

(2015) 03 SC CK 0109

In the Supreme Court Of India

Case No : Civil Appeal No. 8312 of 2003

Commissioner of Customs

APPELLANT

Vs

Diascans (India) Ltd.

RESPONDENT

Date of Decision : 23-03-2015

Acts Referred:

Citation : (2015) 320 ELT 177

Hon'ble Judges : A.K. Sikri, J; Rohinton Fali Nariman, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The Respondent herein had imported one Nuclear Magnetic Resonance Scanner, which is a medical instrument, for the purpose of using it in the hospital. The Respondent cleared the said instrument without any import duty as exemption in terms of the Notification No. 64/88-Cus., dated 1-3-1988 was sought for and given. This Notification lays down certain conditions on the fulfilment of which no import duty is payable. One condition is that the hospital for which such a machinery is used is to be certified by the Ministry of Health and Family Welfare, to be run or substantially aided by such charitable organization as may be approved. There are other conditions which are to be fulfilled even after the import of the machinery, in future as well. These include treatment of free, on average, to at least 40% of all outdoor patients and also free to all indoor patients belonging to the families with an income less than Rs. 500/- p.m. and keeping for this purpose at least 10% of all the hospital beds reserved for such patients. It is an admitted fact that after use of this equipment for few years the Respondent had sold the same to another establishment known as M/s. Florence Medical-cum-Diagnostic Centre (P) Ltd. Siliguri. This is treated as the breach of the aforesaid Notification No. 64/1988. It would also be relevant to state here that at the time of import, whether the Respondent would be entitled to exemption under the aforesaid Notification or not was the dispute which had arisen. The matter had come up to this Court. Before this Court the Respondent

had given an affidavit of undertaking in which apart from agreeing to fulfil the aforesaid conditions, it was also agreed that the equipment shall not be disposed of by the Respondent without 30 days clear notice in writing to the Collector of Customs, Kolkatta. It is found by the CEGAT that there is a violation of the aforesaid undertaking as well as inasmuch as no such clear 30 days notice in writing was given to the Customs Authority before disposing of the equipment.

2. In this manner the order of the adjudicating authority withdrawing the exemption and directing the Respondent to pay the duty has been upheld by the CEGAT. In the Order-in-Original passed, redemption fine was also imposed and penalty in the sum of Rs. 20 lakhs was inflicted as well. The Tribunal, however, after giving the aforesaid findings has come to the conclusion that the duty should be paid at the reduced value, i.e. depreciated value since for few years the obligation was met by the Respondent. Insofar as redemption fine is concerned, the same is reduced from Rs. 50 lakhs to Rs. 5 lakhs and penalty likewise, has been reduced from Rs. 20 lakhs to Rs. 1 lakh.

3. The Department is in appeal before us questioning the aforesaid directions of the Tribunal in directing the calculation of duty at the depreciated value of the machinery as well as reduction of the redemption fine and penalty. Insofar as the payment of duty at the reduced value is concerned, Mr. A.K. Sanghi, learned senior counsel may have something to say, but we find that in the order dated 3-11-2003 passed in this appeal, notice was issued limited to the question of reduction of penalty. Therefore, we refrain from going into the issue raised in the appeal and would confine ourselves only to the reduction of the penalty.

4. We find from the impugned order of the CEGAT that no reason whatsoever is given for reducing the penalty from Rs. 20 lakhs to Rs. 1 lakh except observing that it "appears to be excessive". We have already taken note of the circumstances under which the breach has been committed by the Respondent. More serious breach is the violation of undertaking given to this Court.

5. In these circumstances, we are of the view that it was not a fit case where penalty should have been reduced. Since the Respondent is now to pay the duty at the depreciated value of the machinery, we set aside the order of the CEGAT insofar as reduction of penalty from Rs. 20 lakhs to Rs. 1 lakh is concerned and substitute the same by the following directions:

"the penalty payable shall be same as the duty which is now to be paid by the Respondent on the depreciated value of the machinery, subject to maximum of Rs. 20 lakhs."

The appeal is disposed of accordingly.