

Pfizer Limited Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-13-1998

Reported in : (1999)(112)ELT1035Tri(Mum.)bai

Appellant : Pfizer Limited

Respondent : Commissioner of Central Excise

Judgement :

2. Advocate for the applicant explains duty has been demanded on the sugar syrup which it cleared and captively consumed in the course of manufacture of cough syrup. Among other arguments, he raises one that the product is not marketable. He says that there is no dispute that it contains sodium saccharin, an artificial sweetener and that according to Rule 47 of the Prevention of Food Adulteration Rules no artificial sweetener shall be added to any article of food. He explains that sale of such a product would, therefore be in violation of law. He cites the decision of the Delhi High Court in DCM and Anr. v. Jt. Secretary to Government of India and Anr. -1978 (2) E.L.T. (J 121) to say that if the sale of the goods regulated is by a special law, the goods can be manufacturable only if the provisions of that law are complied with and that the goods cannot therefore be manufactured. We are not going to the other aspects.

3. The Departmental Representative contends that the Commissioner has dealt with this issue by holding that the product is classifiable under Heading 1702.

4. Prima facie, in the face of the Rule 47 of the PFA it is not possible to hold that the article is marketable. That being the case, it cannot, prima facie, excisable. On this point we waive pre-deposit of duty and penalty and stay their recovery.

5. Accepting the request made by the Departmental Representative for early hearing on the ground of duty involved and the recurring effect, we order appeal to be listed for hearing on 20-3-1998.

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