

The Collector of Customs and ors. Vs. Diascans (India) Ltd. and ors.

The Collector of Customs and ors. Vs. Diascans (India) Ltd. and ors.

SooperKanoon Citation : sooperkanoon.com/877266

Court : Kolkata

Decided On : Jun-17-1991

Reported in : (1991)2CALLT326(HC),95CWN1067

Judge : Nagendra Prasad Singh, C.J. and ;Umesh Chandra Banerjee, J.

Acts : [Customs Act, 1962](#) - Section 25(1); ;[Constitution of India](#) - Article 226;
;Fiscal Law

Appeal No. : F.M.A.T. No. 494 of 1991

Appellant : The Collector of Customs and ors.

Respondent : Diascans (India) Ltd. and ors.

Advocate for Def. : B. Gupta, ;S.K. Bagaria and ;Siddharta Mitra, Advs. Nos. 1 and 2 and ;Ashok Dhandhanian, Adv. Nos. 3 and 4

Advocate for Pet/Ap. : N.C. Roy Chowdhury, ;Partha Mukherjee, ;Tapas Hazra and ;Sharmistha Sengupta, Advs.

Judgement :

Umesh Chandra Banerjee, J.

1. The disparity between developed and a developing economy is more pronounced in the matter of availability of medical facilities. Efforts, however, are

now afoot to eradicate such a disparity either by indigenous development of medical facilities by way of transfer of technology from developed to developing countries or by direct importation of equipments so as to subserve the need of the hour and the latest development in medical sciences be made available to the people at large. The State has a responsibility in the matter of providing medical facilities to the citizens and to ameliorate the conditions of suffering people, various policies have been engrafted in the Statute Book so that importation of sophisticated medical equipment can be had, the ultimate object being to render medical assistance so far as is practicable.

2. Our country also is not lagging behind in this respect in the matter of providing medical facilities to the ordinary common man and with that background the Notification No. 64/88 dated 1.3.1988 was issued by the Ministry of Finance, Government of India so as to permit an importer to import sophisticated machinery for medical treatment even without payment of custom duties-A positive step for the benefit of the people. Admittedly the same results in loss of revenue for the country but actions cannot always be measured in terms of rupee and paisa-in discharge of its social obligation certain measures have had to be adopted so that this development in medical sciences may be available to its citizens. Checks and balances have to be introduced in order to avoid the mal-utilization of such a benefit- this restriction cannot by any stretch can be said to be unreasonable and the governmental authority is within its rights to impose some such conditions as is deemed expedient.

3. The Notification No. 64/88 provides exemption in payment of whole of the duty in the matter of importation of machinery. This being an exemption notification, the same shall have to be construed strictly and the law is well settled on this score and as such we need not dilate much in regard to such an issue.

4. Before proceeding further and in order to appreciate the contentions raised in the matter, a brief reference to the factual aspect ought to be effected at this juncture.

5. The writ petitioner No. 1, being desirous of setting a diagnostic clinic decided to import one Nuclear Magnetic Reasonance Scanner (hereinafter referred to MRI

Scanner) and to instal the same at its diagnostic clinic at Calcutta. The MRI Scanner is a highly sophisticated, technical and modernised medical equipment. The clinical application of diagnostic capability of MRI Scanner particularly in brain, bones, breast, spine, joint ligaments, tendons and nerve roots is unmatched. Incidentally it is to be noted that in the entire country there are only five MRI Scanners functioning at New . Delhi, Bombay, Madras and Hyderabad. No Scanner is available in the entire eastern region of the country.

6. On the further factual score it appears that the petitioner to give effect to its avowed desire imported the abovenoted MRI Scanner from a firm in U.S.A. at a cost of 9,00,000 U.S. Dollars. The foreign suppliers M/s. Toshiba America MRI Inc., USA in order to have the Scanner's full benefits invited 2 (two) of the leading Doctors attached to the clinic of the petitioner No. 1 to undertake training courses at San Francisco and Philadelphia in terms of which two Doctors namely, Dr. S. Banerjee and Dr. Bhowmick duly attended the abovenoted training courses and after successful completion, we were told, came back to this City. In terms of the agreement, however, the MRI Scanner arrived at the port of Calcutta hi August, 1990 and the petitioner duly filed a Bill of Entry for home consumption in order to obtain clearance of the abovenoted Scanner equipment. The petitioner in the Bill of Entry also claimed exemption in terms of the Notification No. 64/88-CUS dated March 1, 1988 and according to the petitioner, all necessary declarations and certificates in terms of the Notification to obtain the exemption had been filed by the petitioner. Apparently, however, the Custom Authorities were not satisfied with the declarations and certificates filed by the petitioner No. 1 by reason where for no clearance could be effected and it is this refusal to clear the MRI Scanner from Port of Calcutta which prompted the petitioner No. 1 to file a writ application before this Court. While proceeding with the matter before the learned Trial Judge it was contended on behalf of the Custom Authorities that the only impediment to release of the Scanner was the non-furnishing of the certificates from the Ministry of Health and Family Welfare, Government of India and the bond of end use. The learned Trial Judge, however, upon consideration of the- facts and circumstances of the matter in issue was pleased to direct the Ministry of Health and Family Welfare, Government of India to grant the appropriate certificate to the writ petitioner's Clinic under paragraph 2 of the Table of the Notification No. 64/88 and

upon the petitioner executing a bond, the respondent Custom Authority was directed to release the Scanner within 48 hours thereafter.

7. This appeal is directed against the order of the learned Trial Judge.

8. At this juncture, however, it would be convenient to note the Notification. The relevant extract of which are quoted herein-below :-

'Exemption to hospital equipments imported by specified category of hospitals (charitable) subject to certification from DGHS etc.-In exercise of the powers conferred by Sub-section (1) of Section 25 of the [Customs Act, 1962](#) (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all equipment, apparatus and appliances, including spare parts and accessories thereof, but excluding consumable items (hereinafter referred to as the 'Hospital equipment'), the import of which is approved either generally or in each case by the Government of India in the Ministry of Health and Family Welfare, or by the Directorate General of Health Services to the Government of India, as essential for use in any hospital specified in the Table below, from -

(i) the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975); and

(ii) the whole of the additional duty leviable thereon Under Section 3 of the said Customs Tariff Act.

*** **TABLE

1. All such hospitals as may be certified by the said Ministry of Health and Family Welfare, to be run or substantially added 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 per cent 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 least 10 per cent of all the hospital 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 required 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 starts functioning would be relatable to a hospital specified in Paragraphs 1, 2 or 3 of this Table.

and the said Ministry of Health and Family Welfare certifies to that effect:

Provided that-

(a) in the case of a hospital relatable in Paragraph 3 of this Table, the importer produces evidence to the Assistant Collector of Customs at the time of Clearance 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 or within such extended period as the Assistant Collector of Customs, on sufficient cause being shown, may allow in case, to the effect -

(i) that such hospital equipment has, been installed in the hospital; and

(ii) that such hospital has started functioning ;

(c) the importer shall furnish, at the appropriate time, the certificate 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, an amount equal to the duty leviable on the said hospital equal to the duty leviable on the said hospital equipment,-

(i) if such hospital starts functioning within the period specified therefor, 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 therefor.

Explanation.-For the purposes of this Notification, the expression 'Hospital' includes any Institution, Centre, Trust, Society, Association, Laboratory, Clinic and Maternity Home which renders medical, surgical or diagnostic treatment.'

In view of the aforesaid explanation the clinic shall be included within the expression 'Hospital.'

9. Mr. Roy Chowdhury appearing for the appellant-Custom Authorities strenuously submitted that the writ-petitioners-respondents have not complied with the requirements of Notification No. 64/88-Custom dated 1-3-1988 referred to above, by furnishing a certificate from the Government of India in the Ministry of Health and Family Welfare or by the Directorate General of Health Services to the Government of India that import of the equipment/apparatus is 'essential for use in any Hospital specified in Table' of the said Notification. It was pointed out on behalf of the appellants that the certificate which has been granted by Dr. P. C. Sinha in terms of paragraph 2 of the Table, merely states in a mechanical manner, the provisions laid down in paragraph No. 2 of the Table and does not disclose on what basis or document or documents such certificate had been granted. Mr. Roy Chowdhury further pointed out that the certificate of Dr. P. C. Sinha can not by any stretch be deemed to have been granted by the Ministry of Health and Family Welfare or by the Directorate General of Health Services to the Government of India. Incidentally it is to be noted that Dr. P. C. Sinha is stationed in Delhi in the office of the Director General of Health Services. This Court, however, during the course of hearing directed further issuance of notice to the Ministry of Health and Family Welfare since there was no appearance on their part at the hearing of the appeal. In terms of the notice Mr. Dhandania appeared for the Ministry of Health and Family Welfare and wanted a further opportunity to obtain certain instructions in the matter and in terms of the prayer of learned Advocate for the Government of India, Ministry of Health and Family Welfare such an opportunity was granted and the matter was adjourned. On the adjourned date Dr. P. C. Sinha, represented the Government of India and instructed Mr. Dhandania on behalf of both the Director

General of Health Services, Government of India as also the Ministry of Health and Family Welfare, Government of India. Apparently, there was some confusions in Court by reason where for the learned Advocate wanted a further time so that an affidavit may be filed in regard thereto. This Court granted a further opportunity to file an affidavit. In the affidavit itself, however, affirmed by one Badri Singh Bhandari, being the Under-Secretary in the Ministry of Health and Family Welfare, Government of India and duly authorised to affirm the affidavit on behalf of the Government of India stated :

'The certificate issued by the Director General of Health Services vide No. Z 37036/5/90-MG dated 26th February, 1991 was issued with the approval of the Ministry of Health and Family Welfare.....'

10. By reason of the abovenoted statement of the Under-Secretary of the Department of Health and Family Welfare, question of raising any objection on the count that certificate has not been given by the Ministry of Health and Family Welfare, in our view, cannot be sustained. The Under-Secretary in no uncertain terms stated the approval of the Ministry of Health and Family Welfare so far as the certificate issued by the Director General of Health Services was concerned. The other contention of Mr. Roy Chowdhury in regard to the issue of certificate that the same has been issued without any application of mind and in a mechanical manner also in our view, cannot be sustained by reason of the subsequent approval of the certificate by the Ministry of Health and Family Welfare.

11. It was then submitted by Mr. Roy Chowdhury that even if it is held that Dr. P. C. Sinha had issued the certificate in terms of paragraph 1 of the Notification on behalf of the Ministry of Health and Family Welfare and the Directorate General of Health Services, still there is no material on the record to show that the clinic in question shall be deemed to be a Hospital as contemplated in paragraphs No. 1, 2 or 4 of the Table.

It may be pointed out that on behalf of the writ petitioners there has been no assertion that the said clinic belongs to category mentioned in paragraph No. 1 of the Table. According to the writ-petitioners the clinic will be covered by paragraphs

Nos. 2 and 4 of the Table quoted above. In other words, the said clinic shall be deemed to be a Hospital which is to be run for providing diagnostic treatment,

(a) free, on an average, to at least 40 per cent 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 least 10 per cent of all the hospital 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).

12. On behalf of the writ petitioners it was pointed out that they have not only undertaken to comply with the requirements of paragraph No. 2 of the Table mentioned above, but have also complied with the conditions prescribed in paragraph No. 4 of the said Table, which requires the Ministry of Health and Family Welfare to be satisfied that (i) there is an appropriate programme for establishment of Hospital, (ii) there are sufficient funds and other resources required for such establishment of the Hospital, (iii) such Hospital would be in a position to start functioning within a period of two years, and (iv) such Hospital, when starts functioning would be relatable to a Hospital specified in paragraphs 1, 2 or 3 of the said Table. In this connection our attention was drawn to the aforesaid certificate dated 26-2-1991 granted by Dr. P. C. Sinha, Chief Medical Officer (General), Directorate General of Health Services, Ministry of Health and Family Welfare certifying that the Centre had an appropriate programme for establishment of the Diagnostic Centre and had sufficient funds and other resources to establish the Centre. It has further been certified that the Centre will start functioning within two years from the date of issue of the certificate and that the Centre, when starts functioning would be relatable to a Hospital specified in paragraph 2 of the Table of the Notification as aforesaid. I have already mentioned that on behalf of the Ministry of Health and Family Welfare, as well as on behalf of Directorate General of Health Services to the Government of India, it has been asserted that the said certificate had been granted by Dr. P. C. Sinha with the approval of the Ministry of Health and Family Welfare as well as by the Directorate

General of Health Services to the Government of India.

13. It may further be mentioned that during the hearing of this appeal a supplementary affidavit has been filed on behalf of the writ petitioners respondents which has been sworn by Dr. Pranab Dasgupta, respondent No. 2 who is one of the Directors of Diascans (India) Limited. That affidavit was filed on 4-4-1991 starting as follows :

'3. I further say that in addition to the said undertaking and the said bond which have already been furnished by the respondent company, the respondent company hereby gives an undertaking that on installation of the MRI Scanner in question, it would comply with the conditions (a) and (c) mentioned in Clause 2 of the Table to the said Notification No. 64/88-Cus. The respondent company hereby further undertakes that as and when any facility for indoor patients is created by the respondent company the conditions mentioned in Sub-clause (b) of Clause 2 of the Table to the said Notification will also be complied with by it. The respondent company is ready and willing to execute a bond in support of and/or incorporating the aforesaid undertakings.'

14. In view of the aforesaid stand taken on behalf of the writ petitioners, it shall be deemed that the undertaking has been given on behalf of the writ petitioners that on installation of the MRI Scanner in question it would comply with the conditions (a) and (c) of paragraph: 2 of the Table i.e. it shall provide diagnostic treatment 'free, on an average, to at least 40 percent of all their outdoor patients' and provide diagnostic treatment 'at reasonable. charges, either on the basis of the income of the patients concerned or other wise, to patients other than those specified in Clauses (a) and (b)' of paragraph 2 of the Table. A further undertaking has been given that as and when any facility for indoor patients is created by the writ petitioner-company, the conditions mentioned in Clause (b) of paragraph 2 of the Table of the Notification aforesaid will also be complied with i.e. it shall provide diagnostic treatment 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 least 10 per cent of all the hospital beds reserved for such patients. The respondent company is also willing to execute a bond in support of and/or incorporating the

aforesaid undertakings.

15. Taking the matter in its proper perspective and on consideration of the exemption Notification it is clear that in the event of the Hospital equipment not being available in the country, importation would be permissible on the certification of certain agencies and in the event of such a certification, exemption of duty shall be allowed though, however, with certain reservations and the purpose being to ameliorate the sufferings of the people in the country as a whole. Sheer technicality ought not to outweigh the cause of suffering millions. Admittedly, this particular medical equipment is not available anywhere in the eastern part of this country-installation of the same would render a positive assistance and help to the people in general. Would the law Court be justified in accepting the contention of the Revenue Authority that the Notification ought to be construed in the strictest possible terms? While it is true and it is a well settled principle of law that all revenue statutes including the Notification framed therein ought to be construed strictly and no amount of laxity ought to be allowed, but considering the present-day affair in regard to medical development throughout the globe and considering the socio-economic conditions of the country and since the law makers themselves have introduced a Notification for exemption of duty with an avowed object of giving redress to suffering people of the country and on the wake of such a legislation can it still be said that technical objections ought to be sustained as otherwise the same would be in conflict with the well settled principle of law in regard to revenue matters-In our view, the object of the Notification is loud enough and the law Courts also should rise up to the occasion to avoid technicality in order to complete justice between the parties. Revenue Authorities cannot and ought not always to act as a tax gatherer. The object of the Notification having statutory force shall have to be given a proper meaning so as to allow the law makers to have their intent fulfilled rather than rendering it to be totally nugatory and otiose.

16. Turning now on to the second count of Mr. Roy Chowdhury's submission in regard to the import trade control policy, it was contended that Appendix 6 (six) Item 36(a) of the Import Policy 1990 to 1993 provided that importation, of life saving equipment can be effected by those having after-sales service arrangements, as certified by the authorities mentioned against item No. 36(a). For

convenience's sake the above-noted Item No. 36 (a) of Appendix 6 of the Import Policy is as follows :

36(a) Life saving equipment as (i) By all persons where the c.i.f. per List 2 of this Appendix value of a single item of equip-ment is less than Rs. 1 lakh(Rs. One lakh).(ii) By those having after-sales service arrangements as certified by the Director General of Technical Development, the Chief Medical Officer or Civil Surgeon of a District and the Chief Medical Superintendent of hospital attached to a recognised Medical College, or any of the agency designated for the purpose by the Chief Controller of Imports Exports, New Delhi where the e.i.f. value of a single item of equipment is Rs. 1 lakh and above. Customs Authorities will allow imports on the basis of a certificate of eligibility from anyone of the aforesaid designated agencies.

17. Considering the supplementary import policy effective from 7th June, 1990, it appears now that importation can be had by all persons where the value of a single item is less than Rs. 1 lakh and for value of Rs. 1 lakh and above, by those having after-sales service arrangements as certified by the appropriate authorities as mentioned in the policy itself. Admittedly the equipment costs much more than Rs. 1 lakh and as such Item No. (ii) in the eligibility criteria has to be complied with viz., a certificate from the Director General of Technical Development, the Chief Medical Officer or the Civil Surgeon of a District and the Chief Medical Superintendent of Hospital attached to a recognised Medical College or any of the agency designated for the purpose by the Chief Controller of Imports and Exports, New Delhi. As regards the eligibility criteria it has been specifically stated that import will be allowed by the Customs Authorities on the basis of certificate of eligibility from 'any one of the aforesaid designated agencies'.

18. It is on this score also Mr. Roy Chowdhury submitted that the two certificates produced by the writ petitioners before the Appellate Court one from Prof. C. K. Chatterjee and the other from the Surgeon, Superintendent of a recognised Hospital cannot also be accepted on the ground that the certificates do not disclose what information and what documents were placed either before Prof. C. K. Chatterjee or before the Surgeon, Superintendent of the Hospital. It was contended that the certificates do not show that the writ petitioners have any after-

sales service arrangements with any person ; neither there is any mention as to the persons or the company who have the means to give such after-sales service facilities. Strenuous submissions were made as regards user of language In the certificate itself. Surprisingly, however, two certificates, as produced in Court, contained identical and similar language and it is on this count that Mr. Roy Chowdhury levelled very strong criticism against the writ petitioners and in our view, justifiably so. Obviously the certificates were drafted by the self-same Person and were produced for signature before the two agencies as mentioned in the policy and signatures were obviously obtained thereon. While there is no dispute about the competency of the persons certifying to that effect but certificates as mentioned in the policy, since a mandatory requirement of law, ought to be fulfilled upon proper application of mind ; the certificates being in the identical language, however, negates such an application of mind. In that view of the matter the contention of Mr. Roy Chowdhury on this count as to the invalidity of the certificates cannot be brushed aside.

19. Incidentally, however, it is to be noted that there is a further certificate on record issued by Prof. C. K. Chatterjee dated 28th March,'1991 which, however, complying with the requirements of law and since Item No. 36(a) exclusively provide that certificate from any of the designated agencies will conform to the requirement of law, no exception can be taken to the latter certificate dated 28th March, 1991. In any event, the requirement of law is that there should be proper after-sales service arrangements so that costly machinery imported from outside agencies need not be rendered useless after its installation. The agreement with Digitals India amply exhibit such an after-sales agreement. It is now on record that Digitals India is acting as an agency of the foreign seller in this country, as a matter of fact, two very eminent doctors were sent abroad for the purpose of proper training facilities in regard to the handling and operation of the life saving equipment and both the doctors are back in town upon successful completion of the training period. The correspondence with the Toshiba America MRI Inc., (TAMI), suggests the correctness of the statement in the affidavit filed by the respondent-writ-petitioners. The agreement with Digitals India contained the following terms :

'WARRANTY : Two years, all parts and labour including environmental options. 90% machine uptime guaranteed. Digitals India engineer, TAMI trained, will be available during working hours on all working days.

Diascans (India) Ltd. will pay Digitals India, equivalent of US \$ 25,000/- (i.e. Rs. 4,40,000/-) in 8 equal instalments over two years. Payment will be released at the end of each quarter, as follows :

31st December, 1990 .. Rs. 55,000.00

31st March, 1991 .. Rs. 55,000.00

30th June, 1991 .. Rs. 55,000.00

30th September, 1991 .. Rs. 55,000.00

31st December, 1991 .. Rs. 55,000.00

31st March, 1992 .. Rs. 55,000.00

30th June, 1992 .. Rs. 55,000.00

30th September, 1992 .. Rs. 55,000.00

POST WARRANT

MAINTENANCE' : After expiry of 24 months parts and labour warranty Digitals India Diascans (India) Ltd. will enter into a i service contract agreement as follows :

* First Year Post Warranty .. Rs. 4,50,000/-

* Second Year Post Warranty .. Rs. 4,75,000/-

* Third Year Post Warranty

onwards .. Rs. 5,00,000/-

This will cover labour only. Parts or spares consumed

will be charged additional at actuals'.

20. On perusal of the aforesaid warranty and post warranty maintenance can it still be said that no after-sales service arrangements has been effected? In our view the answer is in the negative.

21. While it is true that at the time When the refusal was effected by the Custom Authorities these documents were not on record but the fact remains that the agreement existed on and since 18th June, 1990 as such, though, strictly the refusal may be said to be justified but as noted above technicality ought not to outweigh the course of justice. The after-sales service agreement has been brought to the notice of the Court and would the law Courts be justified in not looking into the same-while dealing with the matter in appeal from the order of the learned Trial Judge-in our view, the answer cannot but be in the negative. As it stands today all necessary formalities have been complied with and as such question of refusal to import the life saving medical equipment in terms of the Notification No. 64/88 and Import Policy 1990 to 1993 does not and cannot arise.

22. Another redeeming feature ought also not to be lost sight of viz., the writ Court being a Court of equity shall always consider the balance of convenience while issuing a writ. In our view, considering the facts and circumstances of the matter in issue and since this particular medical equipment is not available in the eastern part of the Country and importation of which enures to the benefit of suffering millions, the balance of convenience lies overwhelmingly in favour of the importer and law Courts ought not to put an embargo to the importation of the machinery, though, however, upon due compliance with all required formalities. At this

juncture, in our view, there cannot be said to be existing any embargo in the matter of such an importation.

23. It is, however, made clear that the Custom Authorities shall get the bond executed on behalf of the company in terms of the undertakings given by the company' quoted above to provide diagnostic facilities in accordance with the requirements of paragraph 2 of the Table in view of the exemption having been granted from payment of the custom duties. It will also be open to the Custom Authorities and the Director General of Health Services, Government of India without any prior notice to inspect the premises Where the said MRI Scanner is installed by the company to check from time to time as to whether they are complying with the requirements of paragraph 2 of the Table of the Notification in question by providing services in accordance with the requirements of paragraph 2 of the Table of the said Notification and in the event of non-compliance of any of the requirements and conditions for exemption of the custom duties, the authorities shall be at liberty to take appropriate steps in accordance with law including realisation of the custom duties leviable on the equipment in question and if needed appropriate direction may be sought for from this Court in regard thereto.

24. In the premises, the appeal is disposed of with a direction to the Custom Authorities to allow necessary exemption in regard to the payment of Customs Duty in terms of the Notification No. 64/88 for the importation of MRI Scanner and all connected equipment/tool by the writ petitioner.

25. It is, however, clarified that apart from exemption as above, no other benefit or advantage can accrue to the writ petitioner in terms of this order in the matter of payment of any other charge or levy or impost, if any, leviable in accordance with law.

26. The appeal is disposed of accordingly. Each party shall, however, pay and bear its own costs.

Nagendra Prasad Singh, C.J.

27. I agree.

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