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

Dated: 30/12/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70119/2015 dated 17/12/2015

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/SPS

Application	Appeal	Name and Address of Appellant
	E/2008/2009	CCE, MEERUT I EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT(UP)

Name and Address of Respondent: BAJAJ HINDUSTHAN LTD
UNIT- GANGNAULI
SAHARANPUR(UP

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH P.K.MITTAL,ADV
171, CHITRA VIHAR
DELHI-92

4 Bar Association, CESTAT, Delhi
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

30/12/15
Asstt. Registrar/SPS
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Ex. Appeal No.2008/09

Arising out of O/O No.13/Commr./MRT-I/2009 dated 31.03.2009 passed by Commr. of Central Excise, Meerut I

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)

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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 His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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Commissioner of Central Excise, Meerut I ...APPELLANT(S)

VERSUS

M/s Bajaj Hindustan Ltd. RESPONDENT (S)

APPEARANCE

Shri M. K. Sarangi, Joint.Commr. (A.R.) for the Department
Shri P. K. Mittal, Adv. for the Respondent (s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 17.12.2015

Final ORDER NO. 70119/2015

Per Mr. B.Ravichandran :

The appeal filed by the Revenue is against the order dated 31.03.2009 of Commissioner of Central Excise, Meerut I.

2. Brief facts are that the respondents are engaged in the manufacture of sugar, molasses and de-natured spirit. The Revenue entertained certain doubts regarding eligibility of credit on various input services availed by the respondents as these services appeared to be used in the manufacture of rectified spirit, which is exempted from Excise duty. Proceedings were initiated against the respondents by way of show-cause cum demand dated 01.08.2008. After due process, the case was adjudicated by the ld.Commissioner. He dropped the demand raised in the notice. The Revenue is aggrieved against dropping of a part of demand, is in the appeal before us. It is contended that the original authority indicated that approximately 98% of the total production of rectified alcohol is used for de-natured alcohol cleared on payment of duty. Hence, it is the plea of the Revenue that remaining 2% is not used in the manufacture of de-natured alcohol and hence, appropriate credit of input services should have been ordered to be reversed by the original authority.

3. The ld.A.R. for the Revenue, reiterated the grounds of appeal and when asked specially about the quantification of clearance of rectified spirit amounting 2%, he informed that an inference has been made based on the findings of the original authority at Para 4.7 of the impugned order.

4. The ld.Counsel for the respondent, states that there is no ground for invoking Rule 6 (3) of Cenvat Credit Rules, 2004 in the present

case. He drew our attention to their plea recorded by the original authority at Para 3.6.2 of the impugned order. In terms of Rule 6 (5) of Cenvat Credit Rules, 2004 as prevailing during the relevant period when the credit is availed on input services of listed category, there is no need to follow the provisions of sub-rule (1), (2) & (3) of Rule 6 of Cenvat Credit Rules, 2004, unless such services are exclusively used in relation to manufacture of exempted goods or provided exemption services. The respondent has listed out of the services, on which credit has been availed by them and contended that except for Rs.176/- availed on cargo handling services, all other services are covered by the provisions of Rule 6 (5).

5. We have heard both the sides and examined the appeal records. We find that there is no assertion with evidence by the Revenue regarding actual clearance of exempted rectified spirit by the respondent to the extent of 2% of total production. An inference made is the reason for this appeal. However, even, if it is considered that such 2% of rectified spirit has been cleared by the respondent, the plea made by the respondent as recorded by the original authority regarding applicability of Rule 6 (5) of Cenvat Credit Rules, 2004, has to be considered the services or of such nature, which do not attract the provision of Sub-rule (1), (2) & (3) of Rule 6.

6. Considering the above position, we find no merit in the appeal filed by the Revenue and accordingly, the same is dismissed.

(Dictated and pronounced in the open Court)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(A.CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रति / Certified True Copy
19.1.16
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