TELEGRAM [redacted]GCANAL
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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

Date 19/11/2008

Appeal No. E/5296/2004 - EX[DB]

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

To :
C.C.E.CHANDIGARH
PLOT NO 19,SEC-17-C, CHANDIGARH

C.C.E.CHANDIGARH — Appellant

Vs

M/S RANBAXY LABORATORIES LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 880/2008-**EX[DB]** dated 11-11-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   M/S RANBAXY LABORATORIES LTD.
   A-8-11 INDL AREA PHASE-III, MOHALI
2. Adv. / Consult SH. RAVI RAGHAVAN, ADV.,
   B-6/10, S.J. ENC.
   N. DELHI-29
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 - 3
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), Thyagarava Road, T. Nagar,Chennai
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15. Office Copy
16. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.5296/2004 –Ex(Br)

(Arising out of order in appeal No.605/2004 dated 23.8.2004 passed by the Commissioner of Central Excise (Appeals), Chandigarh)

For approval and signature:

Hon'ble Mr. D.N. Panda, Member(Judicial)
Hon'ble Mr. Rakesh Kumar, Member(Technical)

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1. Whether Press reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether Order is to be circulated to the Departmental authorities?

CCE, Chandigarh — Appellant
(Rep. by Shri V. Chaudhry, DR)

Vs

M/s Ranbaxy Laboratories Ltd — Respondent
(Rep. by Shri Ravi Raghavan, Advocate)

Coram: Hon'ble Mr.D.N. Panda, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Date of Hearing: 11.11.08

FINAL Order No. 880/——/2008-Ex(BR)

Per D.N. Panda:

The learned DR states that Revenue being aggrieved by the decisions of waiver of penalty by the learned appellate authority, they are before this Tribunal. He argued that the decision of the learned appellate authority was only on the basis of Machino Montell (P) Ltd case reported in 2004 (62) RLT 709 and law relating to penalty being well settled in respect of imposition of penalty, the learned appellate authority should have looked into the facts with that vision. The recent Apex Court decision in the case of Dharmendra

Textile Case does not leave any scope to exonerate the respondent from penalty. Therefore, waving of penalty was uncalled for.

2. Shri Ravi Raghavan, learned Advocate appearing on behalf of the respondents submits that the appellant has succeeded on merit. He brings out his case that when they have voluntarily deposited the duty amount, the learned appellate authority has rightly waived the penalty and his order is not interferable.

3. We have heard both the sides and perused the operative part of the order of appellate authority which has given cause to the revenue for coming in appeal. The only basis for waiver of penalty by the learned appellate authority was deposit of tax liability by the respondents before issue of show cause notice. When both sides have rival submissions on the very basis of levy of penalty, in view of settled position of law by Apex Court in the case cited by Revenue, it is required that a fresh order should speak on the contention of both the sides. Therefore, we are of the view that in the fitness of circumstances, whether levy of penalty is warranted or not, needs fresh look on the basis of law settled in respect of penalty. Accordingly, we consider it proper to remand the matter to the learned appellate authority who shall pay a fresh look to the basis of liability of penalty and affording reasonable opportunity of hearing to the appellant shall pass a speaking and reasoned order. In the result, we remand the matter to the learned Appellate Authority below and set aside the impugned order.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

MPS*