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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

STAY Application No. : E/Stay/2118/2012
Appeal No. : E/1601/2012-EX[DB

Dated: **05/10/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
Bajaj Hindustan Limited
(unit: Bhaisana Budhana), Distt.
Muzaffarnagar (u.p.)

Bajaj Hindustan Limited (Appellant)

VS

C.C.E. & S.T.-Meerut-i (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/1203/2012-EX[DB]** , Stay Order No. **SO/1666/2012** and dated **01/10/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C.E. & S.T.-Meerut-i
EXCISE CHOWK...UNIVERSITY
ROAD,
MANGAL PANDEY NAGAR,
MEERUT,
UTTAR PRADESH
250005

2. Advocate(s) / Consultant(s):
Bipin Garg
B-1/1289, A - Vasant Kunj,
New Delhi
Delhi

3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New 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. 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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

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Assistant Registrar
EXCISE Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 01.10.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. Rakesh Kumar, 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.	
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?	

Excise Stay Application No. 2118 of 2012 in
Excise Appeal No. 1601 of 2012

M/s Bajaj Hindustan Limited — Appellants

Vs.

CCE, Meerut-I — Respondent

Present Sh. Bipin Garg, Advocate for the appellants.
Present Sh. M.S. Negi, AR for the respondent.

Coram: **Hon'ble Mr. Justice Ajit Bharihoke, President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

STAY ORDER No. 1666/2012-Ex (BR)
FINAL ORDER NO. A/1203/2012-Ex (BR)

Per: Justice Ajit Bharihoke:

The appellant manufacture sugar and molasses chargeable to Central Excise Duty. They avail Cenvat credit of excise duty paid on inputs. In course of manufacture of sugar by-product/waste – bagasse & Press Mud emerges. The department was of the view that since the appellant have not maintained separate account and inventory of the inputs used in or in relation to manufacture of dutiable final products – sugar and molasses and exempted final products –

bagasse, Press Mud in accordance with the provisions of Rule 6 (3) of Cenvat Credit Rules, 2004, they would be required to pay an amount equal to 8% of the sale value of bagasse. On this basis, the Jurisdictional Assistant Commissioner vide order-in-original dated 14/12/2010 confirmed the demand of Rs. 10,04,073/- alongwith interest and imposed penalty of equal amount. On appeal to Commissioner (Appeals), the Assistant Commissioner's order confirming the demand alongwith interest was upheld. Commissioner (Appeals), however, set aside the order imposing penalty.

2. Though this matter is listed for hearing of stay application, since a short issue is involved, we are of the view that the appeal itself can be taken up for final disposal. Accordingly, with the consent of both the sides, the matter was heard for final disposal after waiving the requirement of pre-deposit.

3. Shri Bipin Garg, Advocate, the learned Counsel for the appellant, pleaded that the issue involved in this case stands decided in ~~their~~ appellants favour by the judgment of the Tribunal in the case of **CCE, Meerut – I vs. Shakumbari Sugar & Allied Industries Ltd.** reported in **2004 (176) E.L.T. 819 (Tri. – Del.)**, and that the Civil appeal filed by the Department against this judgment of the Tribunal has been dismissed by the Hon'ble Supreme Court in the case of **Commissioner vs. Shakumbari Sugar & Allied Industries Ltd. – 2005 (189) E.L.T. A62 (S.C.)** with following observations :-

> "Delay condoned.
>
> It is stated that the point in issue is concluded against the appellant by a judgment of this Court dated 20th February, 2004 in Civil Appeal No. D27628/2003 [*Commissioner of Central Excise, Meerut – II vs. M/s Kichha Sugar Co. Ltd.*] in this view of the matter, the appeal is dismissed."

He, therefore, pleaded for setting aside of impugned.

4. Shri M.S. Negi, the learned Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner (Appeals) and also cited the Board Circular No. 904/24/2009-CX. dated 28/10/2009, wherein it has been clarified that in the Budget of 2008, the definition of excisable goods in Section 2(d) of the Central Excise Act has been amended as a result of which the bagasse emerging as a by-product in sugar mills would be treated as an exempted excisable goods and in respect of its clearances an amount equal to 5% of the sale value would be chargeable, if the Cenvat credit on the common inputs has been taken. He, therefore, pleaded that there is no infirmity in the impugned order.

5. We have considered the rival submissions. We find that Bagasse emerges in the course of crushing of sugarcane and the press mud emerges during the courser of manufacture of molasses as an inevitable product. Thus, keeping in mind that the appellant is engaged in manufacture of sugar and molasses in which process the waste product i.e. Bagasse and press mud are generated, it cannot be said that the appellant possibly could have maintained separate account for inputs for production of excisable items sugar and molasses and exempted items i.e. Bagasse and press mud. Thus, in our view the amendment in Finance Act cited by Sh. Negi, ld. AR and Board Circular would not make any difference so far as the plea of assesse is concerned. Otherwise also it may be noted that Hon'ble Allahabad High Court vide its judgment dated 18.05.2012 in a bunch of writ petition including writ petition No. 11791 (M.B of 2010) titled Balrampur Chinni Mills and Others vs. Union of India and Others has held that Bagasse generated in the course of crushing of sugarcane is not an excisable item notwithstanding the amendment of Section 2(d) of the Central Excise Act, 1944 vide Finance Act, 2008 which became operative w.e.f. 13.05.2008. Vide aforesaid judgment Hon'ble Allahabad High Court has also quashed the board circular referred to by ld. AR. Since press mud is also an

inevitable waste generated during manufacture of molasses the ratio of the judgment of Allahabad High Court is squarely applicable in respect of press mud. Thus, we are of the considered view that Bagasse and press mud being waste product those cannot be termed as excisable goods so as to attract the provision of Rule 6(2) and Rule 6(3) of the Cenvat Credit Rules, 2004.

6. In view of this, Rule 6(3) would not be applicable and as such amount under this rule would not be recoverable in respect of clearance of bagasse. & Press Mud The impugned order is, therefore, not sustainable. The same is set aside.

7. The appeal as well as stay petition is allowed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant