**(1998) 02 MAD CK 0175**

**In the Madras High Court**

**Case No :** Writ Petition No. 720/89 and W.M.P. No. 1025/89

Bharathi Surgical Company APPELLANT

Vs

The Assistant Collector of Customs and Another RESPONDENT

**Date of Decision :** 18-02-1998

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1998) 61 ECC 234

**Hon'ble Judges :** K. Gnanaprakasam, J

**Bench :** Single Bench

**Final Decision :** Allowed

## Judgement

K. Gnanaprakasam, J.—Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the affidavit filed therewith the High Court will be pleased to issue writ of Mandamus, directing the first respondent herein to extend the benefit of exemption granted under Notification No. 208-CUS dated 22.9.81 to the goods imported under B/L.No. CBM/45 and covered by Bill of Entry bearing Import Department serial No. 063567 dated 6.12.88 and directing the first respondent to allow clearance of the goods without payment of Customs duty.

WMP No. 1025/1989:

Petition praying that in the circumstances stated therein and in the affidavit filed with W.P. No. 720 of 1989 on the file of the High Court, the High Court will be pleased to direct the first respondent to allow clearance to the goods imported under B/L.CBM 45 dated 21.9.88 and covered by Bill of Entry Import Serial No. 063567 dated 9.12.88 by extending exemption under Notification No. 208-CUS dated 22.9.81 as was hitherto being done pending W.P. No. 720 of 1989 on the file of this Court.

Orders:

This Writ Petition and WMP coming on for hearing on Monday, the Second day of February, 1998, upon perusing the petition and the affidavit filed in support thereof the Order of the High Court, dated 18.1.89 and made herein and the records relating to the prayer aforesaid comprised in the return of the respondents, to the Writ made by the High Court, and upon hearing the arguments of Mr. K.M. Srirangan, Adcovate for the petitioner in both the petitions, and of Mr. P. Venkatasubramaniam, Additional Central Government Standing Counsel on behalf of the Respondents, and having stood over for consideration till this day, the Court made the following Order:--

This Writ Petition has been filed for the issue of a Writ of Mandamus or any other appropriate Writ, to direct the first respondent to extend the benefit of exemption granted under Notification No. 208-CUS dated 22.09.1981 to the goods imported under B/L.No. CBM/45 and covered by Bill of Entry bearing Import Department Serial No. 063567 dated 09.12.1988 and direct the first respondent to allow the clearance of the said goods without payment of customs duty.

2. The petitioner is carrying on the business of importing and dealing in Scientific medical surgical and laboratory equipments. By the import policy of the second respondent for the period 1988 to 1991, import of life Saving Equipment specified in List 2 of Appendix 6 of that policy is allowed under the Open General Licence to all persons. Item 32 of the said List 2 permits the import of the following:

Intravenous Canulae and Tubing (for long term use)

Item No. 8 of the said List 2 permits Inter alia the import of "Infusion Sets" used for treatment of cancer. The import policies of the second respondent for the period 1985 to 1988 and earlier periods contained provisions similar to Appendix 6 List 2 Entry No. 32 of the 1988-1991 policy. The goods called "Infusion Sets" or "Intravenous Canulae and Tubing for Long term use" and as such the respondents have consistently in the past allowed and are allowing clearance to the same under the provisions of the Open General Licence referred above. The goods "Infusion Sets" being "Intravenous Canulae and Tubing for long term use" the same were and are wholly exempted from Customs duty by virtue of Notification No. 208-CUS dated 22.09.1981 vide item No. 19 thereof. The "Infusion sets" are used in cancer treatment and therefore they are also covered by item No. 44 of the said Notification No. 208 and for that reason too, they are exempted from duty under the said notification. The respondent also granted exemption from duty on the import of "Infusion Sets" under the Bill of Entry bearing No. 539/87, 1101/87, 1039/87. As such, the import of "Infusion Sets" is permitted to all persons without payment of duty and the respondent has been all along allowing the clearance to "Infusion Sets" without recovering any duty.

3. That on 08.08.1988, the petitioner placed an order of Hesung Medical Supply Co. Ltd., for the purchase and import of consignment of Hesung Brand of

 

Infusion Sets. The petitioner placed the said order in view of the exemption from duty available on the said goods and but for the said exemption, the petitioner would not have placed the said order for import. The consignment, arrived to the Port of Madras in or about October 1988 and the petitioner applied for warehousing the goods vide Bill of Entry bearing Import Department Serial No. 56188 dated 31.10.1988 and the first respondent instead of allowing goods to be warehoused, assessed the same to duty completely ignoring the said notification No. 208/81 brushing aside the claim of benefit made by the petitioner.

4. The petitioner by his letter dated 12.12.1988 informed the first respondent that they have committed an error in assessing the said goods to the duty and by the said letter, it was also pointed out to the first respondent that the Director General of Health Services by his letter dated 22.08.1986 clarified that "Infusion Sets" are covered by Item No. 19 of the said Notification No. 208/81. It was also pointed out that by letters dated 11.03.1986 and 11.02.1987, the Chief Controller of Imports and Exports clarified that infusion sets are covered by Entry No. 21 of List 2 of Appendix 6 of AM-88 which means that Infusion Sets answer the description "Intravenous Canulae and Tubing for long terms use" which is also the description contained in Item No. 19 of the said Notification. It was also pointed out that the goods in question are being used for cancer treatment and the same are entitled to the exemption under Item No. 44 of the said Notification. A copy of the Certificate dated 20th June 1988 issued by the Tata Memorial Hospital certifying that the goods are used for cancer treatment was enclosed with the said letter 12.12.1988. Hence, the first respondent was requested to allow clearance to the goods covered by the said Bill of Entry without recovering any duty on the said goods. But, he refused to extend the benefit of exemption granted in the above said Notification and the same is arbitrary and illegal.

5. Aggrieved by the same, the petitioner has preferred the present writ petition.

6. I heard the rival submissions of the learned advocates for the petitioner and the respondents.

7. The fact that the petitioner''s firm placed the orders for the import of "Infusion Sets" is not in dispute. It is also not in dispute that the said drug is used in cancer treatment. As such, it is a life Saving Equipment under certificate has also been issued by the Tata Memorial Hospital to that effect and that therefore, it is covered under Item No. 44 of the said Notification. Hence, it is exempted from the import duty.

8. The learned Advocate for the petitioner has straight away submitted that the demand of duty by the respondent is arbitrary and he also placed reliance upon the judgment reported in Johnson and Johnson Ltd. Vs. Commissioner of Central Excise, Aurangabad, wherein the Apex Court held that certain life saving and sight saving articles manufactured in the country are entitled to exemption. The learned advocate for the respondent is not in a position to place any material

 

evidence, before the Court to reject the contention of the petitioner that the goods imported by the petitioner is not exempted under customs duty.

9. In the said view of the matter, it is unnecessary for me to traverse all the facts in this case and therefore I come to the conclusion that the goods imported by the petitioner are entitled for exemption under Notification No. 208/81. In view of the discussions made above, the first respondent is directed to allow the clearance of the said goods without any payment of customs duty.

10. In the result, this writ petition is allowed. However, there will be no order as to costs. In view of the order passed in the main writ petition, no order is necessary in the connected W.M.P. and the same is closed.