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: **24/08/2016**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/70688-70689/2016-SM[BR]** dated **11/08/2016**

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/55/2012	**BAJAJ HINDUSTHAN LIMITED.** UNIT: KHAMBARKHERA, DISTRICT-LAKHIMPUR-KHERI (U.P.)
2	E/1247/2012	**BAJAJ HINDUSTAN LTD** UNIT PRATAPPUR, DISTT. DEORIA, (U.P.)
		Name and Address of Respondent
3		-C.C.E. LUCKNOW 7-A, ASHOK MARG, LUCKNOW.
		-
4		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

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Other Appellants and Respondents as per Annexure

Copy To
5Advocate(s) / Consultant(s):

PRADEEP KUMAR MITTAL
171, CHITRA VIHAR,
NEW DELHI
110092

6 Additional Party's Name & Address :

7 Bar Association, CESTAT, Allahabad

8 Director Publications, Customs, Excise. I.P. Estate, Delhi

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

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

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

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

13 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

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

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

16 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

17 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

18 C.D.R. 19 Office Copy 20 Guard File

Asstt. Registrar

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

Appeal No.E/55 & 1247/2012-EX[SM]

Arising out of Orders-in-Appeal Nos.263-CE/LKO/2011 dated 29.09.2011 passed by Commr. (Appeals) Customs, Central Excise & S.T., Lucknow & 23/CE/ALLD/2012 dated 29.02.2012 passed by Commr. (Appeals) Customs, Central Excise & S.T., Allahabad.

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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M/s Bajaj Hindustan Ltd.,

...APPELLANT(S)

VERSUS

Commr. of Customs, Central Excise & S.T. Lucknow & Allahabad,

...RESPONDENT (S)

APPEARANCE

Shri Pradeep Kumar Mittal, Advocate for the Appellant (s)
Shri Ashok B. Kulgod Asstt. Commissioner, (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 11.08.2016

FINAL ORDER NO. - 70688-70689/2016

CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Mr. Anil Choudhary :

The issue in this appeal, filed by the appellant, manufacturer of Sugar and Molasses etc., is whether the Cenvat Credit availed by them, on these items like unalloyed cold rolled coils, rolled strips for insulation of boiler, SS Hose assembling, non-metallic jointing sheet, white dry asbestos packing, graphited asbestos packing, superlight packing & jointing, insulation material for steam pipes, MS Fab base for planetary gear box, single metal expansion, Hysil thermal insulation articles, ASB GL packing, plumber block, M.S. grating, Rails, metallic jointing sheet, RBS-LP, etc., falling under chapter 76, 83,68, 69 of CETA have been rightly availed or not during the period of 2005-06 to 2009-10.

2. The issue in these two appeals are common and accordingly both the appeals are taken up together for hearing and disposal. For convenience, I deal with the facts of Appeal No.E/55/2012. Vide show cause notice dated 20.01.2010, it was proposed to disallow the Cenvat Credit of Rs.21,36,910/-, availed by the appellant on the aforementioned items, as it appeared to Revenue that these items do not appear eligible for Cenvat Credit as capital goods in terms of Sub-Clauses of Rule 2(a)(A) of CCR, 2004. As these items do not appear to be covered under the description of components/spares/accessories of capital goods and as such are not covered under Sub-Clause No.(iii) of Rule 2(a)(A) of CCR, 2004. The SCN was adjudicated on contest, and the proposed demand confirmed recording of finding that the appellants have

themselves claimed that the subject goods have been used in election of the new Plant, which plant is fixed to the earth and merits treatment as an immovable property. The packing materials and insulating materials are used for thermal insulation of the pipes and fittings in order to avoid heat loss. The subject items are therefore, neither inputs nor capital goods for manufacture of Sugar. Neither are they used in manufacturing any capital goods, which further find used in their manufacturing process. Further, penalty of equal amount was imposed under Rule 15 of CCR read with Section 11AC of the Act.

3. Being aggrieved, the appellant preferred appeal before the Ld. Commissioner (Appeals), who vide the impugned order was pleased to dismiss the appeal, relying on the findings of the adjudicating authority, observing that the impugned goods were used in the plant and machineries which are immovable and attached to earth. As regards MS Grating, the appellant has submitted that it was used for fabrication of platforms and ladders to monitor functioning of boiling house. Further, observed that platforms are not capital goods in terms of Rule 2(a) of CCR, as these structures are immovable goods embedded to earth. Further reliance was placed on the Ruling of Larger Bench of this Tribunal in case of Vandana Global Ltd. Vs. CCE, Raipur.

4. And the other appeal No.E/1247/2012, the brief facts as per the SCN dated 08.04.2010, for the period of October, 2008 to

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August, 2009, it is urged that the MS Sheet/Plates, Section, Channels etc., which have been used by the appellant for the fabrication of plant and machinery cannot be considered as input in the manufacture of finished goods like Sugar and Molasses. Accordingly, the Cenvat Credit taken on amount of Rs.2,57,330/- was proposed to be disallowed along with the proposal for penalty. The SCN was adjudicated on contest and proposed demand was confirmed along with equal amount of penalty imposed under Rule 14 of CCR. Observing that the appellant have claimed that said items have been used in fabrication of Pan and Juice Heater. As the appellant has themselves used word 'fabrication' instead of 'manufacture' which have definite meaning under Central Excise Act. Further observed that the appellant have stated that partial fabrication of machinery etc. which is clearly repair and maintenance work as alleged in the Demand notice. Being aggrieved, the appellant had preferred an appeal before Ld. Commissioner(Appeals), who vide the impugned order was pleased to reject the appeal, observing that the appellants have failed to counter and controvert the allegations in the SCN and the findings of the adjudicating authority which are based on the provisions of law.

5. The learned Counsel for the appellant urges that it is an admitted fact that the items in question have been utilized either in repair or maintenance of the existing capital assets, or the items have been utilized as insulation and jointing materials, or

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some new machineries etc. have been fabricated or manufactured without which the appellant could not have manufactured the excisable outputs being Sugar and Molasses etc. The learned Counsel further states that the issue is no longer res Integra and the same have been decided in their favour by a coordinate Bench of this Tribunal in Excise Appeal No.793 of 2011-SM, Final Order No.A/57918/2013 dated 25.09.2013. Under similar facts and circumstances in M.S. Angles/Channels , Plates etc., were used for repair and maintenance as well as fabrication of Sugar machinery and credit availed on welding electrodes was in issue. It was held that the issue of credit on welding electrodes used for repairing of plant and machinery, the said issue is already adjudicated in favour of the appellant by three Hon'ble High Court in the case of **Hindustan Zinc Ltd. Vs. Union of India, Ambuja Cements Eastern Ltd. Vs. CCE, Raipur and CCE, Banglore Vs. Alfred Herbert (India) Ltd.** It was Further held that moreover, maintenance and repair is an activity without which manufacturing activity would not be commercially feasible even though theoretically it may be possible to carry out manufacturing activity without repair of plant and machinery. In the Ruling of Apex Court, in the case of **J.K. Cotton Spg. & Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur** reported at 1997 (91) E.L.T. 34 (SC), while interpreting the scope of expression "used in the manufacture of" in Section 8(3)(b) of CST Act, 1956, it was held that if a process or activity is so integrally related to the ultimate manufacture of goods so that without such process or activity, the manufacture may, even if theoretically possible, be commercially inexpedient, the goods intended in that process or activity would have to be treated as used in the manufacture. It was further observed that the definition of 'input' in Rule 2(k) of CCR, 2004 is much wider. Further reliance was placed on the Ruling of Hon'ble Calcutta High Court in the case of **Singh Alloys & Steel Ltd. Vs. Assistant Collector of Central Excise** reported at 1993 (66) E.L.T. 594, wherein it have been held that the definition of 'input' does not depend on what ought to be used but what is commercially expedient to use and the expression "in relation to" used in Rule 57 has wide connotation. Therefore, for determining the eligibility of an item for Cenvat Credit, what is relevant is as to whether the activity in which that item is required has nexus with manufacture of excisable goods, or in other words without that item, the manufacturing though theoretically possible, is not commercially feasible. Accordingly it was held that the activity of repair and maintenance have to be treated as having nexus with manufacture and hence any item used for repair and maintenance would be eligible for Cenvat Credit. It was also observed that under the admitted facts that the assessee have fabricated or manufactured components of Sugar mill machinery from the steel items etc. were used hence one thing is accepted that steel items have been used for fabrication of various items of sugar mill machinery as mentioned in the Order-in-Original or in the repair and maintenance, these steel items etc. would have to be treated as inputs, used in the manufacture of capital goods and, hence, would be covered by definition in Rule 2(k) and would be eligible for Cenvat Credit.

6. It is further observed that pursuant to the Ruling of Vandana Global Ltd. Vs. CCE, Raipur, the same have been distinguished by Hon'ble Madras High Court in case of India Cement and by Hon'ble Gujrat High Court in case of Mundra Ports & Special Economic Zone Ltd. Further, the definition of inputs in Rule 2(k) of CCR means and includes all goods used in the factory by the manufacturer of the final product. It also includes any goods including accessories, cleared with the final product, the value of which is included in such final product.

7. I also notice that the definition of 'inputs' during the relevant period under explanation 2 in Rule 2(k) includes goods used in manufacture of capital goods which are further used in the factory of the manufacturer. Further, clause (i) of Rule 2(k) provides 'input' means all goods used in or in relation to manufacture of final products which directly or indirectly and whether contained in final product or not and includes items like lubricating oils, grease, cutting oils etc., in relation to manufacture of final product or for any other purpose within factory of production.

7. Accordingly, I find that most of the items in question have been indisputably utilized in the factory of production of excisable goods and without the use of which the appellant could not have

manufactured excisable goods. Accordingly, relying on the precedent Ruling of this Tribunal in the appellant's own case as noticed herein above, I allow the appeals. The impugned order is set aside. The appellant will be entitled to consequential benefits in accordance with Law.

(Dictated & Pronounced in the open Court)

-Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy

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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