(2008) 11 MAD CK 0062

In the Madras High Court

Case No : Writ Petition No. 27024 of 2003

Trichy Premier CT Scans Pvt. Ltd. APPELLANT

Vs

Commissioner of Customs RESPONDENT

Date of Decision : 14-11-2008

Acts Referred:
Customs Act, 1962 — Section 111, 112, 114(A), 124, 125(2)

Citation : (2008) 11 MAD CK 0062

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : Arun Kurian Joseph, for Pushya Sitaraman, for the Appellant; A. Muralidharan, Spl. C.G., for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondent.

2. It has been stated that the petitioner Company had imported whole body scanner with standard accessories, vide Bill of Entry No. 01309,

dated 10.2.90. The petitioner Company had claimed customs duty exemption, under Notification 64/88 Cus, dated 1.3.88, which is granted

subject to the certification by the Ministry of Health and Family Welfare. Since such a certificate was not available, the petitioner Company had

opted for provisional assessment.

3. It has also been stated that the respondent had issued a show cause notice, dated 13.2.98, wherein it was alleged that the importer did not have

any hospital, or beds on laboratory or a nursing home. The petitioner Company had only a diagnostic Centre. Since the notification was available

only if the assessee provided fresh treatment to 40% of outdoor patients, to all indoor patients and to patients who earn less than Rs. 500/- per

month, the show cause notice had proposed to confiscate the goods and to impose a penalty. The duty liability of the petitioner Company was said

to be Rs. 20,29,665/-.

4. While so, the Central Government had formulated the Kar Vivad Samadhan Scheme for quick and early resolution of the pending disputes.

Therefore, the petitioner had filed an application, under the Kar Vivad Samadhan Scheme, on 16.12.98, seeking the settlement of the dispute

pending, vide show cause notice F. No. S23/24/90/(pt)hrv13, dated 13.2.98. The said show cause notice had been challenged by way of a writ

petition in W.P. No. 4405 of 1998. However, the respondent, who was the designated authority, under the Kar Vivad Samadhan Scheme, had

issued an order, dated 16.2.99, rejecting the declaration on the ground that there was demand of duty, as the duty cannot be demanded after the

lapse of five years from the date of the finalisation of the PD Bond and the redemption fine and the penalty were also not quantified. In the

meantime, the Supreme Court had declared the law that in case of violation of post importation conditions, the question of limitation does not arise.

In such circumstances, the petition filed by the petitioner, under the Kar Vivad Samadan Scheme ought to have been accepted.

5. In the counter affidavit filed on behalf of the respondent it has been stated that the petitioner Company had imported one set of Toshiba Model

TCL-300s-CT"" whole body scan with standard accessories. The consignment was valued at Rs. 50,74,163/-. The goods were permitted for

home consumption, provisionally, under 64/88, dated 1.8.88, pending production of customs duty exemption certificate from DGHS. While so, the

Intelligence Officer of the Directorate General of Anti-Evasion Zonal Unit, Chennai, after inspecting the scanning centre, had submitted a

verification report, on 20.9.97, stating that the establishment is only a ""Diagnostic Centre"" and made out a case for violation of non-fulfillment of

post importation conditions, stipulated under CN64/88. Therefore, a show cause notice had been issued to the importers, u/s 124 of the Customs

Act, 1962, asking them to show cause as to why the impugned goods should not be confiscated, u/s 111 of the Customs Act, 1962 and as to why

a penalty should not be imposed, under Sections 112 and 114(A) of the Customs

Act, 1962. In stead of replying to the show cause notice, the

importer, vide letter, dated 16.4.98, had informed that they have filed a writ petition before this Court and had requested to treat the writ petition

as the reply to the show cause notice. Therefore, the case was adjudicated by the Commissioner, after exhausting the option for PH and levied Rs.

10,00,000/- as Redemption fine, Rs. 5,00,000/- as penalty and had also demanded a duty of Rs. 20,29,655/-, u/s 125(2) of the Customs Act,

1962. In spite of an Order-in-Original having been passed, the importer had opted for the Kar Vivad Samadhan Scheme and had, accordingly,

filed an application before the designated authority. Since there was no demand raised in the show cause notice, the designated authority under the

Kar Vivad Samadhan Scheme had rejected the application of the importer on the ground that the duty was not demanded and the Redemption and

the Personal penalty was not quantified in the show cause notice. Thus, the department had proceeded with the adjudication order, after observing

the principles of natural justice.

6. At this stage of the hearing of the writ petition the learned Counsel appearing for the petitioner had submitted that it would suffice if this Court

directs the respondent to accept the payment of Rs. 10,15,000/-, which is 50% of the duty amount, in accordance with the Kar Vivad Samadhan

Scheme, 1998, in view of the show cause notice, dated 13.2.98, demanding a duty amount of Rs. 20,29,665/-, within a specified period, as

directed by this Court.

7. The learned Counsel appearing on behalf of the respondent had no objection for this Court passing such an order.

8. In view of the submissions made by the learned Counsels appearing on behalf of the petitioner, as well as the respondent, the petitioner is

directed to pay a sum of Rs. 10,15,000/-, as the duty amount, in accordance with the Kar Vivad Samadhan Scheme, 1998, in view of the show

cause notice, dated 13.2.98, demanding a duty amount of Rs. 20,29,665/-, within a period of two weeks from the date of receipt of a copy of this

order.

With the above directions, the writ petition stands closed. No costs.