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Joe C Mathew, Business Standard

New Delhi Jan 23, 2012: Domestic drug makers, who were relieved after the European Union assurance in July 2011 to end the seizure of Indian generic drugs in transit, were in for a shock last month when Dutch authorities seized 29 cartons of medicines destined to South America from India.

Timely intervention of Pharmaceutical Export Promotion Council (Pharmexcil) and the Ministry of Commerce ensured that the cartons, shipped by Mumbai based Ajantha Pharma, got cleared within two weeks, but the recurrence of the seizure has shaken the confidence level of Indian drug exporters.

The seizure turns significant in the backdrop of the fast nearing India-EU Free Trade Agreement, which got delayed due to the differing stance taken by both groups on trade of specific items including pharmaceuticals.

“Indian industry was happy after EU said there would be no more seizures. The current development has caused anxiety among the domestic exporters. It has disturbed the industry once again”, P V Appaji, executive director of Pharmexcil, said.

On July 28, 2011, the Ministry of Commerce & Industry had announced that India and EU had reached an understanding on the issue of seizure of Indian generic drugs in transit. “European Union has proposed a settlement of the dispute by confirming the detailed principles agreed in the understanding to guide border enforcement of intellectual property in the EU. In addition, EU agreed to India’s request for adoption of guidelines which would confirm the principles agreed to in the understanding with a view to give greater and immediate legal certainty for producers and traders”, the ministry had stated.

It was also clarified that EU had agreed to change its regulations to reflect these principles. In return, the EU sought an assurance that India would go back from its plans to request the World Trade Organisation to establish a dispute settlement panel on the particular issue.

India initiated dispute settlement consultations on 11 May, 2010, at the WTO with the EU on the issue of detention of Indian generic medicines while in transit through the EU. The dispute was triggered by at least 16 instances of detentions/seizure at EU ports, particularly in the Netherlands, of Indian generic drugs destined for export to Latin American and other countries. The detentions were made by invoking the EC’s Regulation 1383/2003 which contains customs procedures for taking action against goods suspected of infringing intellectual property rights (IPRs).

India was joined by Brazil in this dispute; Brazil also filed a similar complaint against the EU before the Dispute Settlement Body of the WTO.

Industry officials hoped that the issue will be solved permanently once the European Commission adopts EU proposal for the new regulation.

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