

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 5993 OF 2001

COMMISSIONER OF CUSTOMS, NEW DELHI

Petitioner (s)

Versus

M/S. CHANDIGARH LITHOTRIPTY CENTRE  
LTD.

Respondent (s)

(With application for stay and with office report)

Date: 10/04/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN  
HON'BLE MR. JUSTICE DALVEER BHANDARI

For Petitioner(s)

Mr. K. Radhakrishnan, Sr. Adv.  
Mr. Ajay Sharma, Adv. for  
Mr. B.K. Prasad, Adv.

For Respondent(s)

Mr. Ba.bir Singh Gupta, Adv.

UPON hearing counsel the Court made the following  
O R D E R

The Civil Appeal is dismissed. No costs.

(Parveen Kr. Chawla)  
Court Master  
[Signed Order is placed on the File]

(Kanwal Singh)  
Court Master

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5993 OF 2001

Versus

M/s. Chandigarh Lithotripsy Centre Ltd.

..Respondent

O R D E R

Revenue has filed the present appeal under Section 130E of

the Customs Act, 1962 (hereinafter referred to as 'the Act') against

the impugned judgment and final Order No. 1966/2000-B dated

7.11.2000 of Customs, Excise and Gold (Control) Appellate

Tribunal, New Delhi (for short 'the Tribunal') in Appeal No.

C/6/2000-B, allowing the appeal filed by the respondent.

The issue involved in the appeal for consideration is as to

whether the respondent had fulfilled the conditions laid down in

Notification No. 64/88-Cus. dated 1.3.1988 and was entitled to

exemption from duty in respect of hospital equipments viz.

'Lithotriper Model Triper X-1' and 'Urological X-ray Examination

Unit' imported in the year 1991. As per notification No. 64/88,

the respondent was required to submit a certificate certifying that

the machinery imported had been installed within a period of two

years from the date of import.

Respondent was issued a show cause notice dated

17.9.1998 alleging therein that the respondent had not complied

with the conditions laid down in the notification and thus, it was

not entitled to avail of the benefits of exemption under notification

No. 64/88. Respondent was called upon to explain in writing

within 15 days from the date of receipt of show cause notice as to

why:

"(a) a duty of Rs.19,42,759/- on the said hospital equipment should not be demanded under provisions of Section 28 of the Customs Act, 1962.

(b) Interest @ 20% per annum should not be demanded i.e. Rs.27,19,362/- with effect from the date of clearance of the said equipments, under the provisions of Section 28(b) of the Customs Act, 1962.

© The said hospital equipment valued Rs. should not be confiscated under Section 111(o)

of the Customs Act, 1962, and,

(d) penalty should not be imposed under

Section 112 and 114A of the Customs Act, 1962 for violating the conditions of the said notification."

Respondent filed its reply to the show cause notice contending that it had fulfilled all the conditions of the notification and that the proceedings be dropped.

The authority-in-original confirmed the demand of duty and imposed the penalty as per show cause notice.

Respondent, being aggrieved, filed an appeal before the Tribunal which has been accepted by the impugned order.

Heard counsel for the parties.

During the course of arguments, learned senior advocate appearing for the revenue, after taking instructions from the officers who were present in the court, had confined its submission with respect to non-furnishing of the installation certificate of the machinery within a period of two years, as indicated in the show cause notice.

Respondent's case before the Tribunal was that they had

submitted the installation certificate to Director General Health Services, New Delhi in the year 1992 and the same was returned to the respondent with a direction to submit the same through State Health Department. The information was again furnished to DGHS, New Delhi through the State Health Department.

Tribunal accepted the appeal by recording the following

finding:

"...We also observe that the appellant's contentions that they had submitted the installation report to DGHS in 1992 and the same was returned to them by DGHS with the Direction to submit through State Health Department which also forwarded the requisite information about installation have not been rebutted by the Department. Thus the fact of installation of the imported equipment cannot also be disputed."

Counsel appearing for the revenue before the Tribunal

could not rebut the contention of the respondent that they had submitted the installation report within time to the DGHS, New Delhi which was returned to it with a direction to resubmit the same through the State Health Department which the respondent

did within two years of the import of the machinery.

The finding recorded by the Tribunal is a finding of fact which stands unrebutted. Accordingly, in the peculiar facts and circumstances of the case, we do not find any infirmity in the impugned order passed by the Tribunal. The Civil Appeal is dismissed. No costs.

.....J.

[ASHOK BHAN]

NEW DELHI;

.....J.

APRIL 10, 2007.

[DALVEER BHANDARI]