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

Appeal No. E/2960/2006-2962/2006 Date 11/07/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
RANBAXY LABORATORIES LTD
INDUSTRIAL AREA NO 3.A.B.ROAD.DEWAS(M.P)

2. M/S. RANBAXY LABORATORIES LTD, 12TH FLOOR, DEVIKA TOWER, 6, NEHRU PLACE, N. DELHI 19

RANBAXY LABORATORIES LTD Appellant

Vs

C.C.E INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 440-442/2008- Excise dated 5-7-08
passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1 Respondent
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE 452001 (M.P.)
2. Adv. / Consult SH. V. L. KUMARAN, B-6/10, S.J. ENCLAVE, N. DELHI-29

22-7-08
ISSUED ON

3. C.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT. U.P
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. ~~T~~axindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Without green sheet.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi-110066

Court No.III

Date of hearing: 1.7.2008
Date of pronouncement: 7.2008

Central Excise Appeal Nos.2960 to 2962 of 2006

Arising out of the Order in appeal No.IND-I/255/2006 dt. 7.7.06; order in original No.24/Commr/CE/Ind/06 dated 7.7.06 and order in original No.44/Commr/CE/IND/06 dated 17.8.06 passed by the Commissioner (Appeals) and Commissioner, Customs & Central Excise, Indore (M.P.).

For Approval and Signature:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellants | | Respondents

M/s Ranbaxy Laboratories Ltd. vs. C.C.& C.E., Indore

Appearance:

Shri V. Laxmikumaran with Shri R.Ravi, Advocates for the appellant(s) and Shri S. Kumar, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. 440 - 442/08-EX

Per Archana Wadhwa:

All the three appeals are being disposed of by a common order as the issue involved is identical.

2. After hearing both the sides, we find that in respect of appeal No.E/2961/06 -Ex. and 2962/06- Ex., the remission of duty in respect of expired P or P medicaments was granted by the Commissioner, by way of communication letter of the Assistant Commissioner. In the said letter, the appellant was directed to reverse the modvat credit of duty availed by them in respect of the inputs used in the said medicaments. The same was reversed by the appellants under protest. Subsequently, they claimed refund of the same which is the subject matter of the present appeals.

3. As regards the appeal No.2962 /06-Ex., we find that the remission of duty of Rs.26, 59,020/- was allowed by the Commissioner subject to reversal of modvat credit by way of passing an appealable order in original No.91/Commr/CE/IND/05, dated 21.11.2005.

All the three orders of the Commissioner, one passed in appealable form and the other by way of communication letters were not appealed against by the revenue though it is seen that the credit reversal was made under protest.

4. Subsequently, appellants claimed refund of the reversed credit amount on the ground that in terms of Larger Bench decision of the Tribunal in the case of Grasim Industries vs. C.C.E., Indore – 2007 (208) ELT 336 (Tri-LB), such reversal in respect of destroyed goods for which remission of duty is granted was not called for. The refund claim stands denied by the authorities below on the ground that earlier order of the remission with the

condition of reversal of credit was not appealed against by the appellant and as such, attained finality. The learned Advocate appearing for the appellants fairly agrees that the refund claim involved in respect of one ~~appellant~~ appeal where remission application was allowed by way of passing an appealable order, which they have not challenged, is not proper, inasmuch as no appeal was filed against the said order of the Commissioner, though the same was in appealable form. As regards the other two refund claims, he submits that the decision to grant remission by the Commissioner was communicated to them by the Assistant Commissioner by way of a simple letter, which cannot be considered to be an appealable order. Further, they were under a bona fide belief that such communications cannot be challenged in an appeal as held by the Tribunal in a number of orders. Reliance in this regard is placed upon the Tribunal decision in the case of Lumbini Beverages Pvt. Ltd. vs. C.C.E, Patna – 2005 (192) ELT 682 (Tri-Kolkata) , laying down that no appeal lies against the communication by the Deputy Commissioner. Similarly, in the case of Birla DLW Ltd. vs. C.CE.., Kolkata -VII – 2005 (192) ELT 260 (Tri-Kol.), it was held that Additional Commissioner's letter communicating the Commissioner's decision rejecting the appellants claim for remission of duty is not an appealable order. To the same effect is the Tribunal decision in the case of Kiran Processors Pvt. Ltd. vs. C.C.E., Ahmedabad I – 2005 (190) ELT 108 (Tri-Mum.). It is also submitted by the appellant that in any case , non-filing of appeal against the communication letter is a procedural aspect, inasmuch as , the appeal can still be filed before the Tribunal with an application for condonation of delay and the Tribunal has power to condone the delay without limitation.

5. After hearing the learned DR, we find force in the submissions made by the learned Advocate. The Commissioner, while deciding the application for remission of duty, ought to have passed an order in appeable form as has been done by him in one case. Mere communication of his order by an officer below the rank of the Commissioner may give a reasonable belief to the assessee that no appeal can be filed against such communication. As such, the appellants cannot be blamed for not filing appeal against such communication and cannot be denied the benefit of ratio of the law declared by the Larger Bench in the case of Grasim Industries. Accordingly, we set aside the impugned orders and remand the matter to the Commissioner for fresh decision on the remission claim, ~~after~~ in terms of AD the law declared in Larger Bench decision in Grasim Industries. We make it clear that appellant's refund claim in respect of credit involved in the case where the issue stands decided by the Commissioner by passing an appealable order is being rejected. All the appeals are disposed of in above terms.

(Pronounced in the open Court on 9.7.2008)

Sd

[Archana Wadhwa]
Member [Judicial]

Sd

[M. Veeraiyan]
Member [Technical]

16.7

C.E.S.T.A.T.
West Block No. 2

scd/