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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

SINGLE MEMBER APPEAL BRANCH

Appeal No. **E/127 - 129 / 2010 –SM[BR]** Date **19/05/2011**

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

1. **M/S BAJAJ HINDUSTAN LTD.**
2. M/S BAJAJ HINDUSTAN LTD.
3. M/S BAJAJ HINDUSTAN LTD.
(UNIT-GOLAGOKARANNATH)DISTT.
LAKHIMPUR-KHERI (U.P.)

M/S BAJAJ HINDUSTAN LTD. Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No. 270 –272 / 2011-SM[BR]** dated 28.4.2011 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. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
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 -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH

Excise Appeal No.127-129 of 2010

(Arising out of Order-in-Appeal No.183-CE/LKO/2009 dated 5.11.2009 passed by the CCE (Appeals),Lucknow)

For approval and signature:

Hon'ble Mr.M.Veeraiyan, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	NO
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	NO
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?	NO

M/s.Bajaj Hindustan Ltd. — Appellants

Vs.

CCE, Lucknow — Respondent

Present for the Appellant: Ms.Sukriti Das & Sh.Mayank Garg, Advocates
Present for the Respondent: Shri S.k.Bhaskar, SDR

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

Date of Hearing/decision: 28.04.2011

Final

ORDER NO. 270 - 272 / 2011 SM Br

PER: M.VEERAIYAN

Heard both sides.

2. The appellants are engaged in the manufacture of cane sugar, molasses and denatured Ethyl Alcohol. The dispute relates to eligibility of cenvat credit taken on items like Joist, M.s.Channel, M.S. Angle, M.S.Rod, M.S.Plate and H.R.Sheets/Coil/Plates. These items as per show cause notice are used Sulphur furnace & Juice

Sulphites, Clarifiers, Syrup Sulphites, vapour Pipes, Raw Juice Tank, etc. The original authority held that these items are used in the plant and machineries and cannot be treated as capital goods and denied the credit. The order of the original authority stands upheld by the Commissioner (Appeals).

3. Learned Advocate for the appellants submits that the use of inputs have been broadly mentioned in the show cause notice. However, specific use and as to whether they have been converted into parts, components for the purpose of replacement, etc. has not mentioned. She fairly concedes that some of the items may not be eligible for cenvat credit in the light of the decision of the Larger Bench of the Tribunal in the case of Vandana Global Ltd. vs. CCE, Raipur reported in 2010 (253) ELT 440 depending upon the actual use of the items. However, for large number of these items, they shall be eligible of cenvat credit.

4. Learned DR submits that the decision of the authorities below were based on the understanding of law at that time and the end use of the items requires to be gone into afresh so that the applicability of the decision of the Larger Bench of the Tribunal in the case of Vandana Global Ltd can be considered.

5. After carefully going through the show cause notice, the order of the original authority and the order of the Commissioner (Appeals), I find that the matter requires reconsideration, as suggested by both sides, for examination by the original authority as the original authority has not considered the actual use of various disputed items.

6. In view of the above, I set aside the order of the Commissioner (Appeals) and the order of the original authority and remand the matter to the original authority for fresh consideration. The appellants are permitted to make written submissions indicating the specific use of the items and the stage at which they are used whether after converting them into parts or components etc. They shall file the written submissions within 45 days from the date of receipt of this order. The original authority shall decide the case within three months after expiry of time limit granted for filing written submissions. He shall grant a reasonable opportunity of hearing before deciding the matter.

7. It is clarified that no views have been expressed on the merits of the case.

8. The appeals are allowed by way of remand as above.

Pronounced in the open court)

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

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