

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.1

Excise Appeal No. 288 of 2012

(Arising out of Order-in-Original No. 14/KOL-VII/2012 dated 15.02.2012 passed by Commissioner of Central Excise (Appeals-I) Kolkata.

M/s Dabur India Ltd.,
(9, N.S.C. Bose Road, Narendrapur, Kolkata-700103)

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-VII
(169, A.J.C. Bose Road, Bamboo Villa, 5th Floor, Kolkata-700014)

...Respondent

APPEARANCE :

Mr. Deepro Sen, Advocate for the Appellant
Mr. P. K. Ghosh, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ASHOK JINDAL MEMBER(JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No.75611/2023

DATE OF HEARING : 01.06.2023

DATE OF DECISION :01.06.2023

PER K. ANPAZHAKAN :

The issue involved in the present appeal is regarding the eligibility of deductions claimed by the Appellant on account deduction of cost of transportation incurred from depot (being the place of removal) to the dealer's place. The Appellant stock transferred their final products to various depots from where they sold the goods to their ultimate customers. They determined the assessable value after deducting the cost of transportation and paid central excise duty accordingly. They filed Price Lists wherein they claimed deduction on account of cost of transportation on equalized basis.

2. A show Cause Notice dated 29.06.2001 was issued to the Appellant proposing to levy short paid excise duty on the ground that they had wrongfully claimed deduction on account of transportation cost incurred for delivery of goods. The Order-in-original dated 31.03.2009 was

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issued confirming the demand along with interest and penalty after recomputing the demand proposed in the show cause notice.

3. The Ld. commissioner (Appeals) vide the impugned Order- in- Appeal dated 15.02.2012 upheld the order in Original based on the following findings:

a. Deduction with regard to equalized freight is not allowable in terms of CBEC Circular No. 287/3/97-CX dated 14.01.1997

b. Certificates of the chartered Accountant do not offer any classification as to as to what the primary and secondary freight actually represent.

c. The decision of the Hon'ble Supreme Court in VIP Industries is not applicable as the Appellant has not stated that they sell their products at a uniform price all over the country.

4. Aggrieved against the impugned order dated 15.02.2012, the Appellant is before us.

5. In their submissions, the Appellant stated that:

(i) the dispute is related to admissibility of deduction claimed on account of freight incurred for removal of the goods from the depot.

(ii) The amended provisions of Section 4 has added the 'depot' as a place of removal. They did not claim deduction on account of freight from the factory to the depot, as evident from the CA certificates. The certificates clearly mention that the transportation cost is considered only from the place of removal (branches) to dealers' destination.

(iii) The finding of the commissioner (Appeals) that the CA certificate does not clarify what constitutes primary and secondary freight is baseless in as much as they clearly stated that the cost of transportation that is being claimed as deduction from the place of removal (branches) to dealers' destination.

(iv) The annexure to the CA certificates provides the mechanism of computation of freight towards transportation charges, which clearly shows that the deduction has been claimed only on the transportation charges from the depot to dealer's destination.

(v) With regard to the reliance placed on Circular dated 14.01.1997, they submitted that the department has wrongly interpreted the Circular. Para 5 of the circular has to be read with the fourth point of doubt in Circular dated

14.01.1996 which clarifies whether transport cost from factory to depot will form part of assessable value or not. In view of the amendment of "place of removal", the freight incurred upto the place of removal, which is the depot in this case, shall be includible in the assessable value. Therefore, the interpretation of the circular is completely erroneous.

(vi) They submitted that the once the assessee has established their claim through submission of the CA certificate, then the onus is on the department to establish that the freight from factory to depot has not been included. In this regard, they placed on CCE, Mumbai vs. Khandelwal Laboratories Ltd. 2012 (276) ELT 526 (Tri-Mum).

(vii) The Ld. Commissioner (Appeals) has held that the ratio in the case of VIP Industries vs. CCE 2003 (155) ELT 8 (SC) is not applicable in the present case as the Appellant has not stated that the prices are constant throughout the country. In this regard, the Appellant stated that they have been maintaining a constant price of the products throughout the country and this practice is very much in the knowledge of the department.

(viii) They submitted that in the following decisions deduction has been allowed on equalised freight:

- CCE PUNE-II vs. Universal Luggage Manufacturing Co.Ltd. 2012 (275) E.L.T. 480 (Tri.-Mumbai)
- Saturn Non Woven Ltd. vs. CCE Surat 2009 (234) ELT 326 (T)
- Prabhat Zarda Factory Ltd. vs. CCE 2002 (146) ELT 497 (SC)
- Ray Ban Sun Optics (P) Ltd. vs. CCE 2002 (140) ELT 96 (T)

(ix) They have duly filed price lists with the department showing the deductions claimed and therefore, there cannot be any allegation of suppression. Therefore, the extended period cannot be invoked and the demand is substantially time barred.

6. The Ld. Departmental Representative reiterated the findings in the Order-in-Original

7. Heard both sides and perused the appeal records.

8. The issue involved in the present appeal is whether deduction on account of cost of transportation on equalized basis, is admissible or not. The Appellant has stock transferred their final products to various depots from where they sold the goods to their ultimate customers. After the amendment of section 4 and 'depot' has been added as a

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'place of removal' freight is includable in the assessable value only upto the place of removal ie, depot in this case. The Appellant has been delivering the goods from their depot to the dealer's premises. The cost of transportation of the goods from the depot to the dealer's premises is not includable, as per the amended section 4 of the Central Excise Act, 1994. The Appellant has submitted CA certificate to the effect that they have only deducted equalized cost of the transportation from depot to the dealer's premises to arrive at the assessable value.

9. We observe that in the impugned order, the Commissioner (Appeals) agrees that the cost of transportation upto the place of removal only includable in the assessable value. But, he rejects the claim of deduction of equalized freight made by the Appellant on the ground that the CA certificate did not clarify what constitutes primary and secondary freight. It is observed that the CA certificate has claimed deduction of equalized freight only from the depot to the dealer's premises from the assessable value. There is no other material evidence brought on record to doubt the veracity of the CA certificate. Whether it is called primary or secondary freight is only a nomenclature. Hence, we find no merit in the observation of Commissioner (Appeal).

10. Commissioner (Appeals) also cited Board Circular 287/3/97 dated 14.10.97 and concluded that the Circular does not allow deduction of equalized freight. For ready reference, the said Circular is reproduced below.

F.No. 6/55/96-CX.1

**Government of India
Ministry of Finance**

Department of Revenue, New Delhi

Subject : Determination of Assessable value - Equalisation of freight in cases of multi product, multi factory companies

Sub-Section (2) of Section 4 of the Central Excise Act, 1944 provides for exclusion of the cost of transportation from the place of removal to the place of delivery, from the value of excisable goods, where the price thereof for delivery at the place of removal is not known and the value is determined with reference to the price for delivery at a place other than the place of removal.

2. The Supreme Court in the case of Union of India Vs. Bombay Tyre International Ltd. (1983 ELT 1896), referring to the entitlement of the assessee to a deduction on account of the cost of transportation of the excisable article from the factory gate to the place or the

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places where it is sold, observed as under:-

"Where freight is averaged and the averaged freight is included in the wholesale cash price so that the wholesale cash price at any place or places outside the factory gate is the same as the wholesale cash price at the factory gate, the averaged freight included in such wholesale cash price has to be deducted in order to arrive at the real wholesale cash price at the factory gate and no excise duty can be charged on it. "(Para 50).

3. Now a question has arisen how the deduction on account of freight has to be allowed in respect of multi-product, multi-factory companies where it may not be possible to work out separately product-wise and factory-wise freight charges to be deducted. Similar question was considered by the CEGAT in the case of M/s Indian-Explosive Ltd. Vs. CCE [1989 (40) ELT 190(t)] and it was held as follows:-

Deductions on account of freight and transit insurance should be allowed pro-rata on average basis after verifying the claims of the appellants made on the basis of 6 categories of products; for this purpose, the total cost of transportation of the two factories for a year or a quarter, as convenient could be taken together, the pro-rata cost for exempted, non-excisable and specific rated products transported deducted therefrom and the balance amount allocated to individual and valorem rated products on weight basis, sale-unit basis.

4. The matter has been further examined and it is felt that in multi-products and multi-location factories if equalised freight cannot be worked product wise, the principle laid down by the CEGAT in above said decision may be followed to work out equalised freight/averaged freight for the purposes of Section 4(2) of Central Excise Act, 1944.

5. For removal of any doubt, it is further clarified that the deduction of equalised freight/averaged freight from the price prevalent at other place of removal as defined under clause (ii) to section 4(4)(b) would not arise on and after 28.9.96. The clarification given against the fourth point of doubt in Board's F.No. 6/31/96-CX.1 (circular No. 251/85/96-CX) dated 14.10.96 may be referred to.

Sd/-
(S.C.Bhatia)
Under Secretary (CX.1)

12. We observe that the Circular has not disallowed deduction of equalised freight on all circumstances. Deduction of equalized freight is not allowed only on the circumstances mentioned in para 5 of the Circular. The Circular, clearly states that deduction is allowed on freight and insurance. There is no dispute that the transportation cost beyond the place of removal is not includable in the assessable value. Only the method of working needs to be checked. In the present case, the Appellant has produced the CA certificate and explained how they arrived at the equalised freight. If there is any doubt on the validity of the CA certificate, then the department should have brought in evidence to substantiate that. In the absence of any evidence to doubt the veracity of the CA certificate, we hold that deduction of equalised cost of transportation as claimed by the Appellant is admissible.

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13. In the impugned order, the Ld Commissioner (Appeals) opined that the decision of the Hon'ble Supreme Court in VIP Industries case is not applicable in the present case, as they have not stated that they sell their products at a uniform price all over the country. In their submissions, the Appellant stated they have been maintaining a constant price of the products throughout the country and this practice is very much in the knowledge of the department. They stated that this is evident from the letter dated 07.03.2001 issued by the superintendent. We observe that there is no finding available on record contrary to the claim made by the Appellant. Hence, we hold that the decision of the Hon'ble Supreme Court in VIP Industries case is applicable to them.

14. In view of the above discussion, we allow the appeal filed by the Appellant.

**Sd/-
(Ashok Jindal)
Member (Judicial)**

**Sd/-
(K. Anpazhakan)
Member (Technical)**

Pinaki