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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/443 /2006 - EX[DB]

Date 08/09/2009

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

Appellant
Vs
Respondent

TORQUE PHARMACEUTICALS PVT LTD

I am directed to transmit herewith a certified copy of **Final order No.** 648/2009- **EX[DB]** dated 02-9-09

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

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   TORQUE PHARMACEUTICALS PVT LTD
   P.O. DAPPAR, DERABASSI, DISTT. PATIALA
2. Adv. / Consult SH. R.K. PHILLIPS, ADV.,
   UG-3, PRAGATI TOWER,
   26, RAJENDRA PLACE, N. DELHI-8
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 Publictions 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 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II

DATE OF HEARING : 26/8/09.

Excise Appeal No. 443 of 2006

[Arising out of the Order-in-Appeal No. 466/CE/CHD/2005 dated 23/12/2005 passed by The Commissioner (Appeals), Central Excise Commissionerate, Chandigarh.]

CCE, Chandigarh — Appellant

Versus

M/s Torque Pharmaceuticals Pvt. Ltd. — Respondent

Appearance

Shri S.R. Meena, Authorized Representative (SDR) – for the appellant.

Shri R.K. Phillips, Advocate – for the Respondent.

CORAM : **Hon'ble Shri D.N. Panda, Judicial Member**
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL Order No. 648/09-EX Dated : ____________

ORDER

Per. D.N. Panda :-

Revenue's appeal challenges the relief granted by the learned Commissioner holding that the discount passed on to the buyers shall not form the part of assessable value. Learned SDR submits that performance of the year 2003-2004 has resulted with discount in the financial year 2004-2005. Such a situation was not known to revenue and the manner of grant of discount was also unknown to record. Therefore, order of the learned Commissioner (Appeals) is reversible. He relies on the circular No. M.F. (D.R.) F. NO. 354/81-2000-TRU dated 30/6/2000. Reading para 9 of the circular, he submits that when the assessee has not disclosed facts to the Department, the discount allowed is immaterial.

2. Learned counsel Shri Phillips submits that allowing discounts, Respondent has achieved target sale. This is the trade policy of the respondent and in every financial year, such a policy is communicated to the buyers. Buyers get incentives by way of discount in a subsequent year in respect of the performance of the preceding year. Circular issued by the respondent to the buyers was known to the authority below. Similar such sample copies are also placed today. He prays that when respondent has not caused any injury to revenue by any unlawful discount passed on to the buyers but was only to boost its sale, that cannot be held to be assessable value. Discount allowed was a price reduction for future without giving rise to any flow back to the respondent for which the respondent gets support of the decision of the Hon'ble Supreme court in the case of **CCE, Mumbai vs. Pepsico India Holdings (P) Ltd.** reported in **2009 (234) E.L.T. 385 (S.C.)**. He also relies on the decision of the Apex Court in the case of **Union of India & Others vs. Bombay Tyres International Pvt. Ltd.** reported in **1984 (17) E.L.T. 329 (S.C.)** and submits that

discount by whatever name called and deducted from the sale price being known to the buyer and seller at the beginning of the year shall be lawful discount and does not prejudice interest of revenue, not resulting in depression of the transaction value as envisaged by Section 4 of the Central Excise Act, 1944. He further relies on the judgment of the Hon'ble Supreme Court in the case of **Perfect Circle Victor Ltd. vs. UOI** reported in **1992 (50) E.L.T. 676 (S.C.)** and submits that when an established practice of granting discount was known to both sides prior to removal of the goods, that cannot be disallowed to hike assessable value of the goods so removed.

3. Heard both sides and perused the record and also have gone through the citations made as well as the reasons advanced by both sides. There is nothing on record to show that the discount allowed by the respondent has unduly benefited buyers and buyers were related or there was reversal of the benefit to the respondent seller. When there is no such cross gift system or flow back of value of the discount passed on by the respondent seller to the buyer and there is also nothing on record to show that the discount was not passed on to the Customer, learned Commissioner (Appeals) was correct in law to grant relief to responded. In absence of any contrary situation, nothing malafide is noticed against the respondent at all. The circular that is brought out by the respondent today clearly shows that respondent was parting with the discount to the buyers. Even reading of the contents of the circular enables to understand that

the discount was an incentive scheme for boosting the sale. When there is no unintended benefit enjoyed for Respondent the transaction value declared by the respondent does not call for disturbance. Accordingly, revenue appeal is dismissed.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK