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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. **E/3427/2010 – SM [BR] & E / STAY / 3217 / 2010 –SM[BR]** Date **21/04/2011**

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

To :
M/S ALPA LABORATORIES LTD.,
33/2, A.B. ROAD, PIGDAMBER, DISTRICT INDORE
(M.P.)
453446

M/S ALPA LABORATORIES LTD., Appellant
Vs
C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No. 192/2011-SM[BR]&S/146/2011** Dated11.4.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM-Appeal Branch)

Copy to :

1. Respondent
C.C.E. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult SHRI SAURAV YADVA ADV.
M/S APPELLANT:-------------------

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH

E/Stay/3217/10 in Appeal No.E/3427/10

(Arising out of Order-in-Appeal No.IND/189 & 190/2010 dt.30.07.2010 passed by the CCE (Appeals), Indore)

For approval and signature:

Hon'ble Mr.M.Veeraiyan, Member (Technical)

1	Whether Press Reporters 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 the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	NO
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?	NO

M/s.Alpa Laboratories Ltd. Appellants

Vs.

CCE, Indore Respondent

Present for the Appellant: Shri Saurav Yadva Advocate
Present for the Respondent: Shri R.K.Gupta, SDR

Coram: Hon'ble Mr.M.Veeraiyan, Member (Technical)

Date of Hearing/decision: 11.04.2011

Final **ORDER NO.** 192/2011 SM (BR)+
S-146/2011 SM (BR)

PER: M.VEERAIYAN

Heard both sides.

2. The dispute relates to leviablity of duty on samples used for in house testing. The original authority based on the show cause notice dated 14.09.09 passed the following order:

"Order

1. Duty on the samples cleared for testing purposes is confirmed on the valuation in terms of section 4(10 (b) of CEA, 1944.

2. Penalty of Rs.10,000/- is imposed upon the Noticee under Rule 25 of CER, 2002.

3. The proposal to confiscate the goods is dropped.

The matter is accordingly disposed off."

3. The Commissioner reviewed that order and appeal was filed by the department before the Commissioner (Appeals). The party also filed the appeal to the Commissioner (Appeals). The Commissioner (Appeals) rejected the appeal filed by the party and allowed the appeal of the department.

4. Learned Advocate for the appellants submits that the very same Commissioner, who ordered review of the original authority's order, decided the appeal on his transfer as Commissioner (Appeals) and the same is not in conformity with the principle of natural justice.

5. In the facts and circumstances of the case, it would be appropriate that the Commissioner who ordered filing of appeal before the Commissioner (Appeals) should not have decided the appeal as the Commissioner (Appeals) subsequent to his transfer as Commissioner (Appeals). I deem it appropriate to set aside the order of the Commissioner (Appeals) and remand the matter for fresh consideration. This will be decided by the Commissioner (Appeals) other than the Commissioner who recommended for

filing of the appeal against the order of the original authority dated 16.2.2010.

6. The appeal is allowed by way of remand. The stay petition is also disposed of.

(Pronounced in the open court)

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

mk