

Batra Hospital and Medical Vs. C.C.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-02-2005

Reported in : (2005)(187)ELT253TriDel

Judge : S Kang, Vice-, N T C.N.B.

Appellant : Batra Hospital and Medical

Respondent : C.C.

Judgement :

2. Applicant filed this application for waiver of pre-deposit of duty of Rs. 1,32,37,001/- and penalty of Rs. 5 lakhs. In this case the applicant made import of medical equipment and availed the benefit of Notification No. 64/88-Cus. dated 1-3-88. Demand was confirmed and appellant failed to fulfill the condition of Notification No.64/88-Cus. as in the year 1995-96 the percentage of free patient is less than 40%.

3. The contention of applicant is that machines were imported in the year 1992 and except for these years 1995-96 the percentage of treatment of free patients is more than 40%. In the year 1998 the percentage of free patient is 47% whereas in the year the percentage of patient is 51%.

4. The contention of the Revenue is that they have not fulfilled the condition of the notification as they are treating less than 40% of free patient. The Revenue relied upon the decision in the case of Commissioner of Custom (Import), Mumbai v.

Jagdish Cancer & Research Centre reported in 2001 (132) E.L.T. 257 (S.C.) where the Hon'ble Supreme Court held that where the deficiency in the percentage of free treatment to patient can be made in subsequent period is rejected by the Hon'ble Supreme Court. The contention of revenue is that applicant had admitted that the treatment in the year 1995-96, the percentage of treatment of free patient is less than 40%. Therefore, the benefit of Notification was rightly denied.

5. We find that for the years 1994 & 97 and 1998-99 the applicant treated more than 40% free patients. The Hon'ble Supreme Court in the case of Jagdish Cancer & Research Centre (supra) relied upon by the Revenue after rejecting the argument of the assessee that the deficiency in the percentage of free treatment to patient can be subsequent year. The Hon'ble Supreme Court further held that it should generally be all through the period. It is being at least 40%, there is hardly any occasion to say that in case there is more than 40% in a given period that may make good the deficiency in the previous or the following year. In the present case, we find that applicant during the year 1998-99 generally treating more than 40% free patient and only in two years the percentage is 35% and 36%. In these circumstances, prima-facie applicant had a strong case in their favour. Therefore, pre-deposit of whole of the duty and penalty is waived for hearing of the appeal. Stay petition is allowed.

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