(1998) 08 MAD CK 0028

In the Madras High Court

Case No : Writ Petition No''s. 15015 and 15016 of 1989

Unival Surgical Traders APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 24-08-1998

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1999) 114 ELT 811

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Advocate : Sudhakar, for the Appellant; P. Thamilmani, Additional Central Government Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Y. Venkatachalam, J.—Invoking Article 226 of the Constitution of India, the petitioner herein has filed these writ petitions, seeking for a

Writ of Certio-rari in W.P. No. 15015/89 to call for the records of the 2nd respondent in his Order No. S8/358/85/ACC, dated nil and issued on

5-11-1985 and to quash the same and in W.P. No. 15016/89 for a Writ of Mandamus to direct the respondents 2 and 3 to refund a sum of Rs.

1,74,177 paid by the petitioner as duty on the ""Scrap Vein Sets'' imported under Bill of Entry No. 5367, dated 14-8-1985.

2. Since in both the Writ petitions, the subject matter and the parties involved therein are one and the same, both writ petitions are taken up

together and are disposed of by this common order with the consent of the parties concerned.

3. In support of the writ petitions, the petitioner herein has filed separate affidavits wherein he has narrated all the facts and circumstances that

forced him to file the present writ petitions and requested this Court to allow both the writ petitions as prayed for. Per contra, on behalf of the

respondents though no counter affidavit has been filed, they have argued the matter.

4. Heard the arguments advanced by the learned Counsel appearing for the respective parties. I have perused the contents of the affidavits and all

other relevant material documents available on record in the form of typed set of papers. I have also taken into consideration in these writ petitions

is, as to whether there are any valid grounds to allow these writ petitions or not.

6. The case of the petitioner herein runs as follows :- They are engaged in the business of importing and dealing in scientific medical surgical and

laboratory equipments. They imported by air, a consignment of ''Scalp Vein Sets'' invoiced as ''Intravenous Canulae'' and sought clearance under

OGL vide Bill of Entry bearing Import Department Serial No. 5367, dated 14-8-1985. On examination of the above goods, the Customs

Department stated that the goods imported by the petitioners herein are disposable infusion set for single use and are to be destroyed immediately

after use and would not be called as ''Intravenous Canulae and Tubing long term Use''. Thereafter at their request the Collector of Customs,

Custom House, Madras after affording personal hearing to the petitioners has passed an Order in No. S8/358/85/ACC, dated nil and issued on 5-

11-1985 (impugned order in these writ petitions) and confiscated the goods imported by the petitioners holding that the ''disposable scalp vein

sets'' for single use were not covered by OGL, which was meant for only ''Intravenous Canulae and tubing for long term use''. It was further held

that the importation of the consignment was without a valid licence, but allowed the goods to be redeemed on payment of a redemption fine of Rs.

10,000/- without imposing any personal penalty on the petitioners. In view of the above order of the first respondent, the goods that were

imported by the petitioners were assessed to duty amounting to Rs. 1,74,177/- and a sum of Rs. 10,000/- was imposed as redemption fine.

Accordingly the petitioners herein deposited a sum of Rs. 10,000/- towards redemption fine and also paid customs duty of Rs. 1,74,177/-

demanded vide AIR C.No. 790, dated 0-9-1985 and cleared the goods for home consumption. That being so, it is the case of the petitioners herein that the Customs Excise and Gold (Control) Appellate Tribunal (CEGAT), New Delhi by its Order No. 313/88-B2, dated 23-5-1988

reported in 1989 (19) ECC 187 laid down that scalp vein sets are ""Intravenous Canulae and Tubing for long term use"" and as such the same are

exempted from duty by virtue of Notification No. 20''8-Cus., dated 22-9-1981 vide Item No. 19 of Part B of the schedule to the said notification

as amended from time to time. Therefore, it is contended by the petitioners herein that in view of the law laid down by the order of the Tribunal, it

is evident that duty recovered on the petitioners'' said goods, was in total disregard of the said Notification No. 208-Cus., dated 22-9-1981 and

as such the said recovery was without the authority of law. As there is no effective alternate remedy available under the provisions of the Customs

Act they have come froward with the present unit petitions.

7. In this case it is an admitted fact that the petitioners imported by Air, a consignment of ''Scalp Vein Sets'' invoiced as ''Intravenous Canulae'' and

sought clearance under OGL vide Bill of Entry bearing Import Department Serial No. 5367, dated 14-8-1985. But the respondents refused such a

stand of the petitioners holding that the goods imported by them are disposable infusion set for single use and are to be destroyed immediately after

use and would not be called as ''Intravenous Canulae and Tubing long term Use''. They also held that therefore the disposable ''Scalp Vein Sets''

for single use were not covered by OGL and also that the said importation of the consignment was without a valid licence. On these grounds they

levied a redemption fine of Rs. 10,000/-and also a duty of Rs. 1,74,177/-. Thereafter by paying the said amounts the petitioners cleared the said

goods. Regarding all these facts there is no dispute. The only dispute is with regard to the fact that whether the scalp vein sets are ''Intravenous

Canulae and Tubing for long term use'' or not and also as such the same is exempted from duty or not. In this regard in the impugned order it is the

case of the respondents that though the goods invoiced in the consignment are ''Top Brand intravenous canulae'' on examination of the consignment

it was fund that the goods are described on the packing as ''Sterile disposable infusion set for a single use'' that the material will have to be

destroyed after single use, and that the importers have claimed importation under OGL and duty free importation under Notification No. 208/81 as

Life saving Equipment. But according to the respondents, Notification No. 208/81 reproduced at a page 229 of Jain Book 85-86 under S.No. 19

Heading (B) describe the goods as intravenous canulae tubing for long term and that therefore that is a life saving equipment which is entitled to

importation under OGL and likewise duty free importation under the aforesaid notification. Therefore it is the categoric case of the respondents

that the goods imported by the petitioners as already stated are disposable infusion set for single use to be destroyed immediately after use and

cannot be called as an intravenous canulae and tubing for long term use. Per contra, it is the contention of the petitioners herein that ''Scalp Vein

Sets'' are nothing but Intravenous Canulae for long term Use''. When it is admitted by the respondents that the goods were ''Scalp Vein Sets'', it

would also be ''In-fusion sets'' and definitely it would fall within the purview of ''Life Saving Equipments''. They contend that the respondents have

misconstrued the word ''Long Term Use'', that he feels that if a disposable syringe is used it could be thrown away after one use and hence it is not

meant for long term use, that this is entirely a total misconception of the matter, that long term use means that a needle must be capable of being

kept in the vein for along term and not that it should be repeatedly used. In the facts and circumstances of this case, such a contention of the

petitioners herein has every force in it.

8. Further it is also stated by the petitioner that the Tribunal CEGAT itself in the judgment reported in 1989 (19) ECC 187 has clearly held that

''Scalp Vein Sets'' are ''Intravenous Canulae and Tubing for Long Term Use'' and will fall under S. No. 21 of List 2 of Appendix 6 of AM 85-88.

Therefore it is contended by the petitioners herein that the order of the 2nd respondent Collector is without jurisdiction and not based on a proper

appreciation of the facts of law, and that therefore the order of confiscation is liable to be set aside. In the facts and circumstances of this case, I

am of the view that there is force in the said contention of the petitioners also because in the abovesaid judgment relied on by the petitioners herein,

it has been clearly held as follows :

Under these circumstances, when the imported goods namely, ''Scalp Vein Sets'' are considered as Intravenous Canulae and Tubing for long term

use'' for I.T.C. purpose as per the classification given by the licensing authorities, the benefit of the Exemption Notification cannot be denied to the

appellants 1988 (15) ECR 298 referred].

Therefore, I am of the clear view that ''Scalp Vein Sets'' are nothing but ''Intravenous Canulae and Tubing for long term use'' and are entitled to

the benefit of exemption of Notification 208/81 and consequently the collection of duty on the scalp vein sets, imported by the petitioners is totally

without jurisdiction and has to be refunded to the petitioners as prayed for in these writ petitions.

9. Therefore, for all the aforesaid reasons and in the facts and circumstances of this case and also in view of my above discussions with regard to

the various aspects of this case and also in view of the stand taken by the CEGAT in its judgment reported in 1989 (19) ECC 187 ,1 am of the

clear view that the petitioners herein have clearly made out a case in their favour and that therefore the impugned order in W.P. No. 15015/89 is

liable to be quashed and as prayed for by them in the W.P. No. 15016/89, they are eligible for refund of a sum of Rs. 1,74,177/- paid as duty on

the ''Scalp Vein Sets'' imported under the Bill of Entry No. 5367, dated 14-8-1985. Thus both the writ petitions succeed and they deserve to be

allowed as prayed for.

10. In the result, both the writ petitions are allowed. No costs. Consequently the order impugned in W.P. No. 15015/89 is hereby quashed and

the respondents 2 & 3 hereby directed to refund a sum of Rs. 1,74,177/- paid by the petitioners as duty on the ''Scalp Vein Sets'' as prayed for by

them in W.P. No. 15016/89.

