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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/3046,3111,3141/2006 - EX[DB]   Date **19/06/2012**

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

To :
BAJAJ HINDUSTAN LIMITED.
UNIT BILAI,DISTT-BIJNOR(UP)

BAJAJ HINDUSTAN LIMITED.   Appellant

Vs

C.C.E.MEERUT I   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** A/677-679   2012   EX|DB| dated 06-6-12 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.MEERUT I
MANGAL PANDEY
NAGAR,MEERUT.

2. Adv. / Consult
MR.S.C. KAMRA & CO.
B-2/210(BASEMENT), SAFDARJUNG ENCLAVE, NEW DELHI- 110029

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions 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. 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)
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Assistant Registrar
(Excise Appeal Branch)

P.T.O.-2,

14. Office Copy

15. Gaurd File

16. Second Folder

17. **BAJAJ HINDUSTAN LIMITED**
Unit-Thanabhawan,Distt-
Muzaffarnagar(UP)

18. M/S. BAJAJ HINDUSTHAN LTD,
UNIT BILAI, DISTT. BIJNOR- UP

Assistant Registrar
EXCISE Appeal Branch

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

COURT NO. I

Central Excise Appeal No. 3046, 3111 & 3141/2006

[Arising out of a common Order-in-Original No. 22-25/Commr/MR-I/2006 dated 19.5.2006 passed by the Commissioner, Customs & Central Excise, Meerut-I, Meerut]

Date of Hearing/decision: 6th June, 2012

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s. Bajaj Hindustan Limited — Appellant

Vs.

CCE, Meerut-I — Respondent

Present for the Appellant : Shri S.C. Kamra, Advocate
Present for the Respondent : Shri R.K. Verma, A.R.

Coram: Hon'ble Shri Justice Ajit Bharihoke, Judicial Member;
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL ORDER NO. A/677-679/2012-EX(BR)

Per Rakesh Kumar:

The appellants have Sugar Mills at Bilai, Dist. Bijnor, Bhaisana, Dist. Muzaffarnagar and Thanabhawan, Dist. Muzaffarnagar for manufacture of sugar and molasses They have separate Central Exccise registrations. During the period from January, 2005 to June, 2005 each of the three appellant units took Cenvat credit in respect of Angles, Channels, Plates, Sections, Beams, Flats, etc. claimed to have been used for fabrication of plant and machinery and supporting structures for various machineries and plant. Cenvat credit availed by Bhilai unit, Thana Bhawan, Muzaffarnagar unit and Bhaisana, Muzaffarnagar unit was Rs. 1,65,69,326/-, Rs. 1,90,52,382/- and Rs. 2,02,96,271/- respectively. The department being of the view that this credit was wrongly taken, as there is no evidence that the items, in question, had been used for manufacture of capital goods for use in the factory, issued show cause notices for recovery of this credit along with interest and imposition of penalty. Show cause notices were adjudicated by the Commissioner by a common order-in-original No. 22-25/Commr/MR-I/2006 dated 19.5.2006 by which above Cenvat credit demands were confirmed along with interest and penalties of equal amounts were also imposed on the appellants. Against this order of the Commissioner the appellants have filed these three appeals.

2. Heard both sides.

3. Shri S.C. Kamra, learned Counsel for the appellants, pleaded that M.S. Angles, Channels, Plates, Sections, Beams, Flats etc. in respect of which Cenvat credit has been taken, had been used for fabrication of various items of plant and machinery ; that the details regarding use of these items in the manufacture of various items and machinery had been

given to the department; that they have availed Cenvat Credit only in respect of the quantity of these items used in the manufacture of machinery and no Cenvat credit was talen for the structural steel items used in fabrication of supporting structures; and that the Commissioner has not considered the evidence produced by them regarding use of these items and dismissing their claim rgarding the use of these items in manufacture of capital goods has disallowed Cenvat credit. Shri Kamra, therefore, pleaded that impugned order is not correct.

4. Shri R.K. Verma, learned D.R., defended the impugned order reiterating the findings of the Commissioner and submitted that though the M.S. Angles, Channels, Plates, Sections, etc. are claimed to have been used for fabrication of various items of machinery for use in the factory, no evidence in support of this claim has been produced in spite of ample opportunities having been given to the appellants; that neither the manufacture of any capital goods have been declared in ER-1 Returns nor any specific intimation has been given regarding use of the structural steel items in manufacture of capital goods; that when the appellants have taken Cenvat credit in respect of items like M.S. Angles, Channels, Plates, Section etc. falling under Chapter 72 & 73 of Central Excise Tariff Act which are not covered under the definition of capital goods, Cenvat credit in respect of these items would be admissible as input only if there is evidence

on record showing their use in the manufacture of capital goods for use in the factory; that the burden of producing evidence in this regard is on the appellant but the appellants have not discharged this burden of proof and that the Commissioner has, therefore, rightly disallowed the Cenvat credit in respect of these items, and as such, there is no infirmity in the impugned order.

5. We have carefully considered the submission of both sides and perused the records. Undisputedly the items which are subject matter of these appeals were used at the time of commissioning of new plant for production of final product, when the manufacturing units had not been started. Thus this is apparent that all the items regarding which Cenvat credit have been claimed by the appellants have been used in the process of commissioning of manufacturing units. Since these items are not covered by the definition of 'Capital Goods,' for being eligible for Cenvat credit in respect of these items as 'Inputs', the appellant were required to establish that the items for which they have claimed Cenvat credit were actually used for manufacture of capital goods subject to explanation (2) to Rule 2(k) of Cenvat Credit Rules, 2004. Second Explanation to Rule 2(k) of Cenvat Credit Rules reads as under:-

"Input includes goods used in manufacture of capital goods while and further used in the factory of manufacture but shall not include cement, angles, channels, CTD or TMT bars, and if the item used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods"

6. By reading of this Explanation it is apparent that if the inputs have gone into manufacture of capital goods, then only they are eligible for Cenvat credit and such capital goods must be put to actual manufacture of final product. Otherwise, also under Cenvat Credit Rules in order to avail Cenvat credit the assessee has to establish that the items in question were actually put to use for manufacture or in relation to manufacture of final product or the capital goods regarding which the assessee seeks to avail Cenvat credit. On going through records we notice that during adjudication proceedings the appellants placed on record only invoices and a chart vaguely indicating how the items, in question, were utilised without giving specific details as to how much quantity of structural steel items was used in manufacture of which machinery or its part, component, and accessory. This by itself does not amount to discharge of onus of proof by the Appelalnt. We may note that it was Appellant who had purchased the items, in question, and utilised them. Therefore, it was only within their knowledge as to how and in what manner these items were put in use. In the adjudication proceedings the appellant despite of the fact that they were given opportunity of hearing did not lead any evidence to indicate as to which items of structural steel plates, and in what quantity were used for fabrication of machinery. In absence of this, the Commissioner had no

option but to hold that the appellant failed to discharge onus regarding use of items, in question, as inputs for manufacture of capital goods. Not only this, admittedly the appellants in the ER-1 returns filed by them, did not declare the use of these items in manufacture of capital goods. We may note that while hearing the arguments we asked the learned Counsel for the appellants, as for what is Boiler Staging mentioned in his chart, he could not explain. This is an example of fact that the annexure filed by the appellants is as vague as it could be. In view of above discussion we are of the considered view that since the appellant have failed to discharge their onus, the impugned order is correct. Therefore, all the appeals are dismissed.

7. Before parting with this matter we would like to observe that there are a large number of appeals pending in the Tribunal where the point of dispute is similar to the dispute in this case i.e. dispute regarding use of structural steel items of Chapter 72 & 73 of the Central Excise Tariff – M.S. angles, channels, bars, plates, joists etc. in the manufacture of various items of machinery and parts, components and accessories thereof. Such disputes can be avoided, if there are instructions from the Board requiring the Assessees to specifically inform the jurisdictional Central Excise authorities well in advance about fabrication of any items of capital goods within the factory using M.S. angles, channels, bars, plates etc. mentioning the approximate quantity of these items

expected to be used and also declaring the capital goods fabricated in the ER-1 returns. With such instructions, the Department would be in a position to verify the usage of the items of structural steel in fabrication of capital goods for use in the factory and while in genuine case, there would be no difficulty in accepting the assessee's claim, the false and inflated claims in this regard will be eliminated and thereby reducing the scope for further litigation. The Board may consider issuing suitable instructions in this regard as a measure to curb litigation on this issue.

(JUSTICE AJIT BHARIHOKE)
PRESIDENT

(RAKESH KUMAR)
TECHNICAL MEMBER

RK

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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

Dated: **04/10/2012**

MISC Order No : 1015-1017/2012
ROM Application No. : E/ROM/2979,2980/2012, E/ROM/2981/2012
Appeal No. : E/3046/2006.3111/2006-EX[DB], E/3141/2006-EX[DB]

1. Appellant :
BAJAJ HINDUSTAN LIMITED
Unit Bhaisana,Distt-Muzaffarnagar(UP)

2. Respondent :
C.C.E.MEERUT I
Mangal Pandey Nagar,Meerut.

3. Advocate(s) / Consultant(s) :
S.C. Kamra & Co.
B-2/210 (Basement),
Safdarjung Enclave,
New Delhi
Delhi
110029

4. C.D.R

5. Bar Association, CESTAT, New Delhi

6. Director Publications, Customs, Excise. I.P. Estate, New Delhi

7. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-110003

8. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-600017

9. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

10. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

11. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12. TaxIndiaOnline.com Pvt. Ltd., Unit No. 1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

13. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

14. M/S. BAJAJ HINDUSTHAN LTD.,
UNIT THANABHAWAN,
DISTT. MUZAFFARNAGAR,(UP)

15. M/S. BAJAJ HINDUSTHAN LTD.
UNIT BHAISANA,
DISTT. MUZAFFARNAGAR (UP)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

Excise ROM Application No. 2979-2981 of 2012 in Appeal No. 3046, 3111 and 3141 of 2006

M/s Bajaj Hindustan Limited — Appellant

Versus

CCE, Meerut – I — Respondent

Appearance

Shri S.C. Kamra, Advocate – for the appellant.

Shri R.K. Verma, Authorized Representative (DR) - for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 21/08/2012.
DATE OF DECISION : 26/09/2012.

Misc. Order No. 1015 to 1017/12-Ex Dated : ____________

Per. Rakesh Kumar :-

These ROMs have been filed in respect of final order No. A/677-679/2012 – EX (BR) dated 6th June, 2012 by which the appeals filed by the appellant against order-in-original No. 22-25/Commr/MR-I/2006 dated 19/5/2006 were dismissed. The Commissioner by the impugned order had confirmed the Cenvat credit demands of Rs. 1,65,69,326/-, Rs. 1,90,52,382/- and Rs.

2,02,96,271/- against the appellant alongwith interest imposing penalty of equal amount on them. This Cenvat credit had been taken by the three units of the appellant during period from January 2005 to June 2005 in respect of MS Angles, Channels, Plates, Sections, Beams, Flats etc. claimed to have been used for fabrication of plant and machinery.

2. Heard both the sides in respect of ROM applications.

3. Shri S.C. Kamra, Advocate, the learned Counsel for the appellant, pleaded that the disputed amount of Cenvat credit had been taken by the appellant in respect of structural steel items, MS Angles, Channels, Flats, Bars etc., which had been used for fabrication various items of capital goods, that no Cenvat credit has been taken in respect of the quantity of structural steel items used for fabricating and erecting the supporting structures or any other structures fixed to the earth, that use of various items of structural steel in respect of which the Cenvat credit, in question, has been taken, was for the manufacture of various items of capital goods and this is supported by the store ledger and the store issue slips with copies of the relevant pages of store ledger maintained by the appellant, that the details of the Cenvat credit taken in respect of MS Angles, Channels, Beams, Joists, mill plates etc. used for fabrication of capital goods had been declared in the Cenvat credit return (ER-6 return) filed by the appellant, that from the store ledger and the store issue slips coupled with the monthly return regarding Modvat credit availed and utilised, it is evident that the items, in question, in respect of which the

disputed amount of Cenvat credit had been taken, had been used for fabrication of capital goods, that fabrication of various items of capital goods like chimney, gear guards at mill house, juice clarifiers, air cooled crystallizer, vacuum crystallizer, high pressure steam, low pressure steam and exit steam piping is clear from the list of contracts awarded for this purpose to various contractors, which had been produced before the Adjudicating Authority alongwith a detailed chart giving invoice-wise details of the structural steel items received in plant and in used, that all this evidence has not been considered by the Tribunal in the final order and thus, the final order passed by the Tribunal suffers from mistake apparent from records. He, therefore, pleaded for rectification of mistake and modification of the impugned final order dated 06/06/12 passed by the Tribunal.

4. Shri R.K. Verma, the learned Departmental Representative, opposed the ROM application pleading that the points raised in the ROM application are not the points of mistake apparent from record, that the appellant seek re-valuation of the evidence on record, which is not permissible, that the appellant had at no point of time had either specifically intimated the department regarding use of the structural steel items for fabrication of capital goods nor had declared the fabrication of various items of capital goods in the ER-1 returns, that in the ER-6 return regarding Cenvat credit availed, details regarding use of the inputs are not given, that no drawings and designs of the various items of machinery claimed to have been fabricated by using the

structural steel items alongwith the quantity of the material used had been produced, that in view of this, the appellant's claim regarding use of the structural steel items for fabrication of various items of capital goods is not supported by any evidence on record and that ROM application is, thus, without any merit.

5. We have carefully considered the submissions from both the sides and perused the records.

6. There is no dispute about the fact that the fabrication of capital goods by using MS Angles, Channels, Plates, Joists etc. in respect of which the Cenvat credit, in question, had been taken, had neither been specifically intimated to the department at any point of time nor the details of the items of capital goods fabricated had been declared in the ER-1 returns filed by the appellant. No drawings and designs of the capital goods claimed to have been fabricated alongwith the quantity of the material used had been produced before the lower authorities on the basis of which it could be ascertained as to how much quantity of structural steel material has been used for various items of capital goods claimed to have been fabricated. The store ledgers and the store issue slips do not show the use of the structural steel items issued. Since, admittedly, the appellant had neither intimated to the department regarding use of structural steel material for fabrication of various items of capital goods nor the details of the capital goods fabricated have been reflected in the ER-1 return, the Jurisdictional Central Excise officers no opportunity to verify this claim of the appellant. In view of this,

we do not find any merit in these applications filed by the appellant. The same are dismissed.

(Pronounced in the open court on 26/09/2012.)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK