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Date : 04-03-2010

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CBECs imposes excise duty on drug samples, IDMA objects

Thursday, March 04, 2010 08:00 IST

Gireesh Babu, Mumbai

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The decision of the Central Board of Excise and Customs (CBEC) to uphold its stand on imposing excise duty for free drug samples through valuation based on the maximum retail price (MRP) has raised serious objections from the pharma industry.

The CBEC, through a circular dated February 19, 2010, reiterated that the value for excise duty on free samples should be determined under Rule 4 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

The decision will affect the industry once the tax exemption enjoyed by the northern states comes to an end, said N R Munjal, president, Indian Drug Manufacturers Association (IDMA). The Association is planning to discuss the issue in its executive committee meeting scheduled on March 19, 2010, at Chandigarh and to finalise the further action to be taken in this regard.

The CBEC's decision is based on the earlier decisions of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in the Blue Cross Laboratories vs CCE, Mumbai dispute, in 2006 and the Cadila Pharmaceuticals Ltd vs Commissioner of Central Excise Ahmedabad II, in 2008. The Board, in its new circular, also clarifies that a circular in 2005 clarifying its stand on excise duty on free drug samples has been upheld by High Court of Mumbai in the case of Indian Drugs Manufacturer's Association vs. UOI, in 2008.

"CESTAT in its majority decision in the case of Cadila Pharmaceuticals Ltd. vs Commissioner of Central Excise Ahmedabad II, reported at 2008 (232) ELT 0245 (Tri.-LB), has held that even after the pharmaceutical products have been notified for MRP assessment under Section 4A of the Central Excise Act, the assessment of free physician samples of these products, is appropriately required to be done under Rule 4 of the valuation rules by taking into consideration the deemed value under Section 4A(1) notwithstanding the non availability of normal price under Section 4(1)(a) of the Act, *ibid*. Accordingly, the value for payment of excise duty for physician sample would be the value determined under Section 4A for the similar goods (subject to adjustment for size & pack etc.)," details the circular.

The new circular, concludes that the "...decision of CESTAT would, *mutatis mutandis*, be applicable in respect of free samples of other products which are under MRP assessment. Accordingly, it is clarified that valuation of Samples which are distributed free as part of marketing strategy, or as gifts or donations, shall be determined, in terms of Board's circular No. 813/10/2005-CX dated 25.4.2005 and the aforesaid decisions of CESTAT, as explained in foregoing paras 2 & 3, whether the final products are assessed under MRP based assessment or otherwise."

However, the decision to collect duty on drug samples which the companies are distributing absolutely for free is unreasonable, said Munjal. "Earlier, the duty was charged only if the product is a saleable pack. Four per cent of the total sales revenue was under exemption for new products introduced in the market," he maintained. The imposition of duty on free samples may not turnout be a major issue at present as majority of products are manufactured in the tax free zones in Northern India and the value could not be calculated.

Once the tax exemption gets withdrawn in these states, pharma companies in the country may experience the impact of the decision. Munjal said that the Association will finalize its course of action objecting to the decision to the government in the meeting in Chandigarh.