Chandigarh Lithotripsy Centre Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-07-2000

Reported in : (2001)(74)ECC380

Judge : A T V.K., P Chacko

Appellant : Chandigarh Lithotripsy Centre

Respondent : Cc

Judgement :

1. The issue involved in this appeal, filed by M/s. Chandigarh Lithotripsy Centre, is whether the exemption contained in Notification No. 64/88-Cus., dated 1.3.1988 is available to the "Lithotriper Model Triper X-1" and 'urological X-ray examination.

2. Briefly stated the facts are that the Appellants had imported medical equipments against custom duty exemption certification dated 10.1.91 issued by the Directorate General of Health Services, New Delhi (DGHS) availing the exemption under Notification No. 64/88-Cus: that the Commissioner of Customs, under the impugned Order, confirmed the demand of Customs duty, imposed penalty and confiscated the impugned goods with an option to redeem the same on payment of fine, observing that the restrictions contained in the Notification come alive the moment the importer fail to comply with conditions; that these was continuing obligation on the part of the Appellants to discharge the obligations under the Notification; that the duty liability fell on the importer since the condition of Para 3, and Para 1 to 4 of the Table to the said Notification was in the nature of a post-

importation condition, the liability to duty was not subject to any time limit.

Reliance was placed on the decision in the case of Mediwell Hospital and Health Care Pvt. Ltd. v. Union of India 1997 (89) ELT 425 (S.C.).

The Commissioner held that the Appellants failed to produce the installation certificate issued by DGHS; that the installation certificate is issued on the basis of the fact whether the hospital would be able to function in its full meaning regarding percentage free treatment of the condition laid down in Para 3 of the Table annexed to the Notification; that four conditions stated in the Table at Para (a), (b), (c) and (d) apply to all or in other cases to any of the specific category of institutions mentioned in the Table annexed to the notification, if specifically mentioned in respect of a particular category; that the Appellants had admitted in the documents submitted to Rosha Committee that they were unable to give records of OPD patients to see if condition of Para 2(a) of the Notification had been followed.

3. Shri K.K. Anand, Ld. Advocate, submitted that in the show cause notice dated 18.9.98, there was only one objection that the Appellants had not furnished the installation certification within the stipulated period; that it is apparent from the 'Installation Reports' dated 17.5.91 and 5.6.91 from M/s. Blue Star Ltd. that both the imported equipments were installed in the Appellants 'premises; that they had sent intimation regarding installation of the equipments directly to the DGHS which under letter dated 17.1.1992 directed them to file application for issue of an installation certificate through the State Health Department; that accordingly they requested the State Health Department to forward installation certificate to DGHS; that the Director, Health & Family Welfare, Punjab under letter dated 15.7.93 informed the DGHS that the Civil Surgeon, Ludhiana had reported that the Appellants had installed the equipments; that a copy of this letter was got endorsed by the Health Department to the Custom Department; that the delay, if any was due to Governmental procedure. The Ld.

Advocate, further, submitted that the Appellants are falling under Serial No. 2 of the Table annexed to the Notification No. 64/88-Cus and not in the category of Hospital mentioned in Serial No. 4 of the Table which is applicable to the hospital which is in the process of being established; that accordingly the condition of installation does not apply to them as held in St. Stephens Hospital v. Commissioner of Customs, New Delhi 2000 (40) RLT 157 (CEGAT). He also mentioned that Commissioner had relied upon the Bond said to have been given by them; that when they request the Department to furnish them a copy of the Bond, the Commissioner, under letter dated 11.10.1999, informed them that "The request for supply of copy of the bond is not material to this adjudication proceedings since it is not a relied upon document in the SCN." 4. The Ld. Advocate also submitted that as the notice was issued by the Assistant Commissioner in 1998 demanding the duty for the equipments imported in 1991, the notice is void ab initio as the Assistant Commissioner is not competent to issue the same. He relied upon the decision in Dewan Chand Satyapal Agarwal Imaging Research Centre v.C.C., New Delhi 2000 (39) RLT 1084 (CEGAT). He further contended, neither any penalty is imposable nor any interest is recoverable in respect of import effected before the provisions of Sections 28AB and 114A of the Customs Act came into force in view of decision in Dewan Chand's case, supra; that demand of duty beyond the limitation period specified under Section 28 of the Act was also held to be time barred in Dewan Chand's case. He relied upon the decision in Jagdish Cancer & Research Centre v. C.C. (Imports), Mumbai , Bharti Telecom v. C.C., Nhava Sheua 2000 (40) RLT 266 and Nippon Andiotronix Ltd. v. C.C. New Delhi 2000 (40) RLT 393 and Yellamma Dasappa v. C.C.Bangalore .

5. Countering the arguements, Shri M.P Singh, Ld. D.R., submitted that the reliance has been wrongly placed on the decision in St. Stephens Hospital case as it is a private hospital more than 100 years old run by a charitable trust; that such an hospital cannot be equated with the present Appellants which is a new Centre; that the show cause notice for taking action under the Customs Act was issued for violation of all the conditions specified in the Notification No. 64/88-Cus; that admittedly DGHS had given them a certificate for availment of the exemption under the said Notification but they had not furnished the installation certificate as required. The Ld. DR, further, submitted that the proviso to notification applies to all the categories of hospitals and not alone to hospitals mentioned in Serial No. 4 of the Table below the Notification; that it is evident from the letter dated 9.11.1999 of the DGHS that the Directorate General will monitor the implementation of the

conditions of the Notification and that is why DGHS directed the Appellants to furnish the information including the information regarding installation of the medical equipments in the premises of the hospital; that the said letter read with the judgment of the Karnataka High Court in the case of Yellamma Dasappa, supra, makes it apparent that the Appellants are required to furnish the certificate of installation. He emphasised that other conditions specified in the Notification are on-going conditions which an importer availing the exemption under the said Notification has to satisfy continuously year after year; that accordingly, the time limit will commence only from the date of contravention of such condition. The Ld.

D.R. finally submitted that the Appellants had given a bond according to which they were to comply with the conditions of the Notification, failing which they were liable to pay duty on demand; that the show cause notice has been issued in terms of the bond and as such demand is not time-barred; that it is mentioned in the show-cause-notice that the Bill of Entry was assessed provisionally and as such the Assistant Commissioner was competent to issue the notice.

6. In reply, the Ld. Advocate mentioned that Bill of Entry was not assessed provisionally as there is no such mention thereon; that the requirement of submitting the Bond was in respect on only hospitals which were in the process of being established; that further no time limit has been provided in the Notification for furnishing the Certificate of installation; that the information called by the DGHS under their letter dated 9.11.1999 has been furnished by them and as such all conditions have been fulfilled by them. He finally submitted that there is mention of conditions in the show-cause notice only in general terms, as a narration only; that in operative portion, the allegation made is only regarding non-submission of installation certificate and there is no allegation regarding violation of other conditions.

7. We have considered the submissions of both the sides. Notification No. 64/88-Cus., dated 1.3.88 exempts all equipment, apparatus and appliances, the import of which is approved either by Ministry of Health and Family Welfare or by the DGHS, as essential for use in any hospital specified in the table below. The said Table is extracted below; 1. All such hospitals as may be certified by the said

Ministry of Health and Family Welfare, to be run or substantially aided by such charitable organisation as may be approved, from time to time, by the said Ministry of Health and Family Welfare.

2. All such hospitals which may be certified by the said Ministry of Health and Family Welfare, in each case to be run for providing medical, surgical or diagnostic treatment not only without any distinction of caste, creed, race religion or language but also: (a) free, on an average, to at least 40 percent of all their outdoor patients; and (b) free to all indoor patients belonging to families with an income of less than rupees five hundred per month, and keeping for this purpose at lease 10 percent of all the hospitals beds reserved for such patients, and (c) at reasonable charges, either on the basis of the income of the patients concerned or otherwise, to patients other than those specified in Clauses (a) and (b).

3. Any such hospital in respect of which the said Ministry of Health and Family Welfare, may having regard to the type of medical, surgical or diagnostic treatment available there, or the geographical situation thereof, or the class of patients for whom the medical, surgical or diagnostic treatment is being provided certify either generally or in each case, that the hospital, even though it makes a charge for the said treatment is nevertheless run on non-profit basis and is deserving of exemption from the payment of duty on the said hospital equipment under this notification: Provided that the hospital equipment in respect of which the exemption is claimed, is imported by such hospital by way of free gift from donor abroad or has been purchased out of donations received abroad in foreign exchange: Provided further that where the said hospital equipment has been purchased out of donations received abroad in foreign exchange, the hospital has been permitted to maintain an account abroad by the Reserve Bank of India for the purpose of receiving funds donated overseas.

4. Any such hospital which is in the process of being established and in respect of which the said Ministry of Health and Family Welfare is of opinion-- (i) that there is an appropriate programme for establishment of the hospital.

(ii) that there are sufficient funds and other resources for such establishment of the hospital, (iii) that such hospital would be in a position to start functioning within a period of two years, and (iv) that such hospital, when it starts functioning would be relatable to a hospital specified in paragraph 1, 2 or 3 of this Table, and the said Ministry of Health and Family Welfare certified to that effect: (a) in the case of a hospital relatable to paragraph 3 of this Table, the importer produces evidence to the Assistant Collector of Customs at the time of clearances of the said hospital equipment that the same is being imported in accordance with the conditions specified in proviso to that paragraph: (b) the importer shall give an undertaking in writing to the Assistant Collector at the time of clearance of the said hospital equipment that the importer shall furnish certificates from the said Ministry of Health and Family Welfare or from the Directorate General of Health Services, Government of India within such period as the Assistant Collector of Customs may specify in this behalf for within such extended period as the Assistant Collector of Customs, on sufficient cause being shown, may allow in each case, to the effect-- (i) that such hospital equipment has been installed in the hospital; and (c) the importer shall furnish, at the appropriate time, the certificates referred to in (b); (d) the importer executes a bond in such form and for such sum as may be specified by the Assistant Collector of Customs binding himself to pay, on demand, and amount equal to the duty leviable on the said hospital equipment,-- (i) if such hospital starts functioning within the period specified therefore, as is not proved to the satisfaction of the Assistant Collector of Customs to have been installed in such hospital, or (ii) if such hospital does not start functioning within the period specified there for.

8. The notification came up for interpretation by the Tribunal in the case of St. Stephens Hospital v. CC, New Delhi 2000 (40) RLT 157 (CEGAT). The Appellate Tribunal considered the question as to whether the condition regarding installation of the equipment imported applied only to hospitals covered by Paragraph 4 of the Table. The Tribunal held as under: First of all, we note that the post-import conditions such as furnishing of certificate regarding installation of equipment and functioning of hospital is contained in the proviso to the table annexed to the notification and is not incorporated in the main body of the notification. This lends support to the view that the proviso incorporating this condition only governs Sl. No. 4 of the table to the Notification. Secondly, the certificate from DGHS and Ministry of Health and Family Welfare referred to in Clause (b) of the relevant

proviso, has to be the cumulative effect that the imported hospital equipment has been installed in the hospital and that such hospital has started functioning and the question of an existing hospital obtaining a certificate regarding commencement of its functioning, does not arise. Thirdly, the bond referred to in Clause (d) of the relevant proviso speaks of commencement of functioning of hospital and, therefore, cannot be held to be applicable to an existing hospital but only to a hospital in the process of being established (covered by Sl. No. 4 of the table to the notification).

For the above reasons, we hold that the requirement in Clause (b) of the relevant proviso for production of certificate from the prescribed authorities is not applicable to the appellant which is a hospital covered by Sl. No. 2 of the table to the notification.

9. As the appellants are covered by Paragraph 2 of the Table below Notification No. 64/88-Cus, as no evidence has been brought on record to show that the appellant hospital was in the process of being established so as to fall under Paragraph 4, the condition of production and certificate from the Ministry of Health and Family Affairs or DGHS to the effect that the imported hospital equipment has been installed in the hospital and that such hospital has started functioning does not apply to the Appellants in view of the decision in St. Stephens Hospital's case. We also observe that the Appellant's contentions that they had submitted the installation report to DGHS in 1992 and the same was returned to them by DGHS with the Direction to submit through State Health Department which also forwarded the requisite information about installation have not been rebutted by the Department. Thus the fact of installation of the imported equipment cannot also be disputed. We do not agree with the submissions of the Ld. DR that the show-cause notice was issued with reference to the contravention of all the conditions specified in the notification regarding free medical treatment to 40% outdoor patient, etc. No doubt the conditions were mentioned in the show-cause-notice issued to the Appellants, but nowhere it was alleged that these conditions were contravened by the Appellants. In para 4 of the notice only it was alleged that the Appellants "did not furnish any installation certificate within the stipulated period." Nowhere it was mentioned in the notice as to how the condition of medical

treatment either free of charge or at reasonable charge was not fulfilled by them and when such breach took place. In absence of any material, it cannot be said that the show-cause notice was issued for non-fulfilment of all the conditions specified in the notification. Accordingly, the impugned Order is not sustainable and we set aside the same. As the appeal of the Appellants is allowed on merit, we are not considering the other points raised by the Ld. Advocate such as competence of the Assistant Commissioner to issue the show-cause notice or whether demand was time barred.