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## **ORDER DENYING CLAIM FOR AREA BASED EXEMPTION SET ASIDE ON ACCOUNT OF ‘NATURAL JUSTICE’: HIGH COURT OF JAMMU & KASHMIR**

### **Overview**

The Hon’ble High Court of Jammu and Kashmir (the ‘Court’) in the case of *Lupin Limited vs Union of India & Ors.*<sup>1</sup> allowed writ petition challenging order denying the availability of benefit under area-based exemption notification. The court observed a violation of ‘Natural Justice’ and remitted the matter to adjudicating authority for fresh consideration.

### **Facts**

In the State of Jammu and Kashmir, Notification No. 56/2002-CE dt. 14.11.2002 was issued, which provided for certain concessions to new industries commencing production on or after 14.06.2002. In lieu of such benefits, Lupin India (the ‘Petitioner’) in 2007 set up an industrial unit in the then State of Jammu. Subsequently, Notification No. 01/2010-CE dt. 06.02.2010 was issued which provided for exemption of certain goods by units located in the then State of Jammu and Kashmir. This notification was applicable even for the units that had undertaken substantial expansion by way of increased installed capacity of above 25%. The minimum criteria of 25% additional investment were fulfilled by the Petitioner in 2013. Consequently, Petitioner vide letter dt. 11.09.2017 applied for benefits accruing to it under Notification No. 01/2010-CE dt. 06.02.2010 which were denied by the department vide the impugned order without granting proper hearing to the Petitioner.

The argument rendered on behalf of the Revenue was on merits, stating that if the claim is allowed, the Petitioner would be granted benefits over and above what it deserved. Additionally, it was argued that the present impugned order was appealable and hence the writ is not maintainable for availability of alternate remedy.

### **Judgement**

The Court dealt only with reference to the fact that Petitioner was not afforded a reasonable opportunity of being heard which is a clear violation of principle of natural justice. Further, the Court observed that even in the case where authorities believed that the claim was tenable, a show cause notice was necessarily required to be issued such that the grounds of rejection could be discussed.

In view of the aforesaid discussion, the Court allowed the Writ Petition while remitting the same for fresh consideration by the competent authorities, with directions that proper opportunity of hearing is afforded to the Petitioner.

### **VA Comments**

Issuance of show cause notice and granting reasonable opportunity of being heard are the pillar of principle of natural justice. Time and again courts have upheld the importance of following such principles irrespective of specific mention in the act or allied rules. The present judgement is an addition and reaffirms the stance.

### **For any further information/ clarification, please feel free to write to:**

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<sup>1</sup>OPW No. 1458/2018 (O&M)

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