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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/1679/2012
Appeal No. : E/1325/2012-EX[DB]

Dated: **03/09/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
Bajaj Hindustan Limited
Sugar Unit: Thanabhawan, District:
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/996/2012-EX[DB]** , Stay Order No. **SO/1419/2012** dated **29/08/2012** 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,250005

2. **Advocate(s) / Consultant(s):**
PRADEEP KUMAR MITTAL ADV.
171-CHITRA VIHAR DELHI-110092

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
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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-I

Date of hearing/decision: 29.8.2012

Stay Application No.1679 of 2012 and Central Excise Appeal No. 1325 of 2012

Arising out of Order in appeal No.24-25-CE/APPL/M-I/2012 dated 24.1.2012 passed by the Commissioner , Central Excise (Appeals), Meerut I.

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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?	

Bajaj Hindustan Ltd.. ... Appellant

Vs.

C.C.E., Meerut I .. Respondent

Present for the appellant : Shri P.K. Mittal, Advocate
Present for the respondent : Shri I. Baig, A.R.

STAY order No. 1419/2012-Ex(BR)
FINAL Order No. A/ 996/2012- Ex(BR)

Per Justice Ajit Bharihoke (oral):

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 during crushing of sugarcane by-product/waste – bagasse 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 product - bagasse, in accordance with the provisions of Rule 6 (3) of Cenvat Credit Rules, 2004, they would be required to pay an amount equal to 10%/5% of the sale value of bagasse. On this basis, the Jurisdictional Assistant Commissioner vide order-in-original dated 22.11.2010 confirmed the demand of Rs.1,34,400/- alongwith interest and imposed penalty of equal amount. On appeal to Commissioner (Appeals), the Assistant Commissioner's order was upheld. Against this order of the Commissioner (Appeals), this appeal alongwith stay application has been filed.

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 P.K. Mittal, Advocate, the learned Counsel for the appellant, pleaded that the issue involved in this case stands decided in their 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 that the impugned order is not correct.

4. Shri I. Baig, the learned Senior 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 10%/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 carefully considered the submissions from both the sides and perused the records.

6. We have considered the rival submissions. We find that bagasse emerges in course of crushing of the sugarcane It may be noted that crushing of sugarcane is necessary to extract cane sugar juice which in turn is processed for production of sugar and molasses. Bagasse is the waste product left after the crushing of sugarcane. Therefore, by no stretch of imagination it can be said that the assessee possibly could have maintained separate accounts for the inputs for production of sugar and molasses (excisable item) and bagasse. Thus, in our considered view, the amendment in Finance Act, cited by Shri I. Baig, AR and the Board's Circular would not make any difference in the facts and circumstances of the case. Moreover, neither the show cause notice nor

the impugned order in appeal mentions as to which common Cenvat credit availed inputs have been used in manufacture of sugar and molasses (dutiable final product) and bagasse (exempted final product. Since Bagasse emerges at sugarcane crushing stage, there is no possibility of any inputs-chemicals etc. having been used at that stage. Accordingly, we find merit in the contention of the appellant. The impugned order is set aside. The appeal and stay applications are allowed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/