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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/70113/2017-EX[DB] dated 23/01/2017

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/MISC/51846/2015,	E/52853/2015	**Bajaj Hindusthan Sugar Ltd** Unit: Rudhauli BASTI U.P
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

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Copy To

3 Advocate(s) / Consultant(s):

PRADEEP K MITTAL AND
PRAVEEN K MITTAL
171-CHITRA VIHAR,
DELHI-110092

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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 & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL No. E/52853/2015-EX[DB With MISC Application No. E/MISC/51846/2015

(Arising out of Order-in-Original No. 58Commr./LKO/CX/2014-15 dated 31/03/2015 passed by Commissioner of Central Excise & Customs, Lucknow)

For approval and signature:

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

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Bajaj Hindustan Sugar Ltd. — **Appellant**

Vs.

Commissioner of Central Excise, Lucknow — **Respondent**

Appearance:

Shri Pradeep Kumar Mittal, Advocate. — for Appellant
Shri Praveen Kumar, Advocate. — for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 18/08/2016

FINAL ORDER NO....70113/2017........

Per: Anil Choudhary

The present appeal is filed by the appellant, M/s Bajaj Hindustan Ltd., against Order-in-Original No. 58Commr./LKO/CX/2014-15 dated 31/03/2015 passed by Commissioner of Central Excise & Customs, Lucknow.

2.1 Brief facts of the case are that the M/s Bajaj Hindustan Ltd., Rudhauli, Basti (Earlier Bajaj Hindustan Sugar & Industries Ltd.) (hereinafter referred to as 'the appellant' having Central Excise Registration Certificate No. AAACB4351JM013 (Earlier AABCT0694HXM006) are a composite sugar unit having distillery also. In sugar unit they are engaged in manufacture of V.P. Sugar & Molasses falling under chapter Sub Heading No. 17011490, 17031000 respectively as also waste products - Press mud and Bagasse both falling under chapter Heading No. 2301.00 of the 1st Schedule to the Central Tariff Act, 1985 attracting nil rate of duty.

2.2 The appellant also manufacture Rectified Spirit (RS), Extra Neutral Alcohol (ENA), Power Alcohol and absolute Alcohol (non-excisable products) and Special Denatured Spirit (SDS)/Ordinary Denatured Spirit (ODS) & Denatured Absolute Alcohol (DAA), Excisable Products. The Central Excise Tariff Heading 2207.20 covers Ethyl Alcohol and Denatured Spirit of any strength. The Un-denatured Sprit like RS, Power Alcohol, Absolute Alcohol and ENA which used to

A.C.

fall under heading 2207.10, no longer exists in the Central Excise Tariff hence these are non-excisable now.

2.3 The appellant is manufacturing non-excisable products i.e. RS, ENA, Power Alcohol and Absolute Alcohol using Molasses as its input/raw material. The appellant also availed the facility of Cenvat Credit on Capital Goods, input and input services as provided under Rule 3 of Cenvat Credit Rules, 2004.

2.4 The molasses manufactured by the appellant is captively consumed in the distillery division as an input to manufacture rectified Spirit (Non-excisable) which further undergoes manufacturing process and SDS, ODS and DDA emerge as final products which are excisable. Rectified Spirit is cleared as such by the appellant without payment of Duty and it is also used in their distillery for manufacture of above mentioned excisable products.

2.5 The appellant obtains Molasses for it s distillery either from their own sugar factory and claim the exemption under Notification No. 67/1995-CE dated 16.03.1995 as amended (captive consumption) or use the Molasses purchased from outside sugar Factories after payment of excise duty. The appellant had been availing Cenvat Credit of Central Excise duty that has been paid on Molasses and has been utilizing the same for the payment of excise duty on their final products. The benefit of said notification (67/1995) can be availed only when the final product is excisable.

2.6 The manufacturer is not entitled to Cenvat Credit on Molasses, other inputs, input services and capital goods which has been used in the manufacture of non-excisable goods i.e. Rectified Spirit which invariably comes first into existence in the distillery section thereafter other products as ENA, Absolute Alcohol, SDS/ODS, DDA comes. Since RS is not specified in the first schedule to the Central Excise Tariff Act, 1985, it is non-excisable, hence the Cenvat Credit chain is snapped at this point i.e. when the Rectified Spirit is cleared to undergo further manufacturing process. The party cannot avail any accumulated Cenvat Credit beyond the point of emergence/clearance of Rectified Spirit.

2.7 Whereas, in the distillery division, as per the appellant's letter Reference No. BHL/RUDHAULI/CIT/2012-13 dated 24.07.2012 & 14.08.2012, it is revealed that during the period August, 2007 to July, 2012, they have consumed 4866309.22 Qtls of Molasses in their distillery section for manufacturing of Rectified Spirit and taken Cenvat Credit Rs.37,59,19,941/- on above stated Qtls of Molasses. From the appellants letter dated 27/28.08.2012, it is also revealed that during the aforesaid period, they have availed Cenvat Credit of Rs.1,75,69,474/- on various inputs other than Molasses, Cenvat Credit of Rs.3,24,89,674/- on capital goods and Cenvat Credit of Rs.2,99,80,943/- on various input services used in distillery section in relation to manufacture of Rectified Spirit. As such during the period August, 2007 to

July, 2012. Total inadmissible Cenvat Credit amounting to Rs.45,59,60,032/- has been taken by the appellant in distillery section of their unit for manufacture of Rectified Spirit which is a non-excisable goods. All these facts and figures have been admitted by Shri M.K. Singh S/o Shri Kapil Deo Sing, authorized signatory of the appellant in his statement dated 31.08.2012, recorded under Section 14 of Central Excise Act, 1944. In his statement, Shri M.K. Singh has admitted that during the period from August, 2007 to July, 2012, they have availed Cenvat Credit amounting to Rs.37,59,19,941/- on 4866309.22 Qtls of duty paid Molasses received from their own unit as well as purchased from outside, Rs.1,75,69,474/- on inputs other than Molasses, Rs.3,24,89,674/- on capital goods and Rs.2,99,80,943/- on various input services. The aforesaid Molasses, inputs other than Molasses, capital goods and input services have been used in their distillery division.

2.8 The Revenue noticed that the appellant during the period from August, 2007 to July, 2012, had availed irregular Cenvat Credit of Rs.37,59,19,941/- on the Molasses in dispute, used in the distillery section for manufacture of Rectified Spirit. During the said period the appellant also had availed Cenvat Credit of Rs.1,75,69,494/- on inputs other than Molasses used in the manufacture of Rectified Spirit & had also availed Cenvat Credit of Rs.3,24,89,674/- on capital goods used in the distillery section for manufacture of

Rectified Spirit & had also availed Cenvat credit of Rs.2,99,80,943/- on various inputs services.

3. Heard both sides.

4. Both sides agree that the issue in the instant appeal is no more res-integra and is covered by the earlier decision passed by this Tribunal in the appellant's own case vide Final Order No. 70392/2016 dated 26.05.2016 in Appeal No. E/52952/2015[DB] wherein it was held as follows:-

> "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 then 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 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 notice dated 14.08.2013 is not sustainable. As a result, we set aside the impugned order and allow the appeal with consequential relief. No Costs.

5. Accordingly, following the earlier ruling of this Tribunal, we set aside the impugned order and allow the appeal with consequential benefits, if any, in accordance with law. Miscellaneous Application also stands disposed of.

(Dictated and pronounced in Court)

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

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

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