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: 18/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70963/2016-SM[BR] dated 30/09/2016

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/50665/2015	BAJAJ HINDUSTHAN LTD UNIT- MAQSOODPUR SHAHJAHANPUR UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW,UTTAR PRADESH-226001

Copy To

3 Advocate(s) / Consultant(s): SH BIPIN GARG,ADV
B-1/1289-A, VASANT KUNJ
NEW DELHI.

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

27/10/16
ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

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

Appeal No.E/50665/2015-EX[SM]

Arising out of Order-in-Appeal No.257-CEx/APPL-LKO/LKO/2014 dated 27.11.2014 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow.

For approval and signature:

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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M/s Bajaj Hindustan Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise & S. Tax, Lucknow

...RESPONDENT (S)

APPEARANCE:

Shri Mayank Garg, Advocate for the Appellant (s)
Shri D.K. Deb Assistant Commr. (A.R.) for the Department (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 30.09.2016

FINAL ORDER NO.- 70963/2016

Per Mr. Anil G. Shakkarwar:

The appeal is filed by the Appellant, M/s Bajaj Hindustan Ltd., against Order-in-Appeal No.257-CEx/APPL-LKO/LKO/2014 dated 27.11.2014 passed by the Ld. Commissioner (Appeals).

2. The brief facts of the case are that the appellant took Cenvat Credit of Rs.4,30,973/- on Welding Electrodes during the period from 2007-08 to 2009-10 and reversed the same on 24.10.2008, 19.02.2010 and 15.07.2010. It appeared to Revenue that though the Cenvat Credit availed was reversed the interest is payable for the period for which Cenvat Credit was available on the books of account. Therefore, the appellants were called upon to show cause as to why the interest amount to Rs.5,75,795/- should not be paid by the appellant. The appellant submitted before the Original Authority that there was sufficient balance lying in their books of account and their balance was never less than the Credit reversed and therefore, it was not utilized and kept lying on the books of account. The Original Authority decided the show-cause-notice through Order-in-Original No.05/SUPDT./CE/SPN/2012 dated 29.11.2012, wherein he confirmed the demand. The appellant preferred appeal before Ld. Commissioner (Appeals). The Ld. Commissioner (Appeals) decided the appeal through Order-in-Appeal No.257-CEx.APPL/LKO/2014 dated 27.11.2014, wherein the original order was upheld. Aggrieved by the said Order-in-Appeal dated 27.11.2014, the appellant is before this Tribunal.

3. Heard the counsel for the appellant. He has reiterated his submission before the Original Authority. He has relied on the ruling by Hon'ble High Court of Madras in the case of Commissioner of Central Excise, Madurai Vs. Strategic Engineering Pvt. Ltd. reported at 2014(310) E.L.T. 509 (Mad.), wherein it was held as follows:-

> 11."*It is an admitted fact that Rule 14 of the Cenvat Crdeit Rules as been subsequently amended, wherein it has been clearly stated as "taken and utilized". Therefore, it is quite clear that mere taking itself would not compel the assessee to pay interest as well as penalty. Further, as pointed out earlier, the subsequent amendment has given befitting answer to all doubts existed earlier. Since, the subsequent amendment has cleared all doubts existed earlier in respect of Rule 14 of the said Rules, it is needless to say that the argument advanced by the learned counsel appearing for the appellant/Department is erroneous, whereas the argument advanced on the side of the respondent is really having merit and the substantial questions of law settled in the present Civil Miscellaneous Appeal are not having substance and altogether the present Civil Misc. Appeal deserves to be dismissed.*"

4. Heard the Ld. D.R. for Revenue who relied on the ruling by Hon'ble Supreme Court of India in the case of Union of India Vs. IND-SWIFT Laboratories Ltd. reported at 2011 (265) E.L.T. 3 (SC).

5. I have carefully taken the rival contentions into consideration. I find that the Hon'ble Madras High Court has taken the ruling by Hon'ble Supreme Court in the case of IND-SWIFT Laboratories Ltd. into consideration while deciding the case of Commissioner of

Central Excise Vs. Strategic Engineering Pvt. Ltd. The Hon'ble Madras High Court in the above stated case has held that it is quite clear that mere taking itself of Cenvat Credit will not compel the assessee to pay interest as well as penalty. In view of the said ruling, I allow the Appeal and set aside both the Order-in-Original and Order-in-Appeal impugned.

(Dictated and Pronounced in the open Court)

Sd/-

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Mishra