

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

Appeal No. E/310 /2007 - SM[BR]

Date 17/09/2008

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

Respondent

C.C.E.GHAZIABAD

I am directed to transmit herewith a certified copy of **Final order No. 1323 / 2008 - SM[BR]** dated **8.9.2008**

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


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E.GHAZIABAD

CGO COMPLEX-I, KAMLA NEHUR NAGAR, GHAZIABAD.

2. Adv. / Consult

MR.V. LAXMIKUMARAN

B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. S.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 Publications (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
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III**

Excise Appeal No. 310 of 2007-SM(BR)

[Arising out of Order-in-Appeal No. 176/CE/GZB/2006 dated 31.10.2006
passed by Commissioner (Appeals) Customs & Central Excise, Ghaziabad.]

For approval and signature:

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

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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? | : | } <i>NA-</i> |
| 2. Whether it should 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
Departmental authorities? | : | <i>Yes.</i> |
-

M/s. Dabur India Ltd.

Appellant

Vs.

Commissioner of Central Excise
Ghaziabad

Respondent

Appearance: Mr. B.L. Narasimhan, Advocate for the Appellant
Mr. A.K. Rastogi, DR for the Respondent

Date of decision : 8.9.2008

final ORDER NO. 1323 / 2007 - SM (BR)

Per P.K.Das (for the Bench):

The appellant filed this appeal against rejection of refund claim of Rs. 2,86,141/- on the ground of unjust enrichment.

2. After hearing both the sides and on perusal of the records, the appellants contended that the price was remained ~~the~~ same during the relevant period and earlier period. They also produced the books of accounts wherein the amount was shown as "claim receivable". The Commissioner (Appeals) observed that in view of the Supreme Court decision in the case of CCE vs. Allied Photographics India Ltd. [2004 (166) ELT 3 (SC)] held that uniformity in prices before and after assessment is not relevant for unjust enrichment. I agree with the submission of the learned advocate that the Commissioner (Appeals) has not examined the books of accounts. In view of that impugned order is set aside and the matter is remanded back to the adjudicating authority to examine books of accounts as to whether incidence of duty has not been passed on to any other person and to pass order in accordance with law.

3. The appeal is allowed by way of remand.

(Pronounced in the open Court)

(P.K.Das)
Member(Judicial)