TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Date 01/02/2011

Appeal No. E/1351/2006 - EX[DB]

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

To :
M/S.LUPIN LIMITED
198-202, NEW INDL. AREA NO.2, MANDIDEEPO
DISTT. RAISEN

LUPIN LIMITED Appellant

Vs

CCE,BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No. 138/ 2011 EX[DB]** dated 20-1-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
CCE,BHOPAL
48, ADMINISTRATIVE AREA,
ARERA HILLS, HOSHANGABAD
ROAD,BHOPAL
2. Adv. / Consult
MR.V. SRIDHARAN
B-6/10, SAFDARJUNG ENCLAVE,
NEW DELHI - 29
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
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 - 110005
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 (Haryana)
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
15. HONBLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing: **20.01.2011**

Date of decision: **20.01.2011**

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, 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.	Yes
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?	Yes
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Excise Appeal No.E/1351/2006-Excise

[Arising out of Order-in-Original No.2/Commr/CEX/2006 dated 24.01.2006 passed by the Commissioner of Central Excise, Bhopal].

M/s. Lupin Limited ....Appellants

Vs.

CCE, Bhopal ...Respondent

Appearance:

Rep. by Shri R. Ravi, Advocate for the appellant.
Rep. by Shri V. Choudhry, DR for the respondent.

CORAM: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No...138/2011-EX/Dated:20.01.2011

Per Hon'ble Shri Justice R.M.S. Khandeparkar:

Heard ld. Advocate for the appellants and DR for the respondent.

2. This appeal arises from the Order dated 24.01.2006 passed by the Commissioner (Appeals), Bhopal.

3. Though the impugned order is sought to be challenged on various grounds, it is not necessary to deal with all those grounds. Suffice to refer to only one ground namely failure on the part of the adjudicating authority to give sufficient opportunity to contest the proceedings to the appellants.

4. It is not in dispute that the appellants were issued with a notice dated 12.01.2006 in relation to show cause notice dated 8.12.2005 requiring the appellant to appear for personal hearing on 18.01.2006 failing which on 19.01.2006, failing thereof on 20.01.2006. The Commissioner while observing that in absence of Additional Commissioner, the adjudicating proceedings were taken over by the Commissioner himself and that adequate time and opportunity had been given to the appellants but they had failed to avail the same and hence proceeded to decide the matter on merits.

5. Ld. Advocate for the appellant drew our attention to the copy of the application dated 19.01.2006 presented in the office of the Superintendent of Customs and Central Excise at Bhopal requesting for further time in the matter. The department's seal thereon discloses that the same was presented in the office of the Asstt. Commissioner of Central Excise at Bhopal.

6. Ld. DR had submitted that the letter was not presented to the adjudicating authority and, therefore, it cannot be said that the Commissioner was aware of the said letter.

7. Irrespective of the fact whether the letter was received by the Commissioner or not, the fact remains that only date for personal hearing which was intimated to the appellants was 18.1.2006. Undoubtedly, the notice also stated that in case of failure to appear on 18.1.2006, the appellants would be required to appear on 19.1.2006 and in case of failure to appear on 19.1.2006, then appellants were required to appear on 20.1.2006. Such a notice cannot be said to be issued for three days of hearing. Besides, it was in relation to the show cause notice issued hardly about 45 days prior thereto. In those circumstances, the Commissioner was not justified in observing that the adequate time and opportunity was given to the appellants and they had failed to avail the same. It appears that the appellants are justified in contending about failure to give them sufficient opportunity to contest the proceedings. The letter dated

19.01.2006 also discloses that the appellants were genuinely interested in contesting the proceedings.

8. For the above reasons, therefore, without going into the merits of the case, the impugned order is liable to be set aside and the matter to be remanded to the adjudicating authority to decide the same afresh after giving appropriate opportunity to the appellants to contest the proceedings.

9. Hence, the impugned order is set aside. The matter is remanded for fresh adjudication. Since the matter relates to the year 2006, as the appellants have not yet filed the reply to the show cause notice, they are required to file the same on or before 28.02.11 before the adjudicating authority and thereupon to appear before the adjudicating authority on 14.03.11 at 11.00 A.M. for further proceedings in the matter. The adjudicating authority shall dispose of the matter as expeditiously as possible. The appeal accordingly stands disposed of.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

Ckp.