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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/1366/2006 – SM[BR] Date 19/11/2008

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

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

C.C.E. INDORE Appellant

Vs

M/S INVENT PHARMACEUTICALS P LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1477 / 2008- **SM[BR]** dated 14.11.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

M/S INVENT PHARMACEUTICALS P LTD
PITHAMPUR

2. Adv. / Consult SHRI HEMANT BAJAJ ADV.
N/V;---------------------------

3 S.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). Thyagaraya 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
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 1366 of 2006-SM

[Arising out of Order-in-Appeal No. IND-I/12/2006 dated 13.1.2006 passed by Commissioner (Appeals I) Customs & Central Excise, 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?	:	Yes
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

Commissioner of Customs & Central Excise, Indore — Appellant

Vs.

M/s. Inven Pharmaceuticals (P) Ltd. — Respondent

Appearance:

Mr. Sansar Chand, DR for the Appellant
Mr. Hemant Bajaj, Advocate for the Respondent

CORAM:

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

Date of Decision : 14.11.2008

Final **ORDER NO. 1477/08-SM(BR)**

Per M. Veeraiyan:

This is an appeal filed by the Department against the order of the Commissioner No. IND-I/12/2006 dated 13.1.2006.

2. Heard both sides.

3. Relevant facts in brief are as follows:

(1) When officers visited on 31.5.2004, they found goods valued at Rs.10,31,515/- not accounted in excise records, but entered in private records.

(2) Shri Manoj Namdeo, excise-in-charge in his statement stated that 31.5.04 admitted that as per the instruction of Production Department, packing lists showing less quantity was prepared by him. Shri K.P. Gupta, Production Manager also admitted the records maintained did not show the actual production and production of batch No. 45015 has not been accounted for in the production records.

(3) Original authority confiscated the goods valued at Rs.10,31,515/- but allowed the same to be redeemed on payment of fine of Rs.50,000/- and imposed penalty of Rs.10,000/- on the respondents.

(4) Commissioner (Appeals) set aside the confiscation and penalty on the ground that the manufactured goods were entered in one or the other register maintained at different stages like production / code / batch register and private records of excise of the unit.

4. The learned DR submits that the liability of applicant to maintain records on day today basis is a strict obligation. The respondents have failed

in their statutory obligation. The admission statement of Shri Manoj Namdeo and Shri K.P. Gupta have not been retracted. Therefore, the order of the Commissioner should be set aside and the order of the original authority restored.

5. Learned advocate submits that there was no intention to suppress the production. The non-accountal was due to want of clearance from the lab about the fitness of the goods packed. He seeks upholding of the order of Commissioner (Appeals).

6. I have carefully considered the submissions made from both the sides. It is not in dispute that at the time of visit by the customs, substantial quantity of the goods were not entered in the statutory register. The admission statement of Shri Manoj Namdeo is to the effect that as per the instructions of production department, they were showing lesser production in the statutory records. The claim that they were waiting for quality clearance from lab for goods already packed is not convincing. However, there is no finding of clandestine removal.

7. Having regard to the entire facts and circumstances of the case, I set aside the order of the Commissioner (Appeals) and restore the order of the original authority. While restoring the order of the original authority, I reduce the redemption fine from Rs. 50,000/- to Rs. 25,000/- (Rupees Twentyfive thousand only) and reduce the penalty from Rs.10,000/- to Rs.2,000/- (Rupees Two thousand only).

8. The appeal is disposed of in the above terms.

(Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

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