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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. C/21 /2009 - SM Date 05/06/2009

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

To :
M/S GAURAV PHARMA LTD.
49 KM STONE, DELHI-ROHTAK ROAD, SAMPLA
(HARYANA)

M/S GAURAV PHARMA LTD. Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 547 / 2009 -SM[BR] dated 1.6.2009 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
   C.C. (ICD) NEW DELHI
   ICD, TUGHLAKABAD, NEW DELHI 110020.
2. Adv. / Consult
   MR.T.P.S.KANG
   F-71, MOTI BAGH-I, NEW DELHI - 110021.
3. S.D.R
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise, I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

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

Customs Appeal No.21 of 2009-SM (BR)

[Arising out of Order No.73/2008 dated 31.12.2008 passed by the Commissioner of Customs, ICD/TKD, New Delhi.]

Date of Hearing/ Decision:1.6.2009

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.
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? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes.

M/s.Gaurav Pharma Limited ...Appellants
[Rep. by Shri T.P.S. Kang, Advocate]

Vs.

CC, New Delhi ...Respondent
[Rep. by Shri R.K. Saini, DR]

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

Final Order No. 547/09-SM (BR)/Dated:01.06.2009

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellant is a 100% Export Oriented Unit (EOU). They imported chemicals as per eligibility issued under LOP bearing No.05/55/2001-100% EOU dated

31.10.2001 by the Government of India, Ministry of Commerce and Industry. They are engaged in the manufacture of medicines. In the present case, they imported 5 consignments. The Drug Control Authority examined the goods and released two consignments. The said Drug Control Authority rejected the release of the goods in respect of the three consignments on the following reasons:-

(a) name and address of the manufacturer was not found mentioned on the labels,

(b) On opening of the container of drugs by ADC(I), it was observed that drugs are well packed in poly bags, however, there is no label on the innermost container (poly bags).

(c) Chemical name of the drugs do not relate with the IUPAC name or synonyms of the subject mentioned bulk drugs.

The Commissioner of Customs confiscated the goods and allowed to redeem the goods on payment of redemption fine of Rs.5,00,000/- and penalty of Rs.2,00,000/- under Section 112 of the Customs Act, 1962 for the purpose of re-exportation only.

2. Ld Advocate on behalf of the appellant submits that the appellant imported chemicals for use in the manufacture of the medicines. He further submits that the objection raised by the Drug Control Authority is a mere technical nature. He also submits that the appellant is a 100% EOU and they have already suffered a demurrage of approximately of

Rs.11 Lakhs. He further submits that the appellant acted in a bona fide manner and, therefore, the redemption fine and penalties are not warranted ad re-export should be allowed without any redemption fine and penalty. Ld. DR reiterates the findings of the Commissioner. He submits that there is no dispute on the contravention of provisions of Drug Control Authority, therefore, the confiscation and imposition of fine and penalty are justified.

3. After hearing both the sides and on perusal of the records, I find that the appellant contravened the provisions of Section 10(a) of Drugs and Cosmetics 1945 and Rules made thereunder and therefore, the goods are liable to be confiscated under Section 111 (d) of the Customs Act, 1962. So, the confiscation of the goods is justified. However, I agree with the submission of the d. Advocate that the amount of redemption fine and penalty is excessive. It is seen that the appellant imported 5 consignments and the Drug Control Authority released two consignments. It is noted that the appellant is a Export Oriented Unit and they have already suffered a demurrage of Rs.11 Lakhs approximately. It is also noted that there is no material available that the appellant is involved in such irregularity. It is noted that the Commissioner allowed to re-export the goods. Ld. Advocate submitted that the Customs Authorities had asked to remit foreign exchange paid earlier to the supplier and this was done by the appellant. Therefore, after considering the facts and circumstances of

the case and the demurrage borne by the appellant, I reduce the redemption fine and penalty to Rs.50,000/- (Rupees Fifty Thousand only) and Rs.20,000/- (Rupees Twenty Thousand only). Order may be issued as Dasti. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 1.6.2009.

(P.K. Das)
Member (Judicial)

Ckp.