

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**CHANDIGARH**

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REGIONAL BENCH – COURT NO. 1

**Excise Appeal No. 1226 Of 2012**

[Arising out of Order-in-Appeal No.21-22/CE-CHD-I/2012 dated 07.02.2012 passed by the Commissioner (Appeals), Central Excise & Customs, Chandigarh]

**M/s Fresenius Kabi Oncology Limited** : **Appellant (s)**  
(formerly Dabur India Limited (Inj. Division)  
19, Industrial Area, Baddi, District Solan,  
Himachal Pradesh

Vs

**The Commissioner of Central Excise** : **Respondent (s)**  
**-Chandigarh-I**  
Central Revenue Building, Sector 17-C  
Chandigarh-160017

With

**Excise Appeal No. 1227 Of 2012**

[Arising out of Order-in-Appeal No.21-22/CE-CHD-I/2012 dated 07.02.2012 passed by the Commissioner (Appeals), Central Excise & Customs, Chandigarh]

**M/s Fresenius Kabi Oncology Limited** : **Appellant (s)**  
(formerly Dabur India Limited (Inj. Division)  
19, Industrial Area, Baddi, District Solan,  
Himachal Pradesh

Vs

**The Commissioner of Central Excise** : **Respondent (s)**  
**-Chandigarh-I**  
Central Revenue Building, Sector 17-C  
Chandigarh-160017

APPEARANCE:

Ms Krati Singh and Mr. Aman Singh, Advocates for the Appellant  
Ms Shivani, Authorised Representative for the Respondent

**CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**  
**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER No.60124-60125/2023**

Date of Hearing: 09.05.2023

Date of Decision:11.05.2023

**Per : P.ANJANI KUMAR**

These two appeals are filed against the orders of the Commissioner (Appeals), Chandigarh which were passed in remand consequent upon this Tribunal remanding the matter back to the authority vide Order No.355-364/2009-EX (DB) dated 30.04.2009.

2. Brief facts of the case are that the appellants M/s Fresenius Kabi Oncology Limited (previously known as Dabur India Limited, Injection Division) are engaged in manufacture and clearance of PP Medicaments. During the visit to the factory, Officers of the Preventive Unit observed that the appellants were clearing the medicaments claiming deduction on the count of Octroi charges and Additional Sales Tax on an equalized basis rather than on actual basis. SCNs were issued and confirmed and the same have reached this Tribunal in the second round of litigation.

3. Ms Krati Singh and Mr. Aman Singh, learned Advocates for the appellants submit that the appellants have a strong case on technical issue and on merits. On the technical issue, she takes the Bench through the SCN and submits that the show cause notice was only in respect of claim of deduction on the count of Octroi charges and Additional Sales Tax on an equalized basis; during the visit of Preventive party, the appellants have submitted figures inadvertently including the amounts for secondary freight in addition to the figures pertaining to Octroi charges and Additional Sales Tax; Department

while taking the figure, they have taken the total amount but the terms of the show cause were very clear that it was meant to deny the deduction on account of Octroi charges and Additional Sales Tax on an equalized basis; the fact is very clear as wherever deductions were mentioned, the SCN has amplified within the bracket Octroi Charges and Additional Sales Tax. Since, there is no ambiguity in the language of the SCN mere mentioning of figures will not empower the Department to collect Excise Duty on an item which was not even agitated in the SCN. She further submits that CESTAT Order dated 30.04.2009 was categorical in the terms of remand; remand was for the limited purpose of calculating the admissible deductions on actual basis and permitting deduction of Octroi charges and Additional Sales Tax on excisable goods alone. This being the position, it was not open to the Original or Appellate Authorities to traverse beyond the terms of the SCN and beyond the terms of the Remand order. She submits that Department also, while filing appeal before the Appellate Authority in respect of Appeal No. E/1227/2012, did not raise this issue. She relies upon the decision in the case of *Syndicate bank Vs CCE, Mangalore-2018 (10)GSTL 555(Tri. Bang.)*. She also submits that the decision of the Tribunal in the case of *Apollo Tyres Ltd. Vs. CCE, Cochin-2003 (160) ELT 836 (Tri. Bang.)*.

4. Learned Authorized Representative appearing for the Department reiterates the findings of the Order-in-Appeal and submits that when the SCN mentions the liability of the appellants in pecuniary terms, mere non-mention of the specific words "Secondary Freight"

does not vitiate the proceedings of the SCN; moreover, the SCN, in respect of Appeal No. E/1227/2012 has mentioned in Para 5 "deductions on account of Octroi and Additional Sales Tax etc. and therefore, it should be implied that the SCN seeks to disallow the deduction claimed on account of secondary freight also.

5. Heard both sides and perused the records of the case. On going through the SCN, we find that the language and the tenor of the SCN are very clear to seek denial of deduction claimed on account of Octroi and Additional Sales Tax. Though, the word "PME" is used in both SCNs, in the SCN in respect of Appeal No. E/1226/2012, denial of deductions on account of Octroi and Additional Sales Tax are mentioned after the word "PME" not once but twice. Moreover, in the said SCN in Para 5, the deductions have been clearly mentioned to be on account of Octroi and Additional Sales Tax etc. without use of word "PME". We further find that in the SCN relating to the other Appeal No. E/1226/2012 word "PME" followed by Octroi charges and Additional Sales Tax in brackets was mentioned only once and term "etc." is also used once. Notwithstanding the mere mention of the words "PME and etc." in one or two places, we find that the gist of the SCNs was to deny the deduction on account of Octroi and Additional Sales Tax for the reason that the same are claimed on an equalized basis, even though paid on some non-excisable goods. The SCN needs to be understood in that perspective alone. The term "etc." when used in conjunction with Octroi and Additional Sales Tax would, by means of any imagination, would mean the statutory or Government levies, if

any, rather than other post-manufacturing expenses like secondary freight as is claimed by the Department. We find that it has been held in several cases that the SCN is not an empty formality and the same needs to be clear and unambiguous. It is not open for the Department just to seek a demand on the basis of figures supplied by the appellant by mistake. In the instant case, we find that there was no whisper of seeking denial of deduction on secondary freight and to that extent, there is no ambiguity in the SCN and it is not open for the Department to claim confirmation of duty on account of secondary freight at this juncture. Moreover, we find that this Tribunal vide above cited Order has clearly stated that the deduction on account of Octroi and Additional Sales Tax are permissible and the remand to the Original Authority to allow the deductions on the lines indicated in the order.

6. In view of the above, Appeal No. E/1226/2012 and E/1227/2012 are allowed.

*(Pronounced on 11.05.2023)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

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