

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/1428/2006-1429/2006,1455,2512,2513&3636/2006 - EX[DB]
E/2122,&3210/2007,E/544&817/2008

Date 20/05/2009

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH

DABUR INDIA LTD.(CHYANPRASH)

Appellant

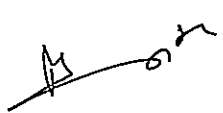
Vs

Respondent

EX[DB] dated 30-4-09

I am directed to transmit herewith a certified copy of Final order No. 355-364/2009-

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


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

DABUR INDIA LTD.(CHYANPRASH)

220-221A, HPSIDC, INDUSTRIAL AREA, BADDI, DISTT. SOLAN(HP)

2. Adv. / Consult

SH. B.L. NARSIMHAN, ADV.,
B-6/10, S.T. ENCLAVE,
N. DELHI-29

3 C.D.R

4 J.C.D.R

5 Bar association, CESTAT, New Delhi

6 Director Publications, Customs, Excise, I.P. Estate, New Delhi

7 M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

9 Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT, U.P.

10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)

11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017

12 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kunj, New Delhi - 110070

13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

14 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

15 LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)

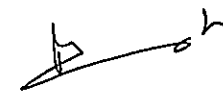
16 Office Copy

17 Guard file

18. HON'BLE PRESIDENT.

19. DABUR INDIA LTD. (HAJMOLA), Unit

109-109A, VILL. BHILANWALI, BADDI, DISTT. SOLAN, (HP)


Assistant Registrar
(Excise Appeal Branch)

20. M/S. DABUR INDIA LTD.,
19, INDUSTRIAL AREA, BADDI, DISTT. SOLAN (HP)

21. M/S. DABUR INDIA LTD.,
(HAIR OIL PROJECT),
VILLAGE BILLANWALI, BADDI,
DISTT. SOLAN, (HP)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-I

Date of hearing/decision: 30.04.2009

**Excise Appeal Nos. 1428/06, 1429/06, 1455/06, 2512/06, 2513/06, 3636/06,
2122/07, 3210/07, 544/08 and 817 of 2008**

[Arising out of Order-in-Appeal Nos. 477-478/CE/CHD/2005 dated 29.12.2005, 59/CE/CHD/2006 dated 31.1.2006, 373-374/CE/CHD/2006 dated 28.4.2006, 766/CE/CHD/06 dated 18.8.2006, 124/CE/CHD/2007 dated 20.4.2007, 569/CE/CHD/2007 dated 15.11.2007, 13/CE/CHD/REV/2008 dated 17.1.2008 and 120/CE/CHD/2008 dated 7.2.2008 passed by the Commissioner of Central Excise (Appeals) Chandigarh]

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, 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 should 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 Departmental authorities?	Yes

CCE, Chandigarh.

Appellant

Vs.

M/s Dabur India Limited

Respondent

Appearance:

Appeared for the Appellant – Shri A.K. Rastogi, DR

Appeared for the Respondent – Shri B.L. Narsimhan, Advocate

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

Final Oral Order No. 355-364/09-Ex

Per M. Veeraiyan:

These ten appeals are by the Department with a common respondent, namely M/s Dabur India Limited. All these appeals involve common issues and therefore, are being disposed of by a common order.

2. Heard both sides.

3. The respondent is a manufacturer of Pharmaceutical and cosmetic products and they have units at different places (Baddi, Sikandrabad and Alwar) and they manufacture different products including some exempted products. They claimed deduction of additional sales tax and octroi in respect of goods cleared from Baddi units on an equalized basis calculated by weighted average method. The original authority disallowed the deduction claimed by them on three grounds. First ground was that while claiming deduction for clearances from Baddi unit, the respondent have taken additional sales tax liability and octroi liability not only in respect of clearances from Baddi unit but also from other units. The second ground was that the respondent initially claimed on the basis of actual liability of the previous year and the finalisation was not based on the figures relating to the concerned year. The third ground was that the liability of additional sales tax and octroi has been taken on an average basis including those related to the exempted excisable goods. The original authority, on the above three grounds totally disallowed the deduction claimed by the respondent and confirmed differential duties and imposed penalties based on different show cause notices issued covering different periods.

4. On ~~an~~ appeal by the party, the Commissioner (Appeals) allowed the appeals holding that the financial accounts represent the consolidated figures of the company as a whole which includes expenses incurred by the party in respect of the Baddi unit and that the quantum of deduction on account of octroi and additional tax has been arrived at on the basis of settled accounting principles and that one-to-one co-relation of the clearances effected by the party is neither feasible nor required under the law.

5. Learned DR submits that Section 4(3)(d) permits deduction of taxes actually paid or payable; the tax paid or payable should relate to the concerned year and the same should not be paid based on the actual figures of the previous year; the octroi and additional sales tax relating to exempted products manufactured by the party cannot be taken into account in determining the eligible deduction in respect of excisable goods cleared from their Baddi units; the stand taken by the party that these expenses cannot be separately arrived at for clearances of goods from individual unit is not acceptable. He also relies on the Board's circulars F. No.354/81-2000-TRU dated 30.6.2000 and 643/34/2002-CX dated 01.07.2002.

6.1 Learned Advocate for the respondent submits that in respect of a multi-locational and multi-product company, additional sales tax is payable not in relation to each consignment but has to be determined only on an average basis. Similarly when octroi is paid at different places in respect of products emanating from different manufacturing units, the allocation of octroi attributable to clearances from a particular unit has to be done on an average basis. He concedes that the deduction on account of octroi or additional sales tax claimed cannot exceed the actual for the concerned year. He also concedes that that the deduction should be based on octroi and additional sales tax liability in respect of excisable goods only.

6.2 He relies on the decision of the Tribunal in the case of CCE vs. Apollo Tyres Limited reported in 2005 (186) ELT 344. He also relies on the Board's Circular No. 20/90-CX.1 dated 30.08.90 wherein deduction of equalized sales tax and other taxes was permitted. He adds that the rational behind the said circular for adopting equalized deduction is relevant especially in the facts of the case even under the amended Section 4.

7. We have carefully considered the submissions from both sides. There is no dispute about the eligibility for deduction on account of octroi and additional sales tax. The original authority has accepted this in principle. He has disallowed the

deduction only based on the grounds that the respondent have claimed the same on a weighted average basis as mentioned ⁱⁿ ~~as mentioned~~ earlier. The Commissioner (Appeals) have allowed the deduction without specifically giving a finding on ~~each~~ of the above three grounds raised by the original authority. We are of the considered view that in the given facts and circumstances of the case, the deduction towards additional sales tax and octroi can be allowed on equalized basis as has been done in the case of Apollo Tyres Limited cited supra. However, we are in agreement with the submissions of the learned DR that the said expenses have to be segregated exclusively in respect of excisable goods cleared by the respondent for the respective year. Therefore, to enable the same, we set aside the orders of the Commissioner (Appeals) and those of the original authority and remand the matter to the original authority to allow the deduction on the lines indicated above after granting reasonable opportunity of hearing to the party. The party shall produce relevant details within two months from the date of receipt of this order and the original authority shall dispose of the matter within four months thereafter.

8. However, in the facts and circumstances of the case, the question of imposing any penalty does not arise.

9. Appeals are disposed of on the above terms.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan) *V*
Member (Technical)

/Pant/