(1998) 03 MAD CK 0041

In the Madras High Court

Case No : Writ Petition No. 14675 of 1988

Eximel India APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 09-03-1998

Acts Referred:

Customs Act, 1962 — Section 25, 25(1)
Customs Tariff Act, 1975 — Section 3

Citation : (1999) 114 ELT 398

Hon'ble Judges : K. Gnanaprakasam, J

Bench : Single Bench

Advocate : R. Sudhakar, for the Appellant; P. Venkatasubramanian, Additional Central Government Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

K. Gnanaprakasam, J.—The above writ petition has been filed for the issue of Writ of Certiorarified Mandamus calling for the records from

the third respondent on the Bill of Entry/Rotation No. 900/1988, dated 28-10-1988 and to quash the same and to extend the benefits of

Exemption Notification No. 208 of 1981 as amended from time to time and 87/88.

2. The petitioner has been importing life saving equipments and sup-plying the same to several Government Hospitals. The petitioner imported

1,10,000 pcs. containing 220 cartons of Infusion sets ""JMS"" Brand, M.V. Indian Courier under the Bill of Entry/Rotation No. 900/88, dated 28-

10-1988 and claimed concessional assessment for the above said imported goods under Customs Notification No. 208 of 1981 as amended from

time to time which ex-empts customs duty on the articles set out in the notification. But the Customs Authorities disallowed the claim of exemption and assessed the goods to a Basic Duty of 40% plus 45% Auxiliary duty as well as Additional Duty of 15% and in total 100% ad valorem. It is

stated that the customs authorities have accepted that the goods fall under Open General Licence (OGL) as far as Import and Export Policy of

1988-91 is concerned. But at the same time, they denied the exemption granted u/s 25 of the Customs Act, 1962, and called upon the petitioner

to pay the Customs Duty.

3. It is stated that the goods imported by the petitioner are life saving equipments exclusively used in Intravenous Transfusion of blood and other

essential fluids and they are known as ""Infusion sets"" in Medical Terminology .The said sets are importable as List 2 Appendix 6 SI. No. 8 of

Import and Export Policy, April, 1988 to March, 1991.

4. It is further stated that these life saving equipments are exempted from payment of duty as per the Notification No. 208 of 1981 as amended

now and then, in exercise of powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of

the notification of the Government of India in the Department of Revenue and Banking number 182-Customs, dated 2nd August, 1976. Under this

Notification, ""A"" deals with life saving drugs or medicines, ""B"" deals with life saving equipments, ""C"" deals with life saving drugs or medicine or

equipment not specified in Headings ""A"" and ""B"". In clause ""B"" item No. 44 ""Infusion sets"" in included among other items. As such the infusion sets

which were imported by the petitioner are exempted from payment of customs duty and additional duty. It is further stated that the Collector of

Customs (Appeals), Bombay and the Collector of Customs, Madras in the Order No. S/49-380/85-B, dated 11-3-1987 and in Appeal No. C.

Cus. 1168/87, dated 6-10-1987 respectively, have held that ""Infusion sets"" qualify for exemption under Notification No. 208/81, dated 22-9-

1981. But however, when the petitioner filed the Bills of Entry, claiming the benefit under Notification No. 208/81 and 87/88, the Customs

Department struck off them and made an endorsement thereby charging duty at 40% plus 45% (i.e. 40% Customs duty and 45% Auxiliary duty)

and 15% additional duty and denying the exemption which is being impugned in this action.

5. The respondents have not chosen to file any counter.

6. Heard.

7. The learned Advocate for the petitioner submits that what it has imported are ""Infusion sets"" and they are ""life saving equipments"" required for

use in Intravenous Transfusion of blood and other essential fluids and they are also known as ''Infusion sets"". The said ""Infusion sets"" were

permitted to be imported under the import and Export Policy April, 1988 to March, 1991 under Appendix 6 List 2 Item No. 8. The petitioner

imported the goods under the Bill of Entry/Rotation No. 900/88, dated 28-10-1988 and as such the Import and Export Policy referred above is

applicable to our case.

8. The Learned Advocate for the petitioner has also pointed out that the Notification No. 208/81-Cus., dated 22-9-1981 as amended now and

then exempts goods specified in the Schedule annexed to the said notification. The ""Infusion Sets"" among other items finds a place in SI. No. 44 ,

Clause B. As such the same is exempted from the levy of customs duty and also from the levy of additional duty u/s 3 of the Customs Tariff Act,

1975. The goods imported by the petitioner are exempted and demand for payment of the customs duty by the respondents is not proper and

legal. The said notification has got to be interpreted in the strict terms and in doing so, no other meaning contrary, would be inferred. The learned

Advocate for the respondents was also not in a position to place any material to dispossess the submissions made by the petitioner.

9. In the said view of the matter it is unnecessary for me to traverse all other 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-Cus., dated 22-9-1981.

10. The learned Advocate for the petitioner has submitted that at the time of filing writ petition, by an order of this Honourable Court in W.M.P, he

furnished bank guarantee and released the goods and now in view of the findings given below, the bank guarantee furnished by the petitioner has

got to be discharged and the said submission is accepted and the Bank guarantee furnished in W.M.P. No. 21959 of 1988 is discharged. As the

petitioner has already got release of all the goods, no further order is required for the release of the goods.

11. In the result, the writ petition is allowed. However, there will be no order as

to costs.

