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

Dated: 01/12/2015

To

Appellant as per address in table below

Respondent as per address in table below

<u>Final Order No. A/ 70078-70079/2015 dated 29/10/2015</u>

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/2886-2887/2010	CCE MEERUT I EXCISE CHOWK, OPP CHOUDHARY CHARAN UNIVERSITY,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

3<u>Advocate(s) / Consultant(s)</u>: SH PRADEEP KR.MITTAL,ADV
171 CHITRA VIHAR
DELHI-110092

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 Advisers 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 AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Ex. Appeal No.2886-2887/10

Arising out of OIA No.48-49/CE/MRT-I/2010-11 dated 28.05.2010 passed by Commr. (Appeals) of Customs & Central Excise, Meerut.

For approval and signature:

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

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

VERSUS

M/s Bajaj Hindusthan Ltd. RESPONDENT (S)

APPEARANCE

Shri Vikram Kaushik, A.C. (A.R.) for the Department
Shri Pradeep Kumar Mittal, Adv. for the Respondent (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 29. 10. 2015

Final ORDER NO. 70079 – 70079/2015

Per Mr. Anil Choudhary :

The revenue is in appeal against common order in appeal number 48-49/CE/MRT-1/2010-11 dated 28/5/10 whereby dismissing the appeal of revenue the ld. Commissioner (Appeals) held that the respondent assessee is entitled to Cenvat credit on input services utilised in the manufacture of rectified spirit an exempt product which have been further used in the factory of the respondent for manufacture of denatured spirit, which is cleared on payment of duty.

2. The respondent is a manufacturer of sugar, molasses and absolute/Ethyl Alcohol and is registered under the provisions of Central Excise and service tax. The respondent have also installed their distillery plant in the same complex. The distillery unit is engaged in the manufacture of Absolute alcohol or rectified spirit which is not taxable under the provisions of Central Excise Tariff Act. Rectified spirit is taxable under State Excise law. After manufacture of Absolute Alcohol or rectified spirit, a part of it is denatured by adding denaturants like, crotonal dehyde, which makes it fit for industrial use and unfit for human consumption. It appeared to revenue that no manufacturing process is involved in making of denatured spirit from absolute alcohol. It further appeared that the process of manufacture of denatured spirit from mollases is not a continuous process. For the manufacture of denatured spirit, another set of machinery is required and is totally independent from the plant used for manufacture of absolute alcohol or rectified spirit. It further appeared that absolute alcohol or rectified spirit being marketable as the final product, in all

sense and accordingly it appeared that all plant machinery equipment as well as services used in the manufacture of absolute alcohol are being used exclusively in the manufacture of non-excisable/exempted products. Accordingly two separate show cause notices ~~very short~~ were issued for the period 2005-06 and 2006-07 and another notice for the period June 2008 to Feb., 2009 requiring the assessee to show cause as to why inadmissible Cenvat credit of service tax on input service, should not be demanded and recovered from them under Rule 14 of CCR read with Rule 6 (3) read with section 73 of the Act along with interest and penalty.

3 The respondent contested the SCN and the same was adjudicated vide order in original dated 23/7/09 and 9/11/09 wherein the proposed demand was dropped.

4. Being aggrieved the revenue preferred appeal before the learned Commissioner (Appeals) who vide the common impugned order was pleased to uphold the order in original observing that the revenue at no stage have contested that the ethyl absolute alcohol is not obtained as a result of continuous process, while this fact has been well established by the adjudicating authority in his order. It was further observed that Central Excise duty on the goods manufacture in India is levied by virtue of entry number 84 of the 7th schedule to the Constitution which exempts duty on alcoholic liquor for human consumption. It was further observed that rectified spirit being alchoholic goods is manufactured first and thereafter, after adding denaturant denatured/ethyl alcohol ~~one~~ is manufacture and sold on payment of

duty. It was also observed that such Cenvat credit was never denied to the assessee in the past. It is further observed that molasses used in the manufacture of the non-excisable goods, that is, rectified spirit. The revenue is condoning the loss on the storage of the denatured/alcohol and have got reversed the proportionate credit availed on the quantity of molasses ~~is~~ used in the manufacture of denatured or absolute alcohol, that is, the molasses used in the manufacture of the rectified spirit first. The ld. Commissioner also observed that in the case of the same respondent assessee vide OIO number 13/Commissioner/MRT-I/2009 dated 31/3/09, it have been held that Cenvat credit on input services used in the distillery for manufacture of None dutiable/exempted intermediate product which in turn are used for manufacture of final dutiable product is eligible to the respondents.

5. Being aggrieved the revenue is in appeal before this Tribunal on the ground among others that prior to 1/3/05 rectified spirit was classifiable under the heading number 2204. 90 of the CET Act attractive nil rate of duty. With effect from 1/3/05 the product does not find any place in the 8 digit tariff,effectively making it a non-excisable commodity. Rectified spirit/~~rectified~~ absolute alcohol has been defined in various dictionaries as concentrated ~~it and on~~ alcohol fit for drinking and ~~cast~~ which is obtained by repeated process of rectification. It was also contended that rectified spirit or absolute alcohol is a final product in itself, being marketable and under the control of the State Excise Authority and as such the respondent assessee is not entitled to Cenvat credit as the

Input or Input services ~~are~~ have been used in manufacture of an exempt product. It is further urged that Cenvat credit cannot be denied on exempted intermediate product but in the present case the product "rectified spirit" or "absolute alcohol" is Intermediate product as well as final product, being marketable, as such and at the same time non-excisable. Accordingly the ld. Commissioner have erred in holding that Cenvat credit is allowable/available.

6. The ld. Counsel for the respondent stated that the issue is no longer res Integra and the same stands settled by the ruling in the case of Commissioner of Central Excise Vs. Jainsons Wool Coombers Ltd.: 2011 (268) ELT 360 (P & H), wherein the question before Honourable High Court was whether Rule 6 of Cenvat Credit Rules does not debar a unit from taking credit of duty on the quantity of inputs used in manufacture of job worked goods cleared without payment of duty and whether the Tribunal was correct in allowing Cenvat credit by placing reliance on its earlier judgement in the case of Sterlite Industries Ltd. : 2005 (183) ELT 353 without taking into cognizance the provisions of Rule 2(d), 2 (f), 3 and 4(5)(a) of the Cenvat credit rules. The Honourable High Court held that the Tribunal rightly held that clearing of goods at Intermediate stage was not at par ~~of~~ with clearing of exempted goods. Under the circular of the Board (665/56/2002 - CX dated 25/9/02) as well as the scheme of Act and the rules, Cenvat credit is permissible to a job worker ~~or~~ and even to a manufacturer at intermediate stage of inputs likely, lubricants, soaps, chemicals, et cetera used in the manufacture of final products on

which duty was admittedly paid. Object of Cenvat credit is to avoid cascading effect of duty. The ld. Counsel also relies on the ruling of Honourable Madras High Court in the case of CCE versus Singaravelar Spinning Mills Private Ltd. : 2009 (241) ELT 497 wherein capital goods were used for producing intermediate products, ~~as~~ the question before the High Court was whether Tribunal was correct in allowing modvat credit of duty paid on capital goods/Spares by notification number 60/94 - CE dated 21/10/94, comes into effect from 21/10/94 and credit was taken during the period April 94 to September 94 and whether Tribunal was correct in allowing modvat credit of duty paid on capital goods and spares, namely Cardig~~an~~ & Combing machines producing products namely silver/Combed/cotton falling under chapter 52.02 of the schedule, wh~~en~~ich heading remained specifically excluded from the purview of ~~capital goods~~ eligible final products under erstwhile Rule 57Q as it stood during the material time. ~~by overing the legal provisions~~. The Honourable High Court held that the final product product namely cotton yarn was cleared on payment of duty. Thus carded/combed cotton came into existence at and intermediate stage. The Tribunal rightly held that the goods in question were not marketable and relying on the circular dated 25/9/02 held that Cenvat credit should not be denied on the capital goods used in the manufacture of intermediate products ~~scrapt~~ exempt from payment of duty which are used Duly in the manufacture of finished goods which are chargeable to duty and held that modvat credit of duty paid on capital goods cannot be denied. The ld. Counsel also relies on the ruling of Honourable Supreme Court in the case of Escorts Ltd. Vs. CCE : 2004 (171) ELT

145 wherein under notification number No. 217/86-CE, parts cleared ~~associates~~ from one factory of assessee to the other factory, where the assessee was availing/taking modvat credit in respect of duty paid on inputs used in the manufacture of parts and those parts were cleared to another factory of the same assessee, without payment of duty by virtue of notification number 217/86, and the parts were then used for manufacture of tractor which were cleared on payment of duty. Revenue had disputed that modvat credit was not admissible as the final goods that is parts were cleared without payment of duty. The Honourable Court have held that in cases where intermediate product comes into existence, even though no duty is paid on the intermediate product as it is exempted from the duty or is chargeable to nil rate of duty, credit will still be allowable so long as duty is paid on the final product. The Honourable Apex Court relied on its earlier decision in the case of M/s Hindustan Sanitaryware Industries, where is was held that so long as duty is paid on the final product, the mere fact that duty was not paid on the intermediate product would not disentitle the manufacturer from the benefit of notification number 217/86-CE. Accordingly, he prays for dismissing the appeal of Revenue.

7. Having considered the rival contentions I find that the issue is squarely covered on all four by the ruling of the Honourable High Court and Supreme Court as relied on by the ld. Counsel for the respondent. In this view of the matter I hold that the respondent assessee is entitled to Cenvat credit on services received in the manufacture of absolute alcohol or rectified spirit, which have been further used for

manufacture of denatured spirit, cleared on payment of duty. Thus, the appeal of revenue is dismissed. The respondent assessee will be entitled to consequential benefit, if any, in accordance with law.

(Dictated and pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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प्रमाणित प्रति / Certified True Copy

सहायक पंजीकार / Asstt. Registrar
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