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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

EXCISE APPEAL BRANCH

Appeal No. E/1573/2005 - EX[DB] Date 29/10/2010

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

To :
BAJAJ HINDUSTAN LTD
GOLAGOKARAN NATH, DISTT. LAKHIMPUR KHERI
(UP)

BAJAJ HINDUSTAN LTD — Appellant

Vs

C.C.E. LUCKNOW — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 731/ **2010 EX[DB]** dated 19-10-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise 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. ~~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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT No. II

CENTRAL EXCISE APPEAL NO. 1573 OF 2005-Ex

(Arising out of Order-in-Appeal No. 37-CE/2005 dated 31.01.2005 passed by the Commissioner (Appeals), Customs & Central Excise, Lucknow)

M/s. Bajal Hindustan Ltd., Appellants
Reptd. By Shri Bipin Garg, Advocate

Versus

CCE, Lucknow Respondent
Rept. By Shri Virender Kumar Chaudhary, SDR

Date of Hearing/decision: 29th September, 2010

Coram: Hon'ble Shri D.N. Panda, Judicial Member;
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL ORDER NO. 731/10-EX DATED

Per D.N. Panda:

The short dispute in this appeal is whether the outcome of molasses which rectified spirit and called as Refined Alcohol when partially vanishes in the process of storage due to volatile nature should be liable for payment of an amount of 8% of the value of goods so pilfered.

2. Both parties are in controversy because of the Modvat credit enjoyed by the assessee on molasses. Had they claimed rectified spirit not under gone pilferage that would have given rise to demand since denatured spirit is dutiable. The assessee submits that denatured spirit which comes out of molasses is subject to volatility to certain extent by chemical properties itself. Therefore, if such permissible volatility, by nature is required to be dutiable by way of levy of 8% pilfered quantity there shall be absurdity.

3. Learned Counsel submits that there is permissibility under the statute and Board's Circular has been issued to accommodate evaporation but he is unable to produce any order.

4. Revenue's submission is that it was left to the assessee to account for properly the Ethyl Alcohol which gives rise denatured spirit and later being excisable. There was loss of revenue due to claim of pilferage. Accordingly 8% levy was made against the assessee. Revenue also submits that there is no basis to allow any percentage by mandate of law.

5. Heard both sides for sometime. We do appreciate that the goods in question is volatile in nature. The chemical properties of the goods is certainly subject to volatility to certain extent because spirit by its nature is evaporable. Once we appreciate the chemical property of the product and do not find the pilferage to be man made or deliberate, there should not be any construction of law to become barrier for justice. To advance justice we are compelled to allow the negligible quantity from levy in view of peculiar nature of goods as indicated above, which gives rise to demand of Rs. 93,312/-.

6. Apart from what is stated above the Larger Bench of the Tribunal had occasion to decide the transition losses of inputs in respect of losses either man-made or machine made or for no reasons attributable to the assessee. What is beyond the control of the assessee cannot be construed to do injustice. We say so following the Larger Bench decision in the case of CCE, Chennai vs. Bhuwalka Steel Industries Ltd., reported in 2010 (249) ELT 218 (to which one of us was a party). Appreciating the ratio of the Larger Bench decision and appreciating that there is

no bar to allow such a natural loss we allow the appeal of the assessee.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER\

(RAKESH KUMAR)
TECHNICAL MEMBER

RK