(1998) 11 MAD CK 0099

In the Madras High Court

Case No : Writ Petition No. 4834 of 1989

South India Surgical Co. Pvt. Ltd. — APPELLANT

Vs

Asstt. Collr. of Cus. — RESPONDENT

Date of Decision : 25-11-1998

Acts Referred:
Customs Act, 1962 — Section 25(1), 25(2)

Citation : (1999) 107 ELT 13

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : V. Ashok, for the Appellant; V.P. Sengottuvel, Additional Central Govt. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—The petitioner has prayed for a writ of declaration declaring that the denial of the benefit to the petitioner of total exemption from customs duty and additional duty on "Infusion sets" conferred by Item No. 44 of Headings in the Schedule to Notification No. 208-Cus., dated 22-9-1981 as amended, is unconstitutional, contrary to law and opposed to the interest of the general public and consequently direct the respondent to forthwith allow clearance of the goods namely "infusion sets" free of customs duty and additional duty in accordance with law.

2. The case of the petitioner is briefly stated hereunder :

The liberalised policy for April, 1988 - March, 1991 not only placed life-saving drugs and equipments under the Open General Licence category obviating the need for obtaining any import licence with respect thereon, but also the said life-saving drugs and equipments were given by the benefit of total exemption from import duty by statutory Exemption Notifications issued u/s 25(2) of the Customs Act. By Notification No. 208-Cus., dated 22-9-1981 as amended by subsequent Notification No. 367/86-Customs, dated 24-6-1986, 53 items of life-saving equipments listed in List ''B'' in the Schedule to the Exemption Notification were exempted from the whole of the import duty and additional duty leviable thereon. Item 44 refers to,

"Ancillaries for Blood Component therapy required for the treatment of cancer, namely...INFUSION SETS...".

As per the said policy of life-saving equipments and in particular "Infusion set" is expressly included. The petitioner is one of the principal suppliers of life-saving equipments on annual Rate Contract for all the Government hospitals in the State of Tamil Nadu, Andhra Pradesh and Karnataka and also to almost all the prestigious medical institutions like in intravenous treatment "Infusion sets" are extensively used and are in great demand. In order to make "Infusion sets" freely available in this country the petitioner on the strength of the liberalised policy of the Union Government placed an order for the supply of 2,00,000 numbers of "JMS Infusion Sets-200" made in Singapore under Invoice, dated 23-2-1989. The consignment arrived at Madras Port under Bill of Lading No. S/M-06/56, dated 27-2-1989. It is further stated, since the goods imported being one of the life-saving equipments allowed for import under Open General Licence and Import Control and Customs authorities allowed import without calling for any import licence. But as regards import duty, petitioner claimed that the goods were wholly exempted from customs duty viz., dated 22-9-1981. Hence, no import duty was payable thereon. But the Customs authority disallowed the claim of exemption and instead assessed the goods to a basic duty of 40 per cent plus 45 per cent = 85 per cent as well as an additional duty of 15 per cent totalling 100 per cent ad valorem. Thus, the petitioner was called upon to pay the huge sum as import duty on the invoice value of US $ 44,000.00. The statutory authorities uniformly took the view that "Infusion sets" being life-saving equipments, qualified for exemption from duty under Item No. 19. Intravenous Canulae and Tubing (for long term use). As such the present infusion sets answer the description intravenous canulae and tubing. In the absence of specific entry relating to infusion sets in the exemption notification as originally issued, the Director of Health Services had frequently issued clarifications that infusion sets were life-saving equipments eligible for full exemption. With a view to remove all doubts and difficulties which had arisen under Item 19 Intravenous Canulae and Tubing in the absence of a specific entry relating to infusion sets the exemption notification has been amended and now contains interalis the two entries viz. entry Item 19 and entry Item 44. In such circumstances, the levy, assessment and demand of import duty at 100 per cent ad valorem on the consignment of JMS Infusion Sets imported by the petitioner is contrary to law, illegal, arbitrary and totally without jurisdiction and is liable to be so declared by this Court.

3. The respondent has not filed counter affidavit.

4. I have heard the learned Counsel for the petitioner and learned Additional Central Government Standing Counsel.

5. It is seen that on the basis of the policy of the Union Government, the petitioner placed an order on M/s. Japan Medical Supply (S) Private Ltd., Singapore for the supply of 2,00,000 number of "JMS Infusion Sets-200" made in Singapore under Invoice No. JMSS-4199/89, dated 23-2-1989 at a unit place of USSO. 20. According to the petitioner the said consignment has arrived at Madras Port under Bill of Lading No. S/M-06/56, dated 27-2-1989. It is the grievance of the petitioner that, since the goods imported, being one of the life-saving equipments allowed for import under Open General Licence, the import control and customs authorities allowed import without calling for any import licence, thus acknowledging and accepting the position that the goods were life-saving equipment. Infusion sets falling within the scope of the Open General Licence List 2 of Appendix 6 of the Import Policy for 1988-91. However, regarding import duty, the petitioner claimed that the goods were wholly exempted from customs duty under Customs Notification No. 208 of 1981, dated 22-9-1981 as amended, hence no import duty was payable thereon. The Customs authority disallowed the claim of exemption and instead assessed the goods to a basic duty of 40 per cent plus 45 per cent = 85 per cent as well as an additional duty of 15 per cent totalling 100 per cent ad valorem. The learned Counsel appearing for the petitioner has contended that, even in the customs exemption Notification No. 208 of 1981 originally the relevant entry was item No. 19.

"Intravenous Canulae and tubing (for long term use)"

which was identical with Entry No. 21 in the then Open General Licence (1985-88 Import Policy). The learned Counsel appearing for the petitioner has also contended that the concerned statutory authorities uniformly took the view that "Infusion sets" being life-saving equipments, qualified for exemption from duty under Item No. 19 Intravenous Canulae and Tubing (for long term use). Accordingly, it is stated that the present "Infusion sets" answer the description Intravenous Canulae and Tubing (for long term use). He also relied on the decision of Director General of Health Services with regard to his opinion regarding, whether any particular drug, medicine or equipment apparatus is life-saving or not. By pointing out the clarifications issued by the Director of Health Services, namely "Infusion Sets" are life-saving equipment eligible for full exemption, contended that the contrary view taken by the Customs authorities cannot be accepted. No doubt, it is true that the Director General of Health Services has clarified that the ''Infusion sets'' are meant for giving Intra Vescular drip and is covered under List 2 Item 19 of Notification No. 208 of 1981, dated 22-9-1981. However, how for the said clarification is acceptable or binding. I shall give my answer at a later point of time.

6. We are concerned with two items, namely, Item No. 19 and 44 in the Notification No. 208.

"Entry No. 19:

Intravenous Canulae and tubing for long term use."

"Entry No. 44:

Ancillaries for Blood Component. Therapy required for the treatment of cancer, namely, Y Type blood solution recipient set; Transfer pack 1000 ml. and 300 ml., Butterfly needle G., Infusion set; Disposable herasis Bowl 225 ml. and 373 ml, Hydroxy ethyl starch solution (Plasma Sterile); Wasting harness with bypass; and Waste bags."

With regard to Entry Item No. 19 which is for long term use, I had an occasion to consider the same in Writ Petition No. 12166 of 1988, dated 10-8-1998. While considering the said aspect in that case, it was brought to my notice by the Additional Central Government Standing Counsel, the decision of Kanakaraj, J. reported in Eximed India v. Union of India and 2 Ors., 1994 Writ Law Reporter 612 is directly on the point, accordingly following the said decision I have dismissed the writ petition. It is also clear that the very same question was thoroughly analysed by a single Judge of the Calcutta High Court in a decision reported in Trio Marketing Pvt. Limited Vs. Union of India (UOI), . As a matter of fact, in the light of the discussion and reasons given by the learned Judge of the Calcutta High Court, Kanakaraj, J., after referring the conclusion of the learned Judge, dismissed the writ petition heard by him. Even though the decision of the Calcutta High Court cited supra judgment of Kanakaraj, J. reported in 1994 Writ Law Reporter 612 and earlier order of mine (P. Sathasivam, J.) in Writ Petition No. 12166 of 1988, dated 10-8-1998 is an answer to the present issue, learned Counsel for the petitioner wanted me take a different conclusion.

7. I have already extracted Entry Item No. 44. It refers not a mere "Infusion sets", but "Butterfly needle G., Infusion sets". As rightly contended by the Additional Central Government standing Counsel, the petitioner chooses to read only "Infusion sets" without adding the qualification prefixed, viz., "Butterfly needle G., Infusion Sets" and claims total exemption of duty. The "JMS - Infusion Sets-200" imported by them are quite different from the "Butterfly needle G., Infusion Sets" figuring at Serial No. 44 in the notification. Further, apart from the view expressed by the licensing authority, in the import policy the Department is competent to take independent decision for levy of customs duty and also to see whether the benefit of notification can be extended or not.

8. Even though the learned Counsel appearing for the petitioner has cited the clarification letter issued by the Director General of Health Services stating that the "Infusion sets'' are meant for giving Intra Vescular drip and are covered under Item 19 of Notification No. 208 of 1981, dated 22-9-1981, the very same Director General of Health Services, New Delhi in their letter No. Z-35011 /5/85-MG, dated 6-6-1985 clarified that "Infusion sets" and Item No. 19 are not one and the same. In the circumstances, "Butterfly needle G., Infusion sets" have been separately listed under Entry 44. It is clear that "Butterfly needle G., Infusion sets" only fall under Item 44. Accordingly, it is not open to the petitioner to say that the "Infusion Sets" has a separate item under Entry 44 adding the prefix "Butterfly needle G" which is incorrect to include the item for levy of duty.

9. As rightly contended by the learned Counsel appearing for the respondent, the import policy gives Chief Controller of Imports and Exports a final say as to the licence and the item for which licence granted. But for the purpose of levy of duty it will not preclude the Customs Department from examining the nature of the commodity imported .under a particular licence and accordingly assess the goods to duty so imported. Hence, wrong classification made by the lower authorities or other authority like Director General of Health Service do not bring out the distinction between two items. Accordingly, the clarifications issued by the said authorities do not advance the case of the petitioner. It is also clear that the Government have taken public interest into consideration while issuing the notification u/s 25(1) of the Customs Act and the Government has to protect the local manufacturer. Merely because the Government or some other authority had given relief in similar case to some other persons, on that basis, it is not open to the petitioner to claim the same relief when it is ultimately found that the earlier relief granted by them are incorrect. The respondent is justified in holding that the goods imported by the petitioner do not qualify for exemption from import duty under Entry 44 of the Exemption Notification.

10. In the light of what is stated above, I am unable to accept the arguments of the learned Counsel appearing for the petitioner. Consequently, the writ petition fails and the same is dismissed. No costs.

