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: 05/05/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70446-70448/2017-EX[DB] dated 26/04/2017

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/50420/2016	**Balrampur Chini Mills Ltd** Unit Balrampur BALRAMPUR UP
2	E/50421/2016	**Balrampur Chini Mills Ltd** Unit Balbhanan GONDA UP
3	E/50422/2016	**Manakpur Chinni Mills** Vpo Dalauti Teh Manakpur GONDA 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. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001
6		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

Other Appellants and Respondents as per Annexure

Copy To

7 Advocate(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

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH: ALLAHABAD

DIVISION BENCH

Appeal No. E/50420, 50421, 50422/2016-EX(DB)

Dated of Hearing/decision: 26/4/2017

[Arising out of Order-in-Original No.50,51 & 52/COMMR/LKO/CX/2014-15 dated 30.03.2015 passed by Commissioner, Central Excise & Service Tax, Lucknow]

M/s Mankapur Chini Mills Ltd. — Appellant
M/s Balrampur Chini Mills Ltd.
M/s Balrampur Chini Mills Ltd.

Vs.

C.C.E. & S.T.-Lucknow — Respondent

Appearance:
Present for the Appellant: Bipin Garg (Advocate)
Present for the Respondent: Shri Rajeev Ranjan (Joint Commissioner) AR

Coram: Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

Final Order No. 70446 – 70448/2017

Per: Anil Choudhary

The present appeals are filed by the appellant-assessee against Order-in-Original No. 50/51 & 52/COMMR/LKO/CX/2014-15 dated 30.03.2015 passed by Commissioner, Central Excise & Service Tax, Lucknow.

2. Heard the parties.

3. The brief facts of the case are that the appellants are having composite mill comprising of sugar Division and a Distillery Division.

They are engaged in the manufacture of V.P. Sugar and molasses, Rectified Spirit (RS), Special Denatured Spirit (SDS), Ordinary Denatured Spirit (ODS) and Extra Neutral Alcohol (ENA). The details of show cause notices and dispute is as follows:-

Sl. No.	Appellant	Period	Duty/Cenvat in dispute	Penalty
01.	Mankapur Chini Mills Ltd.	August 2012 to July 2013	Rs. 3,68,36,663/- +Rs. 4,57,06,768/- (Total Rs. 8,25,43,431/-)	Equal to tax
02.	Balrampur Chini Mills Ltd.	September 2012 to June 2013	Rs. 5,41,04,108/- + Rs. 2,96,71,864/- (Total Rs. 8,37,75,972/-)	Equal to tax
03.	Balrampur Chini Mills Ltd. (Unit: Babhnan)	September 2012 to May 2013	Rs. 3,61,87,222/- + Rs. 89,23,349/- (Total Rs. 4,51,10,571/-)	Equal to tax

They undertake manufacture of Sugar and Molasses in Sugar Mill and Molasses are further utilized in distillery division for manufacturer of ethyl alcohol through the process of fermentation. The contention of revenue is that with effect from 01.03.2005 Central Excise Tariff item no. 22072000 covers ethyl alcohol and other spirit Denatured of any strength. Therefore, the product known as rectified spirit does not ~~exists~~ exist in Central Excise Tariff and on fermentation of molasses rectified spirit comes into existence which does not find place in Central Excise Tariff. Therefore, though from said rectified spirit, denatured spirit is manufactured on which duty of ~~excess~~ excise is paid, the CENVAT credit gets snapped by coming into existence of product not finding place in Central Excise Tariff. Therefore, CENVAT credit on inputs and capital goods and input services going into manufacturer denatured spirit are not available to the appellants. Therefore, the appellants were served with the show cause notices proposing recovery of allegedly wrongly availed CENVAT credit with proposal for payment of interest and imposition of penalty. The said show cause notice was adjudicated through Orders-in-Original, which is impugned order. The appellants submitted their defence before the original authority. In their submission, they have given write up on process of manufacture where they have stated that the process of manufacture of denatured spirit from fermentation of molasses is continuous process. On fermentation, ethyl alcohol is manufactured which is also called as rectified spirit. So as to make rectified spirit unfit for human consumption, denaturing is done by mixing rectified spirit with certain chemicals and they are not clearing rectified spirit at all and rectified spirit is nothing but ethyl alcohol. They, further, contented that there are no provisions in the CENVAT credit Rules that if a non excisable product emerges in between the manufacture of excisable product in a continuous process, CENVAT credit is inadmissible. They have also contended that rectified spirit is finding place at tariff item no. 22072000 because ethyl alcohol and rectified spirit are not two different commodities. The original authority was not convinced with the arguments put forth by the appellant. He confirmed the demand and imposed penalty. Aggrieved by the said orders-in-original the appellants are before us.

3. The grounds of appeal before us are more or less similar to their contentions before the original authority. One of the grounds states that tariff item no. 22072000 is provided for ethyl alcohol and other spirits, denatured, of any strength and contended that the description

covered rectified spirit. They have further relies on various pronouncements.

4. Heard the learned counsel for appellants. He has reiterated his argument before the original authority and in the grounds of appeal and submitted various case laws. He has also submitted copy of Apex Court's ruling in the case of State of Uttar Pradesh and others Vs. M/s Modi Distillery etc. [1996 U.P.T.C.-312] he stated that in para 9 of the said ruling the Hon'ble Supreme Court has given its observation about ethyl alcohol which clearly establishes that rectified spirit is nothing but ethyl alcohol and ethyl alcohol is finding the place in said tariff item 22072000. Therefore, rectified spirit cannot be presumed to be not having place in Central Excise Tariff with effect from 01.03.2005.

5. Heard the learned authorized representative of revenue. He reiterated the findings of the orders-in-Original.

6. We have taken the rival contentions into consideration and also have gone through the case records and paper books submitted during the hearing. We find that the appellant have a composite unit where sugar and molasses are manufactured. Further the molasses on fermentation in the distillery, ethyl alcohol is obtained. Ethyl alcohol is denatured by mixing certain chemicals which make ethyl alcohol unfit for human consumption. Before 01.03.2005 chapter Sub heading 2204.10 covered denatured ethyl alcohol of any strength and chapter Sub heading no. 2204.90 covered ethyl alcohol except alcoholic liquor

for human consumption and undenatured ethyl alcohol. From 01.03.2005 tariff item no. 22072000 covered ethyl alcohol and other spirits denatured of any strength. This led the Central Excise authorities to think that pre-denatured ethyl alcohol does not find placed in Central Excise Tariff. We find that the show cause notice contends that rectified spirit is manufactured in between the process to manufacture denatured spirit and rectified spirit does not find place in Central Excise Tariff with effect from 01.03.2005 and therefore CENVAT credit is not admissible as inputs & input services and capital goods going into manufacture of rectified spirit and hence going into manufacture of denatured spirit. Before 01.03.2005, department accepted that rectified spirit is covered under chapter Sub Heading No.2204.90. As stated above, 2204.90 covers ethyl alcohol except one for human consumption and which are undenatured. Therefore, the issue to be decided is whether ethyl alcohol and rectified spirit are two different commodities or one and the same commodity. We find that the Hon'ble Supreme Court in the case of State of Uttar Pradesh Vs Modi Distillery and others (supra) in para 9 has observed as follows :-

> "The ISI specifications had divided ethyl alcohol into several kinds of alcohol. Beverages and industrial alcohols were clearly and differently treated. Rectified spirit for industrial process was defined as spirit purified by distillation having a strength of not less than 95% by volume of ethyl alcohol."

It is very clear from the observation of Hon'ble Supreme Court that ethyl alcohol and rectified spirit are one and the same. We, therefore, hold that rectified spirit which is not used for human consumption is nothing but ethyl alcohol and is finding place in tariff item no. 22072000. We, therefore, hold that the show cause notices are not sustainable. As a result, we set aside the impugned orders and allow the appeals with consequential relief. No Costs.

(Dictated and pronounced in the open Court)

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

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

(K. Gupta)

प्रमाणित प्रति/Certified True Copy
09/05/2017
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