IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL KOLKATA
EAST ZONAL BENCH, KOLKATA

Date of Hearing/Decision : 18.5.2018
Date of Pronouncement : 10.07.2018

Appeal No. C/175/2009

(Arising out of Order-in-Appeal No. Kol/CUS/CKP/67/9 dated: 9.02.2009 passed by the Commissioner of Customs,(Appeal) Kolkata)

M/s Surgiplus Proprietor Sudhir Kumar Agarwal Appellant

Vs.

Assitant Commissioner Customs, Kolkata Respondent

Appearance
Shri P.R. Choudhary, Consultant for the appellant

Shri S.N. Mitra, AC(DR) for the respondent

CORAM:**Hon'ble Mr. P.K. Choudhary, Member (Judicial)**
Hon'ble Mr. Bijay Kumar, Member (Technical)

Final Order No:F/76418/2018

Per: Bijay Kumar

The present appeal filed against the impugned order passed by the Commissioner (Appeal), wherein he rejected the appeal of the appellant against the Order-in-Original No.KOL/CUS/AC 5(b) 2008 dated 14/07/2008.

2. The facts of the case in brief are that the appellant imported the consignment of 1,40,000 pieces of spinal instrument(needle) of top brand from Medical Net International, Malaysia valued at U.S. dollar 54,600 CIR (Rs. 22,11,300) and filed the Bill of Entry No. 410608 dated 20/05/2008 for the clearance thereof claiming the benefit of exemption under Notification No.

21/2000/CUS Sl. No 370 and 6/2006 CE, Sl. 68 (list 41). The Adjudicating Authority adjudicated the case after following the due process of law and denied the claim made by the appellant for availment of aforestated exemption notification on the ground that these are available only for the assistive devises, rehabilitation(aid), and other goods for the disabled persons, as in the instant case the goods imported are spinal needle in bulk for use of patients in spinal anesthesia, (for conducting cesarean operation of pregnant women and also during some other operation like Inguinal hernia) and hence the benefit under these notifications have rightly been denied to the appellant. The Commissioner (Appeal) has up held the order of Adjudicating Authority and hence the present appeal.

3. The Ld. Advocate stated that;

- The Ld. Commissioner of Customs (Appeals), in his interpretation of the notification,. observed and held that the goods being not for the disabled cannot fall under Sl. 370 of the notification,(List-41 E-9) and hence assessment with full exemption from duty is not available to the imported spinal needle.
- Ld. Commissioner of Customs (Appeal) failed to observe the use of “comas” after the words “assertive devices” and “rehabilitation” aids and other goods for the disabled” have a distinct and vital role in correct interpretation of the notification. The Ld. Commissioner has failed to appreciate that “assertive devices” and “rehabilitation” and

aids and other goods for the disabled" are two different classes of items having separate functional use and these items have been separately identified in the notification by use of "comas". The purport of the notification is to cover:

1. "Assistive devices as **per List 41**

2. "Rehabilitation aids and other goods for the disabled as per list 41.

Coming to item E-9 of List 41, here again it can be seen that items covered are "instruments and implants for severely physically handicapped patients and joint replacement and spinal needles and implants including bone cements"

1. "Instruments and implants for severely physically handicapped patients

2. "Joint replacements

3. "spinal needles

4. "implants including bone cements"

- It is pertinent to note here that the first items is instruments and implants for severely physically handicapped patients i.e., such instruments and implants which are for exclusive use of patients who are severely physically handicapped. The other items need not necessarily be for the severely physically handicapped. Had the law makers had the intention to include the all items for use of severely physically handicapped the, in that even, the words, "severely handicapped patients" would have been placed at the end of the sentence qualifying the use of preceding items for use by such persons only. In such a situation, Sl. E 9 of List 41 would read as follows:

"Instruments and implants and joint replacement and spinal needles and implants including bone cements for severely physically handicapped patients."

- Accordingly, there is no doubt that Assistive Devices shall include spinal needles given that such needles assists in the drawing or infusion of blood fluid or medicine as the case may be in/ from the spine and accordingly, shall merit the benefit of notification 21/2002 Sl. 370 List 41 Item E-9
- The appellant submits that alternatively, the goods are eligible to concessional duty notification 21/2002-CUS, Sl. 363 List 37 item no 35 that covers "Disposable and non disposable cannula for aorta, vena. Cavae and similar vein and blood vessels and cannula for intra corporal spaces."
- In support the appellant relies upon the decision of the CEGAT South Zone Bench n in all matter of **Commissioner of C. Ex. Coimbatore vs**. **Saberwal Surgicals** as reported in 20 00(117) ELT 400 Tribunal and CESTAT Principle Bench New Delhi in the matter of **Becton Dickinson**

India Pvt Ltd vs Commissioner of C. Ex. New Delhi III as reported in 2015(326) ELT 712 Tri Delhi.

- Further as ascertained from the import statics furnished by ZUABA various ports of the country are assessing spinal needles as 'cannula for intra corporal spaces.

4. The Ld. DR has reiterates and the ground contained in the impugned order and submits that the impugned order has discussed in the detail as to how and why the benefit of these two notifications are not available to the appellant. He submits that the impugned order is sustainable in the eyes of law and required to be upheld.

5. We have heard the parties and peruse the appeal record.

6. The issue before us is to decide the availability of benefit under notification claimed by the appellant for the duty free import of the imported consignment of spinal needle. This issue is no longer res-integra in view of the following judgments;

7. Commissioner of Central Excise **Coimbatore Vs. Saberwal Surgical Pvt Ltd.- 2000/117 ELT/400(Tribunal) and Becton Dickinson India Pvt Ltd vs. Commissioner of Customs and Excise Delhi-III 2015 (326) ELT 712 (Tri-Del.).** In these cases the Hon'ble Tribunal has allowed the benefit to the imported item which is quite similar to the one imported by the appellant.

8. The Revenue has preferred the appeal against this order before the Hon'ble Supreme Court which was dismissed. Therefore, this judgment is having the binding precedent.

9. We, therefore, allow the appeal with a consequential benefit if any.

(Pronounced in open Court on 10.07.2018)

Sd/	Sd/
(P.K Choudhary) Member (Judicial)	(Bijay Kumar) Member(Technical)

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