TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Date 17/11/2009

Appeal No. E/2864/2007 – SM[BR]

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S BAJAJ SONS LIMITED
UNIT NO -III,C-92 & 93, PH-V FOCAL POINT,
LUDHIANA — Appellant
M/S BAJAJ SONS LIMITED — Vs
Respondent
C.C.E. LUDHIANA

I am directed to transmit herewith a certified copy of **Final order No.** 1419 / 2009 –SM[BR] dated 9.11.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. LUDHIANA
   CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR, LUDHIANA 141001 (PUNJAB)
2. Adv. / Consult SHRI JAI BHAGWAN SHARMA CO. SECT.
   M/S APPELLANT;-------------------------------

3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:9.11.2009

Central Excise Appeal No.2864 of 2007-SM

Arising out of the order in appeal No.163/ST/Appl/Ldh/2007 dated 6.7.2007 passed by the Commissioner (Appeals), Central Excise , Chandigarh.

M/s Bajaj Sons Limited ... Appellant

Vs.

C.C.E., Ludhiana .... Respondent

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, 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?	Yes
2	Whether it should be released under Rule 27 of 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 Departmental authorities?	Yes

Appearance:

Shri Jai Bhagwan Sharma, Company Secretary for the appellant
Shri R.K. Saini, Authorized Departmental Representative (JDR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 1419/2009 SM(BR)

Per M. Veeraiyan:

Heard both sides.

2. This is an appeal against the order of Commissioner (Appeals) No. 163/ST/Appl/Ldh/2007 dated 6.7.2007 in so far as the same relates to denial of credit amounting to Rs.26,257/- being credit of service tax incurred on outward freight. The case of the appellant is that the supplies are made on FOR basis and the ownership of the goods rest with them till they are delivered at the destination and they incurred liabilities till the goods are delivered at the premises of the buyer. Company Secretary for the

appellants relies on the decision of the Larger Bench of the Tribunal in the case of ABB Ltd. vs. C.C.Ex. & S.T., Bangalore reported in 2009 (15) STR 23 (Tri-LB). He also submits that the question of penalty of Rs.10,000/- does not arise as it is basically a dispute in interpretation of Cenvat Credit Rules.

3. However, the learned DR submits that the denial of cenvat credit was based on factual finding that there was no evidence to show that the clearances in question made by the appellant were on FOR basis, as claimed by them.

4. I have carefully considered the submissions from both sides. There is a clear finding by the Commissioner (Appeals) that the appellants have not adduced any evidence to show that the clearances in question made by the appellants were on FOR basis. On perusal of the grounds of appeal, I find that that there is no rebuttal of this finding. Under these circumstances, the question of extending the benefit of the decision of the Larger Bench of this Tribunal in the case of ABB Ltd. cited supra does not arise. However, the submission of the learned Company Secretary that this is a case involving question of interpretation of Cenvat Credit Rules that there is no wilful suppression on the part of the appellant and that penalty is not justified is acceptable.

5. Accordingly, the appeal is rejected on merits and the demand of duty and interest is upheld. However, the penalty imposed is set aside.

(M. Veeraiyan)
Member (Technical)

scd/