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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/4994/2004-4996/2004 - EX[DB] Date 09/03/2009

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

To :
C.C.E. CHANDIGARH
PLOT NO 19, SECTOR 17-C, CHANDIGARH

C.C.E. CHANDIGARH — Appellant

Vs

M/S DHARAMPAL SATYPAL LTD. (TABACCO DIVISION) — Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 208-210/2009- **EX[DB]** dated 27-1-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   M/S DHARAMPAL SATYPAL LTD. (TABACCO DIVISION)
   1 K.M. STONE, BADDI, DISTT. SOLAN (H P)
2. Adv. / Consult SH. T. R. RASTOGI, ADV.,
   C/O V. L. KUMARAN, ADV.,
   B-6/10, S. J. ENC., N. DELHI-29
3. C.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 - 3
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
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)

17. M/S DHARAMPAL SATYPAL LTD. UNIT-III
    1 K.M. STONE, BADDI, DISTT. SOLAN (H P)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CENTRAL EXCISE APPEAL NO. 4994-4996 OF 2004

[Arising out of Order-in-Appeal No. 513-515/CE/CHD/04 dated 8.7.2004 passed by the Commissioner, Central Excise, Chandigarh]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

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

CCE, Chandigarh — Appellant

Vs.

M/s. Dharampal Satyapal Ltd., — Respondent

Appearance:

Shri C.S. Rajput, Departmental Representative, for the Revenue,
Shri T.R. Rastogi, Advocate for the respondents

Coram:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial),

Date of hearing/decision: 27th January, 2009

FINAL ORDER NO. 208 - 210 / 09 - EX **dated** ________

Per P.K. DAS:

These appeals are arising out of common order and, therefore, all are being taken up together for disposal.

2. Revenue filed these appeals against Order-in-appeal No. 513-515/CE/CHD/04 dated 8.7.2004 passed by the Commissioner (Appeals), Chandigarh, whereby adjudication order was set aside.

3. The relevant facts of the case, in brief, are that the respondents are engaged in manufacture of Chewing Tobacco and Pan Masala falling under Tariff heading No. 2404.40 and 2404.49. The respondents were selling the goods from their depots. They claimed deduction of equalized taxes (i.e. luxury tax, octroi, entry tax and insurance) from the assessable value. Show cause notices were issued proposing demand of duty for the period June, 2002 to February, 2003 disallowing the deduction as claimed by the respondents. The original authority confirmed the demand of duty and imposed penalty along with interest. Commissioner (Appeals) set aside the adjudication order and allowed the appeal filed by the respondents.

4. Learned D.R. reiterates the grounds of appeal. He relied upon the Board's Circular No. 643/34/2002-Cx dated 1.7.2002 wherein it has been clarified that as per definition of transaction value "taxes are deductible only on actual basis, either paid or payable by the assessee". He submits

that in the present case, the respondents claimed deduction not on actual basis but on equalized basis, which is not permissible after the introduction of transaction value w.e.f. 1.07.2000.

5. Learned Advocate reiterates the findings of the Commissioner (Appeals). He draws attention of the Bench to the averment of the respondents that they are ready to debit the duty, if it is less than the deduction claimed by them.

6. After hearing both sides and on perusal of the records, we find from the grounds of appeal that the Revenue has not denied the deduction on merit. The dispute is as to whether deduction is permissible on average/equalized or actual basis. It is seen from the adjudication order that the respondents already took a stand that they are ready to debit the duty, if their expenses are less than the actual deduction. In view of that, we set aside the impugned order and remand the matter to the adjudicating authority to examine the equalized taxes and the amount of taxes actually paid or payable by the respondents on such goods. The respondents are also directed to produce the relevant records. At this stage learned Advocate submits that there are orders in other cases, by the Commissioner/Commissioner (Appeals) that the deduction would be allowed on the basis of equalized taxes. We direct the original authority to consider this aspect also and to decide in accordance with law.

7. All the appeals are allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK