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S.N.S. Diagnostics Ltd. Vs. Cc (A.C. Complex)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-03-2003

Reported in : (2003)(87)ECC602

Judge : S Kang, a T V.K.

Appellant : S.N.S. Diagnostics Ltd.

Respondent : Cc (A.C. Complex)

Judgement :

1. M/s. S.N.S. Diagnostics Ltd. have filed this appeal against the Adjudication Order No. 392/2002 dated 25.5.2002 by which the Commissioner of Customs has confirmed the duty of Customs and imposed penalty and ordered confiscation of the imported goods with an option to redeem the same on payment of a fine.

2. Shri Piyush Kumar, learned Advocate, submitted that the Appellants imported Hitachi CAT Scan Machine from Japan and cleared the same by availing the benefit of Notification No. 279/83-Cus under Bill of Entry No. 3079 dated 11.3.86 and 4518 dated 13.3.86; that the machine was installed at the premises of Lisie Hospital in the name and style of Cochin Scan Research Centre; that the Centre was closed on 30.7,96 as the machine was no more viable economically on account of wear & tear; that the Customs Officers seized the machine on 1.4.98 for alleged violation of the conditions of Notification No. 279/83; that the Commissioner under the impugned Order has confirmed the demand, imposed penalty, and confiscated the machine on the ground that the appellants have not

fulfilled the conditions of the Notification No. 279/83. The learned Advocate, further, submitted that the appellants had carried out free treatment of the patients in the required percentage throughout the life-span of the machine; that the Government of Kerala duly verified the contention of the appellants while recommending grant of subsequent customs duty exemption certificate vide letter dated 20.8.91; that the findings of the Adjudicating Authority that the hospital beds were not reserved is incorrect as they have time and again submitted that they have adhered to the stipulation of C.D.E.C.and there was no default on their part; that the machine was imported in 1986 whereas the show cause notice for demanding duty has been issued on 12.10.1998 beyond the period of 5 years specified under Section 28(1) of the Customs Act. Finally, he submitted that redemption fine of Rs. 1 lakh is highly excessive and grossly disproportionate to the value of the impugned goods; that the penalty of Rs. 25,000 is exorbitant and out of proportion of the gravity of the offence.

3. Countering the arguments Shri R.D. Negi, learned SDR, submitted that the benefit of the Notification No. 279/83-Cus dated 30.9.83 is available subject to the condition that the free treatment is provided on an average to atleast 40% of all outdoor patients and free treatment to all indoor patients belonging to the families with an income of less than Rs. 500 per month and to keep for this purpose at least 10% of all the hospital beds reserved for such patients; that the Commissioner has given his specific finding that the appellants have merely made a bald assertion to have treated more than 40% of the outdoor patients free and no material had been furnished in support of the same; that the question of meeting the other conditions of free treatment to indoor patients belonging to the families with monthly income of less than Rs. 500 and keeping 10% of the beds reserved does not arise as their's was only a Diagnostic Centre having no indoor facility. The learned SDR relied upon the decision in the case of Mediwell Hospital and Health Care Pvt. Ltd. v. UOI, 1997 (57) ECC 197 (SC) : 1997 (89) ELT 425 (SC) wherein it has been held that the object of providing free treatment to 40% to all outdoor patients and entire indoor patients of low income group must be achieved at any cost and on being satisfied that the said obligation have not been discharged the authorities can enforce realization of the Customs duty from the importer; that it has been held by the Supreme Court in Mediwell case that "the

very notification granting exemption must be construed to cast continuing obligation on the part of all those who have obtained the certificate from the appropriate authority and on the basis of that to have imported equipment without payment of customs duty." The learned SDR, therefore, contended that in view of continuing obligation on the part of the appellants to provide free treatment as specified in the notification the demand is not time barred.Commissioner of Customs (Import), Bombay v. Jagdish Cancer & Research Centre,Lady Amphthil Nurses Institution & the South Indian Association v. CCE, Chennai, 2002 (83) ECC 630 (LB) : 2002 (52) RLT 512 (CEGAT-LB); (3) Medical Relief Society of South Kanara v. UOI, 1999 (65) ECC 42 (Kar) : 1999 (111) ELT 327 (Kar) 4. We have considered the submissions of both the sides. The benefit of Notification No. 279/83 dated 30.9.83 is available subject to the condition that the hospital is certified by the Ministry of Health and Family Welfare to be run for providing medical, surgical or diagnostic treatment not only without any distinction of cast, creed, race, religion or language but also, (a) free on an average, to at least 40% of all their outdoor patients and free to all indoor patients belonging to the families with an income less than Rs. 500 per month and keeping for this purpose at least 10% of all the hospital beds reserved for such patients.

5. The appellants have not brought on record any material to show that these conditions specified in the notification, subject to which exemption from payment of import duty was availed of, has been fulfilled by them. As given in his finding by the Adjudicating Authority the appellants could not comply with the requirement of providing free treatment to all indoor patients of families having monthly income less than Rs. 500 and keeping 10% of beds reserved by them. The Supreme Court has held in the case of Mediwell Hospital that "it is needles to mention that the Government has granted exemption from payment of customs duty with sole object that 40% of all outdoor patients and entire indoor patients of the low income group whose income is less than Rs. 500 per month would be able to receive free treatment in the Institution and that the object must be achieved at any cost." The Supreme Court recently in the case of Jagdish Cancer & Research Centre was not impressed with the arguments of the Respondents that the fulfilment of the conditions may be achieved during the life of the equipment imported. According to the Supreme Court the percentage of patients treated free has to be achieved

generally all throughout the period. The Supreme Court also observed in Jagdish Cancer case that according to the condition of the notification 10% of total beds in hospital are to be kept reserved for the patients of the families having an income of less than Rs. 500 per month. The Centre was only having arrangement with another hospital for reserving 10% beds. In such a situation the Supreme Court denied the benefit of the notification to the Respondents observing that "we fuel that 10% of the total number of beds are supposed to be reserved for patients of such families in the hospital where the equipment is installed. The purpose of the notification for grant of exemption from payment of customs duty would not be served by making payment of expenditure incurred on some inpatients in some other hospitals." Further, we find that the penalty imposed is only Rs. 25,000 in a matter where the benefit of Customs duty availed was more than Rs. 1.15 crores. We also do not find the redemption fine of Rs. 1 lakh excessive at all. Accordingly, the appeal filed by the Appellants is rejected.

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