**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI**

**WEST ZONAL BENCH – COURT NO.3**

**EXCISE APPEAL NO: 89380 of 2014**

[Arising out of Order-in-Original No: 191-195/COMMR(WLH)/LTU-M/C.EX/2014 dated 24th September, 2014 passed by the Commissioner of Central Excise & Service Tax, LTU, Mumbai.]

Bajaj Auto Limited … ***Appellant***
Plot No. 2, Sector – 10, IIE, Pantnagar,
Udhamsing Nagar, Rudrapur, Uttarakhand

*versus*

Commissioner of Central Excise (LTU) ***…Respondent***
29th floor, World Trade Centre, Cuffe Parade,
Mumbai – 400 005

**WITH**

**EXCISE APPEAL NO: 85989 of 2015**

[Arising out of Order-in-Original No: 263/COMMR(WLH)/LTU-M/C.EX/2014 dated 27th January 2015 passed by the Commissioner of Central Excise & Service Tax, LTU, Mumbai.]

Bajaj Auto Limited … ***Appellant***
Akurdi, Pune – 411035

*versus*

Commissioner of Central Excise (LTU) ***…Respondent***
29th floor, World Trade Centre, Cuffe Parade,
Mumbai – 400 005

**WITH**

**EXCISE APPEAL NO: 86063 of 2015**

[Arising out of Order-in-Original No: 263/COMMR(WLH)/LTU-M/C.EX/2014 dated 27th January 2015 passed by the Commissioner of Central Excise & Service Tax, LTU, Mumbai.]

Commissioner of Central Excise (LTU) … ***Appellant***
29th floor, World Trade Centre, Cuffe Parade,
Mumbai – 400 005

*versus*

Bajaj Auto Limited ***…Respondent***
Akurdi, Pune – 411035

**WITH**

**EXCISE APPEAL NO: 85151 of 2017**

[Arising out of Order-in-Original No: 82/COMMR/LTU-M/C.EX/2016 dated 7th October 2016 passed by the Commissioner of Central Excise & Service Tax, LTU, Mumbai.]

Bajaj Auto Limited … ***Appellant***
Akurdi, Pune – 411035

*versus*

Commissioner of Central Excise (LTU) ***…Respondent***
29th floor, World Trade Centre, Cuffe Parade,
Mumbai – 400 005

*APPEARANCE:*

Shri A Hidayatullah, Senior Advocate with Shri Makrand Joshi, Advocate for the appellant

Shri RK Dwivedi, Additional Commissioner (AR) for the respondent

**CORAM:**

**HON’BLE MR C J MATHEW, MEMBER (TECHNICAL)**
**HON’BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

**FINAL ORDER NO: A/86355-86358/2019**

DATE OF HEARING: 09/05/2019
DATE OF DECISION: 09/05/2019

*PER: C J MATHEW*

As the issue in these four appeals arise out of common dispute on the denial of exemption from ‘national calamity contingent duty’ levied under section 136 of Finance Act, 2001 that was, despite exemption from basic excise duty conferred under notification no. 50/2003-CX dated 10th June 2003 available to industries in specified areas, held to be chargeable owing to apparent lack of applicability to this levy. Of the four appeals impugned before us, three are of the assessee and pertains to seven show cause notices for the period from April, 2007 to September, 2014 arising from which ₹199,81,81,066 has been confirmed while one, pertaining to the period from January 2014 to June 2014, is that of Revenue and is limited to the non-imposition of penalty.

2. Learned Senior Counsel, appearing for appellant, submits that the issue of eligibility for exemption of 'national calamity contingent duty', 'education cess' and 'secondary and higher education cess', levied by various Finance Acts, has been decided by the Hon'ble Supreme Court in *Bajaj Auto Ltd v. Union of India & Ors [2019-TIOL-127-SC-CX]* on appeal against the order of the Hon'ble High Court of Uttarakhand. It is also contended by Learned Senior Counsel that appellant had not been given an opportunity to be heard despite placing on record the pendency of the appeal before the Hon'ble Supreme Court. He makes a further plea for consequential relief as, in parallel proceedings in civil appeal no. 1600-1605 of 2018 in the matter of *Hero Motocorp Ltd v. Commissioner of Customs & Central Excise, Dehradun,* the Hon'ble Supreme Court had considered it

appropriate to refund the amounts collected within a period of two months from the date of receipt of the order of the Court.

3. We have heard the Learned Authorised Representative.

4. In our view, with the decision of the Hon'ble Supreme Court, the eligibility to exemption under notification no. 50/2003-CX dated 10$^{th}$ June 2003 is not longer *res integra*. Accordingly, we set aside the impugned order and allow the appeal.

5. The proper officer to consider the claim for refund under section 11B is also directed, upon compliance with the procedures therein, to follow the directions of the Hon'ble Supreme Court to the extent applicable and as allowable in the decision in *re Hero Motocorp Limited*.

6. The appeals of M/s Bajaj Auto Limited are allowed and that of Revenue is dismissed.

*(Pronounced in open court)*

**(C J Mathew)**
***Member (Technical)***

**(Dr. Suvendu Kumar Pati)**
***Member (Judicial)***

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