(2015) 03 SC CK 0173

In the Supreme Court Of India

Case No : Civil Appeal Nos. 8435-8436 of 2003

Kamineni Hospitals Ltd. and Others APPELLANT

Vs

Commissioner of Customs RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Citation : (2015) 03 SC CK 0173

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

Bench : Division Bench

Advocate : Wasay Khan and G. Ramakrishna Prasad, for the Appellant; Jaideep Gupta, Sr. Adv., Shweta Garg, Rupesh Kumar and B. Krishna Prasad, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the parties and perused the record.

2. Appellant No. 1 herein is a hospital which had imported certain hospital equipments against three Bills of Entries, claiming the benefits of Notification No. 64/88 dated 01.03.1998. The benefit was given and goods were allowed to be cleared without payment of duty. The aforesaid Notification contains certain conditions which are to be fulfilled. Some of the conditions relate to future obligation on the part of the hospital insofar use of machinery is concerned. Two such conditions are as follows:

(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.

3. On the ground that the Appellants had not complied with those conditions, a show cause notice was issued by the Commissioner as to why the duty be not charged and penalty be imposed. It resulted into passing of an order dated

10.12.1999 by the Commissioner confirming the demand of duty of Rs. 16,16,089/- and imposing penalty of equivalent amount on Appellant No. 1 as well as Rs. 1 lakh on Appellant No. 2. The Appellants challenged this order by filing two appeals before the Customs, Excise and Gold (Control) Appellate Tribunal (for short, ''the Tribunal''). The Tribunal vide the impugned judgment dated 16.04.2003 upheld the finding of the Commissioner. However, insofar as fine is concerned, the same is reduced to Rs. 10 lakhs and the penalty has also been reduced to Rs. 25,000/-.

4. On going through the order of the Tribunal, one finds that a pure finding of fact has been recorded on the basis of material produced before it to the effect that though first condition was fulfilled by the Appellants, they failed to fulfill the second condition. This is a pure finding of fact.

5. We also find that the Appellants had filed I.A. Nos. 3-4 of 2015 in C.A. Nos. 8435-8436 of 2003 and along with these I. As documents are filed to show that penalties along with interest and even the duty has been paid.

6. For this reason, the learned Counsel for the Appellants seeks permission to withdraw these appeals.

7. The appeals are accordingly dismissed as withdrawn.

