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: 27/07/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70530-70531/2016-EX[DB] dated 04/07/2016

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/3624/2006 &E/1914/2008	**PRECISE LABORATORIES PVT LTD** A-13/2, SOUTH SIDE OF GT ROAD, UPSIDC IND.AREA, GHAZIABAD.
		Name and Address of Respondent
2		-C.C.E.GHAZIABAD CGO COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD

Copy To

3Advocate(s) / Consultant(s):

V. LAKSHMI KUMARAN,ADV(ALD)
3/1A/3 OPP AUTO SALES,-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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH: ALLAHABAD

DIVISION BENCH

E/3624/2006-EX(DB), E/1914/2008-EX(DB)

Dated of Hearing/decision: 04/7/2016

[Arising out of Order-in-Appeal No. 128-CE/GZB/2006 dated 30/8/2006 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Ghaziabad]

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Precise Laboratories Pvt. Ltd. — Appellant

Vs.

C.C.E., Ghaziabad — Respondent

Appearance:
Present for the Appellant: Shri Atul Gupta & Shri Vaibhav Dixit, Advocate
Present for the Respondent: Shri Chatru Singh (Assistant Commissioner) A.R.

Coram: Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

Final Order No. 70530/2016 – 70531/2016

Per: Anil Choudhary

The issue in these appeals filed by the manufacturer assessee is whether the amount of duty paid by the appellant under dispute, during pendency of the appeal before the Honourable Supreme Court, when the issue was sub-judice and admittedly no duty was collected from the buyer of the products, whether the revenue is justified in refusing refund for the period September 2000 to February 2001 on the ground of unjust enrichment. Further it is an admitted fact that the appellant have shown the amount receivable in their balance-sheet at Rs.1,96,65,263. It is further admitted fact that the amount has been paid during the period March 2004 to March 2005 by way of debit in their PLA. It is further admitted case of the revenue that the appellant had discounted the bills raised on Dabur India Ltd, raised for clearance of Lal Dant Manjan, from their bankers, which funds were deposited with the revenue through TR-6 challan's during the period March 2004 to March 2005. It is further admitted fact that the said payment were made on being pressurised by the revenue, pending appeal of the assessee before Honourable Supreme Court, wherein the issue of classification was pending. The Honourable Supreme Court decided the issue of classification in favour of the appellant assessee by its order dated 01/4/2005.

2. The brief facts are that both the appeals are arising for the same facts and Order-in-Original, hence the appeals are taken together for disposal.

The appellants were inter alia, engaged in the manufacturer of several products like 'Dabur Anmol Coconut Oil,' 'Dabur Amla Hair Oil', 'Dabur Vatika Hair Oil', etc. for M/s Dabur India Limited. Around September, 2000 the appellants started producing 'Lal Tail' on behalf of M/s Dabur India Limited and classified the same as 'Ayurvedic Medicament' under sub-heading 3003.39 of the First Schedule to the

A

Central Excise Tariff Act, 1985. Dispute arose as to the correct classification of 'Lal Tail' as department sought classification under Chapter heading 33.04 of the Central Excise Tariff Act, 1985. After several stages of proceedings, the matter reached this Tribunal - CESTAT, New Delhi wherein vide Final Order No. 158-159/03-B dated 28.02.2003, the Tribunal decided the issue in favour of the department.

3. Being aggrieved with the above Order dated 28.02.2003 passed by this Tribunal, New Delhi, the appellants preferred an Appeal before the Hon'ble Supreme Court of India, and upon insistence of the department deposited the differential Excise duty amounting to Rs.1,96,65,263/- 'under protest' during the pendency of the appeal before the Supreme Court.

4. Subsequently, vide judgment dated 01.04.2005 (reported at 2005 (182) ELT 290 (SC), the Hon'ble Supreme Court set aside the order of the Tribunal and allowed the appeal of the appellant. The Hon'ble Supreme Court held that the product is rightly classifiable under sub-heading 3003.39 and not under heading 33.04 of the Central Excise Tariff Act, 1985. The Hon'ble Supreme Court vide its separate order dated 01.04.2005 also held that no penalty is imposable on the appellants.

5. Pursuant to the above decision of the Hon'ble Supreme Court, the appellants filed a refund claim dated 03.05.2005 along with all evidences for an amount of Rs.1,96,65,263/- deposited during the

pendency of the appeal. In the meanwhile, the appellant also approached the Hon'ble High Court of Allahabad which vide its interim order dated 25.11.2005 directed the appellants to make a representation before the concerned adjudicating authority. This direction was duly complied with by the applicants whereby, it filed a detailed representation dated 30.11.2005 before the proper officer seeking refund claim of duty deposited 'under protest',during pendency of appeal.

6. However, vide Memorandum Order No. 89/2005-06 the adjudicating authority partially granted refund to the extent of Rs. 10,25,000/- to be applicants and allowed the balance amount of Rs.1,86,40,263/-, but the balance amount was directed to be credited to the Consumer Welfare Fund. The applicants preferred an appeal before Ld. Commissioner (Appeals). However, the Ld. Commissioner (Appeals) vide Order dated 30.08.2006 (impugned order) remanded the matter back to the adjudicating authority to consider the submissions of the appellants with respect to the issue of unjust enrichment.

7. Against the aforesaid impugned order of the Ld. Commissioner (Appeals), the appellant has filed the present appeal No. E/3624/2006.

8. Further, in terms of remand directions of the Ld. Commissioner (Appeals), the appellants were granted an opportunity of personal hearing and also filed written submissions before the Jurisdictional Assistant Commissioner. However, yet again the Ld. Assistant

Commissioner vide Memorandum Order No. 184/2006-07 partially upheld the refund claim of Rs.10,25,000/- and credited the balance amount of Rs.1,86,40,263/- to Consumer Welfare Fund on the ground of Unjust Enrichment. Aggrieved by the above order passed by the Ld. Assistant Commissioner, the applicant filed an appeal with the Ld. Commissioner (Appeals). However, the Ld. Commissioner (Appeals) vide the impugned order dated 30.05.2008 rejected the refund claim on the ground that money has been raised from their buyers i.e. M/s Dabur India Limited by sale of their excisable other products and the same money has been utilized for payment of Central Excise duty amounting to Rs.1,86,40,263/-. In other words, the Ld. Commissioner (Appeals) held that the incidence of duty has been passed on to the buyer and the appellant has failed to produce any evidence, confirming the allegation of the adjudicating authority. Aggrieved by the aforesaid order dated 30.05.2008, the applicants preferred Appeal before this Tribunal, (vide Appeal No. E/1914/2008-EX[DB]).

9. As both the appeals are arising from the same facts and Order-in-Original, we take the appeals together for disposal.

10. Heard the ld. Counsel for the appellant who have urged that the refund claim under the fact and circumstances is not hit by the principle of unjust enrichment. It is stated that, it is an admitted fact that the appellant have not charged any Excise duty on the invoices raised for clearance of Lal Tail, during the disputed period, or subsequently.

A. or

11. Thereafter the appellants filed refund claim on 3/5/2005 along with the evidences of deposit of tax during pendency of appeal. Under such circumstances the ld. Counsel assailed the findings of the Commissioner (Appeals) who have observed in the first round that the amount deposited by the appellant during pendency of their appeal before Honourable Supreme Court is not a pre-deposit, as the same was not deposited under order of the Court and accordingly the provisions of Section 11 B would apply. The ld. Commissioner also observed that although the amount in issue is shown in the balance-sheet as recoverable, remanded the matter to the Adjudicating Authority for further examination. In the 2nd round the Assistant Commissioner have observed that on examination he finds from the documents submitted that the amount of claim recoverable Rs.10,25,000/- against the head 'excise duty, recoverable' on Lal Tail for the year ending 31/3/2004, at page No. 156 of the letter which copy is the same as enclosed with the writ petition. Likewise at page number 158 of the letter the appellant have submitted, as in the writ petition showing amount of Rs.1,96,65,263/- against the head Excise duty recoverable on Lal Tail. He further observed that he finds these pages neither certified nor Stamped by the Chartered Accountant where as all the pages relating to balance-sheet of any year submitted by the party/appellant are duly certified, as well Stamped by the Chartered Accountant. He further observed that in absence of certification by Chartered Accountant, the showing of outstanding-recoverable towards Excise duty seems to be by way of an

Ag

afterthought. Further observing as to passing of incidence of duty, that the duty is realised by way of selling Lal Dant Manjan. He observed that on examination of bank statement of the appellant, it is found that a total of Rs.1,96,65,263/- deposited and refund claimed by the appellant, Rs.10,25,000 have been sourced by them on their own, whereas the rest of Rs.1,86,40,263/- has been sourced from payments received from Dabur India Ltd for the sale of their product 'Dabur Lal Dant Manjan', as reflected in the relevant sales bills and had borne the incidence of duty. On such findings the Assistant Commissioner was pleased to uphold the rejection of refund of duty, for the part amount Rs.1,86,40,263/- which is in dispute in these appeals.

12. Being unsuccessful the appellant preferred appeal before ld. Commissioner (Appeals) who vide order dated 8/3/2007 have rejected the appeal confirming the findings of the Assistant Commissioner.

13. The learnedly A.R. for revenue relies on the impugned orders.

14. Having considered the rival submissions we find that the ld. Commissioner have misconceived the concept of unjust enrichment. The ld. Commissioner have also failed to understand the provisions of Central Excise as well the basic principles of accounting. Under the admitted facts, that the appellant have not raised any supplementary invoice for the Dabur Lal Tail cleared during the period September 2000 to February 2001 there can be no question of passing of duty on

Ar

the buyer. Secondly no duty can be passed on to the same buyer for an earlier clearance of some different product, by clearance of some different product in the future time. Further it is admitted fact that the appellant have deposited the amounts by TR-6 Challans and debited the duty during pendency of their appeal before Honourable Supreme Court, by way of debit entry made in the PLA (Personal Ledger Account). Accordingly we hold that there is no question of unjust enrichment involved under the facts and circumstances of the case. Accordingly we allow these appeals with consequential benefits. We direct the Adjudicating Authority to disburse the refund of Rs.1,86,40,263 within a period of 30 days from the date of receipt of this order along with interest, from 3 months after the date of application for refund, being 3/5/05.

Thus the appeals are allowed in the aforementioned terms.

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

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(K. Gupta)

प्रमाणित प्रति / Certified True Copy
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