CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 15/2/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70067/2016 dated 10/02/2016

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
	E/55633/2014	BAJAJ HINDUSTAN LTD UNIT-KUNDRKI DISTT- GONDA(UP)

Name and Address of Respondent	CCE, ALLAHABAD 38,M.G.MARG CIVIL LINES, ALLAHABAD

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s S.C.KAMRA,ADV
B-2/210(BASEMENT)
SAFDARJUNG ENCLAVE
NEW DELHI-29.

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

Asstt. Registrar
Regional Bench, Allahabad

In The Customs, Excise & Service Tax Appellate Tribunal
Regional Bench (Allahbad)

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Appeal No : E/55633/2014

(Arising out of OIA/CE/ALLD/2014 Dated 30.07.2014 passed by Commissioner (Appeals) of Customs, Central Excise & Service Tax-Allahbad)

M/s Bajaj Hindustan Ltd. : Appellant (s)

Vs

CCE & ST, Allahbad : Respondent (s)

Represented by:
For Appellant (s) : Shri S.C. Kamra (Advocate)
For Respondent (s) : Shri D.K. Sinha (AR)

For approval and signature:

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

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should 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 Departmental authorities?	Yes

CORAM:
MR. ANIL CHOUDHARY, HON'BLE MEMBER (JUDICIAL)

Date of Hearing: 10.02.2016

Date of Decision: __________

Ac

Final **Order No.** 70067/2016

Per: ANIL CHAUDHRY

1. Heard the parties.

2. The issue in this appeal is whether the appellant a manufacturer of Sugar and Molasses is entitled to take Cenvat credit on welding electrodes 'as inputs' admittedly used in repair of plant & machinery of boiling house, pan, crystallizer, mill house machinery, etc. being capital goods which are further used for manufacture of excisable goods.

3. The issue is no longer res-integra, and stands decided in favor of the assessee in their own case by this Tribunal in Appeal No. E/817 & 818/2009-SM, Final Order No. 201-202/2011-SMB dated 31.03.2011 wherein it is held:-

> "7. I find that the issue has been dealt by the Hon'ble Chhatisgarh High Court in the case of Ambuja Cements Eastern Ltd. vs. CCE, Bangalore-I vs. Alfred Herbert (India) Ltd. wherein both the Hon'ble High Courts have held that welding electrodes used in the repair and maintenance of the plant and machinery are entitled for credit. Also on the point judicial pronouncement by the highest court has held by the Hon'ble Bombay High Court in the case of Mercedes Bear India Pvt. Ltd. vs. Union of India-2010 (252) ELT 168 (Bom.) that the decision of the higher count is binding. Accordingly in these appeals, the respondents are entitled for credit availed by them on welding electrodes which are used by them for fabrication and repair and maintenance of their capital goods. Accordingly, I do not find any infirmity in the impugned orders and the same are upheld. The appeals filed by the Revenue are rejected."

4. It have also been again decided by another SMB of this Tribunal in the appellants own case- E/2982/2009, Final Order No. 285/2011-SMB wherein it was held as follows:-

5. The issue involved in this matter stands decided against the department by Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd vs. Union of India (supra) and Hon'ble Chhatisgarh High Court in the case of Ambuja Cement Eastern Ltd. vs. CCE, Raipur reported in 2010 (256) ELT 690 wherein both the High Courts have held that welding electrodes used for repair & maintenance of plant & machinery are eligible for Cenvat Credit as inputs as well as capital goods. In case of Ambuja Cement Eastern Ltd. (supra), Hon'ble Chhatisgarh High Court also observed that dismissal by Hon'ble Supreme court of the SLP filed against the judgement of CESTAT, Kolkata Bench in the case of Steel Authority of India Ltd. vs. Commissioner reported in 2008 (222) ELT 233 (Tri.-Kolkata) does not lay down any law as summary dismissal of SLP by the Apex Court neither lays down any law nor results in any binding precedent. Following the judgements of above two High Courts, I therefore, hold that the impugned order denying Cenvat Credit in respect of welding electrodes used for repair & maintenance for plant & machinery is not sustainable. The same is set aside. The appeal is allowed."

5 Thus, as the issue is squarely covered on all fours, I allow the appeal and set-aside the impugned order. The appellant will be entitled to consequential benefit, if any.

(Order pronounced in Court dated...............................)

G.Y.

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रति / Certified True Copy
17.2.16
सहायक पंजीयक / 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