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

Dated: 11/5/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70171-70175/2016 DB dated 04/05/2016

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
	E/2483-2486/2005 &E/1635/2006	RESIDENCY FOODS & BEVERAGES LTD HOTEL TAJ PALACE SARDAR PATEL MARG, N DELHI-21
		SH PRANAB PAL RESIDENCY FOODS & BEVERAGES LTD HOTEL TAJ PALACE SARDAR PATEL MARG, N DELHI-21
		SH SANJAY MALHOTRA RESIDENCY FOODS & BEVERAGES LTD HOTEL TAJ PALACE SARDAR PATEL MARG, N DELHI-21
		V.S.GURUMANI RESIDENCY FOODS & BEVERAGES LTD HOTEL TAJ PALACE SARDAR PATEL MARG, N DELHI-21
		A.B.KARKAR TULIP STAR HOTELS CHANDRA MUKHI BLDG BASEMENT, NARIMAN POINT MUMBAI
	Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE, KANPUR 117/7, SARVODAYA NAGAR KANPUR

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s   SH L.P.ASTHANA,ADV
K-163, GREATER KAILASH-I
NEW DELHI

SH P.N.KALRA,ADV
WZ-27, 10, JWALAHERI MKT
F FLOOR, PASCHIM VIHAR
N DELHI-63

9 Bar Association, CESTAT, ALLAHABAD
10 Director Publications, Customs, Excise. I.P. Estate, Delhi

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

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

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

14 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

15 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121005 (Haryana)

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

17 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
18 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
19 C.D R.   20 Office Copy   21 Guard File. 22.M.S KNOWLEDGE PROCESSING PVT
LTD(TAMMANAGEMENTINDIDA.COM)

Asstt. Registrar
Regional Bench, Allahabad

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

Ex. Appeal Nos.2483-2486/05 & 1635/06

Arising out of O/O No.CCE (Adj.)/22-31/2005 dated 07.04.2005 passed by Commr. of Central Excise (Adj.), New Delhi.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, 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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(1) M/s Residency Foods & Beverages Ltd.
(2) Shri Pranab Bal
(3) Shri Sanjay Malhotra
(4) Shri V.S.Gurumani
(5) Shri A. B. Kerkar

...APPELLANT(S)

VERSUS

Commissioner of Central Excise & Customs, Kanpur

RESPONDENT (S)

APPEARANCE

Shri L. P. Asthana & Ms.Shreya Dahiya, both Advocates for the Appellant (s)
Shri Rajeev Ranjan, Joint Commr. (D.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 04. 05. 2016

Final ORDER NO. 70171-70175/2016

Per Mr. Anil G. Shakkarwar :

These 5 (five) appeals are arising out of the same Order-in-Original dated 7th April, 2005.

2. Brief facts of the case are that the appellants, M/s Residency Foods & Beverages Ltd., are manufacturers of aerated soft drinks since 26.04.1990 and they had entered into agreement with Pepsi Foods Ltd. for acting as its franchisee and producing & marketing their products. The appellants have entered into an agreement for distributorship with M/s Taj Services Ltd.. The period covered in the impugned order is from 01.03.94 to 29th January, 1995. During the said period, the appellant was to clear all the goods manufactured by them through M/s Taj Services Ltd. (TSL for short) Revenue's contention is that the appellant and M/s Taj Services Ltd., are related persons within the meaning of Section 4 (4)(c) of Central Excise & Salt Act, 1944. Hence, the sale price of TSL will be the assessable value for levy of duty in the hands of Appellant Company. As per agreement, the Appellant Company was to undertake all advertisement, publicity and sales promotion programme, at their own cost. TSL was to bear the cost of marketing and distribution. Through the impugned order, the differential duty of Rs.2,61,81,808/- was confirmed and penalty was imposed. Further, personal penalties were imposed on four co-noticees (Director, Manager).

3. The ld.Counsels for the appellants, pleaded that in terms of ruling of the Hon'ble Supreme Court in the case of Calcutta Chromotype Ltd. Vs. Collector of Central Excise, Calcutta reported in 1998 (99) ELT 202, both the appellant and M/s Taj Services Ltd.,

being Companies incorporated under the Companies Act, 1956, cannot be treated as related persons. He further contended that at the time of original adjudication, they had claimed deductions on account of freight, trade discount, sales tax paid, cost of durable and returnable packages allowable under Section 4 (4)(d) of the Central Excise and Salt Act, 1944, from the invoice price received by them from M/s Taj Services Ltd. and the same were not considered by the original authority. In the paper book at page 987 onwards, they have repeated their contentions that as per law, they are entitled for the above stated deductions. Further, they contended that through a letter dated 20.06.1995, jurisdictional Assistant Collector informed them as follows :

> *"Now that the Directorate General of Anti Evasion, New Delhi has completed investigation in regard to few bottles (as informed vide DOC No.160/INI/DGAE/HQ/94/2396/1.5.1995) as in the light of the findings of the Directorate General of Anti-Evasion. I hereby order for final approval of price list No.4/94-95 w.e.f.1.3.1994 at the same price at which the goods were cleared provisionally. All the assessments which were made provisional because of the order issued vide even C.No.442-443/23.1.1995 will be treated as final."*

He contended that all the assessments during the relevant period, were finalized and the Revenue did not file any appeal before the ld.Commissioner (Appeals) against the said finalization of assessment. Further, he contended that the period covered by these appeals, is after a passage of normal period of limitation and the demand raised through the show-cause notice adjudicated through the impugned order is hit by limitation.

4. The ld.A.R. for the Revenue, contended that there is a common share holding between the appellants and M/s Taj Services Ltd. and also there is a common management between the two and therefore, they are related persons. He also contended that the appellants have advanced an interest free loan for about of Rs.2.00 Crores. He further contended that in the present case, extended period of limitation was invokable.

5. We have carefully gone through the records and the submissions before us. We find that both the appellants and M/s Taj Services Ltd., are Companies incorporated under Companies Act, 1956. Therefore, in terms of ruling by the Hon'ble Supreme Court in the case of Calcutta Chromotype Ltd.(cited supra), we hold that M/s Residency Foods & Beverages Ltd. and M/s Taj Services Ltd., during the period covered by the appeal, were not related persons. Further, deductions claimed by the appellants referred to above, have not been contested by the Revenue by way of filing Cross Objection and also during hearing. We find that as per the provisions of law as existed during the material period, the said deductions were allowable for arriving at the assessable value. After allowing the said deductions, there is no differential duty demandable from the appellants. We further hold that the assessments were finalized as stated above. The finalization of the assessment was not challenged by the Revenue before the ld.Commissioner (Appeals). Therefore, the impugned show-cause notice is hit by limitation. In view of the foregoing, we set aside the

impugned Order-in-Original dated 07.04.2005 and allow all the appeals. No costs. The appellants will be entitled to consequential benefits.

(Pronounced in the open Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Anil Choudhary)
Member (Judicial)

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प्रमाणित प्रति / Certified True Copy
27.6.16
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