

Pfizer Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-04-1998

Reported in : (2002)(0)ELT0Tri(Mum.)bai

Appellant : Pfizer Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The question for consideration in this appeal is the liability to duty of "sugar syrup" manufactured by the appellant for use in the manufacture by it of cough syrup. It consists of a mixture of purified water, sugar, sodium saccharin, sodium citrate, sodium benzoate and sorbitol. The entire quantity of this commodity is used in the manufacture of sugar syrup in a continuous process. In the order impugned in the appeal, the Commissioner has held the product to be sugar syrup classifiable under Heading 17.02 of the Central Excise Tariff Act, and invoking the extended period contained in the proviso to Section 11A of the Act demanded duty on the quantity produced between December, 1991 and September, 1996. She has also imposed penalty under Section 11AC and demanded interest under Section 11 AD of the Act.

2. The order is challenged first on the ground that it has not been shown that the product is marketable there being no buyer for the goods. They could not in any case be sold without contravening the provision of Rule 47 of the Prevention of Food Adulteration Rules, 1959 which prohibits sale of any food articles (other than those excluded therein) which contains sodium sachharin.

3. The department had sought to meet the requirements of marketability by citing the fact that an unspecified biscuit manufacturer paid duty on syrup and rose syrup manufactured by a firm Mapro at Mahabaleshwar was being sold. The departmental representative reiterates this argument. The fact that the biscuit manufacturer chose to pay duty on sugar syrup is no evidence of its marketability. He may have wrongly paid duty. Or he may have certainly waived it. The rose syrup sold by Mapro, Mahabaleshwar is on the face of it different from the product now under consideration. Its ingredients as shown on the label for the product are sugar, rose petals and citric acid. These materials do not constitute sufficient evidence to show that the product was marketable.

4. Apart from this it has to be concluded that the commodity is clearly not marketable. Rule 47 of the Prevention of Food Adulteration Rules provides that no artificial sweetener shall be added to any article of food. An exception is made in the case of four products in which permissible limits of sodium sachharin are allowed. None of these four products includes sugar syrup. There is no dispute that sodium sachharin is an artificial sweetener within the meaning of this rule.

Sale of a food product containing sodium sachharin would invite penal action including prosecution under the Prevention of Food Adulteration Act and Rules. The Commissioner's view, implicit in her order, this is not really relevant cannot be upheld. The decision of the Delhi High Court in Delhi Cloth & General Mills Co. v. Joint Secretary -1978 (2) E.L.T. (J 121) is that a commodity cannot be considered marketable if it does not meet the requirements of law regulating its use and exchange. The Court held that calcium carbide which did not comply with regard to purity and packaging with the Carbide of Calcium Rules was not marketable and therefore not liable to excise duty. This decision has been confirmed in appeal by the Supreme Court in 1997 (92) E.L.T.5. The goods therefore are not marketable and hence not liable to duty.

We therefore do not consider necessary to deal with the arguments to determine the relation to applicability of the extended period for demand of duty, or the levy of interest and penalty.