

Pfizer Ltd. Vs. Cce

Pfizer Ltd. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/29392

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-18-2002

Reported in : (2003)(106)LC670Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Pfizer Ltd.

Respondent : Cce

Judgement :

1. The question for consideration in this appeal is the liability to duty of the substance that the appellant manufacturers. This consists of a solution 66% of sugar and water to which added quantities of sodium citrate, sodium saccharin and sodium benzoate. This syrup is used by the appellant in the manufacture of cough syrup. In the order impugned in the appeal, the Commissioner (Appeals) has held, overruling the Additional Commissioner that the product is marketable and liable to duty.

2. In coming to his conclusion that the substance was not liable to duty, the Additional Commissioner had relied upon an order of the Tribunal relating to the same product made by the same manufacturer. In its order in appeal E/2236/97, the Tribunal accepted the contention of the appellant that the presence of sodium saccharin in the substance attracted the provisions of Rule 47 of the Prevention of Food Adulteration Rules, 1955 which prohibited the sale of any food articles (other than those specified therein) which contained sodium saccharin, and relying upon

the judgment of the Delhi High Court in Delhi cloth & General Mills Co. v. Joint Secretary 1978 ELT J121 that a commodity cannot be considered marketable if it does not meet the requirements of law regulating its use and exchange, held that the substance was not marketable. In his order, the Commissioner (Appeals) has said that the fact that the substance contains saccharin does not affect its classification in heading 17.02 of the tariff and therefore it is liable to duty.

3. The departmental representative, in addition to relying upon this finding, makes the following submissions. To determine marketability a commodity need not be shown to be actually marketed. It is sufficient if it is shown to be capable of being marketed. This requirement would be met if it is shown that the product has some utility. Since the appellant puts the product to use, it is capable of being used. The prohibition contained in Rule 47 of the Prevention of Food Adulteration Rules, 1955 will only be attracted if the appellant sells the goods and this is not done, this is not relevant. He relies upon the decision of the Tribunal in Punjab National Fertilizers & Chemicals Ltd. v. CCE to distinguish the applicability of the judgment of the High Court in Delhi Cloth & General Mills Co. v. Joint Secretary 1978 ELT J121 and the decision of the Tribunal in Gujarat Narmada Valley Fert. Co. Ltd. v. CCE . He cites four decisions of the Tribunal in which sugar syrup has been held liable to duty. He cites a circular No. 226/60/96-CX dated 3.7.1996 of the Board enclosing opinion of the Chief Chemist of the Central Revenues Control Laboratory, in which the Board has agreed.

4. We are concerned in this appeal with the sugar syrup which contained some quantity of saccharin. None of the four decisions of the Tribunal that the departmental representative cites deals with sugar syrup containing saccharin, nor does the opinion of the Chief Chemist referred in the Board's circular. In any event all that the opinion says is that the sugar syrup has shelf life. In its decision relating to the same substance in the earlier appeal, the Tribunal was not concerned with the shelf life of the product or whether it is physical or chemical characteristics prevented it from being sold. In fact it was not claimed by the appellant earlier, nor is contended before us now, that the product has a short shelf life that it cannot be sold or that it contains chemical or physical characteristics which render it incapable of being marketed. The only contention that was raised, which was

accepted, was that, by the application of the ratio of the Delhi High Court's judgment in Delhi Cloth & General Mills Co. v. Joint Secretary, the goods have to be held not to be marketable because their sale would be contrary to law. The arguments of the departmental representative with regard to the other aspects therefore are not relevant. In Punjab National Fertilizers & Chemicals Ltd. v. CCE , the Tribunal was concerned with the liability to duty of sodium bicarbonate of purity of 71% to 74%. In coming to its conclusion that the product was liable to duty, it did not accept the contention raised on behalf of the manufacturer that this substance was not marketable because the purity of sodium bicarbonate was not in conformity with the Indian Standard specifications. The Tribunal quoted from the Delhi High Court's judgment in the same case that is now relied upon by the appellant (1978 ELT J121) to say that the fact that the product was sub-standard does not render it unmarketable. We do not see the relevance of this ratio of the Delhi High Court's judgment under consideration. After repeating the contention of the petitioner before it that the calcium carbonate was not marketable because it did not have the requisite degree of purity, the High Court went on to say that the product was not marketable because its sale would be in contravention of the Carbide of Calcium Rules, 1937 made under Petroleum Act, 1934 as the manufacturer was not in compliance with these rules. It is this ratio that has been relied upon in the earlier order of the Tribunal.

6. Nor do we find it possible to accept the contention of the departmental representative that merely because the product has some use, it necessarily becomes marketable. Marketability is dependent on the capability of the goods to be taken to the market to be brought and sold. In that context of marketability; as we have noted, it has not been argued before us by the appellant that it was not. However what the Delhi High Court said in its Judgment is that since the calcium carbonate could not be marketed because its sale would be contrary to the law, it is not goods in the economical scene. It went on to say that in the light of the rules "the product under consideration is neither sold nor is capable of being sold." We fail to understand the contention of the departmental representative that the prohibition contained in the Prevention of Food Adulteration Rules, 1955 would apply if the product is actually sold, and would not apply if it were not sold. We therefore find no reason to differ from the view taken earlier.

