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/72 /2007 – SM[BR] Date 15/07/2009

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

C.C.E. GHAZIABAD

Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 690 / 2009 – SM[BR] dated 6.7.2009

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

C.G.O. COMPLEX - II, KAMLA NEHRU NAGAR, GHAZIABAD.
201002

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 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)
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CENTRAL EXCISE APPEAL NO. 72 OF 2007-SM

[Arising out of Order-in-Appeal No. 184-CE/GZB/2006 dated 10.11.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Ghaziabad]

For approval and signature:

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?	N
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

M/s. Dabur India Ltd., Appellants

Vs.

CCE, Ghaziabad Respondent

Appearance:

Shri Ravi Raghavan, Advocate for the appellants;
Shri R.K. Verma, D.R. for the Revenue

Coram:

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

Date of hearing/decision: 6th July, 2009

FINAL ORDER NO. 690/2009 SM (Prl) **dated** _________

Per P.K. Das:

Relevant facts of the case, in brief, are that the appellants paid duty on their product, namely Gulabari (Rose Water) under Section 4 instead of Section 4A of the Central Excise Act, 1944. The goods were cleared from their factory to depot. Subsequently, the appellants detected the clerical mistake and claimed refund of duty of Rs. 3,20,125/- and Education Cess of Rs. 6,403/-. The original authority rejected the refund claim on the ground of unjust enrichment which was upheld by the Commissioner (Appeals).

2. After hearing both sides and on perusal of the records, I find that the main submission of the learned Advocate is that this amount was shown in their balance-sheet as "Excise duty recoverable" under the heading "Loan & Advances". Learned Advocate submits that the Division Bench of the Tribunal in their own case, reported in 2008 (228) ELT 131 (Tri.-Del.) ~~in respect of~~ allowed refund claim on Gulabari arising out of classification dispute.

3. On perusal of the impugned order I find that the Commissioner (Appeals) have not examined balance sheet, while rejecting the refund claim. Learned Advocate drew attention of the Bench to the relevant portion of the balance sheet. The Tribunal in the appellants' own case as reported in 2008 (228) ELT 131 (Tri.-Del.), held as under:-

"We find that in this case admitted fact is that the appellants paid differential duty after clearance of goods. Demand of differential duty was confirmed for the period 1-3-90 to 30-9-97 and the duty has been paid in the year 1998. It is settled law that all the refund claimed are subject to the principle of unjust enrichment and onus is on the assessee to show that the burden of duty has not been passed on to the customer. In the present case demand was confirmed in respect of product-Gulabari after classifying the same under heading different from heading claimed by the appellant. Demand was subsequently set aside by the Tribunal. In the balance-sheet for the financial year, 1997-98 this amount is shown as excise duty recoverable from the revenue department. The amount, in question, was also shown in subsequent balance sheet as recoverable excise duty. We find that the Tribunal in various decisions relied upon by the appellants has taken a view that in case balance sheet amount of refund was shown as recoverable, it has been taken as established that the appellants have not passed on extra duty burden but have borne the same themselves. In these circumstances, as the balance sheet which is as per record under the Companies Act showing the amount as recoverable from the revenue and in view of the earlier decisions on this issue impugned, order is set aside. Appeal is allowed."

4. After considering the facts and circumstances of the case, I find that it is fit and proper that the matter should be examined by the original authority on the basis of balance sheet and the decision passed by the

Division Bench of the Tribunal in their own case. Accordingly impugned order is set aside and the matter is remanded to the original authority to decide the refund claim on the basis of balance sheet and the decision of the Tribunal in the appellants own case (supra). Needless to say that the appellants should be afforded proper and reasonable opportunity of hearing before passing the order. The appeal allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066
PRINCIPAL BENCH, COURT NO.1

Excise Appeal No. 72 of 2007-SM

Date of Hearing/Decision: 18.08.2008

M/s Dabur India Limited

Appellant

Rep. by Mr. Ravi Raghavan, Advocate for the Appellant

Vs.

CCE, Ghaziabad

Respondent

Rep. by Mr. R.K. Verma, DR for the Respondent

Coram: Hon'ble Mr. Justice S.N. Jha, President

ORDER

Per Justice S.N. Jha:

The dispute in this case relates to refund. According to the appellant they were required to pay duty under section 4A of the Central Excise Act based on MRP; instead, they paid duty on the assessable value under section 4. It is not in dispute that the duty was paid in excess. The refund has nevertheless been refused on the ground that the appellant had passed on the burden to the consumers. As a matter of fact, the excess amount stands credited to the Consumer Welfare Fund.

2. After making submissions for a while, Shri R.K. Verma, DR, submitted that it is necessary to verify from the record as to how much amount was actually collected by the appellant during the period in question i.e. between 20.7.2008 and 9.8.2004, and therefore, the matter may be sent back for de novo order.

3. Having regard to the amount involved, in order to shorten the litigation, I am of the view that the matter may be finally resolved by the Tribunal. I direct the Department to get the facts verified and submit statement.

3. Adjourned to 10th September 2008.

[Dictated and pronounced in the open Court]

[Justice S.N.Jha]
President

[Pant]