REGISTERED / AD

FAX : 011-26108426

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

Dated: 01/11/2012

To

1. Appellant as per address in table below

2. Respondent as per address in table below

Final Order No. **A/1250/2012-EX[DB]** dated **16/10/2012**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

S.No	Application	Appeal	Name and Address of Appellant	Name and Address of Respondent
1.		E/2898/2012	**Commissioner of Central Excise and Service Tax-Bhopal** 48...ADMINISTRATIVE AREA, ARERA HILL...HOSHANGABAD ROAD, BHOPAL, MADHYA PRADESH 462011	**Birla Corporation Ltd** (satna Cement Works) Po Birla Vikas, Satna(mp)

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Copy To
1. Advocate(s) / Consultant(s): MS. SUKRITI DAS, ADV.,
B-1/1289A, VASANT KUNJ,
N. DELHI-70

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2. C.D.R 3. Office Copy 4. Guard File

5. Bar Association, CESTAT, Delhi **6.** Director Publications, Customs, Excise. I.P. Estate, Delhi

7. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

8. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

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, Satellite Road, Ahmedabad-15

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

12. TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

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

Assistant Registrar
EXCISE Appeal Branch

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/ Decision:16.10.2012

CCE & ST, Bhopal — Appellants

Vs.

M/s. Birla Corporation — Respondent

Appearance: Shri M.S. Negi, DR for the appellant.
Ms. Sukriti Das, Advocate for the respondent.

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

Excise Appeal No.E/2898 of 2012-Excise

FINAL ORDER No A/1250/2012-EX (BR)

Per Rakesh Kumar:

The respondent is manufacturer of cement having a captive power generation plant for generation of power. They have availed cenvat credit in respect of inputs as input services used in connection of power generation. The electricity generated, apart from its use in the factory for manufacture of final products is also supplied to the residential colony, hospitals and school of the Respondents. The Department was of the view the since the electricity is an exempted final product and since the respondent used cenvated inputs and input services for manufacture of dutiable final products and exempted final products i.e. electricity supplied to residential colony, school and hospital, they in term of Rule 6(3) of Cenvat Credit Rules, 2004 would be liable to pay 5%/10% of the value of the electricity, supplied to School, Hospitals and residential colony. Though the Respondent had reversed the proportionate Cenvat credit, still a show cause notice was issued to the Respondent for recovery of difference between the proportionate cenvat credit and the amount payable at the rate of 5% / 10%, of the value of the electricity supplied to residential colony, hospitals and schools. The show cause notice sought recovery of interest on the amount and imposition of penalty. This show cause notice was adjudicated by the Addl. Commissioner vide order-in-original dated 31.03.2012 by which the demand for an amount of Rs. 20,69,955/- was confirmed along with interest thereon under Section 11A(1) hence no penalty was imposed. On appeal to the Commissioner (Appeals), order of the Addl. Commissioner was set aside and the appeal was allowed. Against this order of CCE (Appeals), this appeal has been filed by the Revenue.

2. Heard both the sides.

3. Ms. Ranjana Jha, Joint CDR assailed the impugned order by reiterating the grounds of appeal and pleaded that the electricity is an exempted excisable product, that since cenvat credit availed inputs and input services had been used in or in relation to the manufacture of dutiable final products

and electricity supplied to the schools, residential colonies and hospitals, in respect of this electricity the respondent would be liable to pay an amount equal to 5% /10% of its value and that the proportionate cenvat credit reversed by the respondent is not sufficient. She, therefore, pleaded that the impugned order is not correct.

4. Ms. Sukriti Das, Advocate, ld. Counsel for the respondent defended the impugned order and pleaded that on account of retrospective amendment to Rule 6(3) of Cenvat Credit Rules, 2004 by Finance Act, 2010, the respondent had an additional option of reversing the proportionate credit, that in this case, there is no dispute that the proportionate credit has been reversed and that in view of this, the impugned order-in-appeal cannot be faulted.

5. We have considered submissions from both the sides and perused the records. There is no dispute that the respondent during the period of dispute had reversed the proportionate cenvat credit in respect of electricity supplied to the residential colony, hospital and school. In view of the retrospective amendment to Rule 6(3)of the Rules, 2004 by Finance Act, 2010,a manufacturer availing cenvat credit in respect of inputs and input services which are used for both dutiable and exempted goods, the manufacturer has an additional option of reversing the proportionate credit in respect of inputs/input services used in or in relation to manufacture of exempted final

products. In this case, there is no dispute that the Respondent have reversed the proportionate cenvat credit. In view of the above, we do not find any reason to interfere with the impugned order. Revenue's appeal is, therefore, dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Ckp.