

Commissioner of Customs Vs. Satyapal Khosla Charitable

Commissioner of Customs Vs. Satyapal Khosla Charitable

SooperKanoon Citation : sooperkanoon.com/38646

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-01-2005

Judge : A T V.K., P Bajaj

Appellant : Commissioner of Customs

Respondent : Satyapal Khosla Charitable

Judgement :

1. The issue involved in this Appeal filed by the Revenue is whether the demand of customs duty is hit by time limit specified under Section 28 of the Customs Act.
2. When the matter was called, no one was present on behalf of the respondents, M/s. Satyapal Khosla Charitable Memorial Trust inspite of notice having been received by them as per the postal acknowledgement.

We, therefore, heard Shri U Raja Ram, learned Departmental Representative and perused the records.

3. In this case the respondents had imported audio meter in September, 1991 and claimed exemption from payment of duty under Notification No.64/88-Cus. The Additional Commissioner under order-in-Original No.49/2002 dated 31.5.02 confiscated the imported goods with an option to redeem the same on payment of Rs.25,000/- and confirmed the Customs duty and also imposed a penalty of Rs.10,000/- on the ground that the respondents had not fulfilled the conditions stipulated in Notification No.64/88 regarding providing free treatment to on an

average 40% of outdoor patients and free treatment to poor in door patients and reserve 10% beds for this purpose. The Commissioner (Appeals), however, under the impugned order has set aside the demand as time barred, as the show cause notice was issued on 16.9.2000 in respect of goods imported in 1991. Learned Departmental Representative has further submitted that it has been held by the Supreme Court in the case of Mediwell Hospital and Health Care Centre vs. Union of India (1997 (89) ELT 425 (SC)) that "obligation cast on the importer was a continuing obligation." Needless to say that in a continuing obligation the date of clearance of the goods can not be date for determining the limitation. The Larger Bench of the Tribunal in the case of Lady Amphthil Nurses Institute vs. Commissioner of Customs, Chennai [2002 (150 ELT 776 (Tri-LB))] has after considering the various judgments on the subject including the decision of the Hon'ble High Court of Madras in the case of Appollo Hospital Enterprises vs. Union of India [2001 (133) ELT 58 Mad)] held that the conditions specified in the Notifications "were based on the equipments imported when this equipment will be used for treating a particular percentage or number of patients who were poor" and "thus infringement could only be prospective from the date of clearance of the goods." The Larger Bench has held that "since it was a post importation obligation, therefore, liable to pay duty or confiscation of goods could arise only subsequent to the date of clearance of the goods. In the absence of any specific period, the liability could arise only when there is infringement of the conditions and hence Section 28 did not apply." Further, in the case of Commissioner of Customs (Imports), Mumbai, vs. Jagdish Cancer and Research Centre [2001 (132) ELT 257 (SC)] it has been held by the Apex Court that where the order has been passed for payment of Customs duty along with an order of imposition of fine in lieu of confiscation of goods, it shall only be referable to Sub-Section (2) of Section 125 of the Customs Act and it would not attract Section 28(1) of the Customs Act. Supreme Court has further held that "the order for payment of duty under Section 125 (2) would be an integral part of proceedings relating to confiscation and consequently orders thereon, on the grounds, as in this case, that the importer had violated the conditions of Notification subject to which exemption of goods was granted without attracting the provisions of Section 28(1) of the Customs Act." In view of this, we hold that time limit specified in Section 28 of the Customs Act will

not be applicable. The matter is therefore, remanded to the Commissioner (Appeals) for deciding the matter on merits.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com