(1999) 02 MAD CK 0019

In the Madras High Court

Case No : Writ Petition No. 232 of 1999 and W.M.P. No. 284 of 1999

Nilagiri Cancer Centre (P) Ltd. APPELLANT

Vs

Dir. Gen. of Health Services RESPONDENT

Date of Decision : 08-02-1999

Acts Referred:
Customs Act, 1962 — Section 28(2)

Citation : (1999) 65 ECC 40 : (1999) 111 ELT 326

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Advocate : S. Murugappan, for the Appellant; I. Sathuraman, Additional Central Govt. Standing Counsel, for the Respondent

Judgement

S. Jagadeesan, J.—This writ petition and WMP coming on for hearing on this day upon perusing the petitions and the respective affidavits

filed in support thereof the order of the High Court, dated 8-1-1999 and made herein and the counter and reply affidavits filed herein and the

records relating to the Order No. S/30/497/96 Ace. dated 17-1-1997 and C.No. VIII48/53A/98-Cus. Prer. dated 13-12-1998 on the file of

2nd and 3rd respondents respectively comprised in the return of the respondents to the writ made by the High Court, and upon hearing the

arguments of Shri S. Murugappan, Advocate for the petitioner in both the petitions and of Shri I. Sathuraman. Additional Central Govt., standing

counsel advocate for the respondents in both the petitions the court made the following orders :-

The petitioner has filed this writ petition challenging the recovery proceedings of the second respondent herein dated 17-1-1997 and the order of

attachment dated 13-12-1998 passed by the third respondent. Under the impugned proceedings dated 17-1-1997 the second respondent has

levied a duty of Rs. 29,51,410/- u/s 28(2) of the Customs Act, in respect of the machineries imported by the petitioner. The petitioner did not

challenge the said order. However, on 27-2-1997 he set a communication claiming exemption. The second respondent sent a communication

dated 25-4-1997 requesting the petitioner to furnish the relevant documents to consider the claim of the petitioner for exemption. The petitioner

also sent further communication on 19-5-1997 claiming exemption and took time for submitting further certificates. He was making arrangement to

get the certificate. In the meanwhile under the proceedings dated 13-12-1998 demand has been made for the payment of the duty.

2. The only grievance of the petitioner is that while the petitioner''s request for exemption was pending, recovery proceedings has been initiated.

3. I carefully considered the contention of the counsel for the petitioner. Admittedly the petitioner did not challenge the order of the second

respondent dated 17-1-1997 levying the duty. Hence, I am not inclined to go into the merits of the levy of duty at this stage, especially after lapse

of two years. The petitioner having accepted the levy has failed to challenge the same. Now it is not open to him to reopen the issue. However,

subsequently he has claimed exemption and no final order has been passed by the authorities even though the petitioner has been directed to

furnish the particulars.

4. Considering this aspect, I am of the view that the recovery proceedings can be stayed till the disposal of the petitioner''s claim for the exemption

by the appropriate authority. But however, the petitioner is directed to deposit 50% of the duty within two months from today and the respondents

are directed to dispose of the petitioner''s claim for exemption within three months after the deposit of the amount by the petitioner. If the authority

find that the petitioner is entitled for exemption, the petitioner will be entitled for the refund of the deposit. In case if the authority hold that the

petitioner is not entitled for exemption, the petitioner is liable to pay the balance amount thereafter. Till the claim of the petitioner for exemption is

disposed of recovery proceedings is stayed on the above terms.

5. The writ petition is ordered accordingly. Connected W.M.P. is also closed.

