

**Chandigarh Lithotripsy Centre Vs. C.C.**

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**SooperKanoon Citation :** [sooperkanoon.com/18731](http://sooperkanoon.com/18731)

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

**Decided On :** Jul-25-2000

**Reported in :** (2000)(71)ECC122

**Judge :** S Kang, a T V.K.

**Appellant :** Chandigarh Lithotripsy Centre

**Respondent :** C.C.

**Judgement :**

1. The applicants filed this application for waiver of pre-deposit of duty demand of Rs. 19,42,759.00 under Section 28 of the Customs Act and interest under Section 28AB and penalty of Rs. 46,62,621.00 under Section 114A of the Customs Act, 1962.

2. Ld. Counsel appearing on behalf of the applicants, submits that the applicants made an import of hospital equipments, namely, 'Lithotriper X-1' and 'Urological X-ray examination Unit' and availed the benefit of Notification 64/88-Cus. dated 01.03.88. He submits that a show cause notice was issue to the applicants on the grounds that the applicants had not furnished proof of installation of the imported machines within a period of two years. He submits that the goods were imported in the year 1991 and the applicants wrote to the Director General of Health Services for issue of the necessary certificate for installation. The Director General of Health Services, vide letter dated 17.1.92 directed the applicants that the application for issue of installation certificate be furnished through the State Health Department

along with inspection report from the Director of Health Services. He submits that thereafter, on 07.04.93, the applicants wrote to the Director, Min. of Health & Family Welfare, Punjab for issue of necessary certificate. In pursuance to their request, the Director of Health & Family Welfare, Punjab, wrote to the Secretary to Govt. of Punjab, Health & Family Welfare Department vide letter dated 15.7.93 that the applicants have installed the equipment. He submits that, thereafter, nothing was heard from the Director General of Health Services in respect of issue of necessary installation certificate. He submits that it is not in the hands of the applicants to produce the installation certificate. He submits that from the correspondence between the Director of Health Services and the Secretary to Govt. of Punjab, Health & Family Welfare Department, it is clear that the imported equipment was duly installed in their premises. He also pleaded financial hardship and submits that the applicants are under losses. For this, he relied upon the balance-sheet of the applicants. He, therefore, prays that the application be allowed.

3. Ld. DR appearing on behalf of the revenue, submits that as per the conditions of Notification No. 64/88-Cus, the applicants were to prove that the hospital equipment imported was to be installed in hospital within a period of two years as per para 4 (iii) of the Table to the Notification. The applicants furnished a bond at the time of clearance of the equipments before the Customs authorities to this effect also that they will produce the installation certificate within two years.

Ld. DR submits that till today, the applicants have not produced any installation certificate. He submits that the installation certificate is to be issued by the Ministry of Health & Family Welfare or by the Director General of Health Services, Govt. of India. His contention is that the applicants applied for necessary certificate to the Director General of Health Services and the Director General of Health Services, vide letter dated 17.1.92, asked certain clarifications. Ld. DR also brought to our notice that vide letter dated 9.11.99, the Director General of Health Services again wrote to the applicants and asked for certain information. Ld. D.R. submits that as the applicants had not produced the requisite certificate, the application is liable to be rejected.

5. In this case, the applicants made an import of hospital equipment and availed the benefit of Notification No. 64/88 Cus dated 1.3.88. As per the conditions of the notification, the applicants were required to produce a certificate from the Ministry of Health and Family Welfare or from the Director General of Health Services, Govt. of India to the effect that the equipment imported has been installed in the hospital.

The applicants relied upon the correspondence between the Director General of Health Services, Punjab and the Secretary to the Govt. of Punjab, Health & Family Welfare Department to show that the Director, Health & Family Welfare, vide letter dated 15.7.93, specifically mentioned that the equipment imported by the applicants, was installed in their premises.

6. The requirement of notification is that a certificate is to be issued by the Director General of Health Services, Govt. of India or by the Ministry of Health & Family Welfare, Govt. of India. We find that vide letter dated 9.11.99, the Director General of Health Services, Nirman Bhavan, New Delhi asked for certain clarifications from the applicants. Till today, the applicants have not produced the requisite certificate from the Director General of Health Services or from the Ministry of Health & Family Welfare. Therefore, prima facie, we are of the view that it is not a fit case for total waiver of the duty and penalty. The applicants also pleaded financial hardship by showing their balance-sheet that the applicants are under losses. Therefore, taking into consideration the facts and circumstances of the case and the financial hardship of the applicants, the applicants are directed to deposit a sum of Rs. five lakh within a period of eight weeks from the date of receipt of this order. On deposit of the above mentioned amount, the deposit of remaining amount of duty, interest and penalty is waived for hearing of the appeal and the same is stayed during the pendency of the appeal. To come up for reporting compliance on 9.10.2000.