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: 31/01/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70094/2017-EX[DB] dated 12/01/2017

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/390/2009	**THE GENERAL MANAGER, THE KESAR ENTERPRISES LTD.** BAHERI, DISTT. BAREILLY, UTTAR PRADESH.
		Name and Address of Respondent
2		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Copy To
3Advocate(s) / Consultant(s).

Kapil Vaish
2nd floor, Part-A Krishna Janki Palace, 35-C, Rampur Garden, Civil Lines, Bareilly, UP
Bareilly
Uttar Pradesh

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 AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal No.E/390/2009-EX[DB]

Arising out of Order-in-Original No.53/Commr./MRT-II/2008 dated 28.11.2008 passed by Commissioner Customs, Central Excise & Service Tax, Meerut-II.

The General Manager,
The Kesar Enterprises Ltd.

..APPELLANT(S)

VERSUS

Commissioner of Central Excise, Meerut-II

..RESPONDENT (S)

APPEARANCE:

Shri Kapil Vaish, Advocate for the Appellant (s)

Shri Rajeev Ranjan, Joint Commr. (A.R.) for the Department (s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 12.01.2017

FINAL ORDER NO.- 70094/2017

Per Mr. Anil G. Shakkarwar:

The present appeal is filed by the appellant against Order-in-Original No.53/Commr./MRT-II/2008 dated 28.11.2008 passed by Commissioner of Central Excise, Meerut-II.

2. The brief facts of the case are that the appellants are manufacturers of Sugar, Molasses, Ethyl Alcohol, Rectified Spirit, Denatured Spirit etc. They also manufacturing Indian Made Foreign Liquor. They are availing Cenvat Credit facility. They were issued with a show-cause-notice dated 07.03.2007 wherein, it was contended that they were availing Cenvat Credit of duty paid of Molasses and said Molasses were used in the manufacture of Ethyl Alcohol which was subsequently used in the

manufacture of Denatured Spirit. It was contended in the said show-cause-notice that, Ethyl Alcohol is non-excisable, therefore, Cenvat Credit of duty paid on Molasses was not admissible to the appellant. Therefore, through the said show-cause-notice applicants were called upon to show cause as to why Cenvat Credit amounting to Rs.5,63,96,746/- should not be recovered under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A of Central Excise Act, 1944. The said show-cause-notice was adjudicated through impugned Order-in-Original wherein, demand of Rs.3,17,22,494/-was confirmed and equal penalty was imposed. Aggrieved by the said order, the appellant is before this Tribunal.

3. Heard the learned counsel for the appellant who has submitted that the facts of the present case are similar to the facts of case decided by this Tribunal in the case of M/s Bajaj Hindustan Sugar Ltd. Vs. Commissioner of Central Excise, Lucknow decided through Final Order No.70392/2016 dated 26.05.2016.

4. Heard the learned DR for Revenue, who is supporting the impugned Order-in-Original.

5. Having considered the rival contentions, we find that the issue of admissibility of Cenvat Credit of duty paid on Molasses used in the manufacture of Ethyl Alcohol/Rectified Spirit which subsequently is used in the manufacture of Denatured Spirit was decided by this Bench through said Final Order No.70392/2016 dated 26.05.2016 wherein it was held in Para 6 as follows "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 Rectified 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".

5.1 In view of our finding in the said case, we hold that the impugned Order-in-Original, wherein Cenvat Credit was denied is not sustainable in Law. We, therefore, allow the appeal. The appellants shall be entitled to consequential relief as per law.

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

-Sd/-
(ANIL G. SHAKKARWAR)
Member(TECHNICAL)

Mishra

प्रमाणित प्रति / Certified True Copy
8.2.17
सहायक पंजीकार / Asst. 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