

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

REGIONAL BENCH – COURT NO.1

(1) Excise Appeal No.197 of 2010
(On behalf of Appellant)

(Arising out of Order-in-Original No.01/SPECIAL RATE/CE/DIB/2009 dated 22.09.2009 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh)

M/s Hindustan Unilever Limited

(Personal Products Factory, Unit I, Doomdooma Industrial Estate, District-Tinsukia, Pin-786151)

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Dibrugarh

Milan Nagar, Lane "F", P.O.-C.R.Building, Dibrugarh-786003

Respondent

WITH

(2) Excise Appeal No.198/2010

**(M/s Hindustan Unilever Limited Vs. Commissioner of Central
Excise & Service Tax, Dibrugarh)**

Arising out of Order-in-Original No.02/SPECIAL RATE/CE/DIB/2009 dated 22.09.2009 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh)

(3) Excise Appeal No.477/2012

**(M/s Hindustan Unilever Limited Vs. Commissioner of Central
Excise & Service Tax, Dibrugarh)**

Arising out of Order-in-Original No.01/TECH/2012 dated 24.04.2012 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh)

(4) Excise Appeal No.478/2012

**(M/s Hindustan Unilever Limited Vs. Commissioner of Central
Excise & Service Tax, Dibrugarh)**

Arising out of Order-in-Original No.02/TECH/2012 dated 24.04.2012 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh)

(5) Excise Appeal No.71266/2013

**(M/s Hindustan Unilever Limited Vs. Commissioner of Central
Excise & Service Tax, Dibrugarh)**

Arising out of Order-in-Original No.02/TECH/2013 dated 17.07.2013 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh)

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71266,71267/2013, 75637-75639/2014,
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(6) Excise Appeal No.71267/2013

(M/s Hindustan Unilever Limited Vs. Commissioner of Central Excise & Service Tax, Dibrugarh)

Arising out of Order-in-Original No.03/TECH/2013 dated 17.07.2013 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh)

(7) Excise Appeal No.75637/2014

(M/s Hindustan Unilever Limited Vs. Commissioner of Central Excise & Service Tax, Dibrugarh)

Arising out of Order-in-Original No.05/TECH/2013-14 dated 05.02.2014 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh)

(8) Excise Appeal No.75638/2014

(M/s Hindustan Unilever Limited Vs. Commissioner of Central Excise & Service Tax, Dibrugarh)

Arising out of Order-in-Original No.06/TECH/2013-14 dated 07.02.2014 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh)

(9) Excise Appeal No.75639/2010

(M/s Hindustan Unilever Limited Vs. Commissioner of Central Excise & Service Tax, Dibrugarh)

Arising out of Order-in-Original No.07/TECH/2013-14 dated 07.02.2014 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh)

(10) Excise Appeal No.76131/2014

(M/s Hindustan Unilever Limited Vs. Commissioner of Central Excise & Service Tax, Dibrugarh)

Arising out of Order-in-Original No.01/DIB/TECH/2014-15 dated 29.04.2014 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh)

(11) Excise Appeal No.76132/2014

(M/s Hindustan Unilever Limited Vs. Commissioner of Central Excise & Service Tax, Dibrugarh)

Arising out of Order-in-Original No.02/DIB/TECH/2014-15 dated 29.04.2014 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh)

(12) Excise Appeal No.75765/2016

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Arising out of Order-in-Original No.05-DIB-TECH-2015-16 dated 17.02.2016 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh)

(13) Excise Appeal No.75766/2016

(M/s Hindustan Unilever Limited Vs. Commissioner of Central Excise & Service Tax, Dibrugarh)

Arising out of Order-in-Original No.04-DIB-TECH-2015-16 dated 17.02.2016 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh)

(14) Excise Appeal No.75767/2016

(M/s Hindustan Unilever Limited Vs. Commissioner of Central Excise & Service Tax, Dibrugarh)

Arising out of Order-in-Original No.06-DIB-TECH-2015-16 dated 17.02.2016 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh)

(15) Excise Appeal No.75768/2016

(M/s Hindustan Unilever Limited Vs. Commissioner of Central Excise & Service Tax, Dibrugarh)

Arising out of Order-in-Original No.08-DIB-TECH-2015-16 dated 17.02.2016 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh)

(16) Excise Appeal No.75769/2016

(M/s Hindustan Unilever Limited Vs. Commissioner of Central Excise & Service Tax, Dibrugarh)

Arising out of Order-in-Original No.07-DIB-TECH-2015-16 dated 17.02.2016 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh)

(17) Excise Appeal No.75770/2016

(M/s Hindustan Unilever Limited Vs. Commissioner of Central Excise & Service Tax, Dibrugarh)

Arising out of Order-in-Original No.03-DIB-TECH-2015-16 dated 17.02.2016 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh)

(18) Excise Appeal No.77120/2017

(M/s Hindustan Unilever Limited Vs. Commissioner of Central Excise & Service Tax, Dibrugarh)

Arising out of Order-in-Original No.01-DIB-TECH-2017-18 dated 21.08.2017 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh)

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(19) Excise Appeal No.77121/2017

**(M/s Hindustan Unilever Limited Vs. Commissioner of Central
Excise & Service Tax, Dibrugarh)**

Arising out of Order-in-Original No.07-DIB-TECH-2017-18 dated 21.08.2017 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh)

(20) Excise Appeal No.77122/2017

**(M/s Hindustan Unilever Limited Vs. Commissioner of Central
Excise & Service Tax, Dibrugarh)**

Arising out of Order-in-Original No.03-DIB-TECH-2017-18 dated 21.08.2017 passed by the Commissioner of Central Excise & Service Tax, Dibrugarh)

APPERANCE :

Shri M.H.Patil, Mr.Viraj Reshamwala & Ms.Satabdi Chatterjee, all Advocates for the Appellant
Shri S.Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO...76741-76760/2023

DATE OF HEARING : 23 .08.2023

DATE OF PRONOUNCEMENT : **22.09.2023**

Per Ashok Jindal :

As all the appeals are having a common issue, therefore, all the appeals filed by the appellants are being disposed off by a common order.

2. The facts of the case are that the appellants are engaged in the manufacture of Oral Preparations, Cosmetics, Hair Care & Skin Care

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Preparations at their factories at Doomdooma Estate, Dist. Tinsukia, Assam.

2.1 On 20.11.1997, the Central Government announced an Industrial Policy, inviting entrepreneurs to set up new industrial Units in North-Eastern States and promised that such Units would be exempt from payment of central excise duty and income tax for a period of 10 years from the date of commencement of their commercial production.

The Ministry of Industry notified the Industrial Policy on 24th December 1997. In order to aid industrial growth in various non-developed areas of the country, including north-eastern States, Central Govt. issued Notifications granting exemption from payment of central excise duty on the goods manufactured in such areas.

2.2 Accordingly, a Notification No.32/1999-CE dated 08.07.1999 was issued granting exemption from duty of excise or additional duty of excise equivalent to the amount paid from PLA, by way of refund of such duty paid from PLA, after exhausting the Cenvat credit balance.

2.3 In this regard, another Notification No.56/2002-CE and Notification No. 57/2002 both dated 14.11.2002 for Jammu & Kashmir, Notn. No. 56/2003-CE dated 10.06.2003 and Notification No.71/2003-CE dated 09.09.2003 for Sikkim, etc. were issued.

2.3 In order to avail of the benefits under the said Notifications, the appellants set up the following factories at Doomdooma Industrial Estate in Tinsukia District of Assam State:

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- (i) Unit No.1 in August 2001
- (ii) Unit No.2 in April 2003
- (iii) Unit No.3 in March 2013

The appellants were manufacturing the following goods in their Units:

Unit No.1		Unit No. 2	Unit No.3	
Sr. No.	Name of the products			Chapter
1.	Hair Care	Hair Care	Hair Care	33
2.	Talcum Powder	Talcum Powder	---	33
3.	Skin Cream	Skin Cream	Skin Cream	33
4.	Vaseline Petroleum Jelly	---	---	27
5.	Oral Care/ Toothpaste	Oral Care	---	33

2.4 Notification No.17/2008-CE dated 27.03.2008 was issued, for amending the Notification Notn.No.32/99-CE dated 08.07.1999, for providing for exemption of duty payable on value addition, subject to payment thereof from PLA (after exhausting Cenvat credit). The exemption from duty payable on value addition or to the extent of duty actually paid from PLA, whichever is less, was admissible; for which an application to the Commissioner was to be made within 60 days from the beginning of the financial year, if the manufacturer finds that four-

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fifth of the ratio of actual value addition in the production or manufacture of the goods to the value of the goods, was more than the rate specified in the amending Notification.

2.5 The said Notification No.32/99-CE was further amended through Notification No.31/08-CE dated 10.06.2008, providing for fixation of special rate, if the manufacturer finds that actual value addition of the goods is more than 115% of the percentage prescribed in the Notification; for which, an application to the Commissioner was to be made, not later than 30th September of the respective financial years.

2.6 The Explanation to Para 2.1(4) of Notification No.32/99-CE prescribed the following formula to arrive at actual value addition based on financial records of the preceding financial year, which is as reproduced below:

- | | | |
|--------|---|--------|
| óxxxxx | xxxxxx | xxxxxx |
| (iv) | <i>Sale value of the said goods excluding excise duty, Value Added Tax and other indirect taxes, if any, paid on the goods;</i> | |
| (v) | <i>Less: Cost of raw materials and packing materials consumed in the said goods;</i> | |
| (vi) | <i>Less: Cost of fuel consumed if eligible for input credit under CENVAT Credit Rules, 2004;</i> | |
| (vii) | <i>Plus: Value of said goods available as inventory in the unit but not cleared, at the end of the financial year;</i> | |
| (viii) | <i>Less: Value of said goods available as inventory in the unit but not cleared, at the end of the financial</i> | |

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year preceding that underconsideration.

XXXXX

XXXXX

XXXXX"

2.7 Value addition for all goods falling under Chapter 33 i.e. "Cosmetics & Toilet Preparations", being manufactured by the Appellants, was fixed at 56%, at Sr.No. 3 of the Table under Para 2A of the Notification No. 32/99-CE, as amended by the said Notifications. In other words, the Appellants were entitled to exemption/refund of 56% of the total duty payable on the goods manufactured and cleared by them, subject to the amount paid from PLA.

2.8 In view of actual value addition to the sales value was more than 115% of the prescribed percentage of 56% (i.e. 64.4%), the Appellants made separate applications for Units No. 1, 2, & 3 for each of the Financial Years from 2008- 09 to 2016-17, supported by requisite documents, including certificates from their Statutory Auditors, M/s. Lovelock & Lewes, for the Financial Year 2008- 09 to 2013-14 and M/s. B.S.R & Co LLP, for Financial Years 2014-15 to 2016.

2.9 The said Statutory Auditors issued certificates based on the audited Balance Sheets and Profit & Loss Accounts for the financial years 2008-09 to 2016-17. The Appellants, in each of the financial years, claimed value addition ranging between 62% and 83%, product wise, as summarized below:

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Sr. No.	Name of the product	Financial year	Value addition as per Statutory Auditors	Percentage of value addition specified in Notifications	115% of Value addition & percentage specified in Notifications
(1)	(2)	(3)	(4)	(5)	(6)
1.	Hair Care	2008-09	74%	56%	64%
2.	Talcum Powder		62%	56%	64%
3.	Skin Cream		81%	56%	64%
4.	Oral Care		69%	56%	64%
5..	Hair Care	2009-10	66%	56%	64%
6.	Skin Cream		79%	56%	64%
7.	Oral Care		65%	56%	64%
8.	Hair Care	2010-11	70%	56%	64%
9.	Skin Cream		83%	56%	64%
10.	Oral Care		68%	56%	64%
11.	Hair Care	2011-12	65%	56%	64%
12.	Skin Cream		83%	56%	64%
13.	Vaseline Petroleum Jelly		56%	36%	41%
14.	Oral Care		67%	56%	64%
15.	Hair Care	2012-13	67%	56%	64%
16.	Skin Cream		82% / 84%	56%	64%
17.	Vaseline Petroleum Jelly		66%	36%	41%
18.	Oral Care		66%	56%	64%
19.	Hair Care		79%	56%	64%
20.	Hair Care	2013-14	68% / 75%	56%	64%
21.	Skin Cream		82% / 83%	56%	64%
22.	Vaseline Petroleum Jelly		66%	36%	41%

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23.	Oral Care		65%	56%	64%
24.	Hair Care	2014-15	67%	56%	64%
25.	Skin Cream		83%	56%	64%
26.	Vaseline Petroleum Jelly		69%	36%	41%
27.	Oral Care		67%	56%	64%
28.	Skin Care		68%	56%	64%
29.	Hair Care	2016-17	70%	56%	64%
30.	Skin Care		86%	56%	64%
31.	Vaseline Petroleum Jelly		78%	36%	41%
32.	Oral Care		67%	56%	64%

2.10 The Appellants filed separate applications for fixation of special rate for each Unit financial year-wise for the disputed period, along with relevant documents, including certificates issued by Statutory Auditors.

2.11 The aforesaid applications have been rejected by the Commissioners, on the following grounds:

- (a) that the Balance Sheet, based on which the computation of value addition has been done by the Appellants, is not in conformity with Section 211 of Companies Act, 1956;
- (b) that Section 211 of Companies Act, 1956 does not contain any provision to prepare Balance Sheet or financial records for the same company, for different purpose;
- (c) that the gross sales value (GSV) arrived at by the Appellants by multiplying the quantity of the goods manufactured and cleared from the Unit with All India Average Rate of sales realization at the Depots. The GSV represents an amount which relates to goods manufactured

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by the number of manufacturing units located at different parts of the country and not solely the Units in NESAs. Therefore, it is incorrect, as the actual cost of production of the said Units is not considered;

(d) that as per Explanation to Para 4 of Notification No.32/99-CE, the computation of value addition does not include work-in-progress;

(e) that GSV was arrived at by taking All India average rate of sales realization of the company and the average rate of VAT at the rate of 12.5% has been deducted from the gross sales value. This does not show the true picture of value addition considering the fact that the products manufactured by the Appellants attract various rates of taxes under VAT;

(f) that the Appellants have valued the inventory physically lying at the Units including the WIP at the cost of raw materials and packing material consumed. As per accounting standards, the valuation of the inventory has to be made on the basis of cost of raw material, packing, factory overheads, administrative overheads, etc. Therefore, the value of inventory of stock does not represent fair and true value;

(g) Some of the applications have been rejected on merits and some of the applications have been rejected both on merits and time bar.

2.12 Aggrieved from the said orders, the appellants are before us.

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3. The Ld.Counsel appearing on behalf of the appellant submits that the products manufactured at the above mentioned units, the Appellants are delivered to their depots from where the same are sold at a uniform selling price. The term uniform selling price indicates that there is uniform all India average rate prevalent at all the depots of the Appellants and hence, multiplying the number of units cleared from the unit with the said all India average rate of selling price is the only and correct way of computing the gross sales value. The fact of actual cost of product at each unit being considered or relevant in computation of sales value as elaborated above. He further submits that different states have different rates of sales tax. It is not possible for Appellants who being multi-product, multi-locational company to identify as to what quantity of which product, stock transferred to their Depot, is sold in which state, in order to claim the amount of sales tax against that particular clearance. In view of this, the Appellants' claim of the total sales tax paid, on average basis, is computed as under:

$$\frac{\text{Total sales tax paid all over India on a particular product,}}{\text{Total sales value of that product, paid in terms of Percentage.}} \times 100 = \text{Average Sales Tax}$$

The above would give the actual sales tax payable and paid as percentage of the sales value. It may be clarified that the total sales tax paid and that claimed is equal. The only difference is that it has

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been claimed on equalised basis. Since the Appellants are not claiming Sales Tax Deduction more than what was paid (i.e. paid to various States under the name and style sales tax), the same is admissible deduction, irrespective of whether it is claimed on equalised basis or otherwise. Claiming of admissible deductions like Sales Tax, etc. on equalized basis is permissible as has been held by Hon'ble Tribunal and Supreme Court in Appellants' own following cases:

- (b) Hindustan Unilever Ltd. – 2016 (334) ELT 95(T)
- (c) Hindustan Unilever Ltd. – 2016 (341) ELT 434 (T)

In view of the above, the finding in the impugned Order to the effect that by taking all India average rate of sales tax as well as sales realization, actual value addition cannot be arrived at, is not sustainable.

3.1 He further submits that by resorting to valuation based on conservative method of valuing inventory at cost of raw materials and packing materials is correct. In any case, the same method of valuation has been resorted to for both, opening stock and closing stock. It is not a case of undervaluing opening stock and overvaluing closing stock to arrive at higher percentage of valuation addition. Further, for the period from 2012 to 2017, there are no finished goods inventory. In 2012, automatic conveyor system was installed in the NESA Plant, from where goods after being manufactured was directly transferred to the

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godown on real time basis. Hence, no inventory was available in the factory during this period.

3.2 He further submits that the Commissioner's finding that the Balance Sheet is not in conformity with the Companies Act, 1956, is incorrect, based on the following submissions:

- (i) that a Certificate from Statutory Auditors, containing the calculation of value addition based on the audited Balance Sheet of the preceding financial year has to be submitted in support of the claim for fixation of special rate.
- (ii) that for the purpose of calculation of actual value addition, as per the prescribed format, relevant figures from the audited Balance Sheet have been extracted, which has been enclosed along with each application. Hence, it is not a case that a separate Balance Sheet was prepared for the purpose of special rate fixation, as contended by the Learned Commissioner, in the impugned Orders. In other words, an extract of Balance Sheet containing figures required for computation, in a format exclusively to suit the calculation of value addition was enclosed, which gets evidenced from the Notes accompanying the said extract of Balance Sheet, to the effect that the said extracted Balance Sheet has been prepared solely for the purpose of and as basis for claim of fixation of special rate.

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(iii) that nowhere the Notification stipulates that copy of the Balance Sheet is to be enclosed. Instead, it just mandates that the value addition must be calculated based on the audited Balance Sheet and in the present case, the computation of value addition has been done based on the figures taken from such audited Balance Sheets only.

(iv) that considering the financial details of the year in question, instead of considering preceding financial years' details, in the applications made for fixation of special rate, would be more accurate and, hence, should not be questioned by Department.

3.3 He further submits that Section 211 of Companies Act, 1956 prescribes the form in which the Balance Sheet and Profit & Loss Account of every Company registered under the said Act is to be prepared, showing the true financial position of the said Company. It stipulates that in order to give true and fair picture of the state of affairs of the Company at the end of the financial year, the format as prescribed in Part-I of Schedule VI has to be adopted for preparation of the Balance Sheet and Profit & Loss Account. The Balance Sheet prepared by the Appellants is in a consolidated form, in the sense that all its Units located all over the country have been brought under the common Balance Sheet and Profit & Loss Account. In other words, the said consolidated Balance Sheet of the Company gives the true picture

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of the functioning or the financial position of the Company (the Appellants) as the whole. Hence, the Balance Sheet prepared is very much in conformity with the provisions of Companies Act and the findings of the Commissioner that statement of value addition based on the said Balance Sheet and Profit & Loss Account does not bear any legal sanctity is not correct and not sustainable. Adopting any other method for preparing the Balance Sheet would lead to violation of the provisions of Companies Act and Income Tax Act. In a nutshell, the figures in the Extract of Balance Sheets, based on which the value addition has been calculated, is very much in conformity with Companies Act as well as with the Income Tax Act. Under these factual circumstances and compliance of provisions of law, rejecting the application for special rate fixation on a ground that the Balance Sheet is not in conformity with the Companies Act, 1956, is incorrect and unsustainable.

3.4 He further submits that the Explanation to Para 4 of Notn.No.32/99-CE prescribes the formula to arrive at actual value addition, based on financial records of the preceding financial year:

- (i) Sale value of the said goods excluding excise duty, Value Added Tax and other indirect taxes, if any, paid on the goods;
- (ii) Less: Cost of raw materials and packing materials consumed in the said goods;

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- (iii) Less: Cost of fuel consumed if eligible for input credit under CENVAT Credit Rules, 2004;
- (iv) Plus: Value of said goods available as inventory in the unit but not cleared, at the end of the financial year;
- (v) Less: Value of said goods available as inventory in the unit but not cleared, at the end of the financial year preceding that under consideration.

From the above, it is clear that what is to be added is the inventory of goods available at the end of each of the Financial Years and not cleared. Similarly, the value of inventory not cleared at the end of the financial year preceding to the Financial Year under consideration has to be deducted. It may be relevant to note that the term "inventory" would include stock of finished goods as well as stock of unfinished goods in as much as some stock of goods may be incomplete or just few steps/process away from the stage of completed finished product. The said stock of incomplete/ unfinished goods, which have passed through some processes and are yet to be subjected to some processes to reach the final stage of production, are termed as 'work-in-progress', which are also the part of the inventory, as per the accounting standards. The aforesaid contention also gets support from the following Accounting Standard (AS) 2 - Valuation of Inventories, issued by the Institute of Chartered Accountants of India:

"Inventories are assets:

- (a) held for sale in the ordinary course of business;

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- (b) in the process of production for such sale; or
- (c) in the form of materials or supplies to be consumed in the production process or in the rendering of services.

3.5 He further submits that it is a settled position of law that once the Department has not rebutted the evidences like Statutory Auditor's certificates, as required under the Notification, the evidences brought by assessee have to be accepted, based on the following judgments:

- (a) Crane Betel Nut Powder Works – 2011 (274) ELT 113 (T)
- (b) (bi) Crane Betel Nut Powder Works – 2012 (279) ELT 487 (A.P.)
- (c) -do- Dept's appeal dismissed by SC- 2014 (305) ELT A-109 (SC)

3.6 He further submits that financial records as certified by the Statutory Auditors would be the basis for calculation of actual value addition for fixation of special rate. Hence, the actual value addition, computed based on the figures from the audited financial records, is correct and the special rate calculated based on the said value addition is to be allowed. It is a settled position of law that Statutory Auditor's/CA's certificate is valid for arriving at the value addition, based on the following judgments:

- (a) Shree Narmada Khand Udyog – 2015 (329) ELT 820 (Tri)
- (b) Bombay Dyeing & Mfg. Co. Ltd. - 2008 (223) ELT 514 (T)

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3.7 He further submits that the inventory has to be considered as per Explanation to Para 2.1 of Notn.No.32/1999-CE and, hence, Commissioner's findings that inventory in Depots and goods in transit are not considered has got no relevance to the present case.

3.8 He further submits that In a similarly circumstanced facts and issue, Hon'ble Tribunal, vide its Final Order No.60151/2023 dated 20.04.2023/06.06.2023, reported in 2023-TIOL- 548-CESTAT-CHD in the case of Kokuyo Camlin Ltd., has held that resorting to and invoking uniform sales price; considering equalized sales tax; preparing adjusted Balance Sheet/adjusted Profit & Loss Account, based on whole company's Balance Sheet and Profit & Loss Account, etc., etc. is proper and legal for arriving at value addition under area based exemption Notification No. 56/2002-CE dated 14.02.2002. It has also been held that Statutory Auditors' certificate cannot be questioned by the Commissioner. Appreciating that applications made for fixation of special rate under para 2.1 was accompanied with Statutory Auditors certificate, which is the basis for computation of value addition, Hon'ble Tribunal in Kokuyo Camlin was pleased to fix special rate, as certified by the Statutory Auditors and claimed by the assessee therein. Kokuyo Camlin's claim of fixation of special rate considering MRP based assessment, however, was rejected. The Hon'ble Tribunal judgment in Osaka Alloys and Steels – [2015 (328) ELT 625 (Tri.-Del.)] also renders persuasive support to the Appellants' contention of special rate based on value addition.

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3.9 He further submits that the findings of the Commissioner that filing of applications for fixation of special rate was not done within the time stipulated in the Notification would not be correct and also not sustainable, in view of Hon'ble Guahati High Court judgment dated 12.08.2021 in the case of Jyothy Labs Ltd. – 2021 (378) ELT 269 (Gau) [para 16 to 21], wherein it has been held that the requirement of making application for fixation of special rate has arisen after Hon'ble Supreme Court judgment in V V F judgment dated 22.04.2020. It has been held that the requirement of making such application not later than 30th September of a given financial year was a streamlining procedure and, hence, the request made on 18.05.2020 (after V V F's judgment dated 22.04.2020) was held to be not time barred. In the present case, applications were made, from time to time, for each of the disputed financial years, as detailed in list of events. Assuming, whilst denying, that there is delay in filing the applications, the application filed in any year would hold good for each of the subsequent financial years. For example, the application filed in September 2009, for financial year 2008-09, can be considered as the application for financial year 2009-10 and so on. In any case, the applications decided after three months prescribed in Para 2.1(2) of the said Notification is not sustainable.

3.10 Finally, he submits that the Hon'ble Supreme Court in the judgment & Order dated 22.04.2020 in the case of VVF (supra) has specifically held that Notifications (No.17/2008-CE dated 27.03.2008

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and 31/2008-CE dated 10.06.2008) are clarificatory in nature, since it declares the refund of excise duty paid genuinely and paid on actual manufacturing of goods and not on the duty paid on the goods manufactured only on paper and without undertaking any manufacturing activities of such goods. The above contention further gets substantiated from the findings in the said judgment.

3.11 He further submits that the recovery proceedings initiated by the Dept., in view of the said Hon'ble Supreme Court judgment, were challenged by the Applicants through Writ Petition WP(C) 3162/2019 and Hon'ble Gauhati High Court, in its Order dated 24.06.2020, has directed the Respondents (i.e. UOI and jurisdictional Commissioner and Assistant Commissioner) to re-visit the issue regarding the claims sought for by the Petitioner in view of the judgment and order dated 22.04.2020 rendered by the Hon'ble Apex Court in the case of Union of India v/s VVF Limited and, thereafter, take into consideration all the claims made by the Petitioner as regards their entitlements to refund as sought for in terms of the excise notification. He submits that invoking the ratio laid down by the Hon'ble Supreme Court and Hon'ble Gauhati High Court, the eligibility and quantum of refund has to be re-determined.

3.12 He, therefore, prays that based on the above submissions and those made in the grounds of appeals, all the 20 appeals, as has been

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settled by the Tribunal in the case Kokuyo Camlin's case (supra), may be allowed by setting aside the impugned orders.

4. On the other hand, the Id.A.R. for the Revenue supported the impugned orders and submitted that the applications of fixing of special rate were filed after 30th September of the same year beyond time limit prescribed under the Notification and admittedly, the appellants have filed these applications for special rate fixing in the very next year. Therefore, the applications for special rate of fixing of rates are not sustainable. In regard to balance sheet, he submits that the balance sheets are not in conformity with Section 211 of the Companies Act, 1956. He further submits that the gross sale value on the average rate is not acceptable and the average rate of VAT is also not acceptable. He further submits that the work in process cannot be a part for taking value of sales and therefore, the appeals deserve to be dismissed.

5. Heard both the parties and considered the submissions.

6. We find that the application for special rate fixing for the period 2009-10 to 2016-17 were initially held that they have filed the applications for fixing special rate after 30th September of the same year and is barred by limitation.

6.1 The said issue has been examined by the Hon'ble Apex Court and the Hon'ble Apex Court in the case of Union of India Vs. V.V.F. Limited reported in 2020 (372) ELT 495 (S.C.), has held that the pending

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refund application shall be decided as per the subsequent notification/industrial policies, which were impugned before the respective Hon'ble High Courts and they shall be decided in accordance with the law and on merits and as per the subsequent notifications/industrial policies impugned before the respective Hon'ble High Courts. The extracted of orders of the Hon'ble Apex Court is as under :

"..... subsequent notification / amendment in the original notification did not in any way alter the basis of the original first notification of 2001."

"..... once it is held that the subsequent notifications/industrial policies impugned before the respective High Courts are clarificatory in nature and it does not take away any vested rights conferred under the earlier notifications/industrial policies,"

".....that by the subsequent notifications/industrial policies, the rights which have been accrued under the earlier notifications had been taken away "

" On a fair reading of the earlier notifications/industrial policies, it is clear

*that the object of granting the refund was to refund the excise duty paid on genuine manufacturing activities.
..... "*

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"..... it is clarified by the subsequent notifications that the refund of the excise duty shall be on the actual excise duty paid on actual value addition made by the manufacturers undertaking manufacturing activities".

"..... they do not take away any vested right conferred under the earlier notifications".

6.2 Further, the Hon'ble Guwahati High Court in the case of Jyoty Labs reported in 2021 (378) ELT 269 (Gau.), has held that making such application for fixation of special rate under Notification No.32/99-CE and Notification No.31/2008-CE, after the judgement of Hon'ble Supreme Court in the case of V.V.F. (supra) were in time.

6.3 In view of the above, we hold that as all the applications were filed by the appellants before 20.04.2020. In that circumstances, all the applications were filed within time, therefore, the applications in question cannot be rejected on limitation.

6.4 The remaining issue in all the appeals are common, therefore, all are disposed off by a common observations as under :

6.5 The first issue is that the balance sheet is not in conformity with Section 211 of the Companies Act, 1956. For better appreciation, the facts of the relevant provisions under Notification No.32/99-CE dated 08.07.1999, are extracted herein under :

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- 2C The exemption contained in this notification shall be given effect to in the following manner, namely :-
- (a) the manufacturer shall submit a statement of the total duty paid and that paid by utilization of CENVAT credit, on each category of goods specified in the said Table and cleared under this notification, to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, by the 7th of the next month in which the duty has been paid;
 - (b) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, after such verification as may be deemed necessary, shall refund the duty payable on value addition, computed in the manner as specified in paragraph 2A above to the manufacturer by the 15th of the month following the one in which the statement as at clause (a) above has been submitted.
- 2D Notwithstanding anything contained in sub-paragraph 2C above,-
- (a) the manufacturer at his own option, may take credit of the amount calculated in the manner specified in paragraph 2A in his account current, maintained in terms of the Excise Manual of Supplementary Instructions issued by the Central Board of Excise and Customs. Such amount credited in the account current may be utilized by the

manufacturer for payment of duty, in the manner specified under rule 8 of the Central Excise Rules, 2004, in subsequent months, and such payment shall be deemed to be payment in cash;

- (b) the credit of the refund amount may be taken by the manufacturer in his account current, by the 7th of the month following the month under consideration;
- (c) a manufacturer who intends to avail the option under clause (a) shall exercise his option in writing for availing such option before effecting the first clearance in any financial year and such option shall be effective from the date of exercise of the option and shall not be withdrawn during the remaining part of the financial year;
- (d) the manufacturer shall submit a statement of the total duty payable as well as the duty paid by utilization of CENVAT credit or otherwise and the credit taken as per clause (a), on each category of goods manufactured and cleared under the notification and specified in the said Table, to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, by the 15th of the month in which the credit has been so taken;
- (e) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, after such verification, as may be deemed necessary, shall determine the amount correctly refundable to the manufacturer and intimate to the manufacturer by the 15th day of the next month to the month in which the statement under clause (d) has been submitted. In case the credit taken by the manufacturer is in excess of the amount determined, the manufacturer shall, within five days from the receipt of the intimation, reverse the said excess credit from the account current maintained by him. In case, the credit taken by the manufacturer is less than the amount of refund determined, the manufacturer shall be eligible to take credit of the balance amount;
- (f) in case the manufacturer fails to comply with the provisions of clauses (a) to (e), he shall forfeit the option, to take credit of the amount calculated in the manner specified in sub-paragraph 2A in his account current on his own, as provided for in clauses (a) to (c);
- (g) the amount of the credit availed irregularly or availed of in excess of the amount determined correctly refundable under clause (e) and not reversed by the manufacturer within the period specified therein, shall be recoverable as if it is a recovery of duty of excise erroneously refunded. In case such irregular or excess credit is utilised for payment of excise duty on clearances of excisable goods, the said goods shall be considered to have been cleared without payment of duty to the extent of utilisation of such irregular or excess credit.

Explanation. - For the purposes of this paragraph, duty paid by utilisation of the amount credited in the account current, shall be taken as payment of duty by way other than utilisation of CENVAT credit under the CENVAT Credit Rules, 2004.

6.6 The clarification was given that in the area based exemption and the refund of duty vide letter No.354/34/2004-TRU (Pt) dated 27.03.2008, the same is incorporated herein under :

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354/34/2004-TRU(Pt.)

Area based exemptions — Refund of duty payable on value addition

Letter F.No. 354/34/2004-TRU(Pt.), dated 27-3-2008

Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject : Area based exemptions - Changes in refund scheme.

As you are aware, area based exemptions from central excise duty operating as refund scheme are currently in operation under various notifications as follows :

- (a) for North Eastern States under Notification No. 32/99-C.E. and 33/99-C.E. both dated 8-7-1999 and under Notification No. 20/2007-C.E., dated 25-4-2007;
- (b) for Kutch district of Gujarat under Notification No. 39/2001-C.E., dated 31-7-2001;
- (c) for Jammu & Kashmir under Notification Nos. 56/2002-C.E. and 57/2002-C.E. both dated 14-11-2002; and
- (d) for Sikkim under Notification No 56/2003-C.E., dated 25-6-2003, No. 71/2003-C.E., dated 9-9-2003 and No. 20/2007-C.E., dated 25-4-2007.

2. In all these cases, the exemption operates through a refund mechanism. Thus, the manufacturer availing of the exemption is required to fully utilise the Cenvat credit available with him at the end of the month and pay the balance duty payable either in cash or through PLA. The duty paid in cash or through PLA is then refunded to the manufacturer. Analysis of data collected from the field formations in respect of units availing of the exemption indicates that the scheme in its present form does not necessarily link the quantum of incentives to the value addition undertaken by the unit. The underlying objective of these exemptions is to incentivize genuine value addition in these backward areas. In order to achieve this in a more effective manner some changes/amendments have been carried out in these exemptions. These have been incorporated in Notification No. 16/2008-C.E. to 23/2008-C.E. all dated 27-3-2008.

3. The salient features of these amendments are as follows -

- (i) Goods covered by the scheme and manufactured by eligible units in the specified areas are currently exempt from so much of the duty of excise as is equivalent to the duty paid in cash or through account current (PLA). Instead, the extent of exemption shall henceforth be equivalent to the duty payable on value addition carried out by the unit in these areas.
- (ii) The rates of value addition for goods falling under different chapters of the Central Excise Tariff have been prescribed in the notification. The amount of refund that would be due to the unit at the end of the month would be computed by simply multiplying the total duty payable by it with the applicable rate of value addition. Thus, if the total duty payable by a unit manufacturing cosmetics, classifiable under Chapter 33 works out to be Rs. 100 and the applicable rate of value addition is 56% (S. No. 3 of the Table), the amount of refund due to him would be Rs. 56 (100 x 56%). The notification provides, however, that in case the actual duty paid by the unit in cash or through PLA during that month is less than the amount calculated in the aforesaid manner, the refund would be restricted to the amount actually paid.
- (iii) There is no substantive change in the procedure for filing the refund claim except the supporting documents that the assessee is required to furnish. These

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are specified in the notification. The current provision for self-credit of the refund amount by the assessee has also been retained.

(iv) It has also been provided that in case the actual value addition undertaken by a unit exceeds the prescribed rate by more than 25% (i.e. say, in case the value addition is 50% whereas the rate prescribed is less than or equal to 40%), the unit may apply for a special rate to be fixed by the jurisdictional Commissioner. The special rate would be fixed on the basis of the factors specified in the explanation (*defining actual value addition and special rate*) in the notifications. The information pertaining to these is required to be taken from the financial records/statements of the assessee for the preceding financial year. For the ease of computation, it has been prescribed that the assessee would furnish a certificate from his statutory auditor containing a computation of the actual value addition, alongwith his application for a special rate.

(v) Once fixed, the special rate would be applicable from the date on which the assessee made the claim. Any refunds made in the intervening period would be adjusted accordingly.

(vi) These changes shall be effective from 1st April, 2008.

6.7 The first ground for denial of special rate of fixation is that the balance sheet is not in conformity with Section 211 of the Companies Act, 1956 and there is no provision to prepare the balance sheet or financial records under the provision of 211 of the Companies Act, 1956.

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6.8 The said Section is incorporated herein under :

Form and contents of balance sheet and profit and loss account.

45[(1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in the form set out in Part I of Schedule VI, or as near thereto as circumstances admit or in such other form as may be approved by the Central Government either generally or in any particular case; and in preparing the balance sheet due regard shall be had, as far as may be, to the general instructions for preparation of balance sheet under the heading "Notes" at the end of that Part:

Provided that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity or to any other class of company for which a form of balance sheet has been specified in or under the Act governing such class of company.]

(2) Every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year and shall, subject as aforesaid, comply with the requirements of Part II of Schedule VI, so far as they are applicable thereto:

Provided that nothing contained in this sub-section shall apply to any insurance or banking company ⁴⁶[or any company engaged in the generation or supply of electricity], or to any other class of company for which a form of profit and loss account has been specified in or under the Act governing such class of company.

⁴⁷**(3)** The Central Government may, by notification in the Official Gazette, exempt any class of companies from compliance with any of the requirements in Schedule VI if, in its opinion, it is necessary to grant the exemption in the ⁴⁸[public interest].

Any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

⁴⁹**[(3A)** Every profit and loss account and balance sheet of the company shall comply with the accounting standards.

As per the said provisions, the profit and loss accounts and the balance sheet of the Company shall comply with the accounting standards.

6.9 We find that a certificate from the Statutory Auditors, containing the calculation of value addition based on the audited balance sheet of the preceding financial year has to be submitted in support of the claim

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for fixation of special rate.

6.10 We further take note of the facts that Section 211 of Companies Act, prescribes the form in which the Balance Sheet and Profit & Loss Account of every Company registered under the said Act is to be prepared, showing the financial position of the said Company and the balance sheet prepared by the appellants is in consolidated form, in the sense that all its Units located all over the country have been brought under the common Balance Sheet and Profit & Loss Account, but in other words, the said consolidated Balance Sheet of the Company gives the picture of the functioning or the financial position of the appellants as the whole. Hence, the Balance Sheet prepared is very much in conformity with the provisions of Companies Act and the findings of the Ld.Commissioner that statement of value addition based on the said Balance Sheet and Profit & Loss Account is not acceptable are in conformity of law.

6.11 Further, we find that the figures in the Extract of Balance Sheets, are based on which the value addition, has been calculated, is very much in conformity with Companies Act and the Income Tax Act.

6.12 Therefore, we hold that rejection of application for special rate fixation on the balance sheet is not in conformity with the Companies Act, 1956, is not correct. On the said ground, the said application cannot be rejected.

6.13 We take note of the fact that whether the statutory auditor's report is acceptable or not ? We hold that that the statutory auditor's

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report is acceptable in terms of the decision of this Tribunal in the case of Commissioner of Central Excise & Customs, Guntur Vs. Crane Betel Nut Powder Works reported in 2011 (274) ELT 113 (Tri.-Bangalore), wherein this Tribunal has observed as under :

"5.1..... It is also undisputed that the respondent-assessee had produced a detailed Chartered Accountant certificate before the Adjudicating Authority, when the Adjudicating Authority issued a show cause notice to them for rejection of the refund claim. It is also undisputed and on records that the revenue had not produced any contrary evidence to evidence produced by the respondent-assessee in form of Chartered Accountant certificate for coming to such a conclusion that the respondent-assessee had passed on the burden to the customers.

.....

5.3 It is seen from the records that as against the above detailed Chartered Accountant's certificate, revenue has not produced any contrary evidence to rebut the same except for claiming that the said certificate is devoid of any details. We find that the said Chartered Accountant's certificate as reproduced hereinabove clearly indicates that the Chartered Accountant (who was also the statutory auditor of the respondent-assessee) has given the certificate after going through the entire records of the respondent-assessee. In the absence of any effective rebuttal of the said Chartered Accountant certificate by leading a contrary evidence, we are of the considered view that the Chartered Accountant's certificate which indicates that the duty liability has not been passed on and has been absorbed

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by the assessee, cannot be rejected as an evidence in support of non-passing of the burden of incidence of duty.

The said decision is affirmed by the Hon'ble Apex Court. We, therefore, hold that the statutory auditor's report is acceptable as an evidence.

7. Now, another issue raised by the Id.Commissioner that the gross sales value based on all India average rate is not acceptable.

8. We find that the products manufactured by the appellants were delivered to their depots from where the same were sold at a uniform selling price. The term uniform selling price indicates that there is uniform all India average rate prevalent at all the depots of the appellants and hence, multiplying the number of units cleared from the unit with the said all India average rate of selling price is the only and correct way of computing the gross sales value. The GSV was arrived at by taking all India Average rate of sales realization of the Company and the average rate of VAT at the rate of 12.5% has been deducted from the gross value. Since different States have different rates of Sales Tax, it is not possible for the appellant to identify as to what quantity of which product, stock transferred to their Depot, is sold in which State, in order to claim the amount of Sales Tax against that particular clearance. In view of this, the appellant has adopted the formula for computation to arrive at the average Sales Tax, which is as under :

$$\frac{\text{Total sales tax paid all over India on a particular product,}}{\text{Total sales value of that product,}} \times 100 = \text{Average Sales Tax paid in terms of Percentage.}$$

9. We find that for the purpose of calculation of actual value addition, as per the prescribed format, relevant figures from the audited Balance Sheet have been extracted, which has been enclosed along with each application. Hence, it is not a case that a separate Balance Sheet was prepared for the purpose of special rate fixation, as held by the adjudicating authority. An extract of Balance Sheet containing figures

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required for computation, in a format exclusively to suit the calculation of value addition was enclosed, which gets evidenced from the Notes accompanying the said extract of Balance Sheet, to the effect that the said extracted Balance Sheet has been prepared solely for the purpose of and as basis for claim of fixation of special rate and nowhere the Notification stipulates that copy of the Balance Sheet is to be enclosed. Instead, it mandates that the value addition must be calculated based on the audited Balance Sheet and in the present case, the computation of value addition has been done based on the figures taken from such audited Balance Sheets only.

10. Further, an another reason for rejection of application is that the average rate of VAT at the rate of 12.5% is not acceptable.

11. The said issue has been settled by this Tribunal in the appellants' own case reported in 2016 (334) ELT 93 (Tri.-Chennai), wherein this Tribunal has held as under :

"3. *After hearing both sides, and on perusal of records, we find that the appellants are engaged in the manufacture of Shampoo, Pure Petroleum Jelly (Vaseline) etc. The issue involved in these appeals is whether the appellants are eligible for abatement of equalized/averaged sales tax from transaction value under Section 4 of the Central Excise Act. According to the Revenue, the appellants have to claim sales tax abatement on actual basis. We find that Tribunal in the appellant's own case by Final Order No. A/1956/WZB/Mum/05/C-III/EB, dated 25-8-2005 following the decision of the Tribunal in the case of Zandu Pharmaceuticals v. CCE, Thane-II in Order No. A/370/WZB/2005-C-I, dated 5-4-2005 held that such deduction is permissible and set aside the impugned order.*

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4. It is seen that the Tribunal subsequently vide Final Order No. A/361 & 362/13/EB/C-II, dated 16-4-2013 in the appellant's own case set aside the order and allowed the appeal. The relevant portion of the said decision is reproduced below :-

5. This issue came up before this Tribunal in appellant's own case wherein vide Order No. A/1956/WZB/Mum/05/C-III/EB, dated 25-8-2005 this Tribunal held that the Equalised Sales Tax can be allowed to be deducted. This issue again came up before this Tribunal in the case of Dabur India Ltd. - [2009 \(247\) E.L.T. 335](#) wherein this Tribunal observed as under :

7. We have carefully considered the submissions from both sides. There is no dispute about the eligibility for deduction on account of octroi and additional sales tax. The original authority has accepted this in principle. He has disallowed the deduction only based on the grounds that the respondent have claimed the same on a weighted average basis as mentioned earlier. The Commissioner (Appeals) have allowed the deduction without specifically giving a finding on each of the above three grounds raised by the original authority. We are of the considered view that in the given facts and circumstances of the case, the deduction towards additional sales tax and octroi can be allowed on equalised basis as has been done in the case of Apollo Tyres Limited cited supra. However, we are in agreement with the submissions of the learned DR that the said expenses have to be segregated exclusively in respect of excisable goods cleared by the respondent for the respective year. Therefore, to enable the same, we set aside the orders of the Commissioner (Appeals) and those of the original authority and remand the matter to the original authority to allow the deduction on the lines indicated above after granting reasonable opportunity of hearing to the

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party. The party shall produce relevant details within two months from the date of receipt of this Order and original authority shall dispose of the matter within four months thereafter.

6. Again this issue came up before this Tribunal in the case of Dabur India Ltd. [2013-TIOL-125-CESTAT-DEL = [2013 \(295\) E.L.T. 257](#) (T)] wherein also the same view was taken by this Tribunal.

7. Following the precedent decisions cited hereinabove of this Tribunal, which was accepted by the Revenue, we do not have any hesitation to hold that the appellant are entitled to claim deduction of Equalised Sales Tax from the transaction value to arrive at the assessable value."

5. *In view of the above discussion, we hold that the appellants are entitled to claim the abatement of equalized sales tax from the transaction value. Accordingly, both the impugned orders are set aside and both the appeals are allowed with consequential relief. Stay applications are disposed of."*

the said order has been affirmed by the Hon'ble Apex Court.

12. Therefore, we hold that the average rate of VAT at the rate of 12.5% is equalized the basis and the same is permissible for fixation of special rate. Hence, rejection of special rate of fixation, the applications cannot be rejected on that ground.

13. The next issue is that inclusion of work in progress is not correct.

14. The Explanation to Para 4 of Notn.No.32/99-CE is very much clear, which is as under :

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- (i) *"Sale value of the said goods excluding excise duty, Value Added Tax and other indirect taxes, if any, paid on the goods;*
- (ii) *Less: Cost of raw materials and packing materials consumed in the said goods;*
- (iii) *Less: Cost of fuel consumed if eligible for input credit under CENVAT Credit Rules, 2004;*
- (iv) *Plus: Value of said goods available as inventory in the unit but not cleared, at the end of the financial year;*
- (v) *Less: Value of said goods available as inventory in the unit but not cleared, at the end of the financial year preceding that under consideration.*

Special rate would be the ratio of actual value addition in the production or manufacture of the said goods to the sale value of the said goods excluding excise duty, Value Added Tax and other indirect taxes, if any, paid on the goods."

From the above, it is clear that what is to be added is the inventory of goods available at the end of each of the Financial Years and not cleared. Similarly, the value of inventory not cleared at the end of the financial year preceding to the Financial Year under consideration has to be deducted. It may be relevant to note that the term "inventory" would include stock of finished goods as well as stock of unfinished goods in as much as some stock of goods may be incomplete or just few steps/process away from the stage of completed finished product. The said stock of incomplete/ unfinished goods, which have passed through some processes and are yet to be subjected to some processes to reach the final stage of production, are termed as 'work-in-progress', which

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are also the part of the inventory, as per the accounting standards, which is as under :

"Inventories are assets :

- (a) held for sale in the ordinary course of business ;*
- (b) in the process of production for such sale ; or*
- (c) in the form of materials or supplies to be consumed in the production process or in the rendering of services."*

which means that the process of production on such materials i.e. work in process is the part of inventory and the appellants have correctly included the work in process in their stock. Therefore, we hold that the work in process is to be included in the opening stock and closing stock in computation of actual value addition.

15. In a nutshell, we take note of the fact that the issue of rejection of fixation of special rate on the above ground, came up before this Tribunal in the case of M/s Kokuyo Camlin Limited Vs. Commissioner of Central Excise & Service Tax, Jammu & Kashmir reported in 2023-TIOL-548-CESTAT-CHD, wherein this Tribunal has observed as under :

"4. Heard both sides and perused the records of the case. Brief issue that requires consideration in the instant case is as to whether the Adjudicating Authority was correct in rejecting the appellant's claim for value addition in terms of Notification No. 56/2002-CE dated 14.11.2002 as amended. We find that on an application, dated 29.09.2009, made by the appellants, Commissioner vide letter dated 20.04.2010 informed the appellants that the value addition comes to 45.73% as against the claim of 58.6% or 62.65% by the appellants. We find that the

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appellants have submitted a detailed written reply and a Statutory Auditor's certificate to establish their claim.

5. We find that after giving a personal hearing on 11.05.2010, learned Commissioner has proceeded to adjudicate the case. Whereas in the letter dated 20.04.2010, Commissioner arrived at a value addition of 45.73%, while passing the final order, he rejected the claim completely. Commissioner has given the following findings: • In terms of Para 2.1 (I) of the Notification, it is the obligation of the manufacturer to stake their claim along with necessary documents and certificates and the appellants have failed to do so; burden to prove the claim is squarely on the appellants. 5 Excise Appeal No. 2630 Of 2010 • The word "Sale" is not defined under notification and therefore, the definition requires to be taken from Section 2 of Central Excise Act; the appellants claim of two value additions cannot be accepted; MRP value as contemplated under Section 4A of Central Excise Act, 1944 is a notional value and the same cannot be considered as a value for the purpose of the notification. • The application made by the appellants is dated 29.09.2009 and whereas the audited balance sheets are 30.09.2009 and therefore, cannot be accepted to be accurate in respect of various figures submitted. • As taken in the adjusted balance sheet, gross revenue cannot be considered as sale value; sale value requires to exclude Central Excise, VAT and other taxes; distribution of cost plus 10% on an average basis to all the sales is not acceptable.

6. We find that Commissioner has not discussed, in the impugned order, as to whether the appellants have arrived the calculations as above. However, he has discussed the same in the letter dated 20.04.2010 and made some additions and reductions in the claim of the appellants and arrived at the value addition of 45.73%. The appellants submit that: • Deduction the count of commission/

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discount/ service charges; transport and forwarding charges; selling and distribution cost aggregating to Rs.38,52,223.18/- was incorrect as they have already come under profit & loss account. 6

Excise Appeal No. 2630 Of 2010 • Deduction of export value of Rs.5,84,119/- from the sale value is incorrect. • Cost of inter-unit transfer of semi-finished goods to Samba Unit which was already included in the cost of raw materials has been again included. • Commissioner erred in arriving at inventory values and adding freight inward to the cost of raw materials was incorrect. However, learned Commissioner has not discussed any of the above calculations in the impugned order and therefore, we do not find that there is any reason for us to go into the same in detail more so, when a Statutory Auditor's certificate is on record.

7. On-going through the records, we find that the learned commissioner, vide letter dated 20.04.2010, which is a show cause notice for the purposes of the impugned case, proposes to fix the value addition at the rate of 45.73% and vide final order totally rejects the claim of the appellant. Thus, we find that the Adjudicating Authority has gone beyond the scope of the Show Cause Notice. In case the learned Commissioner was to reject the claim totally, he should have put the appellants to proper notice in terms of principles of natural justice. As the proposal and final order are contrary to each other, we find that, in the instance case, the principles of natural justice have been grossly violated. Moreover, the Adjudicating Authority has not given any finding, whatsoever, on the Statutory Auditor's certificate, rebutting the certificate on the basis of cogent and reliable data and reasoning. The only finding that the Adjudicating Authority gives is that whereas the application is dated 29.09.2009, 7 Excise Appeal No. 2630 Of 2010 the Statutory Auditor's report is dated 30.09.2009 and therefore, it cannot be relied upon. The reasoning given by

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the learned Commissioner is not acceptable for the reason that the Statutory Auditor report was submitted before finalisation of the value addition by the Commissioner. We find that in terms of second Proviso to Para 2.1 (1), the manufacturer has to support his claim for a special rate with a certificate from his Statutory Auditor containing a calculation of value addition in the case of goods for which claim is made, based on the audited balance sheet of the unit for the preceding financial year. We find that the appellants have submitted the necessary certificate, it was therefore, incumbent upon the Adjudicating Authority to go through the Statutory Auditor's report; to question the figures adopted by the Statutory Auditor; to ask for clarification of the appellants before rejecting the same. Therefore, we find that Commissioner had no justified reasons to reject the Statutory Auditor's certificate. For this reason, we find that the Adjudicating Authority has completely ignored the provisions of the notification and therefore, such an order is liable to set aside.

8. We find that Explanation under Para 4 of the Notification reads as under: "For the purpose of this paragraph, the actual value addition in respect of said goods shall be calculated on the basis of the financial records of the preceding financial year, taking into account the following:

- (i) Sale value of the said goods excluding excise duty, Value Added Tax and other indirect taxes, if any, paid on the goods;*
- (ii) Less: Cost of raw materials and packing material consumed in the said goods;*
- (iii) Less: Cost of fuel consumed if eligible for input credit under CENVAT Credit Rules, 2004;*
- (iv) Plus: Value of said goods available as inventory in the unit but not cleared, at the end of the financial year; 8 Excise Appeal No. 2630 Of 2010 (v) Less: Value of said goods available as*

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inventory in the unit but not cleared, at the end of the financial year preceding that under consideration. We find that learned Adjudicating Authority has not given any findings on the above as to whether the calculations arrived by the appellants followed the above principles. The impugned order does not show any reasons to controvert the Statutory Auditor's report. Therefore, the calculations and figures as given by the Statutory Auditor require to be considered as held in Crane Betel Nut Powder Works (supra) and other cases cited above.

9. Having held that the rejection of the appellant's claim in the impugned order is incorrect, we are required to fix the percentage of value addition. We find that the appellants vide application dated 29.09.2009 and during the course of personal hearing on 11.05.2010, submitted that the value addition as applicable to them would be 58.60% ,if actual sale value is taken or 62.65%, if sale value is taken on MRP basis. We are in agreement with the findings of the Adjudicating Authority that MRP is a notional value and such value cannot be considered for the purposes of arriving at "Sale Value" in terms of the Notification No.56/2002-CE dated 14.11.2002. The actual sale value is to be considered. Therefore, we are inclined to accept the value addition at the rate of 58.60% as arrived by the appellants in their letter dated 29.09.2009 on the basis of figures that were certified by the Statutory Auditor. During the course of the argument and vide the written submissions, the appellants have arrived at a special rate of 60.38%. However, looking into the records of the case and the application dated 29.09.2009 submitted by the appellants and 9 Excise Appeal No. 2630 Of 2010 the Statutory Auditor's report, we find that the appellants are eligible for special rate of 58.60% as against the rate of 36% provided in the table of the said notification.

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10. In view of the above- the impugned order is set aside and the appeal is allowed fixing the special rate at 58.60%.

16. In view of the above discussions and observations, we hold that the rejection of the applications of fixation of special rate by the adjudicating authority is not correct and are in violation of law.

17. Therefore, we set aside the impugned orders and allow all the appeals by fixing the special rates as prayed by the appellants.

(Pronounced in the open court on **22.09.2023**)

Sd/

**(Ashok Jindal)
Member (Judicial)**

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

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