

Pfizer Ltd. Vs. Commr. of Cus.

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SooperKanoon Citation : sooperkanoon.com/20711

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-02-2001

Reported in : (2001)(131)ELT251Tri(Mum.)bai

Appellant : Pfizer Ltd.

Respondent : Commr. of Cus.

Judgement :

1. Pfizer Ltd. filed a bill of entry at the Air Cargo Complex, Sahar for clearance of "Promotional matter", the classification of which was claimed under Chapter 49.01 of the Tariff. This chapter heading is for printed books and other such printed matter. A Custom House agent, M/s.

Pan Oceanic & Forwarding Services, was appointed by the importer to clear the consignment. Examination of the consignment by the Custom House showed that what was imported was not printed matter but light pointers. These, it was explained to us, are something in the nature of electric torches used to point to particular objects on a screen in the course of lectures or audio-visual presentations. The Custom House found, the classification claimed to be incorrect, and the value declared of Rs. 500/- far too low. The required import licence was also not produced. On these facts being made known to the Custom House Agent and the importer, they waived written notice but were heard by the Additional Collector on the proposal of the department to redetermine the classification, enhance the value, confiscate the goods, and impose penalties on the importer and the Custom House Agent. After hearing them, the Additional Commissioner

ordered confiscation of the goods under Clause (d) of Section 111 of the Act, with an option to redeem them on payment of fine, and imposed penalty on the importer, the Custom House Agent, and its employee, P.P. Mehta. On appeal from this order, the Commissioner (Appeals) declined to set aside the confiscation of goods, penalties, although he reduced the amounts of penalties on the clearing agent and on Mehta. Hence these three appeals before us.

2. We accept the contention of the common advocate for the three appellants that P.P. Mehta, the employee was not asked to show cause, either in writing or orally against the penalty proposed. He did not waive issue of written notice. That being the case, no notice has been served on him, and the penalty imposed on him is set aside.

3. The common contentions on behalf of the other two appellants are these. The goods were consigned by M/s. Pfizer Inc., USA on their own to be distributed as promotional material to members of the medical professionals. The importer had no idea what the goods were, and in the absence of an invoice did not know what the value was. It was the importer who had asked for first check examination, which revealed its true identity. The Custom House agent and the importer thus acted bonafide. It is alternatively contended that penalties are excessive.

4. We are not able to agree that the importer or its agent asked for first check examination. The bill of entry does not bear out this contention. The fact that the appraiser in the assessing group has ordered examination of the goods prior to assessment, which is "first check examination", does not by itself establish by any means that it was done at the instance of the importer or its agent. If that were the case, there would have been a written request or evidence of an oral request. The contention that after the identity of the goods came to be known, the bill of entry was amended, in any case, goes against the importer, and substantially against the Custom House Agent. It is "" not in dispute that after the examination of the goods the word "light pointers" were added to the description in the bill of entry. This course of action was wholly incorrect. Once a document is submitted to the Customs department, and accepted, any further change can only be made after obtaining permission of the proper officer. It is not in dispute that the value was

also changed after the bill of entry was noted. It would appear to us that the goods were originally described in the bill of entry as promotional matter, and the words "light pointer" added later. The Additional Collector and the Commissioner (Appeals) record that the appellant stated that the description was changed later.

5. The further contention of the importer that it did not know what the goods were is again entirely unacceptable. The airway bill for the consignment itself described the goods as "promotional matter, light pointer". That this airway bill was in the possession of the appellant, when the bill of entry was filed, is clear of the fact that the number of the airway bill was mentioned in the document. The licence required for the goods were also not produced. Confiscation of the goods therefore has to be confirmed.

6. Taking into account the value of the goods of Rs. 1.32 lakhs, and the redemption fine of Rs. 1.00 lakh, we reduce the penalty on the importer from Rs. 1.00 lakh to Rs. 50,000/-.

7. The Commissioner (Appeals) has already reduced the penalty imposed on the Custom House Agent from Rs. 25,000/- to Rs. 10,000/-. In our view, such a deduction was itself unjustified. The Custom House Agent has throughout acted in with a high degree of irresponsibility. If, as is contended, it did not at all know the value of the goods, its act of declaring a value of Rs. 500/- was shows its utter disregard for the law, and for its own responsibilities. Any responsible Custom House Agent would have indicated the value to be unknown and asked for examination of the goods. The act of subsequently amending the value on the bill of entry, classification and, as we have concluded, the description only aggravated the matter further. That a professional who is expected to use his special skill in carrying technical work would behave with such utter disregard to the procedure and law is astonishing. In our view, appropriate action against the Custom House Agent under the Customs House Agents Licensing Regulations was called for. We however refrain from directing such action only for the reason that the acts in question took place in 1993 and the department has chosen not to do anything.

8. Appeal C/447/96 dismissed, C/448/96 allowed in part, and appeal C/449/96 allowed.

