(2015) 10 SC CK 0029

In the Supreme Court Of India

Case No : Civil Appeal Nos. 5858-5859 of 2007

Commissioner of Central Excise, Mumbai — APPELLANT

Vs

Pfizer Ltd. — RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Citation : (2015) 326 ELT 431

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri K. Radhakrishnan, Senior Advocate, Tara Chandra Sharma, Ms. Binu Tamta, Rajiv Singh and B. Krishna Prasad, Advocates, for the Appellant; Mrs. Shiraz Contractor Patodia, Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. The question that falls for consideration is as to whether the Virginiamycin imported under brand name STAFAC 1000 is classifiable under Customs Tariff Heading 2941.90 and Central Excise Tariff Heading 2941.90 or under Customs Tariff Heading 2309.90 and Central Excise Tariff Heading 2302.00. The Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as ''CESTAT'') by impugned decision dated 5-9-2006 has followed its judgment rendered by the Chennai Bench in the case of ''Tetragon Chemie Pvt. Ltd. & Ors. v. CCE [1999 (30) RLT 366 = 2001 (138) E.L.T. 414 (Tribunal-LB)]. We may mention that the aforesaid judgment was upheld by this Court dismissing the appeal of the Revenue.

2. The contention of the appellant/Department in challenging the aforesaid findings of the CESTAT is that the said judgment in Tetragon Chemie Pvt. Ltd. is not applicable in the instant case. On the other hand, it is pointed out by Mr. K. Radhakrishnan, learned senior counsel appearing for the Department, that the CESTAT has totally ignored the fact that they have placed the decision of this Court classifying these products under sub-heading 2941.90 of the Central Excise Tariff that it is not premix animal feed under sub-heading 2302.00. It is pointed

out that this view has been taken in the case of the same assessee in ''Pfizer Ltd. v. Commissioner'' [2005 (186) E.L.T. A117 (S.C.)].

3. We find substance in the aforesaid submission of learned senior counsel. We may mention that insofar as the judgment in Tetragon Chemie Pvt. Ltd. is concerned, which was upheld by this Court [2003 (152) E.L.T. A92 (S.C.)], it pertains to two competent classifications, i.e., 29/36 as Vitamins or 23.09/23.02 as preparation of a kind used in animal feed. In that case, the product was a premix, the additional items in the product were calcium carbonate, benzene, dextrose, lactose, yeast, soya flour etc. On the other hand, in the present case, imported goods Virginiamycin is a well defined chemical of 100% purity with anti-bacterial properties included specifically under Chapter 29 by virtue of Chapter Note 1(a). The judgment of Tetragon Chemie Pvt. Ltd. has, therefore, no application to the facts of the present case.

4. As a result of the aforesaid discussion, the present appeal is allowed and the order of CESTAT is set aside.