
(2006) 07 JH CK 0067

In the Jharkhand High Court

Case No : Civil Writ Jurisdiction Case No. 193 of 1998 (R)

Ranchi Medical Research and Development Foundation
Private Limited and Dr. K.K. Sinha, Director

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-07-2006

Acts Referred:

Customs Act, 1962 — Section 111(1), 142(1), 25(1), 28(1), 28(3)
Limitation Act, 1963 — Article 137

Citation : (2006) 4 JCR 221

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, A.G. and Indrajeet Sinha, for the Appellant; J.P. Gupta, ASG, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—Heard the parties.

2. Petitioners have challenged the order dated 4.11.1997, (Annexure-18) withdrawing exemption certificates; the order dated 18.12.1997, (Annexure-20), directing the petitioners to pay customs duty to the tune of Rs. 1,74,12,357/- for importing medical equipments detailed as per list; and also the orders of seizure/detention of equipments passed u/s 111(1) of the Customs Act, 1952 (the Act for short) dated 23.1.1998 (Annexure-23).

3. Mr. Anil Kumar Sinha, learned senior counsel appearing for the petitioners, submitted that even if the matter is covered by the judgments of Supreme Court, the duty cannot be recovered from the petitioners as the demand was made beyond the period prescribed under Sub-section (1) of Section 28 of the Act. He further submitted that in view of Article 137 of the Limitation Act, also no demand could be raised after three years. He further submitted that the respondents are stopped from recovering the custom duty from the petitioners as the custom duty exemption certificates (CDECs) were granted without any

misrepresentation. He further submitted that, judgments of Supreme Court are prospective in nature.

4. Mr. Gupta, appearing for the respondents, submitted that the question of limitation has never been raised, even in the writ petition. However, he submitted that the notice was given within the time prescribed under Sub-section (1) of Section 28 of the Act and in any event the Limitation under the said provision is not applicable in this case. He further submitted that Pursuant to the recommendation of the Health Department of State Government and the undertaking of the petitioner to fulfil the conditions, the Director General of Health Services granted exemption certificates. Referring to the notice dated 18.12.1997 (Annexure-20) he submitted that the medical equipments in question were imported against the Bills of Exchange in the year 1993 which were allowed clearance free of duty provisionally on the basis of such certificates and on execution of Provisional Duty assessment Bonds, executed by the petitioners, binding them to pay on demand the duty finally assessed and the show cause notice about withdrawal of the exemption certificates was issued on 9.6.1997. He further submitted that the grant of exemption certificates itself were void ab initio as the petitioners never fulfilled the conditions of the exemption notification, and accordingly they were withdrawn. Referring to a copy of the order dated 18.10.1996, passed by the Delhi High Court in a PIL -(CW (F) No. 409 of 1996, referred in the counter affidavit), he submitted that the grant of exemption certificates in favour of petitioners and others itself remained under clouds of doubt. (A copy of the said order is kept on the record.)

He also submitted that the said PIL was filed complaining large scale bungling in grant of such Custom Duty Exemption Certificates causing loss of several thousand crores of rupees to the public exchequer; and for taking actions against the erring officials. On 23.5.1996, the Delhi High Court constituted a Committee to enquire into the matter. The committee prima facie found that the allegations of large-scale corruption in the offices of Director General of Health Services and the customs department were correct. Accordingly, two committees were constituted, one for action required to be taken under the Customs Act and other for dealing with the aspect of corruption. Admittedly, petitioners also received notices from the committee constituted pronounced on 15.9.1997 in the case of Faridabad Ct. Scan overruling part of Mediwell (Supra). He further pointed out that petitioners have been delaying the disposal of this writ petition and it. was ordered on 4.5.2006 that the interim order of stay dated 27.1.1998 will be subject to the provisions of Section 28AA/28AB of the Customs Act, 1962.

5. A Notification No. 64/88-CUS dated 1st March, 1988 (Annexure-1) was issued u/s 25(1) of the Customs Act exempting custom duty on certain conditions. Few of them, contained in Clause 2 of the table reads as follows:-

2. All such hospitals which may be certified by the said Ministry of Health and Family Welfare, in each case, to be run for providing medical, surgical or diagnostic treatment not only without any distinction of caste, creed, race,

religion or language but also-

- (a) free, on an average, to at least 40 percent, 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 percent of all the hospital beds reserved for such patients; and
- (c) at reasonable charges, either on the basis of the income of the patients concerned or otherwise, to patients other than those specified in Clauses (a) and (b).

6. On 17.12.1996, the Supreme Court in the case of Mediwell Hospital and Health Care Pvt. Ltd. Vs. Union of India and others, . inter alia held as follows:-

10. It is true that no importer can claim absolute exemption from payments of custom duty as a right. The normal rule is that every import attracts duty under the Customs Tariff Act unless otherwise exempted by a notification issued by the Central Government in exercise of power u/s 25 of the Act and the person claiming exemption certificate should establish that the preconditions prescribed under the notification are fully satisfied. In the context of the dispute between the parties and on reading the exemption notification as a whole it appears that the Government intended to exempt such hospitals from payment of customs duty on import of equipments which are certified by the Ministry of Health and Family Welfare to the effect that it provides medical, surgical or diagnostic treatment. Thus (sic) entitled to exemption under the notification issued by the Central Government. The conclusion of the Central Government as well as that of the High Court on this score, therefore, may not be held to be incorrect and the appellant may not be entitled to seek for issuance of mandamus to Respondent 2 on this ground.

13...we would like to observe that the very notification granting exemption must be construed to cast continuing obligation on the part of all those who have obtained the certificate from the appropriate authority and on the basis of that have imported equipments without payment of customs duty to give free treatment at least to 40 per cent of the outdoor patients as well as give free treatment to all the indoor patients belonging to the families with an income of less than Rs. 500 per month. The competent authority, therefore, should continue to be vigilant and check whether the undertakings given by the applicants are being duly complied with after getting the benefit of the exemption notification and importing the equipment without payment of customs duty and if on such enquiry the authorities are satisfied that the continuing obligations are not being carried out then it would be fully open to the authority to ask the persons who have availed of the benefit of exemption to pay the duty payable in respect of the equipments which have been imported without payment of customs duty. Needless to mention the Government has granted exemption from payment of customs duty with the sole object that 40% of all outdoor patients and entire indoor patients of the low-income group whose income is less than Rs.

500 per month would be able to receive free treatment in the Institute. That objective must be achieved at any cost, and the very authority who have granted such certificate of exemption would ensure that the obligation satisfied that the said obligations have not been discharged they can enforce realization of the customs duty from them.

7. However, in paragraph 11 of the said judgment of Mediwell (supra), it was held that when exemption certificates were granted in favour of other such diagnostic center, refusal to grant such certificate to the appellant before the Supreme Court was discriminatory and accordingly the order refusing to grant certificate was struck down. But on 15.9.1997, in the case of M/s. Faridabad Ct. Scan center Vs. D.G. Health Services and others, . a Larger bench held that the benefit of the exemption notification cannot be extended on the ground that such benefit has been wrongly extended to others and thus the decision of Mediwell Hospital (Supra) does not lay down the correct law on this point. In effect, paragraph 11 of the Mediwell Hospital (supra) was overruled.

8. A notice dated 9.6.1997 (Annexure 16) was served on the petitioners to show cause as to why the exemption certificates issued under the said notification dated 1.3.1988 should not be withdrawn. The petitioners did not send a proper reply. They only said that they have already replied to the notice received from Rosha Committee (constituted by the Delhi High Court). Thus, petitioners failed to show that they complied with the conditions of exemption. Thereafter, by letter dated 4th November, 1997 (Annexure-18), the exemptions were withdrawn on the grounds that, as per the interim order of the Delhi High Court, the Director General of Health Services could consider the reply received up to 15.9.1997 only and not beyond that, but as no reply was received either from the petitioners or from the State Government, the respondents on the basis of the information available with them came to the conclusion that petitioner is only a diagnostic center not having indoor patient treatment facilities and it does not fulfil the conditions for availing and retaining the exemption certificates issued to it. By demand notice dated 18.12.1997 (Annexure-20), petitioner was called upon to pay the duty; and due to non payment, action u/s 111(1) of the Act was taken on 23.1.1998 followed by action u/s 142(1)(c)(ii) of the Act.

9. Sub-section (1) of Section 28 of the Act inter alia provides that when a duty has not been levied by reason of collusion or any willful misstatement or suppression of facts by the importer, the proper officer may within five years from the (sic) Section (3)(a) of Section 28, the relevant date means in case where the duty has not been levied, or interest is not charged, the date on which the proper officer makes an order for clearance of the goods. In the present case, the equipments in question were imported against Bills of Exchange (B/E) of the year 1993. Duty was not levied and equipments were cleared provisionally on the basis of the purported exemption certificates and on execution of Provisional Duty assessment Bonds (PD Bond) executed by the petitioners to pay the duty finally assessed. In paragraph 13 of the Judgment of Mediwell (supra) it

was held that the exemption notification casted a continuing obligation on the importer to fulfil the conditions of exemptions and on failure, the authorities were directed to recover the duty. When a large scale bungling in grant of such certificates was complained, the Delhi High Court constituted a committee for enquiry. Petitioners also received notice from such committee and they knew about the said case. The exemption certificates were withdrawn on 4.11.1997 after giving opportunity to the petitioners. There is nothing to show that petitioners ever fulfilled the conditions of exemption. Thus petitioners were not entitled to any exemption and the exemption certificates were void ab initio. The notice issued in 1997, in relation to the Bills of "Exchange of 1993 were within the period prescribed under Sub-section (1) of Section 28 of the Act. In any event, in the circumstances noticed above, it cannot be said that the demand was time barred as per the said provision. The judgments of Commissioner of Customs (Import), Mumbai Vs. M/s. Jagdish Cancer and Research center, and Commissioner of Customs, New Delhi Vs. C.T. Scan Research center (P) Ltd., . may be usefully referred. Moreover, Customs Act being a special Act, Article 137 of the Limitation Act will not apply.

10. In view of the law laid down in the case of Mediwell (Supra) read with M/s Faridabad Ct. Scan (supra), petitioners were not entitled to exemption. These judgments were rendered, prior to the withdrawal of exemption certificates. It cannot be said that these judgments will not apply to the purported exemption certificates granted earlier. Indisputably, petitioners did not fulfil the conditions of exemption, and therefore it cannot be said that the exemption certificates were issued, without misrepresentation, on the part of the petitioners.

11. Mr. Sinha lastly submitted that the custom duty has not been levied as per the prevailing rate. Such plea was never raised before the authorities and (sic)

12. In the facts and circumstances of the case, noticed above, it is not possible to accept the contentions raised by Mr. Sinha and it has to be held that the respondents were/are entitled to realize the custom duty and interest in accordance with law.

13. Accordingly, this writ petition is dismissed, with cost of Rs. 10,000/- (Ten thousand).