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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. ST/78 /2008 – SM[BR] Date 25/11/2008

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR — Appellant

Vs

M/S MERLIN MARKETING, — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1505 /2008- **SM[BR]** dated **17.10.2008**

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

**Copy to :**

1. Respondent

M/S MERLIN MARKETING,
STERLING VENTURE COMPOUND, OPPOSITE JAGDAMBA TEMPLE,
RING ROAD NO.1,
KUSHALPUR, RAIPUR-492013

2. Adv. / Consult

NONE

3-12-08
ISSUED ON

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). Thyagarava 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 NEW DELHI

Appeal No.ST/78/2008-SM (BR)

[Arising out of Order-in-Appeal No.91(ST)/RPR-I/07 dated 20.11.2007 passed by the Commissioner of Central Excise (Appeals-I), Raipur).

**Date of Hearing/ Decision:17.10.2008**

**For approval and signature:**

**Hon'ble Mr. P.K. Das, Member (Judicial)**

| | | |
|---|---|---|
| 1. Whether Press Reporters may be allowed to see 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? | : | |
| 3. Whether Their Lordships wish to see the fair copy of the Order? | : | |
| 4. Whether Order is to be circulated to the Departmental authorities? | : | Yes. |

CCE, Raipur ...Appellants

[Rep. by Shri Sansar Chand, DR )

Vs.

M/s. Merlin Marketing ...Respondent

[Rep. by None.]

CORAM: **Hon'ble Mr. P.K. Das, Member (Judicial)**

Final Order No.1505/08-SM(BR)/Dated:17.10.2008

**Per P.K. Das :**

The relevant facts of the case, in brief, are that the Respondents are engaged as C& F Agent of M/s. Intas Pharmaceuticals Ltd. It has been alleged that the Respondent failed to discharge the tax liability as C&F

Agent during the relevant period. The Respondent deposited the tax of Rs.34,815/- along with interest upon detection by the Central Excise Officers before issue of show cause notice. The Adjudicating Authority confirmed the demand of tax and appropriated the amount as deposited by the Respondent. He also imposed penalty of equal amount under Section 78 of the Finance Act, 1994 and penalty of Rs.100/- per day for non-filing of the Returns under Section 76 of the Act along with interest. The Commissioner (Appeals) set aside the penalty under Section 78 and reduced the penalty to Rs.5,000/- under Section 76 of the Act. Hence, the Revenue filed this appeal.

2. Heard the ld. DR on behalf of the Revenue. None appeared on behalf of the Respondent.

3. The Respondent requested to decide the matter in their absence on the basis of the records. It is stated that the Firm has closed its business in the financial year 2003-2004 and they are not in position to appoint any Consultant/Representative for appearing before the Tribunal.

4. After hearing the ld. DR and on perusal of the records, it is seen from the order of the Commissioner (Appeals) that the Respondent entered into an agreement with M/s. Intas Pharmaceuticals Ltd. intentionally to save service tax, which they were remitting to the Agent viz. the Respondent herein. It is also seen from the order of the Commissioner (Appeals) that the complicity of revising the agreement in

1997 to save the Service Tax component squarely falls on the principals viz. M/s. Intas Pharmaceuticals Ltd. and not on the Agent, the Respondent. The Commissioner (Appeals) observed that no mela fides on this account can be attributed to the Respondent as they were appointed as C&F Agent. The Adjudicating Authority observed that the Respondent had intentionally entered into agreement to save the tax and mislead the Revenue department. In view of the above, it appears that the Respondent had knowingly entered into agreement to the principal in order to avoid the payment of tax. So, the Commissioner (Appeals) is not correct to extend the benefit under Section 80 of the Finance Act, 1994 in the present case. Accordingly, the impugned order passed by the Commissioner (Appeals) is required to be set aside. The Adjudication Order is restored. However, it is seen that the Respondent deposited the duty before issue of show cause notice and, therefore, imposition of penalty under Section 78 of the Act would be reduced to 25% of the tax, which comes to Rs.8,700/-. Considering the facts and circumstances of the case, the penalty imposed under the Adjudication Order is reduced to Rs.8,700/- and Rs.5,000/- under Section 78 and 76 of the Act respectively. The appeal is allowed in the above terms.

Order dictated & pronounced in open court on 17.10.2008.

( P.K. Das )
Member (Judicial)

Ckp.