TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/1855,2071-2072/2009 - EX[DB]
E/S/1928,2158-59/2009-EX

Date 16/12/2009

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

To :
M/S DHILLON KOOL DRINKS & BEVERAGES LTD
REGD OFFICE: 301, SECTOR 9-C, CHANDIGARH.

M/S DHILLON KOOL DRINKS & BEVERAGES LTD — Appellant

Vs

C.C.E. DELHI I — STAY ORDER NO.1407-1409/2009-EX — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1375-1377/ 2009 EX[DB]** dated 06-11-09 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. DELHI I
   C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002
2. Adv. / Consult
   MR.KAMALJEET SINGH
   J-144, PATEL NAGAR -I,GHAZIABAD.
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
18. HON'BLE PRESIDENT.

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. I

DATE OF HEARING : 06/11/2009.
DATE OF DECISION : 06/11/2009.

Excise Appeals No. 1855 and 2071-2072 of 2009

[Arising out of the Order-in-Original No. CCE/Adj./PKH/08-10 dated 24/03/2009 passed by The Commissioner of Central Excise (Adj.), Delhi – II.]

For Approval and signature :

Hon'ble Justice R.M.S. Khandeparkar, President
Hon'ble Shri P. Karthikeyan, 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?	:	Yes
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 Department Authorities?	:	Y

M/s Dhillon Kool Drinks & Beverages Ltd. Appellants

Versus

CCE, Delhi – II Respondent

Appearance

Shri K.J. Singh, Advocate – for the Appellants.

Shri R.K. Verma, Authorized Representative (JDR) – for the Respondent.

CORAM : **Hon'ble Justice R.M.S. Khandeparkar, President**
Hon'ble Shri P. Karthikeyan, Member (Technical)

FINAL Order No. 1375/09-EX TO 1377/09-EX Dated : ____________

Per. Justice R.M.S. Khandeparkar :-

Since common question of law arises in all these three appeals they are heard together and are being disposed of by this common order.

2. We have heard the learned advocate for the appellants and learned DR for the respondent and perused the records.

3. Only point which is sought to be canvassed is that the Adjudicating Authority has refused the deduction in relation to the sales tax paid on the product solely on the ground that most of the invoices do not specifically disclose that the rates were inclusive of the sales tax; it is further case of the appellant that there has been no factual verification as to whether the rates were inclusive of sales tax or not.

2. The learned advocate for the appellants in that regard has drawn our attention to para 20.1 of the impugned order. The said para reads as under :-

> "20.1 As regards the deduction on account of sales tax, I find that it is a settled position that the sales tax paid is permissible deduction. However, this deduction has been disallowed because the base price taken for demanding duty was not inclusive of the sales tax. I find from the copy of the invoice produced of M/s DKD that the demands has been raised on the prices mentioned in the rate column. The remarks on this invoice reads as under :
>
> > *"Rate (s) are inclusive of excise duty and local taxes paid by **the manufactures**".*

It is not disputed that M/s DKD/DHKD were not the manufacturers. A reading of above remark makes it clear that these prices mentioned in the invoices were not inclusive of sales tax paid by M/s DKD/DHKD. Accordingly, these prices were exclusive of any sales tax paid by M/s DKD/DHKD. Thus, the claim made by M/s DKDBL for deduction on account of sales tax paid by M/s DKD/DHKD is not eligible. Accordingly, I reject their claim for deduction on account of sales tax as the prices given in the invoices were not inclusive of sales tax payable by M/s DKD/DHKD."

3. The departmental representative has fairly submitted that apart from para 20.1, no part of the order discloses any discussion regarding the issue sought to be raised in the matter.

4. In the circumstances, it is apparent that the Adjudicating Authority has refused the deduction in relation to the sales tax solely on the basis of the remarks on the invoices without factually ascertaining as to whether the rates were inclusive of the sales tax or not. Undisputedly, the remarks on these invoices read "*rate (s) are inclusive of excise duty and local tax paid by manufactures*". The impugned order nowhere discloses any discussion on the point as to whether the local tax paid by the manufacturer included the sales tax, local and/or central. This aspect was required to be verified by the Adjudicating Authority by taking into consideration the factual situation in relation to the payment of such taxes, if any, by the appellants for the relevant period. The authority having not done the required exercise and merely on the basis or remarks on the invoices the matter having been disposed of, the same cannot be sustained and the matter need to be remanded to the authority to deal with the same afresh in accordance with provisions of law and to arrive at or correct finding based on the

fact situation in the matter. As no other point is canvassed, the matter is remanded for the above purpose with the direction that the authority shall dispose of the matter as early as possible. Appeal accordingly stands disposed of, in above terms.

(Justice R.M.S. Khandeparkar)
President

(P. Karthikeyan)
Member (Technical)

PK