

Commissioner of Central Excise Vs. Pfizer Ltd.

Commissioner of Central Excise Vs. Pfizer Ltd.

SooperKanoon Citation : sooperkanoon.com/40418

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-29-2005

Judge : A Wadhwa, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Pfizer Ltd.

Judgement :

1. The appeal arises out of the order of the Commissioner (Appeals). In the impugned order, the Commissioner (Appeals) rejected the department's appeal before him as unsustainable. The Revenue is in appeal against this order.

2. Briefly the facts are that the respondents claimed exemption in respect of their products (a) Terramycin Opth ointment (3.5 gms), (b) Terra Cortril E/E ointment (3.00 gms) and (c) Nebacortril eye ointment (3.00 gms) under notification 29/88 dated 1.3.1988. The three products mentioned above are used for treatment of eye diseases including trachoma. Under notification 29/88 dated 1.3.1988 all formulations based on the list of bulk drugs specified in the 1st schedule to DPCO 1987 either individually or in combination of other bulk drugs specified in the said schedule attract 'Nil' rate of duty provided such formulations have therapeutic value in ophthalmological uses.

3. In the impugned order, the Commissioner (Appeals) rejected the department's contention that the three products in dispute fall in the second schedule (notification speaks of 1st schedule) of DPCO / or are not single ingredient bulk

drugs. He held that the proper authority to categorise the drugs into Ist or IInd Schedule is the Government under para 27 of DPCO 1987. He also held that on reclassification of goods the Department can demand duty only prospectively.

4. The Revenue contends that the Commissioner (Appeals) failed to examine the admissibility of the exemption in the light of the ingredients (tetracycline or hydrocortisone) used and conditions of notification 29/88; that the notification prescribes nil rate of duty to all formulations based on the list of bulk drugs specified in the first schedule to the Drugs (Price Control) Order, 1987 either individually or in combination with other bulk drugs specified in the schedule excluding formulations based on tetracycline or hydrocortisone for any therapeutic use other than for ophthalmological use; that the notification being self-explanatory and statutory in nature does not leave any scope for interpretation/clarification by any authority including Ministry of Industry; that the Commissioner (Appeals) is not correct in holding that duty not levied/short levied cannot be demanded and recovered even for past period of six months when classification is reviewed by the Department; that in the present case, the Department can issue a demand under Section 11A for past period of six months.

6. Notification 29/88 exempts all formulations based on the list of bulk drugs specified in the first schedule to the DPCO either individually or in combination with other bulk drugs specified in the said schedule excluding formulations based on tetracycline or hydrocortisone for any therapeutic use, other than ophthalmological uses. It is clear that even when a formulation contains tetracycline or hydrocortisone if it is used for ophthalmological use it gets the benefit of exemption notification 29/88 is available to such a drug. It is clear from the Ministry of Petroleum and Chemicals' letter dated 16.5.1990 that the products in question are meant for ophthalmological use as they are eye ointments. The Commissioner has rightly held that whether the products in question are based on IInd Schedule bulk drugs of DPCO 1987 has to be decided by the Administrative Ministry and since that Ministry holds them to be Category I formulations, they should be considered so. In our opinion, the formulations meant for ophthalmological use even if they contain tetracycline and hydrocortisone are eligible for the benefit of notification. The Commissioner's observation that the

Department can demand duty only prospectively when classification of goods is revised is however rejected as this observation is not based on good law.

7. The net result, however, is that the appeal of the Revenue fails as we consider that the products in question are entitled for the benefit of the said notification.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com