

Customs, Excise and Gold Tribunal - Delhi

M/S Kamineni Hospitals Ltd. & ... vs Cc, Hyderabad li on 31 May, 2001

Equivalent citations: 2001 (76) ECC 399, 2001 (134) ELT 554 Tri Del

ORDER P.G. Chacko

1. These are applications filed by the appellants for leave to produce additional documentary evidence. Application No. 270 is for production of a certificate issued on 6.3.2000 by Indian Medical Association, Hyderabad City. Application No. 273 is ditto, a copy of the above application No. 270 having been separately numbered as 273 by the Registry unnecessarily. Application No. 403 is in respect of the following documents :-

(1) The three relevant Bills of Entry.

(2) The three CDE certificates issued by the DGHS.

(3) The certificate issued by the Customs department dt. 1.3.1996 cancelling the three PD bonds.

(4) A letter dt. 27.7.2000 issued by the DGHS.

(5) Panchanama dt. 27.1.1998, and (6) Circular dt. 6.7.2000 issued by the Govt. of A.P.

2. Heard both sides.

3. Sh. A.K. Jain, counsel for the applicants, submitted that the IMA certificate dated 6.3.2000 was not available at the adjudicatory stage of the case and that the document was necessary to show that the adjudicating authority's understanding of the expression "outdoor patient" was not correct. If the expression was understood in the way it was used in medical parlance as certified by IMA, the appellants would be found to have fulfilled the conditions of Notification No. 64/88-Cus dated 1.3.88 for import of medical equipments/accessories without payment of duty during the material period. In respect of the documents covered by application No. 403, ld. advocate submitted that all those documents were relevant to the issues involved in the appeals. He, therefore, prayed for admitting the documents to the record.

4. Sh. M.P. Singh, JDR, did not have any serious objection so far as the documents mentioned at Serial Nos. 1, 2, 3 and 5 in application No. 403 were concerned. However, he vehemently opposed the application in respect of the other documents on the ground that such documents were not in existence at the time of adjudication and were sought to be produced only to make up the shortcomings of the parties' case at adjudication. Ld. DR submitted that it was not permissible in law for the parties to adduce such evidence at the appellate stage. In support of this argument, he cited the Supreme Court's decisions in the cases of State of U.P. Vs. M.L. Srivastava and vice versa [AIR 1957 S.C. 912] and Central Indian Machinery Manufacturing Co. Ltd. Vs. State of M.P. [(1997) 9 S.C.C. 475].

5. We have considered the submissions. The basic issue in the appeals is as to whether the appellants (applicants herein) were entitled to the benefit of Notification No.64/88-Cus. in respect of the imported medical equipments/accessories which were sought to be cleared at Customs under the three Bills of Entry mentioned in the present application No. 403. The CDE certificates of the DGHS mentioned in the application are documents which were submitted by the parties to the Customs in terms of the above notification at the time of filing the Bills of Entry. The letter/certificate dated 1.3.96 issued from the office of the Assistant Collector of Customs, mentioned in the application, was the department's intimation of cancellation of the PD bonds executed by the importer in respect of the imported goods covered by the three Bills of Entry. We further note that the show-cause notice (SCN) issued for denying the benefit of the notification and for confiscation of the seized goods and for imposition of penalties on the present applicants stated that it relied on the Bills of Entry and the Panchnama dated 27.1.98. Therefore, the department can have no tenable objection to production of copies of the Bills of Entry, CDE certificates of the DGHS, Customs letter dated 1.3.96 and the Panchnama. Ld. DR has not seriously objected either. Therefore these documents are allowed to be produced as additional evidence of the appellants in the appeals.

6. With regard to the remaining documents, we note that none of the documents was in existence on or before the date of adjudication of the case by the Commissioner. The DGHS letter dated 27.7.2000 is addressed to the Health Secretary, Govt. of A.P., requesting for verification and certification of the data of OPD/IPD free treatment in respect of M/s Kamineni Hospitals Ltd. (one of the applicants). The "circular" dated 6.7.2000 is an order of the District Collector, Hyderabad, constituting inspecting teams for hospitals in the district, including Kamineni Hospital, and directing them to submit their inspection reports through proper channel to the Central Government for purposes of Customs duty exemption notifications. But neither of the documents contains anything to show that the inspection/verification/certification referred to therein relates to the material period. Therefore, the applicants' plea that the documents are relevant to the appeals cannot be accepted. No other ground has been stated by the applicants or their counsel. As regards the IMA certificate dated 6.3.2000, we note that the certificate has not been shown to be applicable to Kamineni Hospital. Apart from this, the appellants have not shown cause why they could not obtain a certificate from the IMA and produce the same before the adjudicating authority at the adjudicatory stage of the case. Above all, it is apparent that the attempt of the applicants, by seeking to bring on record of the Tribunal the IMA certificate on "outdoor patients", is to make up some shortcomings of their defence vis-a-vis the department's case before the adjudicating authority. This cannot be permitted as rightly pointed out by the learned Departmental Representative. The apex Court's ruling in the cited case of M.L. Srivastava supports the DR's argument.

7. The application for producing the DGHS letter dated 27.7.2000, District Collector's order dated 6.7.2000 and the IMA certificate dated 6.3.2000 as additional evidence in the appeals cannot be allowed for the reasons already recorded. The other documents mentioned in application No. 403 will be accepted. Application No. 270 is rejected, while application No. 403 is allowed in part.