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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

Appeal No. E/249 /2007 Date 30/04/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S DABUR INDIA LTD.

22, SITE IV, INDUSTRIAL AREA, SAHIBABAD,
GHAZIABAD.
M/S DABUR INDIA LTD. Appellant

Vs

C.C.E. GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 199/08 **Excise** dated 10-4-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar

(Excise Appeal Branch)

Copy to :
1. Respondent

C.C.E. GHAZIABAD

C.G.O. COMPLEX, KAMLA NEHRU NAGAR, GHAZIABAD
201002
2. Adv. / Consult
MR. V. LAXMIKUMARAN

B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

EXCISE APPEAL No. 249 OF 2007

[Arising out of Order-in-Appeal No. 182-CE/GZB/2006 dated 6.11.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Ghaziabad]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters 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?	No
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Departmental authorities?	No

M/s. Dabur India Ltd. Appellants

Vs.

CCE, Ghaziabad Respondent

Appearance:

Shri Ravi Raghavan, Advocate for the appellants,
Shri Deepak Garg, Departmental Representative, for the respondent

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Techncial)

Date of Hearing: 10th April, 2008

FINAL ORDER NO. 199/08-EX dated ________

Per S.S. Kang:

Heard both sides.

2. Appellants filed this appeal against the impugned order whereby refund claim of the appeal was rejected on the ground of unjust enrichment.

3. Contention of the appellants is that the adjudicating authority sanctioned the refund but the same was credited to the consumer welfare fund on the ground that refund is hit by bar of unjust enrichment. Contention is that the demand has been raised by the revenue for the period 1.3.94 to 30.9.97. The appellants paid differential duty in January, 1998, February, 1998, April, 1998 and December, 1998 i.e. after clearance of goods. The appellants submitted that as the duty has been paid after clearance of the goods and the appellants have not raised any supplementary invoice to recover the amount, therefore, it cannot be said that burden of duty has been passed on to the customer. The appellants also submitted that in the relevant balance sheet, they were showing amount in dispute as recoverable from the Excise department and till

date they are showing this amount in the same way. Hence, it cannot be said that burden of duty has been passed to the customer. Contention of the appellants is that the Tribunal in the following decisions has held that once the amount is shown as recoverable from the department in the balance sheet, then refund of such amounts cannot be rejected on the ground of unjust enrichment:-

(i) CCE Vs. N.G. Thakkar & Sons – 2004 (166) ELT 115;

(ii) Jaipur Syntex Ltd. Vs. CCE – 2002 (143) ELT 605;

(iii) Hero Honda Motors Ltd. Vs. CC – 2000 (126) ELT 1014

(iv) CC VS. Maruti Udyog Ltd. – 2003 (155) ELT 523;

(v) Sipani Automobiles Ltd. Vs. CC – 2004 (176) ELT 807;

(vi) Bhoruka Steel Ltd. Vs. CC – 2005 (188) ELT 28;

(vii) Corning S.A. Vs. CCE – 2005 (70) RLT 344;

(viii) Beekay Hosiery Industries Vs. CC – 2005 (188) ELT 301;

(ix) Toyota Kirloskar Motor Ltd. Vs. CCE – 2005 (187) ELT 499;

(x) Transformers & Electricals Vs. CC – 2005 (188) ELT 60

Learned Advocate submitted that in view of the above decisions of the Tribunal appellants are entitled for refund.

4. Contention of the Revenue is that before the lower authorities case of the appellants was that the amount in question should be treated as pre-deposit. Revenue relied upon the decision of the Hon'ble Supreme Court in the case of Commissioner vs. Parle International Ltd., reported in 2005

(188) ELT A81 (S.C.) to submit that the view taken by the Hon'ble Gujarat High Court that the amount deposited by the assessee is to be treated as 'deposit' and not 'duty' is not correct. Contention of the revenue is also that onus is on the appellants to show that burden of duty has not been passed on.

5. We find that in this case admitted fact is that the appellants paid differential duty after clearance of goods. Demand of differential duty was confirmed for the period 1.3.90 to 30.9.97 and the duty has been paid in the year 1998. It is settled law that all the refund claimed are subject to the principle of unjust enrichment and onus is on the assessee to show that the burden of duty has not been passed on to the customer. In the present case demand was confirmed in respect of product Gulabari after

heading, from the

classifying the same under different heading claimed by the appellant. Demand was subsequently set aside by the Tribunal. In the balance-sheet for the financial year, 1997-98 this amount is shown as excise duty recoverable from the revenue department. The amount in question was also shown in subsequent balance sheet as recoverable excise duty. We find that the Tribunal in various decisions relied upon by the appellants has taken a view that in case balance sheet amount of refund was shown as recoverable it has been taken as established that the appellants have not passed on extra duty burden but have borne the same themselves. In these circumstances, as the balance sheet which is as per record under the

Companies Act showing the amount as recoverable from the revenue and in view of the earlier decisions on this issue impugned order is set aside. Appeal is allowed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 15th April, 2008

RK