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

Dated: 05/05/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70452-70453/2017-EX[DB] dated 13/04/2017

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/58867/2013	**Dabur India Limited** Corporate Office,kaushambi GHAZIABAD UP
2	E/58868/2013	**Dabur India Limited** 22,site-iv,industrial Area,sahibabad GHAZIABAD UP
		Name and Address of Respondent
3		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002
4		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(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

6 Bar Association, CESTAT, Allahabad

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

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

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

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

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, Hyderabad – 38

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

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

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/58867 & 58868/2013-EX[DB]

(Arising out of Orders-in-Original No. 14 & 15/Commissioner/GZB/2012-13 dated 28/03/2013 passed by Commissioner of Customs, Central Excise & Service Tax, Noida)

M/s Dabur India Limited — **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Ghaziabad — **Respondent**

Appearance:

Shri B. L. Narasimhan, Advocate,
Shri Atul Gupta, Advocate &
Ms. Natasha Sarkar, Advocate, — for Appellant
Shri Pawan Kumar Singh, Superintendent (AR), — for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 13/04/2017

FINAL ORDER NO. 70452 - 70453/2017

Per: Anil G. Shakkarwar

Appeal No. E/58867/2013 is filed by appellants - M/s Dabur India Limited against Order-in-Original No. 14/Commissioner/GZB/2012-13 dated 28/03/2013 & Appeal No. E/58868/2013 is filed by appellants, M/s Dabur India Limited against Order-in-Original No. 15/Commissioner/GZB/2012-13 dated 28/03/2013. The issue in both these appeals is common. Therefore, they are taken together for decision.

E/58867/2013

2. The brief facts of the case are that the appellants - M/s Dabur India Limited, Corporate Office, Kaushambi, Ghaziabad were registered with the Central Excise & Service Tax department as Input Service Distributors (ISD in short) M/s Dabur India Limited were availing the facility of Cenvat Credit of Service Tax paid on various Input Services including Advertisement Service & Sales Promotion Service. As Input Service distributors they used to distribute Input Service credit to its various Units which were manufacturing dutiable goods. Certain Units of M/s Dabur India Limited were availing area based exemption under Notification No. 50/2003-CE dated 10/06/2003. It appeared to Revenue that credit of Service Tax attributable to service used in a Unit exclusively engaged in the manufacture of exempted goods was distributed by Input Service distributor, to Units which were manufacturing dutiable goods. It appeared to Revenue that under Clause (b) of Rule 7 of the Cenvat Credit Rules, 2004 M/s Dabur India Limited was not entitled to distribute such Input Service Tax credit which was attributable to Services used in a Unit exclusively engaged in manufacture of exempted goods. Therefore, investigations were carried out and on the basis of investigation a Show Cause Notice dated 21/10/2011 was issued to M/s Dabur India Limited (Input Service Distributor - Ghaziabad). It was alleged in the said Show Cause Notice that Advertisement Service & Sales Promotion Services received by Input Service Distributor

which was attributable to exempted goods and traded goods were distributed to the Units which were manufacturing dutiable final product. Para 14 & 15 of the said Show Cause Notice are reproduced below:

> "14 And whereas to further ascertain the actual amount of Cenvat Credit attributable to dutiable goods, exempted goods and traded goods separately, M/s Dabur India Limited (ISD) were requested to provide the item wise production value of each unit whether paying duty or availing area based exemption under Notification No. 50/2003-CE dated 10/06/2003 or any other exemption and value of the traded goods. M/s Dabur India Limited (ISD), vide letter dated 10/10/2011 [RUD – 9] and letter dated 13/10/2011 [RUD – 10] ~~hae~~ have provided the items wise & unit wise production value of both dutiable as well as exempted goods and value of traded goods respectively. On the basis of said details, the item wise & year wise percentage of Cenvat Credit attributable to dutiable goods, exempted goods and trades goods have been worked out in a chart enclosed as ***Annexure-C*** for the last five year from April, 2006 to March, 2011. On the basis of the percentage worked out in the said ***Annexure-C,*** invoice wise & item wise admissible credit has been calculated separately for each unit to whom the said inadmissible credit has been distributed. The details of said inadmissible credit have

been drawn in a chart enclosed as ***Annexure-C- 1, C-2, C-3, C-4, C-5, C-6, C-7, C-8 & C-9***. Unit wise consolidated figures of said inadmissible credit is given as below

S. No.	Name of the Unit & Address	Credit of items as distributed				Inadmissible credit distributed by the ISD			
		S. Tax	Ed. Cess	SHE Cess	Total	S. Tax	Ed. Cess	SHE Cess	Total
1	Dabur India Ltd. Industrial Area Alwar Rajasthan (Ann.-C-1)	79205170	1583438	604261	81392869	51766811	1034855	416999	53218665
2	Dabur India Ltd. Survey No. 225/4/1 Saily Road, Dadra Nagar Haveli Silvasa **(Unit –I, plant-1024) (Ann-C-2)**	61042358	1221278	502168	62765804	57626614	1153484	479109	59259207
3	Dabur India Ltd. Survey No. 225/4/1 Saily Road, Dadra Nagar Haveli Silvasa **(Unit-II, plant-1025) (Ann-C-3)**	5170324	1033798	436287	53173332	29830139	596392	248289	30674820
4	Dabur India Ltd. 22, Site-IV Industrial Area Sahibabad, Ghaziabad **(Ann-C-4)**	43200616	865961	243064	44309641	22828196	457968	138467	23424630
5	Dabur India Ltd. 86-A Kheda Industrial Area, Pitampur, District Dhar **(Ann-C-5)**	114484085	2285158	914927	117684170	94261558	1881287	748425	96891270
6	Dabur India Ltd. (Chyawanprash unit), HPSIDC Industrial Area Baddi, District Solan (H.P.) **(Ann-6)**	29211686	587511	279680	30078877	20835681	419056	199647	21454385
7	Dabur India Ltd. (Haz), 109 HPSIDC Industrial Area Baddi District Solan (H. P.) **[Hazmola unit] (Ann-C-7)**	11629986	232423	90051	11952460	0	0	0	0
8	Dabur India Ltd. (Haz), 109 HPSIDC Industrial Area Baddi District Solan (H. P.) **[Tooth powder unit] (Ann-C-8)**	105051	2102	1051	108204	0	0	0	0
9	Dabur India Ltd. Narendrapur **(Ann-C-9)**	379955	7599	3799	0	0	0	0	0
	TOTAL	390962154	7819268	3075287	401465356	277114000	5543042	2230935	284922977

15. And whereas, in view of above, it appears that M/s Dabur India Limited (ISD) have availed Cenvat credit amounting to **Rs.40,14,65,356/- (Rs.39,09,62,154/- S. Tax + Rs.78,19,268/- Ed. Cess + Rs.30,75,287/- SHE Cess)** on the input service of advertisement & sales promotion during April, 2006 to March, 2010. Out of said Cenvat credit, **Rs.28,49,22,977/-**

(Rs.27,71,49,000/- S. Tax + Rs.55,43,042/- Ed. Cess + Rs.22,30,935/- SHE Cess) has been availed on the input service of advertisement & sales promotion attributable to exempted products and traded goods and the same has been distributed to their duty paying manufacturing units for utilization. Therefore, it appears M/s DIL (ISD) have wrongly availed and distributed the said Cenvat credit and the same is liable to be recovered along with interest from them."

It appeared to Revenue that Cenvat credit amounting to Rs.28,49,22,997/- on account of exempted goods and traded goods were inadmissible for distribution since the said credit was in respect of Service Tax paid on Services of Advertisement Service & Sales Promotion Services which were attributable to exempted goods. Therefore, M/s Dabur India Limited were called upon to show cause as to why Cenvat credit amounting to Rs.41,33,92,472/- including Cenvat credit amounting to Rs.12,74,69,495/- attributable to trading should not be disallowed under Rule 3 of the Cenvat Credit Rules, 2004. The appellant contested the said Show Cause Notice. The main contention was that under Clause (b) of Rule 7 of the Cenvat Credit Rules, 2004, only such credit which is attributable to service used in a unit exclusively engaged in manufacture of exempted goods cannot be distributed. The said Show Cause Notice was adjudicated through impugned Order-in-Original No.

14/Commissioner/GZB/2012-13 dated 28/03/2013. The Original Authority did not appreciate the contentions of the appellant and relied on provisions of Clause (d) of Rule 7 of the Cenvat Credit Rules, 2004 which was provided with effect from 01/07/2012 and confirmed the demand. Aggrieved by the said Order-in-Original the appellant is before this Tribunal.

E/58868/2013 M/s Dabur India Limited

3. In para 14 of the said Show Cause Notice dated 21/10/2011 at Serial No. 4 of the table it has been stated that Dabur India Ltd. (ISD) distributed Cenvat credit amounting to Rs.2,34,24,630/- which was inadmissible credit and the same was distributed by M/s Dabur India Limited, Shahibabad, Ghaziabad. M/s Dabur India Limited, Shahibabad, Ghaziabad was issued with a Show Cause Notice No. 17/Commissioner/GZB/2011-12 dated 21/10/2011 contending that the Cenvat credit of Service Tax attributable to unit which is involved in the manufacture of exempted goods was distributed to the tune of Rs.2,34,24,630/- to M/s Dabur India Limited, Shahibabad, Ghaziabad and same was liable for recovery. The appellant contested the said Show Cause Notice. The Original Authority did not appreciate the same and relied on provisions of Clause (d) of Rule 7 of the Cenvat Credit Rules, 2004 and confirmed the demand through the said Order-in-Original No. 15/Commissioner/GZB/2012-13 dated 28/03/2013.

Aggrieved by the said Order-in-Original appellant is before this Tribunal.

4. Heard the ld. Counsel for appellant who has taken us through the said Show Cause Notice in para 14 & 15. He also taken us through the provisions of Rule 7 of the Cenvat Credit Rules, 2004 that were operational during the material period of Show Cause Notice. He has contended that as per Clause (b) of Rule 7 of the Cenvat Credit Rules, 2004 Service Tax attributable to services used in a Unit exclusively engaged in the manufacture of exempted goods is not admissible to be distributed. He further contended that the Show Cause Notice has nowhere established that the Service Tax which was proposed to be recovered was attributable to services exclusively used in those Units which were exclusively engaged in the manufacture of exempted goods. He has further contended that it is admitted fact that the services were commonly used for entire group of manufacturing organization and that the apportionment of admissible Cenvat credit and inadmissible credit for issue of Show Cause Notice was by Revenue on the basis of turnover of Units which were manufacturing exempted goods and turnover of the Units which were manufacturing ~~total~~ taxable goods. He further contended that in the entire Show Cause Notice therein no allegation that credit of Service Tax of any service used exclusively in the Unit which is manufacturing exempted goods have been availed or distributed. He further

contended that Clause (d) of Rule 7 of the Cenvat Credit Rules, 2004 which was introduced subsequent to the period of Show Cause Notice was relied upon by Original Authority for confirmation of demand and therefore the impugned order is not sustainable. He further contended that Rule 14 of the Cenvat Credit Rules, 2004 cannot be relied upon for recovery of alleged inadmissible Cenvat credit from M/s Dabur India Limited (ISD). He further relied on the Final Order No. 52089-52090/2017-DB dated 03/03/2017 passed by Coordinate Bench of this Tribunal in the case of M/s Secure Meters Ltd. *Versus* Commissioner of Central Excise & Service Tax, Jaipur. He has contended that in the said case services were utilized at the level of corporate office of the manufacturing Units and in terms of said Rule 7 of the Cenvat Credit Rules, 2004, credit was distributed to the Unit manufacturing dutiable goods. It was further held in the said Final Order No. 52089-52090/2017-DB dated 03/03/2017 that Rule 7 of the Cenvat Credit Rules, 2004 was amended vide Notification No. 5/2014-CE (NT), dated 24/02/2014 whereby the explanation was substituted with "used by one or more units in the place of use in a unit" and it was held that such amendment was not applicable for the period prior to January, 2010. He further relied on this Tribunal Final Order in the case of Indian Oil Corporation Ltd. *Versus* Commissioner of Central Excise, Delhi-II reported at 2014 (35) S.T.R. 411 (Tri. – Delhi) wherein it was held that demand for recovery cannot be raised against input service distributor under Rule 14 of the Cenvat Credit Rules, 2004.

5. Heard the ld. D. R. who has relied on the impugned Order-in-Original. The ld. D. R. has contended that provisions of Clause (d) of Rule 7 of the Cenvat Credit Rules, 2004 were clarificatory in nature and they were applicable to the period even before 01/07/2012.

6. Having considered the rival contentions and on perusal of the records, we find that the Original Authority has specifically relied on provisions of Clause (d) of Rule 7 of the Cenvat Credit Rules, 2004 for confirmation of demand whereas no such provision has been invoked in the said Show Cause Notice because during the material period such provisions did not exist on statute. We further find that in Para 14 & 15 of the said Show Cause Notice a methodology was adopted for distribution of Cenvat credit into admissible and inadmissible credit on the basis of turnover. We do not find any provision of law for doing so. We further find that Clause (b) of Rule 7 of the Cenvat Credit Rules, 2004 that existed during material time provided that such Cenvat credit of Service Tax paid was not admissible to be distributed which was exclusively used in unit engaged in the manufacture of exempted goods. The said Show Cause Notice nowhere established that the Cenvat credit which was proposed to be recovered was used in a unit exclusively engaged in manufacture of exempted goods. It is admitted

that the Services such as Advertisement Service & Sales Promotion Services, were utilized in Corporate Office, Kaushambi, Ghaziabad. The ld. Counsel also contended that both the Show Cause Notices are hit by limitation. He has also contended that the second Show Cause Notice is repetition of the first Show Cause Notice. We keep the issue of limitation open. We set aside both impugned Order-in-Original and allow both appeals. The appellants shall be entitled for consequential relief, if any, as per law.

(Dictated and pronounced in Court)

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

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

Ansari

प्रमाणित प्रति/Certified True Copy
09/05/2017
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