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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/4737/2004 Date 18/07/2008

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

To
C.C.E. INDORE

P.B.-10, MANIK BAGH PALACE, INDORE (M.P.)

C.C.E. INDORE Appellant

Vs

M/S IVES DRUGS (INDIA) PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No** 483/2008- **Excise** dated 16-7-08

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

Assistant Registrar

(Excise Appeal Branch)

Copy to :

1. Respondent
   M/S IVES DRUGS (INDIA) PVT. LTD.
   GHATABILLOD, DISTT.- DHAR (M.P.)
2. Adv. / Consult SH. ARVIND GARG, ADV., C/O. RESPONDENT
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. Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK-II, R.K. PURAM, PRINCIPAL BENCH, NEW DELHI,
COURT NO. III

Excise Appeal No. 4737 of 2004

[Arising out of Order-in-Original No. IND-I/208/2004 dated 03.06.2004 passed by the Commissioner (Appeals-I), Customs & Central Excise, Indore]

Date of hearing/decision: 11.07.2008

Hon'ble Mrs. Archana Wadhwa, Member [Judicial]
Hon'ble Mr. M. Veeraiyan, Member [Technical]

M. Veeraiyan

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?	Yes

CC&CE, Indore ...Appellant
[Rep. by Mr. Deepak Garg, DR]

Vs.

M/s Ives Drugs (India) Private Limited ...Respondent
[Rep. by Mr. Arvind Garg, Advocate]

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

FINAL ORDER 483/08-EX

Per: M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. IND-I/208/2004 dated 03.06.2004.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:-

(i) The respondent is manufacturing Patent & Proprietary and Pharmacopial Medicines namely:

(a) 20% and 10% Mannitol I.P.
(b) Metronidazole
(c) Ciprofloxacin Lactate
(d) 10% Icodex
(e) Icolyte F, G, M, P & R in 5% Dext. Inj.
(f) Isodex 5%, 50% Invert Sugar

M. Veeraiyan

(g) Icoccel with or without Icoset
(h) Icoamin 10%
(i) Isodex M & P

and they have claimed exemption for the same in terms of Notification No. 6/2002 dated 01.03.2002 during the period 2001-2002.

(ii) The original authority denied the exemption holding that the said medicaments cannot be treated as intravenous fluids, which are used for sugar, electrolyte or fluid replenishment.

(iii) On appeal. Commissioner (Appeals) relying on the decision of the Tribunal dated 26.02.2004 in the case of Parental Drugs (India) Ltd., allowed the exemption and hence the Department is in appeal.

4.1. Learned DR draws our attention to the pamphlet, literature relating to these products and claims that at least in respect of some of the medicines like Mannitol Injection I.P. 20%, Metronidazole Injection IP and Ciprofloxacin Injection I.P. the main ingredients are only of medicinal value and they are also of 100 ml. volume. As the main contents of the product are basic medicines for curative purposes, they cannot considered to be those meant for sugar electrolyte or fluid replenishment.

4.2. He also submits that the said decision in the case of Parental Drugs basically deals with a period covered under Notification No. 36/2000. He draws our attention to Para 6(f) of the said decision which reads as follows:-

> "(f) The notification in question, in this case, on a plain and single interpretation would encompass 'IV fluids' administered through intravenous route. "The Notification 3/2001, dated 1.3.2001 would only curtail the ambit of the exemption only to disallow small volume parenterals, which were permissible under the earlier notifications broader entry. The emphasis in both the notifications is on method and administration by intravenous route fluid sugar electrolyte requirements of a patient and not on the composition thereof as is being made out by Revenue".

4.3. Since the Notification 3/2001 is restrictive in nature when compared to the predecessor-notification 36/2000, he ought to have not relied upon the said decision.

M. Veeraye

5. Learned Advocate for the respondent submits that their case is squarely covered by the decision in the case of Parental Drugs (India) Ltd and in the case of M/s Prem Pharmaceuticals & M/s Ives Drugs (India) Pvt. Ltd., vide final order No. 777-79/05-Ex. in Excise Appeal Nos. 2752, 3249 & 837 of 2003 dated 16.9.2005.

6. We have carefully considered the submissions made by both sides. The decisions relied upon by Commissioner (Appeals),prima facie, relate to the period before the coming into effect of notification 6/2002. Further, he has ~~have~~ not dealt with each of the products individually to come to a finding that the decision in the case of Parental Drugs (India) Ltd. (supra) is applicable. We also find that the decision in the case of M/s Prem Pharmaceuticals & M/s Ives Drugs (India) Pvt. Ltd., vide final order No. 777-79/05-Ex. in Excise Appeal Nos. 2752, 3249 & 837 of 2003 dated 16.9.2005 has gone on the basis that no patient can be given about a litre of fluid to inject a small dose of medicine. This may not be applicable in respect of every item considered in this case. It would be appropriate that the Commissioner (Appeals) examines each of the product individually to come to a finding whether the decisions in these cases are applicable. The entire matter requires to be gone into afresh taking into the change in the wordings of the notification and nature of each of the product. To enable the same, we set-aside the order of the Commissioner (Appeals) and remand the matter for de novo consideration after granting reasonable opportunity of hearing to the parties. We do not express any views on the merits of the case. We leave all the issues open.

7. Appeal is allowed by way of remand.

[Operative portion of the order was pronounced in the open Court].

16/7/08

[Archana Wadhwa]
Member [Judicial]

15/7/08

[M. Veeraiyan]
Member [Technical]

[Pant]