(1988) 01 MAD CK 0012

In the Madras High Court

Case No : Writ Petition No. 2509 of 1981

British Physical Laboratories India Pvt. Ltd. APPELLANT

Vs

Government of India RESPONDENT

Date of Decision : 20-01-1988

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1988) 37 ELT 344

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Advocate : N. Ganapathy, for S. Venkataraman and Jyoti-Balasundaram, for the Appellant; P. Narasimhan, Sr. Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Swamikkannu, 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 a Writ of Certiorari calling for the records, of the 1st respondent relating to order

No. 307-B/80, dated 11 -11 -1980 and quash the same in so far as it imposes the condition relating to interchangeability of components.

2. Order:- This Writ Petition coming on for hearing on this day upon perusing the petition and the affidavit filed in support thereof the order of the

High Court dated 30-4-1981 and made herein, and the Counter affidavit filed herein and the records relating to the order in No. 307-B/80, dated

11 -11 -1980 on the file of 1st respondent comprised in the return of the respondents herein to the Writ made by the High Court, and upon

hearing the arguments of Mr. N. Ganapathy for M/s. S. Venkataraman and Jyoti

Balasundaram, Advocates for the petitioner, and of Mr. P.

Narasimhan, Senior Central Government Standing Counsel, on behalf of the respondents, the Court made the following order :-

3. Mr. N. Ganapathy, learned counsel for the petitioner, Inter alia, contends that the order No. 307-B/80, dated 11 -11 -1980 of the first

respondent herein is not quite in consonance with law, especially when the impugned order, which is the order of the revisional authority sets aside

the concurrent finding of both the lower authorities viz., the initial authority as well as the appellate authority. The impugned portion of the order

which is the subject-matter of this writ petition reads as follows :-

''The Government of India observe that there is much force in the arguments of the petitioners that components and accessories cannot be generally

used in the condition in which they are imported in the hospitals as life saving equipments. Petitioners'' contention that the components and

accessories can be used only for manufacturing the D.C. Defibrillator-alite saving equipment - which is used in hospitals appears to be convincing.

Petitioners'' contention is further supported by the fact that the wording of the notification is ""generally used in hospital"". The Government of India

accordingly, set aside the order-in-appeal and allow the revision application. As regards interchangeability of the components, though the order-in-

appeal is silent on this aspect, the Government of India direct that the petitioners shall satisfy the Collector of Customs with necessary documentary

evidence to show that these are not interchangeable for use In other electronic equipments and can only be used for the manufacture of D.C.

Defibrillator. Government of India allow the revision application subject to this condition.

4. The learned counsel for the petitioner further submits that when the revisional authority has found force in the contention raised by the petitioner,

he ought not to have further subjected the petitioner to certain restrictions which are not warranted, especially when his case has been, more or

less, accepted by the revisional authorities. He further submits that there be also belief reposed on the petitioner when he had stated in his petition

that the articles which are being imported will be only used for the purpose of saving life of persons as enumerated in Notification No. 182-Cus/76,

dated 2-8-1976. In this regard, he points out the Schedule II of the

Notification'''' 1.182-Cus./76, dated 2-8-1976, which runs as follows :-

II. The following life-saving equipments generally used in hospitals, namely: 1. D.C. Defibrillators and Pacemakers, components and accessories

them of...

The exemption granted by the said Notification is absolute, and it Is not subjected to any condition.

5. Mr. P. Narasimhan, the learned Government Advocate for the respondents, inter alia, contends that it is only with the object to see that the

articles that are imported are used only for saving the life of persons, such a condition has been imposed in the order which Is the subject-matter of

this petition by the revisional authority and that does not In any affect any of the objects of the Notification referred to above. The revisional

authority has got the power to impose certain conditions in order to see that the articles that are imported are used only for the purpose of D.C.

Defibrillators and Pacemakers and Components and accessories thereof only, and not for any other purpose than the one mentioned in the

notification, and In particular-for electronic business purpose since It Is common ground that the petitioner herein is a dealer in electronic goods

also.

6. The point for consideration in this writ petition is whether the conditions imposed in the impugned order of the revisional authority viz., the order

of the first respondent herein violates Notification No. l82-Cus./76, dated 2-8-1976, and as such are liable to be quashed.

7. In the affidavit accompanying this writ petition it is, inter alia, stated that the petitioner is the only manufacturer of D.C. Defibrillators in India and

that the Notification exempting the payment of duty applies with equal force to any manufacturer inasmuch as a hospital cannot manufacture any

components or import components directly without recourse to a dealer or manufacturer. The main point urged in the revision petition was that the

Notification No. 182/76 (Customs) speaks for itself and is an authority which cannot be diluted by any clarification distinguishing a component part

imported by the manufacturers from components Imported by hospitals. The petitioner further contended that the components and accessories

could be used only for manufacturing D.C. Defibrillators which are used in hospitals only and that the end use of the product alone should be the criterion in deciding whether the components and accessories are free from duty as per Customs Notification No. 182/76. We find that all these

contentions of the petitioner have been upheld by the revisional authority viz., the first respondent herein; but only the portion of the order

impugned that is now the subject-matter of this writ petition is whether the revisional authority has exercised some jurisdiction which is not vested

with him. In that view, this Court, while going through the contents of the affidavit as well as the counter affidavit, together with the interesting

arguments advanced by either side, comes to the one and only conclusion that the revisional authority has the power to impose some condition in

order to give force to Its order, especially when it reversed the judgment/ decision of the two lower authorities and allowed the prayer of the

petitioner herein in substance. With the object of the above, it Is seen by this Court that the revisional authority had imposed certain conditions In

the paragraph extracted above in the impugned order. Such a kind of imposition of condition In the order to ascertain that the components that are

purchased are not utilised for some other purpose than the purpose for which a Notification, as referred to-above has been issued, cannot be

classified as infringing the spirit and tenor of the said Notification. As such, this Court is of the opinion that the Revisional Authority who sits over

and above the lower authorities as against the concurrent finding of both quasi-judicial authorities below has certainly the power to impose certain

conditions, as extracted above, in order to see that the spirit and tenor of the Notification exempting the articles components from levy of tax

getting frustrated. Under the circumstances, the contention raised on behalf of the petitioner herein is not sustainable. Hence, this writ petition

becomes liable to be dismissed.

8. Therefore, this writ petition is dismissed. Under the circumstances, there Is no order as to costs.