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: 05/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70005/2017-SM[BR] dated 03/01/2017

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/Stay/1730/2010	E/1726/2010	**BAJAJ HINDUSTHAN SUGAR & INDUSTRIES LTD.** Unit: Pratappur, Distt. Deoria (UP)

Name and Address of Respondent

2 -C.C.E Allahabad
38,M.G.Marg, civil Lines,
Allahabad

Copy To

3 Advocate(s) / Consultant(s):

**BIPIN GARG & CO.
ADVOCATES(ALLD)
102, MAHALAXMI ENCLAVE
(ADJ. INCOME TAX OFFICE),
STANLEY ROAD, CIVIL
LINES, ALLAHABAD (U.P.)-
211001**

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/1726/2010-EX[SM]

Arising out of Order-in-Appeal No.75/CE/ALLD/2010 dated 26.03.2010 passed by Commissioner (Appeals), Central Excise, Allahabad.

M/s Bajaj Hindustan Sugar & Industries Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Allahabad

...RESPONDENT (S)

APPEARANCE:

Ms. Stuti Saggi, Advocate for the Appellant (s)

Shri Pawan Kumar Singh, Supdt. (A.R.) for the Department (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 03.01.2017

FINAL ORDER NO.- 70005/2017

Per Mr. Anil G. Shakkarwar:

This appeal is filed by the appellant, M/s Bajaj Hindustan Sugar & Industries Ltd., against Order-in-Appeal No.75/CE/ALLD/2010 dated 26.03.2010 passed by Commissioner (Appeals), Allahabad.

2. The brief facts of the case are that the appellants were engaged in manufacturers of Sugar & Molasses. The appellants were issued with a show-cause-notice dated 24.01.2008 contending that appellants had declared on various date in the year 2006, Molasses more than recorded balances of the same. Therefore, it was presumed by Revenue that proportionate Sugar was also manufactured by appellants. On the basis of such presumed quantity of Sugar, the

appellants were called upon to show cause as to why Central Excise duty amounting to Rs.31,40,137/- should not be demanded from them under Section 11A of Central Excise Act, 1944. The said show-cause-notice was adjudicated through Order-in-Original No.MP(Dem-04/2008) 05 of 2009 dated 24.01.2009. The Original Authority confirmed the demand and imposed equal penalty. The appellant preferred appeal before Ld. Commissioner (Appeals). The Ld. Commissioner(Appeals) adjudicated the matter through impugned Order-in-Appeal dated 26.03.2010. The Ld. Commissioner(Appeals) upheld the O-I-O and rejected the appeal. Aggrieved by the said Order-in-Appeal, appellant is before this Tribunal.

3. Heard the learned counsel for the appellant. The learned counsel took me through the said show-cause-notice dated 24.01.2008 and contended that on careful reading of said show-cause-notice, it will be clear that there are many contradictory statements made in the said show-cause-notice and that it was admitted in the said show-cause-notice that the declarations made in respect of Molasses were erroneous and on the basis of such admittedly erroneous declarations it was presumed that unaccounted and proportionate Sugar was manufactured and cleared without payment of duty. The learned counsel also contended that though the Officers have visited the unit they have not checked the stock of the balance of the goods nor verified any record to know the quantity of raw materials procured for such clandestinely manufactured and cleared goods.

4. Heard the Ld. DR for the Revenue, who has supported the impugned Order-in-Appeal.

5. Having considered rival contentions, I find that there are many contradictory statements made in the said show-cause-notice. The show-cause-notice has failed to substantiate the procurement of raw material for presumed quantity of Sugar having manufactured which was not accounted for nor the Investigating Officers took stock of the balance quantity of Sugar available in the factory nor they verified the production record in respect of Sugar. Therefore, I find that the said show-cause-notice is presumptive. Therefore, I set aside the impugned Order-in-Appeal holding the said show-cause-notice dated 24.01.2008 as unsustainable in Law. In view of the said findings, I allow the appeal.

(Dictated & pronounced in the open Court)

(Anil G. Shakkarwar)
Member (Technical)

Mishra

प्रमाणित प्रति / Certified True Copy
17.1.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001