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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/936/2007-937/2007 & 1156 & 1175/08 Date 29/08/2008

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 (VICE-VERSA) Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 652-655/08-EX Excise dated 4-8-08 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-II, KAMLA NEHRU NAGAR, GHAZIABAD 201302
2. Adv. Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
3. CD.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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/936-37/07 & 1156 & 1175/08

[Arising out of Order-in-Original No.02-03-CE/GZB/2007 dt.12.1.07 and 60-61/CE/GZB/08 dt.28.2.08 passed by the Commissioner(Appeals), Ghaziabad)

For approval and signature:

Hon'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

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1. Whether Press Reporters may be allowed to see: the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?

2. Whether it would be released under Rule 27 of : the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?

3. Whether their Lordships wish to see the fair : copy of the order?

4. Whether order is to be circulated to the : Department Authorities:

M/s. Dabur India Ltd. Appellant

Versus

CCE, Ghaziabad
Vice-versa Respondent

Appearance

Shri Ravi Raghvan, Adv. For appellant
Sh. B.S.Suhag, Authorised Departmental Representative(DR) For respondent

Coram: Hon'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

Date of decision: 4.8.08
FINAL Order No. 652-655/08-EX

Per S.S.Kang:

Common issue is involved in these appeals, therefore, they are taken up together.

2. Heard both sides. In these appeals, the dispute is in respect of classification of following items:

1. Clove Oil

2. Saunf Ka Ark

3. Sandalwood Oil

In respect of Clove oil and Sandalwood oil, the revenue demanded duty after classifying the same under tariff heading 3301.00 of the tariff whereas M/s. Dabur India Ltd. classifying the same under sub heading 3303.20 of the tariff. The contention of the appellant is that they are receiving Clove oil and Sandalwood oil in bulk packing and they are simply repacking in the small packings. ~~As~~ No process was undertaken by the appellant which amounts to manufacture and there is no chapter note under chapter 33 of the tariff which states that the packing and repacking of goods classifiable under sub-heading 3301.00 amounts to manufacture. In absence of any chapter note, as the appellant are only repacking from the bulk packing and the same does not amount of manufacture, therefore, irrespective of the classification of the goods, the demand is not sustainable. The contention is that

Commissioner(Appeals) in the impugned order whereby demand in this regard is confirmed held that as the appellant claimed the classification under sub-heading 3003.20 of the tariff, therefore, the argument of the appellant that process undertaken by the appellant does not amount to manufacture. As the process undertaken by the assessee does not amount to manufacture, the levy of Central Excise Duty is not sustainable.

3. The contention of the revenue is that the appellants are receiving the Clove oil and Sandalwood oil in bulk packing and thereafter repacking the same to make it marketable, hence they are liable to duty.

4. We find that there is no evidence on record to show that the appellants are undertaking any process in respect of oil received by them. The oils ~~are~~ received in bulk quantity and the same has been repacked into small quantity and further ~~we find~~ in absence of any chapter note in respect of the goods classifiable under heading 33.01 of the tariff which provides that packing and repacking from bulk to retail amounts to manufacture, We find merit in the contention of the appellant that processes undertaken by the appellant does not amount of manufacture, Hence demand in this regard is set aside.

5. In respect of the classification of Saunf Ka Ark, the revenue wants to classify the same under tariff heading 3301.00 of the tariff whereas the contention of the appellant is that the same is classifiable under sub-

heading 3003.31 of the tariff. For ready reference tariff entry 3003.31 is reproduced below:

> "3003.31 – Manufactured exclusively in accordance with the formulae described in the authoritative books specified in the First Schedule to the Drugs and Cosmetics Act,1940 (23 of 1940) or Homoeopathic Pharmacopoeia of India or the United States of America or the United Kingdom or the German Homoeopathic Pharmacopoeia, as the case may be, and sold under the name as specified in such books or pharmacopoeia".

6. The contention of the appellant is that the Saunf Ka Ark is being manufactured as per the formula described in the authoritative books specified in the First Schedule to the Drugs and Cosmetics Act. As per the First Schedule of the Drugs & Cosmetics Act, the Arkaprakasa and The Ayurvedic Formulary of India is specified book. As per the Ayurvedic Formulary of India, the formula of the preparation the ark is given and they are manufacturing the same as per the formula mentioned in the specified book. In Arkaprakasa, it is mentioned that Saunf ka Ark is used as a medicament. The appellant also submitted the prescription of various ayurvedic practitioners showing that the saunf ka ark is prescribed as a medicine. The appellant also having licence under Drugs & Cosmetics Act for manufacture of Saunf ka Ark. The appellant submitted that as per the product literature, it is marketed as ayurvedic medicine useful for constipation, indigestion and also griping pains. The contention of the appellant is classifiable that saunf ka ark is under sub-heading 3003.31 of the tariff.

7. The contention of the revenue is that as per the chapter note 1(c) aqueous solution or aqueous distillate
and (d) of chapter 30 of the tariff, ~~solutions~~ of the essential oil ~~for~~ suitable for medicinal uses or preparation of chapter 33 even of they have prophylactic properties, are not covered under this chapter. Therefore, the goods, in question, are not classifiable under chapter 30 of the tariff and chapter 33 specifically covers essential oil which are extracted from the plant materials. The revenue relied upon the chapter note of chapter 30 of the Central Excise Tariff Act.

8. We find that in this case the appellants are manufacturing saunf ka ark under the Drugs Licence issued by the competent authority under the Drugs & Cosmetics Act. The ark is being manufactured as per formula mentioned in the specified book 'The Ayurvedic Formulary of India' which is mentioned at 54A in the First Schedule attached to the Drugs and Cosmetics Act. The saunf ka ark is manufactured as per formula is given in that book. In respect of the evidence that the same is marketed or used as a medicine, the appellant produced the prescription given by the ayurvedic practitioners. The product literature of the product also shows that the same is marketed as a medicine for the constipation, indigestion and griping pain and doses also mentioned as 10 to 20 ml. three times a day or as directed by the practitioner.

9. In view of the fact that the saunf ka ark is manufactured exclusively in accordance with the formula described in the authoritative

book mentioned the first schedule attached to Drugs & Cosmetic Act and the same has been sold as medicine. We find merit in the contention of the appellant. The saunf ka ark is rightly classifiable under tariff heading 3001.31 of the tariff. Appeals filed by the appellants are allowed and the appeals filed by the revenue are dismissed.

Order dictated in the open Court.

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member Technical

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