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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 28/02/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70424/2018-SM[BR] dated 30/01/2018

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/2894/2011	**Bajaj Hindusthan Limted** Unit-kundarki GONDA UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

Copy To

3 Advocate(s) / Consultant(s):

STUTI SAGGI
102,MAHALAXMI
ENCLAVE,STANLEY
ROAD,CIVIL
LINE,ALLAHABAD,UTTAR
PRADESH

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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/2894/2011-EX[SM]

(Arising out of Order-in-Appeal No. 209/CE/APPL/ALLD/2011 dated 07/10/2011 passed by Commissioner (Appeals), Central Excise, Allahabad)

M/s Bajaj Hindusthan Ltd. **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Allahabad **Respondent**

Appearance:

Ms Stuti Saggi (Advocate) for Appellant
Shri Sandeep Kumar Singh (Dy. Commr.) AR for Respondent

CORAM:

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

Date of Hearing : 30/01/2018
Date of Decision : 30/01/2018

FINAL ORDER NO:- 70424/2018

Per: Anil Choudhary

The present appeal is directed against Order-in-Appeal No. 209/CE/APPL/ALLD/2011 dated 07/10/2011 passed by Commissioner (Appeals), Central Excise, Allahabad.

2. Heard the parties.

3. The issue in this appeal is whether the appellant ~~is~~ engaged in the manufacture of Sugar and Molasses, is entitled to take Cenvat credit on welding electrodes 'as inputs' admittedly used in repair of plant & machinery of boiling house, pan, crystallizer, mill house

machinery etc. being capital goods which are further used for manufacture of excisable goods.

4. The issue is no longer *res-integra*, and stands decided in favour of the appellant - assessee in their own case by this Tribunal in Appeal No. E/817 & 818/2009-SM, Final Order No. 201-202/2011-SMB dated 31/03/2011 wherein it is held:-

"7. I find that the issue has been dealt by the Hon'ble Chhattisgarh High Court in the case of Ambuja Cements Eastern Ltd. Vs CCE, Bangalore-I Vs. Alfred Herbert (India) Ltd. wherein both the Hon'ble High Courts have held that welding electrodes used in the repair and maintenance of the plant and machinery are entitled for credit. Also on the point judicial pronouncement by the highest Court has held by the Hon'ble Bombay High Court in the case of Mercedes Bear India Pvt. Ltd. Vs. Union of India-2010 (252) E.L.T. 168 (Bom.) that the decision of the higher count is binding. Accordingly, in these appeals, the respondents are entitled for credit availed by them on welding electrodes which are used by them for fabrication and repair and maintenance of their capital goods. Accordingly, I do not find any infirmity in the impugned orders and the same are upheld. The appeals filed by the Revenue are rejected."

5. It has also been again decided by another SMB of this Tribunal in the appellant's own case Appeal No. E/2982/2009, Final Order No. 285/2011-SMB wherein it was held as follows:-

"5. The issue involved in this matter stands decided against the department by Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. Vs. Union of India (Supra) and Hon'ble Chhattisgarh High Court in the case of Ambuja Cement Eastern Ltd. Vs. CCE, Raipur reported in 2010 (256) E.L.T. 690 wherein both the High Courts have held that welding electrodes used for repair & maintenance of plant & machinery are eligible for Cenvat credit as inputs as well as capital goods. In case of Ambuja Cement Eastern Ltd. (Supra), Hon'ble Chhattisgarh High Court also observed that dismissal by Hon'ble Supreme Court of the SLP filed against the judgement of CESTAT, Kolkata Bench in the case of Steel Authority of India Ltd. Vs. Commissioner reported in 2008 (222) E.L.T. 233 (Tri.-Kolkata) does not lay down any law as summary dismissal of SLP by the Apex Court neither lays down any law nor results in any binding precedent. Following the judgements of above two High Courts, I therefore, held that the impugned order denying Cenvat

credit in respect of welding electrodes used for repair & maintenance for plant & machinery is not sustainable. The same is set aside. The appeal is allowed."

6. Thus, as the issue is squarely covered in favour of the appellant, therefore, I allow the appeal and set aside the impugned order. The appellant shall be entitled for consequential relief, as per law, if any.

(Dictated & Pronounced in Court)

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

Lks