FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 31/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70085/2017-EX[DB] dated 10/01/2017

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.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/1272/2010	C.C.E, C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302
		Name and Address of Respondent
2		DABUR INDIA LTD. SAHIBABAD, GHAZIABAD (U.P.),,

Copy To

3Advocate(s) / Consultant(s):

**V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO SALES,Above the Office Of Blue Dart/DHL Courier, COLVIN ROAD, LOHIA MARG ALLAHABAD-211001**

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

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

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Appeal No.E/1272/2010-EX[DB]

Arising out of Order-in-Original No.65/COMMR./GZB/2009 dated 24.12.2009 passed by Commissioner, Central Excise, Ghaziabad.

Commissioner of Central Excise, Ghaziabad

..APPELLANT(S)

VERSUS

M/S Dabur India Ltd.

..RESPONDENT (S)

APPEARANCE:

Shri D.K. Deb, Asstt. Commr. (A.R.) for the Department (s)
Shri Atul Gupta, Advocate for the Appellant (s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 10.01.2017

FINAL ORDER NO.- 70085/2017

Per Mr. Anil G. Shakkarwar:

The present appeal is filed by Revenue against Order-in-Original No.65/COMMR./GZB/2009 dated 24.12.2009 passed by Commissioner of Central Excise, Ghaziabad.

2. The brief facts of the case are that the respondents were manufacturers of Edible preparations, Bulk Drugs, P.P. Medicines, Essential Oils and Machinery Items. Some of the goods manufactured by the respondents were dutiable and rests were exempted or attracting Nil rate of duty. The appellants were using furnace oil for the generation of steam, which was used for manufacture of both dutiable and exempted final products. The respondents were issued with a show-cause-notice dated 23.03.2008. It appeared to Revenue that

Cenvat Credit of Rs.78,71,907/- availed and utilized by respondents was ~~were~~ of such proportion of furnace oil which had gone into the manufacture of exempted final products and was inadmissible to the respondent because they were not maintain separate account of duty paid on furnace oil received by respondents and the quantities of furnace oil input gone into the manufacture of dutiable and exempted final product. Another allegation in the said show-cause-notice was that the respondent had conducted their own internal study and had come to conclusion that 10 MT of steam per day was required for manufacture of dutiable goods and proportionate input credit was taken by them at the beginning after the lapse of one year after the receipt of inputs. So, it appeared to Revenue that Cenvat Credit was not taken immediately on receipt of inputs into the factory. The said show-cause-notice was adjudicated through impugned Order-in-Original. The respondent contended before the Original Authority that provisions of Sub-Rule (2) of Rule 6 of Cenvat Credit Rules, 2004 clearly provided that provisions of Rule 6 are applicable only in a situation, wherein the manufacturer avails credit of duty paid on inputs which have been used in the manufacture of dutiable final product as well as exempted goods. However, in their case, it is undisputed that the respondent did not take Cenvat Credit of duty paid of furnace oil used in generation of steam, which in turn was used in the manufactured of exempted goods. They further contended that the quantum of credit attributable to quantity of furnace oil used in generation of steam, which was used in relation to the manufacture of dutiable final product was availed by them. They further contended that there was no provision in Cenvat Credit Rules for denying credit after a gap of more than one year and there was no time limit prescribes for availing credit of duty paid on inputs or capital goods. The Original Authority appreciated the contentions and allowed Cenvat Credit amounting to Rs.78,71,907/- to the respondent and dropped the proceedings. Aggrieved by the said Order-in-Original, Revenue is before this Tribunal.

3. The Revenue has advanced two grounds in their appeal. In their grounds of appeal one ground is that the respondent did not maintain separate accounts, therefore, attributable Cenvat Credit was not admissible to respondent and another ground advanced by Revenue is that this Tribunal in the case of J.V. Strips Ltd. Vs. Commissioner of C. Ex., Rohtak, reported at 2007 (218) ELT (Tri.-Del.) had held that "immediately on receipt of input" cannot be expanded a period of six months and argued that Cenvat Credit which was not immediately taken by the respondent was not admissible to them.

4. Heard the learned DR for Revenue, who has presented the grounds of Appeal.

5. Heard the learned counsel of the respondent. The learned counsel for the respondent has submitted that the Original Authority has appreciated provision of Sub-Rule 2 of Rule 6 of Cenvat Credit Rules, 2004 that the need for maintenance of separate accounts is only when Cenvat Credit of all the inputs received is taken and then the inputs are used in two steams one attracting duty and another not attracting duty and since their case is not where Cenvat Credit was taken on

such quantity of input which was going into the manufacture of exempted goods, therefore, there was no need to maintain separate accounts. He has further contended that this Tribunal in the case of Steel Authority of India Ltd. Vs. Commissioner of C. Ex., Raipur reported at 2013 (287) ELT 321 (Tri.-Del.) in para 9 has held that the judgement of Single Bench of this Tribunal in the case of J.V. Strips Ltd. (*supra*) is not based on correct interpretation.

6. Having considered the rival contentions, We find that as provided in Sub-Rule 2 of said Rule 6, the question of maintenance of separate accounts arises only when Cenvat Credit is availed on entire inventory of the inputs and subsequently such inputs are used both in the manufacture of dutiable as well as exempted final products. In the present appeal for the said inputs there was no need for maintenance of separate accounts and it is undisputed that the respondent has availed Cenvat Credit only on such quantity of inputs which were used for manufacture of dutiable final products. Further as held by Division Bench of this Tribunal in the case of Steel Authority India Ltd. (*supra*), there was no time limit during the relevant period for availment of Cenvat Credit after the receipt of inputs into the factory. Therefore, the grounds raised by Revenue are not sustainable. We, therefore, reject the appeal filed by Revenue. The respondent will be entitled to consequential relief.

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

-Sd/-
(ANIL G. SHAKKARWAR)
Member(TECHNICAL)

Mishra

प्रमाणित प्रति / Certified True Copy
8.2.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001