

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

**DIVISION BENCH
COURT NO. I**

APPEAL NO. E/3321/2001-Ex[DB]

[Arising out of Order-in-Appeal No. 375/CE/CHD-I/01 dt. 21.08.2001
passed by the Commissioner of C.Ex. (Appeals), Chandigarh]

Pfizer Limited : **Appellant(s)**

VS

CCE, Chandigarh-I : **Respondent(s)**

Appearance:

Present for the Appellant(s): Mr. R.G. Seth, Advocate

Present for the Respondent(s): Mr. Atul Handa, A.R.

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Hon'ble Mr. Bijay Kumar, Member (Technical)

Date of hearing/decision: 05.12.2018

FINAL ORDER NO. 63592/2018

Per : Ashok Jindal

The appellant is in appeal against the impugned order, wherein demand of duty along with interest has been confirmed on the account of non-revision of the price for the products namely TMQ, Chloropropamide and Saliomycin during the period April 1993, July 1998 and November 1996 to March 1997 respectively.

2.1 Ld. Counsel for the appellant contented that non-revision of the price list is only due to oversight and TMQ is exempt from payment of duty; therefore, on that account no demand is sustainable against them. Consequently, no penalty is imposable.

2.2 With regard to Salianiomycin, it is the contention of the Ld. Counsel for the appellant that they have paid the duty before the issuance the Show Cause Notice; therefore, demand of interest and penalty is not sustainable as non-payment of duty is not due to fraud, willful statements and suppression of facts or with the intension to evade the payment of duty. Therefore, the impugned order is to be set aside.

3. On the other hand, the Ld. A.R. drew our attention to the Show Cause Notice alleging that the non-payment of duty is due to non-revision of price list. Unless and until, the audit was conducted, the non-revision of price list could not be revealed to the Revenue; therefore, penalty is imposable on the appellant.

4. Heard the parties and considered the submissions.

5. We find that in this case, demand sought to be confirmed against the appellant for two products namely TMQ, which was held an exempt from payment of duty; therefore, the demand of duty for clearance of TMQ is set aside. Consequently, no penalty is imposable on the appellant for that demand.

6. We further find that a demand of Rs. 58,576/- has been confirmed against the appellant for non-revision of price list of Salianiomycin and the same has not been disputed by the appellant and duty has been paid before issuance of the Show Cause Notice; therefore, the said demand is confirmed along with interest.

7. We further take note of the fact that the appellant has paid the duty only on pointing out by the departmental officers during the

course of examination of the records. If the audit could not be done then non-revision of price list would not have been revealed. In these circumstances, in terms of proviso to Section 11AC of the Act, penalty is reduced to 25% of the duty confirmed. The same shall be payable within 30 days from the receipt of this order failing which the appellant is liable to pay 100% duty as penalty is confirmed.

8. The appeal is disposed of in these terms.

(Dictated and pronounced in the open court)

(Bijay Kumar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

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