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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/S/2154/2011 IN C/364 /2011 - CU[DB] Date **04/04/2012**

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

To :
C.C. ICD, TUGHLAKABAD,
NEW DELHI 110 020.

C.C. (ICD) NEW DELHI Appellant

Vs

REDDY PHARMACETICALS LTD. **STAY ORDER NO.C/S/98/2012** Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/A/101/ 2012 CU[DB]** dated 27.03.2012 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
REDDY PHARMACETICALS LTD.
B-7, PATPARGANJ INDUSTRIAL
AREA, NEW DELHI. 110092

2. Adv. / Consult MS. PREJA NAIR,
C/O. **REDDY PHARMACETICALS LTD.**
B-7, PATPARGANJ INDUSTRIAL AREA,
NEW DELHI. 110092

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

DIVISION BENCH
Court No.3
C/Stay/2154/2011 & Appeal No.C/764/2011-Cus

(Arising out of Order-in-Appeal No.CC(A)Cus/ICD/114/11 dt.25.03.11 passed by the CC (A), New Customs House, New Delhi)

Date of Hearing/decision: 27.03.2012

For approval and signature:
Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Mathew John, 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?	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

Commissioner of Customs, New Delhi — Appellant
Vs
M/s.Reddy Pharmaceuticals — Respondent

Present for the Appellant: Shri K.P.Singh, SDR
Present for the Respondent: Ms.Preja Nair, Advocate
Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

Stay **ORDER NO.** C/S/98/12-Cus
Final order No. C/A/101/12-Cus.

PER: ARCHANA WADHWA

After rejecting the stay petition filed by the Revenue, we proceed to decide their appeal itself, inasmuch as a short issue is involved. Accordingly, we have heard both sides.

2. Being aggrieved with the order passed by the Commissioner (Appeals) vide which he has reduced redemption fine to Rs.25,000/-

and penalty to Rs.75,000/-, the Revenue has filed the present appeal.

3. As per facts on records, the respondents imported OFLOXACIN from China.

4. It is observed that as per Rule 23 of the Drug and Cosmetics Rules, 1945, an import licence in Form-10 shall be required for import of Drugs excluding those specified in Schedule X, and an import licence in Form-10A shall be required for import of Drugs specified in Schedule X. From the documents submitted, it appeared that the appellant had violated the provisions of Rule 23 of the Drugs and Cosmetics Rules, 1945 and therefore, the goods were not permitted to be imported into India. Section 111(d) of the Customs Act, 1962 provides that any goods which are imported or attempted to be imported or are brought within the India Customs waters f or the purpose of being imported, contrary to any prohibitions imposed by or under this Act or any other law for the time being in force, shall be liable for confiscation. The impugned goods valued at Rs.42, 34,481.37 appeared to have been imported against the provisions of Drugs and Cosmetics Rules, 1945 and therefore liable for confiscation under section 111(d) of the Customs Act, 1962.

5. The respondent vide their letter dated 17.9.10 requested for re-export of the goods as the supplier has agreed to take back the same.

6. The matter was taken up for adjudication by the adjudicating authority, who allowed the re-export of the same on payment of redemption fine of Rs.5 lakhs and payment of penalty of Rs.2 lakhs.

7. The said order of the adjudicating authority was appealed against before the Commissioner (Appeals), who reduced the redemption fine to Rs.25,000/- and penalty to Rs.75,000/- by observing as under:-

"From the perusal of the impugned order, I find that on first check the goods were found to be as per declaration and thus there is no case of mis-declaration. The impugned goods could be cleared as per Rule 23 of the Drugs and Cosmetics Rules, 1945, on production of an import licence in Form-10 required for import of drugs excluding those specified in Schedule X, and an import licence in Form-10A required for import of drugs specified in Schedule X. The appellant applied and could not get the same. The appellant applied for re-export of the impugned goods and the adjudicating authority allowed the same on payment of fine and penalty. There is no allegation of deliberate attempt to import the impugned goods without required licence. Further the appellant has submitted a Certificate from the Banker that no payment has been made in respect of the impugned import of goods and hence no foreign exchange is involved. Therefore in the absence of any mens rea, the quantum of fine and penalty imposed seems to be harsh and needs to be reduced. Accordingly, the fine is reduced to Rs.25,000/- and penalty is reduced to Rs.75,000/-. The impugned order stands modified to that extent only."

8. We find that identical appeal filed by the Revenue against the same respondents, involving the same issue stands rejected by the Tribunal vide Final Order No.C/557/11 dt.05.12.11. The Tribunal vide its order has held as under:-

"On going through the grounds of appeal, we find no valid reason stands advanced by the Revenue for enhancement of the redemption fine and penalty. The finding of the Commissioner (Appeals) is that there is no malafide on the part of the importer does not stand rebutted by the Revenue. Need to re-export of the impugned goods arose only because the importer could not get licence from the Drugs Controller of India. There is no dispute that the goods were correctly declared by the by the appellant. In such, a scenario, we find no infirmity in the impugned order of the Commissioner (Appeals) reducing redemption fine and penalty. The Revenue's appeal is rejected."

9. As such by following earlier decision of the Tribunal, we find no infirmity in the impugned order of the Commissioner (Appeals) reducing redemption fine and penalty. The Revenue's appeal is rejected.

10. The stay petition as also appeal get disposed in the above manners.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

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