

Regional Institute of Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-07-2006

Judge : S Kang, Vice, M T K.C.

Appellant : Regional Institute of

Respondent : Cc

Judgement :

1. Regional Institute of Ophthalmology and Eye Hospital Trust, Sitapur, imported following equipments in terms of Notification No. 64/88-Cus dated 1.3.88 without payment of Customs duty in terms of Customs Duty Exemption Certificate (hereinafter referred as CDEC) issued by the Director General of Health Services (hereinafter referred as DGHS): 1. Coopervision Laserted Model 40A Argon Laser with green optics-3 Mirror Lens laser with modified 30 SL/M Slit Lamp 1 pair Argon safety goggles operators manual.

2. Coopervision Lasertok Model 150 PVND YAG Laser Q-switched ND-YAG laser with modified 30 SL/M motorized stand, energy continuously adjustable from 0.5 to 15 MKJ in single mode and 2 to 75 MJ in multimode.

4. Adopter for 40A with focusing optics and eye fitter for connecting 40A to PV.150 IND-YAG Laser.

5. Three mirror contact Glass 903 for examination of the entire fundus & Gonioscopy for Slit Lamp 900.

6. Green line/Biopolar coagulation unit 200/220V/ with 400/foot switch serial No. 3108.

All these goods were valued at Rs. 19,11,063/- on which duty of Rs. 26,03,082/- were imported under Bills of Entry No. 229861 dated 24.5.88, 220641 dated 8.4.88, and 280871 dated 8.6.88 claiming exemption under Notification No. 64/88-Cus. Notification No. 64/88-Cus provided certain conditions to be satisfied by the Hospital in question which intended to import the hospital equipments before claiming exemption under the said notification. The DGHS called information from the importer to ascertain whether the importer fulfilled the conditions for obtaining/retaining CDEC for import of hospital equipments. The information furnished by the importer was checked by a team of experts who inspected the hospital of importer on 13.1 2001 and they found that M/s. Regional Institute of Ophthalmology and Eye Hospital Trust, Sitapur failed to fulfill the post importation conditions stipulated under the notification No. 64/88-Cus and accordingly withdrawn and cancelled CDEC issued to them. Therefore, show cause notice was issued to the appellants for violation of conditions (a), (b) and (c) of Para 2 of the table of the notification. No. 64/88-Cus dated 1.3.88. Duty of Rs. 26,03,082/- was demanded for contravention of Section 111(o) of the Customs Act and the goods were proposed to be confiscated. Penalty was also proposed on the appellants under Section 112(a) of the Customs Act. The case was adjudicated by the Commissioner under the impugned Order confirming the demand of Rs. 16,24,403/-. He also ordered confiscation of the medical equipments valued at Rs. 19,11,063/- under Section 111(o) of the Customs Act, but, gave the appellants an option to redeem the same on payment of fine of Rs. 50,000/-. A penalty of Rs. 10,000/- was also imposed on the appellants.

2. It was argued before us for the appellants that CDEC was cancelled on the report of ROSHA Committee and they were not given any opportunity to present their case before ROSHA Committee. Statutory limit for demand of duty in terms of Section 28 is only up to 5 years, and hence, duty cannot be demanded under Section 28 of the Customs Act.

There was no material before the adjudicating authority that DGHS made in depth verification regarding various conditions said to be not fulfilled by the appellants in terms of notification No. 64/88-Cus.

Free treatment to 40% Out Door patients per year was not required under the notification. They have submitted the figures before the adjudicating authority which shows that they have given free treatment to more than 40% of Out Door patients. Reliance is placed by the appellants on the following cases: C.C. (Import), Mumbai v. Jagdish Cancer & Research Centre for the proposition that whenever an order confiscating the imported goods is passed an option under Section 125(1) of the Customs act is to be given to the person who pay fine in lieu of confiscation and under Section 125(2) the person shall, in addition, is liable to any duty and charges payable on such goods. Therefore, when an order is 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. It would not attract Section 28(1) of the Customs Act. S.V.M.C.'S INLAKS & Budhrani Hospital & Proposed Research Centre v. C.C., Mumbai notification No. 64/88-Cus dated 1.3.88 has been repealed before the issue of show cause notice in this case. Proceedings, therefore, initiated after rescinding of the same cannot be upheld. In the said decision it was also held that they do not charge any fees on the patient treated as Indoor patient since it is a charitable hospital and keeping record of the income of the patient while treating a patient may be counterproductive. Therefore, there is no reason to reject the appellants' submission for affording free treatment to poor who is earning Rs. 500/- per month.

3. An affidavit was also filed on behalf of the appellants that Regional Institute of Ophthalmology and Eye Hospital Trust working on no profit or no loss basis and is a public trust. The record of pertaining to OPD patients and Indoor patients is reflected in the registers and they submitted the figure of OPD and Indoor patients treated absolutely free from 1988 to 2005. When the appellants were asked that the figures filed by them are totally different from the figures submitted by them to DGHS, it was pointed out that in the figures supplied to DGHS they had given the figures of Regional Institute of Ophthalmology and Eye Hospital Trust whereas at

present in the affidavit they have given the figure of Regional Institute and other hospital and Sitapur Eye Hospital which were under the same Trust.

4. On behalf of the Revenue it was argued that under notification No.64/88 the appellants were allowed duty free clearance of the equipments on the basis of CDEC certificate issued by the DGHS. Since CDEC certificate has been withdrawn and cancelled by the DGHS under their letter dated 16.3.2001 the appellants are not entitled for exemption from customs duty and the ground on which the duty free clearance was allowed to them do not exists. Therefore, they are liable to pay the duty leviable on the equipments cleared free of duty at the time of importation. It was argued that the Supreme Court in the case of Mediwell Hospital held that there is continuing liability on the person who imports the goods under exemption under notification No. 64/88 of giving free treatment to 40% of Outdoor patients and 10% of the Indoor patients whose monthly income is less than Rs. 500/-. To verify these conditions information was called by the DGHS which was furnished by the appellants vide their letter dated 19.2.99. Thereafter, a team of experts were deputed by the DGHS for inspection of the hospital on 13.1.2001. Inspection team found that the Regional Institute of Ophthalmology & Eye Hospital Trust is a private trust registered under the Societies' Act. The patients registered with OPD have to pay for the inspection and buy medicines on their own, hence, the claim of hospital giving free treatment to more than 40% of OPD patients were found incorrect. The hospital is of 1000 beds. The patients have to pay for the inspection, cost of lens, surgery and medicines. Therefore, Indoor patients are not treated free as claimed by the appellants. The hospital has not earmarked any bed for patients whose monthly income is less than Rs. 500/- per month. The income of patients is not recorded on the case sheet. As such claim of the hospital of treating all indoor patients with income less than Rs. 500/- per month is incorrect.

5. Before the adjudicating authority the appellants furnished certain figures of Indoor and Outdoor patients which were claimed to have been treated free of charge. However, these figures were taken for 5 or 6 days in each year and these are entirely different from the figures supplied to DGHS. Figures supplied by the appellants in the affidavit now include the figure of Sitapur Hospital which is a

different hospital although run by the same Trust. Despite this the affidavit claimed that the appellant hospital is also run by a public trust whereas before the DGHS it was claimed as a private trust. In the affidavit it has been claimed before us that it is the public chargeable trust. Before the DGHS it was not claimed as charitable trust. Therefore, it was pleaded that the affidavit may be rejected and the finding of the lower authorities may be upheld. Reliance was placed on the following decisions: held that the very notification granting exemption must be construed to cast the obligation on the part of all those who have obtained the certificate from the appropriate authorities and on the basis of that have been imported equipments without payment of customs duty to give free treatment to at least 40% of Outdoor patients as well as would give free treatment to all Indoor patients belonging to families with an income up to Rs. 500/- per month...." If on such inquiry the authorities are satisfied, continuing obligation are not being carried out then it will be fully upon the authorities to ask the person who have availed the benefit of exemption to pay the duty payable in respect of equipment which has been imported without payment of customs duty. C.C. (Imports), Mumbai v. Jagdish Cancer & Research Centre for the proposition that the order for payment of duty under Section 125(2) would be an integral part of the proceedings relating to confiscation and consequential orders thereon, on the ground as in this case that the importer had violated the condition of notification subject to which exemption of goods was granted, without attracting the provisions of Section 28(1) of the Customs Act. A reference may beneficially be made to a decision of this Court reported in Mohan Meakins Ltd. v. CCE, Kochi wherein it has been observed in Para 6....

"Therefore there is a mandatory requirement on the adjudicating officer before permitting the redemption of goods, firstly, to assess the market value of the goods and then to levy any duty or charge payable on such goods apart from the redemption fine that he intends to levy under Sub-section (1) of the section." In this view of the matter the objection raised by the Centre that Section 28 of the Customs Act would be attracted is not sustainable.

Confiscation could be ordered only on the ground of non-submission of certificate and no other ground.... We, therefore, feel that reading the notice parawise and

confining it watertight within each paragraph, would not be a correct way of construing notice. It is to be read as a whole to find out as to whether the person concerned is made aware of various grounds on the basis of which action is proposed to be taken as well as the nature of action." The Supreme Court upheld the finding of the adjudicating authority for confiscation of the goods under Section 111(o) of the Customs Act.

6. It was also argued that action can be taken against the appellants despite rescinding of notification No. 64/88 under the provisions of Section 159A of the Customs Act.

7. We have considered the submissions made by both sides. We find that the main issue involved in this appeal is whether the appellants have fulfilled the conditions of Notification No. 64/88-Cus, and whether the goods are liable for confiscation and appellants are liable to penalty.

8. We find that the adjudicating authority under the impugned order has demanded duty of Rs. 16,24,403/- from M/s. Regional Institute of Ophthalmology & Eye Hospital Trust on the ground that the customs duty exemption certificate dated 7.4.88 granted to them by DGHS on the basis of which they had availed the customs duty exemption was cancelled by the said authorities under their letter No. 2-37026/3/91/MG dated 16.3.2001. This action was taken by DGHS as the hospital has not treated the patients free whose monthly income is less than Rs. 500/-.

They have not recorded income status of the patients to substantiate their claim that they were treating all such patient having income less than Rs. 500/- per month free of charge. Outdoor patients were also not treated free of charge although 40% of patients were required to be treated free of charge. We find that DGHS before cancellation of CDEC issued notice to the appellants and obtained information about the patients whether Indoor or Outdoor which were treated free of charge and after receipt of information from the appellants an expert committee was sent to visit the hospital and verify the information.

After verification of the information DGHS came to the conclusion that the appellants have failed to fulfill the conditions described under Notification No. 64/88-Cus. The appellants have also failed to give complete information to substantiate their claim that they have fulfilled the condition of notification No. 64/88 before the adjudicating authority. Therefore, in terms of law laid down by the Supreme Court in the case of Mediwell Hospital and Health Care Pvt.

Ltd. v. UOI (supra) there was continuing obligation on the appellants to give free treatment to at least 40% of Outdoor patients and at least 10% Indoor patients whose monthly income is less than Rs. 500/-. The appellants could not establish before adjudicating authority that these conditions have been fulfilled. Affidavit submitted before us shows entirely different picture which is contrary to the information furnished to DGHS or to the Commissioner during adjudication. Even now the nature of the Trust is shown as different and the figure of two different hospitals have been added together. Therefore, we cannot accept the figures furnished as correct. Therefore, the findings of the lower authorities and DGHS which are based on the information furnished by the appellants and verification done by the expert committee have to be treated as correct. From those figures it is clear that they have neither given free treatment to 40% of Outdoor patients nor given free treatment to 10% of Indoor patients having income of less than Rs. 500/- per month, nor reserved beds for the Indoor patients having monthly income less than Rs. 500/-. Therefore, the appellants are not entitled for the benefit of exemption under notification No. 64/88-Cus.

The claim of the appellants that the show cause notice was issued to them after rescinding of notification is correct as the show cause notice was issued to them on 19.11.2003 whereas the notification No.64/88 was rescinded on 1.3.94. However, show cause notice can be issued in terms of notification No. 64/88-Cus as there is a continuing liability on them and action can be taken for violation of conditions of notification till the life of equipment by virtue of bond executed by them before the customs authorities as well as under Section 159A of the Customs Act. Since, the appellants having not fulfilled the post importation condition, they have rendered the equipments liable to confiscation under Section 111(o) of the Customs Act. The appellants are also liable for penalty for non-

fulfillment of post importation condition under Section 112(a) of the Customs Act. Therefore, we do not find any infirmity in the Order of the adjudicating authority. We, accordingly, reject the appeal.

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