

**Pfizer Limited Vs. Collector of Customs**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** May-18-1983

**Reported in :** (1983)LC808DTri(Delhi)

**Appellant :** Pfizer Limited

**Respondent :** Collector of Customs

**Judgement :**

2. The appellants imported aluminium foil laminated with polyethylene film. The goods were assessed under Heading 76.03/04(2) of the Customs Tariff Act, 1975 and customs duty of 100% plus auxiliary duty of 20% plus countervailing duty of 33.6% was charged thereon. The importers filed an application for refund claiming re-assessment at the rate of 27.5% customs duty plus 5% auxiliary duty. They based their claim on the authority of notification No. 170/79-Cus, dated 24-7-79. The subject goods in this case were imported on 4-5-79, i.e., about 2 1/2 months earlier than the Issue of the notification relied upon by the appellants and the Assistant Collector, therefore, rejected their claim on the ground that the aforesaid notification was effective only from the date of its issue and it could not be applied retrospectively to the subject goods. At the appeal stage, the appellants relied instead on notification No. 67/79-Cus., dated 15-3-79. The Appellate Collector rejected this claim also on the ground that notification No. 67/79-Cus.

covered only plain aluminium foil and did not cover laminated aluminium foil. The appellants filed a revision application to the Central Government in which they changed over to notification No. 173/77-Cus., dated 8-8-77 for relief. This revision

application, on transfer to the Tribunal, is now before us as the subject appeal.

3. When the case came up for hearing on 18-5-83, the appellants pressed for consideration of their claim under notification No. 67/79-Cus. but when it was pointed out to them that this notification gave exemption only from additional customs duty or countervailing duty, they again changed to notification No. 173/77-Cus. which was the one relied upon by them in their revision application. They stated that the condition laid down in this notification that aluminium manufactures specified therein should contain more than 97% aluminium applied to the purity of aluminium portion of the foil only. The invoice of the subject goods stated that aluminium in the laminated foil imported by them possessed purity of 99.00-99.2 and, therefore, the goods were duly covered by the notification.

4. The Department's representative stated that the appellants' original claim was under notification No. 170/79 and that because of the time limit of six months as contained in section 27 of the Customs Act, 1962 they were barred from making fresh claims.

5. We have carefully considered the matter. We find that the original claim of the appellants itself was for re-assessment of the goods at 27.5% customs duty plus 5% auxiliary duty. Notification No. 173/77-Cus.

ultimately relied upon by them gives precisely these rates of effective duty and nothing more. Since their claim remains the same in substance and they are not asking for anything more than what they had originally claimed, we hold that no objection can be taken to their relying on a different notification than the one cited in their original claim. As regards the merits of their claim, we find that exemption notification No. 173/77-Cus. is in the following terms : "Aluminium manufactures, containing more than 97% of aluminium, namely, plates, sheets, circles, strips and foil other than etched aluminium foil but including foil in any form or size ordinarily used as parts and fittings of tea chest and falling under Heading No. 76.03/04 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), are exempt from payment of so much of that portion of the duty of Customs leviable thereon, which is specified in the said First Schedule as is in excess of 27-1/2 per cent ad valorem." There is no doubt that this notification covers aluminium foil which, in the

absence of any qualifying words, would cover laminated aluminium foil also so long as aluminium is the predominant component of the laminate and gives the laminate its essential character. Since the laminated aluminium foils imported by the appellants have been assessed under Heading 76,03/04(2) CTA which relates, inter alia, to aluminium foil, it has to be presumed that in the subject goods aluminium was predominant and it gave the essential character to the goods. The notification, however, lays down a further condition that an aluminium manufacture to be covered thereunder should contain more than 97% of aluminium. The notification does not say that in the case of composite goods like laminates, the purity of the aluminium portion alone should be judged for the purpose of this condition. Going by the plain meaning of the wording used in the notification, aluminium content of the goods as a whole has to be taken into account and not the purity of the aluminium portion of the goods alone as contended by the appellants.

There is nothing on record to show that in the laminated aluminium foils imported by the appellants, aluminium was more than 97% of the laminate as a whole. Since the condition for exemption laid down in notification No. 173/77-Cus. is not satisfied, we hold that the appellants are not entitled to relief under this notification.

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