaded that the demand confirmed is to the tune of Rs.9,51,11,791/- and the issue is recurring in nature and the appellant has received subsequent show cause notices and prayed for early hearing of the appeal. Since the issue was recurring in nature and substantial amount being involved the early hearing was allowed and with the consent of authorized representative of revenue.APPEAL No.E/52952/2015 (DB) was heard.

2. The brief facts of the case are that the appellant are having composite unit comprising of sugar mill and distillery division. They are engaged in the manufacture of Sugar and molasses, ethyl alcohol, rectified spirit and Denatured Absolute Alcohol. The show cause notice is covering a period from August, 2012 to May, 2013. They undertake manufacture of

Sugar and Molasses in Sugar Mill and Molasses are further utilized in distillery division for manufacturer of ethyl alcohol through the process of fermentation. The contention of revenue is that with effect from 01.03.2005 Central Excise Tariff item no. 22072000 covers ethyl alcohol and other spirit Denatured of any strength. Therefore, the product known as rectified spirit does not exists in Central Excise Tariff and on fermentation of molasses rectified spirit comes into existence which does not find place in Central Excise Tariff. Therefore, though from said rectified spirit denatured spirit is manufactured on which duty of excess is paid the CENVAT credit gets snapped by coming into existence of product not finding place in Central Excise Tariff. Therefore, CENVAT credit on inputs and capital goods and input services going into manufacturer denatured spirit are not available to the appellants. Therefore, the appellants were served with the show cause notice No.28/Commr./Alld./2012 dated 14.08.2013 proposing recovery of allegedly wrongly availed CENVAT credit of Rs.9,51,11,791/- with proposal for payment of interest and imposition of penalty. The said show cause notice was adjudicated through Order-in-Original No. 57/Commr./Lko/CX/2014-15 dated 13.03.2015 which is impugned order. The appellant submitted their defense before the original authority. In their submission they have given write up on process of manufacture where they have stated that the process of manufacture of denatured spirit from fermentation of molasses is continuous process. On fermentation, ethyl alcohol is manufactured which is also called as rectified spirit. So as to make rectified spirit unfit for human consumption denaturing is done by mixing rectified spirit with certain chemicals and they are not clearing rectified spirit at all and rectified spirit is nothing but ethyl alcohol. They, further, contented that there are no provisions in the CENVAT credit Rules that if a non excisable product emerges in between the manufacturer of excisable product in a continuous process, CENVAT credit is inadmissible. They have also contended that rectified spirit is finding place at tariff item no. 22072000 because ethyl alcohol and rectified spirit are not two different commodities. The original authority was not convinced with the arguments put forth by the appellant. He confirmed the demand and imposed penalty. Aggrieved by the said order-in-original dated 31.03.2015 the appellant is before us.

3. The grounds of appeal before us are more or less similar to their contentions before the original authority. One of the grounds states that tariff item no. 22072000 is provided for ethyl alcohol and other spirits, denatured, of any strength and

contended that the description covered rectified spirit. They have further relies on various pronouncements.

4. Heard the learned counsel for appellant. He has reiterated his argument before the original authority and in the grounds of appeal and submitted various case laws. He has also submitted copy of Apex Court's ruling in the case of State of Uttar Pradesh and others Vs. M/s Modi Distillery etc. [1996 U.P.T.C.-312] he stated that in para 9 of the said ruling the Hon'ble Supreme Court has given its observation about ethyl alcohol which clearly establishes that rectified spirit is nothing but ethyl alcohol and ethyl alcohol is finding the place in said tariff item 22072000. Therefore, rectified spirit cannot be presumed to be not having place in Central Excise Tariff with effect from 01.03.2005.

5. Heard the learned authorized representative of revenue. He reiterated the findings of the order-in-Original dated 31.03.2015.

6. We have taken the rival contentions into consideration and also have gone through the case records and paper books submitted during the hearing. We find that the appellant have a composite unit where sugar and molasses are manufactured. Further the molasses on fermentation in the distillery ethyl alcohol is obtain. Ethyl alcohol is denatured by mixing certain

chemicals which make ethyl alcohol unfit for human consumption. Before 01.03.2005 chapter sub heading 2204.10 covered denatured ethyl alcohol of any strength and chapter sub heading no. 2204.90 covered ethyl alcohol except alcoholic liquor for human consumption and undenatured ethyl alcohol. From 01.03.2005 tariff item no. 22072000 covered ethyl alcohol and other spirits denatured of any strength. This led the Central Excise authorities to think that pre-denatured ethyl alcohol does not find placed in Central Excise Tariff. We find that the show cause notice contents that rectified spirit is manufactured in between the process to manufacture denatured spirit and rectified spirit does not find place in Central Excise Tariff with effect from 01.03.2005 and therefore CENVAT credit is not admissible as inputs & input services and capital goods going into manufacture of rectified spirit and hence going into manufacture of denatured spirit. Before 01.03.2005, department accepted that rectified spirit is covered under chapter sub heading no.2204.90. As stated above, 2204.90 covers ethyl alcohol except ~~are~~ one for human consumption and which are undenatured. Therefore, the issue to be decided is whether ethyl alcohol and rectified spirit are two d~~e~~ifferent comm~~un~~odities or one and the same commodity. We find that the Hon'ble

Supreme Court in the case of State of Uttar Pradesh and others (supra) in para 9 has observed as follows : -

> "The ISI specifications had divided ethyl alcohol into several kinds of alcohol. Beverages and industrial alcohols were clearly and differently treated. Rectified spirit for industrial process was defined as spirit purified by distillation having a strength of not less than 95% by volume of ethyl alcohol."

It is very clear from the observation of Hon'ble Supreme Court that ethyl alcohol and rectification spirit are one and the same. We, therefore, hold that rectified spirit which is not used for human consumption is nothing but ethyl alcohol and is finding place in tariff item no. 22072000. We, therefore, hold that the show cause notice dated 14.08.2013 is not sustainable. As a result, we set aside the impugned order and allow the appeal with consequential relief. No Costs.

(Dictated in Court)

—Sd— —Sd—

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

akp

प्रमाणित प्रति / Certified True Copy
15.7
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