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: 29/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71174/2016-SM[BR] dated 16/12/2016

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
1	E/Stay/2375/2010	E/2610/2010	**BAKEWELL AGRO LTD.** 9TH KM DELHI ROAD, SAHARANPUR (U.P.)
			Name and Address of Respondent
2			-C.C.E. MEERUT I EXCISE CHOWK,OPPOSITE CHOUDHARY CHARAN SINGH UNIVERSITY MANGAL PANDAY NAGAR, MEERUT - 250005. -

Copy To

3Advocate(s) / Consultant(s):

Aalok Arora, Advocate
82-MISSION COMPOUND,
SAHARANPUR,
UTTAR PRADESH
247001

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/2610/2010-EX[SM]

Arising out of Order-in-Appeal No.12-CE/MRT-I/2010-11 dated 26.04.2010 passed by Commissioner (Appeals) Customs & Central Excise, Meerut-I.

M/s Bakewell Agro Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Meerut-I

...RESPONDENT (S)

APPEARANCE:

Shri Aalok Arora, Advocate for the Appellant (s)
Shri D.K. Deb, Asstt. Commr. (A.R.) for the Department (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 16.12.2016

FINAL ORDER NO.- 71174/2016

Per Mr. Anil G. Shakkarwar:

This appeal is filed by the appellant, M/s Bakewell Agro Ltd., against Order-In-Appeal No.12-CE/MRT-I/2010-11 dated 26.04.2010 passed by Commissioner(Appeals).

2. The brief facts of the case are that the appellants are engaged in the manufacture of Biscuits. They are also availing the Cenvact Credit facility. During the period from June, 2005 to February, 2006, appellants cleared old used machines and parts, by way of sale for total amount of Rs.5,90,000/-. They were issued with a show-cause-notice dated 07.10.2008 calling upon the show cause as to why under Rule 3(5A) of Cenvat Credit Rules, 2004, they should not pay Excise

duty amounting to Rs.96,288/- on the scrap and old machines, cleared after use. The show-cause-notice was adjudicated through Order-in-Original No.22/2009-dated 17.11.2009, wherein demand was confirmed. Being aggrieved, the assessee preferred Appeal before the Ld. Commissioner (Appeal). The Ld. Commissioner (Appeal) decided the appeal through Order-in-Appeal No.12-CE/MRT-II/2010-11 dated 26.04.2010, wherein the Ld. Commissioner (Appeal) dismissed the appeal. Aggrieved by the said Order-in-Appeal, the appellant is before this Tribunal.

3. Heard the learned counsel for the appellant, Shri Aalok Arora, who has submitted that the machines of which Central Excise duty is being demanded were purchased in the past and Cenvat Credit on the same was not availed and, therefore, they do not attract the provisions of Cenvat Credit Rules. He has further submitted that the other goods involved are old Generator, which was purchased on commercial invoice and Cenvat Credit on the same was not availed. He submitted that the old scrap was related to uses Iron and Steel rods etc. earlier used in construction of some part of the building and no Cenvat Credit was on the same also availed at the time of purchase.

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

5. Having considered the rival contentions and perusal on record. I find that the scrap, which is generated on mechanical working, is covered by the definition of manufacture of scrap. The present case is not one in which Central Excise duty was liable to be paid. I therefore, find that

machines and generator on which duty is demanded under Rule 3(5A) of Cenvat Credit Rules are those on which there is no mention in the show-cause-notice about availment of Cenvat Credit. Therefore, Revenue has not established that Cenvat Credit is availed on them and therefore, show-cause-notice could not establish that they were covered by Cenvat Credit Rules. I, therefore, hold that show-cause-notice in the present case is not sustainable. Therefore, I set aside impugned Order-in-Original and Order-in-Appeal.

6. Thus, the Appeal is allowed. The appellant shall be entitled for consequential relief, as per Law.

(Dictated & pronounced in the open Court)

Sd/-

(Anil G. Shakkarwar)
Member (Technical)

Mishra