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: 31/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70115-70117/2017-SM[BR] dated 13/01/2017

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/3275/2010	**BAJAJ HINDUSTAN LTD.,** UNIT-GOLA GOKRANNATH, LAKHIMPUR KHERI (U.P.)
2	E/3276/2010	**BAJAJ HINDUSTAN LTD.,** UNIT-GOLA GOKRANNATH, LAKHIMPUR KHERI (U.P.)
3	E/3280/2010	**Bajaj Hindustan Ltd** Unit-khambarkhera LAKHIMPUR KHERI UP

	Name and Address of Respondent
4	C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001
5	-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow. -
6	-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow. -

Other Appellants and Respondents as per Annexure

Copy To

7Advocate(s) / Consultant(s):

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

8 Bar Association, CESTAT, Allahabad

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

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

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

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

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 & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. E/3275-3276 & 3280/2010-EX[SM]

(Arising out of Order-in-Appeal No. 146-147 & 144-CE/LKO/2010 dated 19/07/2007 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

M/s Bajaj Hindustan Ltd.(Unit – Gola Gokrannath) (In Appeal No. E/3275-3276/2010),

M/s Bajaj Hindustan Ltd.(Unit – Khambarkhera) (In Appeal No. E/3280/2010) **Appellant**

Vs.

Commissioner of Central Excise, Lucknow Respondent

<u>Appearance:</u>

Ms. Stuti Saggi, Advocate, for Appellant

Shri Pawan Kumar Singh, Superintendent (AR). for Respondent

<u>CORAM:</u>

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 13/01/2017

FINAL ORDER NO. 70115 – 70117/2017

Per: Anil G. Shakkarwar

The present three appeals are arising out of Order-in-Appeal No. 146-147 & 144-CE/LKO/2010 dated 19/07/2007 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow. The issue is same in the said three appeals. Therefore, they are taken together for decision.

2. Brief facts of the case are that the appellants are manufacturers of Sugar. They cleared Sugar from their

factory on payment of Central Excise duty & Sugar Cess imposed under Section 3 of Sugar Cess Act, 1982. Subsequent to clearance of Sugar on payment of Central Excise duty & Sugar Cess they ~~re~~stored sugar in ~~due~~ duty paid godown. On 1st January, 2008 Sugar Cess was increased from Rs.14 to 15/- per quintal with effect from 01/03/2008 and further sugar cess was increased to Rs.24/- per quintal. Therefore, the appellants were issued with three Show Cause Notices. Show Cause Notice No. 12/Additional Commissioner/LKO/2009 dated 03/02/2009 issued to M/s Bajaj Hindustan Ltd. (Unit – Gola Gokrannath), District – Lakhimpur Kheri, wherein it was alleged that the duty paid stock of Sugar was liable to be levied with the differential Sugar Cess. Therefore, the demand of Sugar Cess amounting to Rs.18,72,734/- was raised through said Show Cause Notice dated 03/02/2009. In similar manner, through Show Cause Notice No. 05 – Dem/STP/2009 dated 22/01/2009 issued to M/s Bajaj Hindustan Ltd. (Unit – Palia Kalan), District - Lakhimpur Kheri, a demand of Rs.3,75,190/- of Sugar Cess was raised. Further, through Show Cause Notice No. 06 – Dem/STP/2009 dated 22/01/2009 issued to M/s Bajaj Hindustan Ltd. (Unit – Khambar Khera) District - Lakhimpur Kheri, a demand of Rs.2,42,301/- of Sugar Cess was raised. The said Show Cause Notice dated 03/02/2009 was adjudicated through Order-in-Original No. 58/DC /STP/DEM/2009 dated 30/11/2009, wherein the Original

Authority confirmed the demand of Sugar Cess of Rs.18,72,734/- and imposed equal penalty. The Show Cause Notice dated 22/01/2009 issued to appellants M/s Bajaj Hindustan Ltd. (Unit – Palia Kalan) was adjudicated through Order-in-Original No. 58/DC /STP/DEM/2009 dated 27/11/2009 through which Sugar Cess of Rs.3,75,190/- was confirmed and equal penalty was imposed. The said third ~~three~~ Show Cause Notice was adjudicated through Order-in-Original No. 59/DC /STP/DEM/2009 dated 27/11/2009 wherein Sugar Cess of Rs.2,42,301/- was confirmed and equal penalty was imposed. Aggrieved by the said Orders-in-Original appellant preferred appeal before Commissioner (Appeals). The Appeals arising out of Orders-in-Original dated 27/11/2009 & 30/11/2009 were decided through common Order-in-Appeal No. 146-147-CE/LKO/2010 dated 19/07/2007, wherein the ld. Commissioner (Appeals) has upheld the confirmation of demand of differential Sugar Cess and reduced the penalties from Rs.18,72,734/- to Rs.3,00,000/- & from Rs.3,75,190/- to Rs.75,000/-. Aggrieved by the said Order-in-Appeal appellants are before this Tribunal. The Order-in-Original No. 59/DC /STP/DEM/2009 dated 27/11/2009 was challenged by the appellant before Commissioner (Appeals) and the said appeal was decided through Order-in-Appeal No. 144-CE/LKO/2010 dated 19/07/2007, wherein the ld. Commissioner (Appeals) upheld the confirmation of demand

and reduced penalty from Rs. 2,42,301/- to Rs.50,000/-. Aggrieved by the said Order-in-Appeal appellant is before this Tribunal.

3. Heard the ld. Counsel for the appellant who has submitted that in all the three cases demand was raised on the Sugar which was cleared from the factory on the payment of appropriate duty and after the appropriate duty was paid there was no question of calling the same as short paid goods.

4. Heard the ld. D. R. who has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of records I find that Sub-section 4 of Section 3 of Sugar Cess Act, 1982 provides that the provisions of Central Act, 1944 & Rules made thereunder shall apply in relation to levy and collection of Sugar Cess as they are applied in relation to levy and collection of duty to excise on Sugar under the Central Excise Act, 1944. The provisions of Central Excise Act, 1944 require payment of duty of excise at the time of clearance of goods from the factory. Central Excise Act has not empowered authorities to collect the duty on goods after they are cleared from the factory when appropriate duty leviable at the time of clearance was paid. Similarly, Central Excise Authorities are not empowered to collect any duty which has been increased after clearance of goods, on goods cleared ~~as~~ on payment of appropriate duty at the time of clearance. Since all the provisions of Central Excise Act are made applicable for levy

and collection of Sugar Cess through Sub-section 4 of Section 3 of Sugar Cess Act, 1982, the increased levy of Sugar Cess, after the date of clearance, from the factory on payment of appropriate Central Excise duty and appropriate Sugar Cess does not arise. I, therefore, set aside the said three impugned Orders-in-Appeal and allow all the appeals. The appellants shall be entitled to consequential relief, if any, in accordance with law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

Ansari

प्रमाणित प्रति / Certified True Copy
8.2.17
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