CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

Customs Appeal No: 227 of 2010

[Arising out of Order-in-Appeal No: 239/Mumbai-III/2009 dated 26th November 2009 passed by the Commissioner of Customs (Appeals), Mumbai – III.]

KEM Hospital … ***Appellant***
Parel, Mumbai – 400 012

versus

Commissioner of Customs (CSI Airport) ***…Respondent***
Awas Corporate Point, Makwana Lane,
Andheri-Kurla Road, Marol, Mumbai – 400 059

APPEARANCE:

Ms Aarti Bhide, Advocate for the appellant

Ms Trupti Chavan, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR P DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/88581 / 2018

DATE OF HEARING: 03/05/2018
DATE OF DECISION: 03/05/2018

PER: C J MATHEW

This appeal arises from order-in-appeal no. 239/Mumbai-III/2009 dated 26th November 2009 of Commissioner of Customs (Appeals), Mumbai – III, which, while disposing off the appeal of M/s KEM Hospital against the order of the original authority pertaining to three bills of entry no. 109361/26.10.2004, 330757/05.07.2005 and

384039/05.09.2005, upheld the demand for differential duty of ₹1,45,777/- along with interest but limited the penalty under section 112 of Customs Act, 1962 to ₹ 50,000/-.

2. The appellant had imported 'DC defibrillators' for internal use and 'pace makers (along with accessories)' and claimed exemption under notification no. 21/2002-Cus dated 1st March 2002 (at serial no. 363A). In the proceedings before the lower authority initiated for erroneous claim of benefit under the said notification, it was pleaded by the appellant herein that they were also eligible for exemption at serial no. 362 of the very same notification. Nonetheless, the original authority, and the first appellate authority, held this claim to be untenable as the certificate indicating compliance with the conditions prescribed therein had not been produced at the time of clearance and it would have been necessary to ascertain compliance thereof at that point of time. Furthermore, confirmation of penalty under section 112 of Customs Act, 1962 was resorted to for alleged mis-declaration of the goods as intended for internal use though found to be for external use. Aggrieved by this order, the appellant is before us.

3. Learned Counsel for the appellant submits that the said exemption, as claimed subsequently by the appellant, is available subject to the condition that the hospital is run, *inter alia*, by a local authority evidenced by a certificate from the prescribed authority to that effect and certification by the head of the hospital that the equipment is

meant for use in the hospital and is essential for running and maintenance thereof. It is also seen that the exemption is available to at serial no. 363A to ‘DC defibrillators’ intended for internal use. That the imported goods are ‘DC defibrillators’ is not in doubt and the dispute is limited only to the internal or external use of the same. It is also seen from the records that the appellant filed duty exemption certificate along with the bill of entry which certifies the eligibility for import under the alternate claim made by the appellant.

4. We have heard Learned Authorised Representative.

5. As the eligibility for import as per condition no. 77 of notification no. 21/2002-Cus dated 1st March 2002 is not in dispute and it is only the subsequent production of the certification that has led to the detriment, we are of the opinion that the exemption should be made applicable. The Tribunal has taken the same view in *PD Hinduja National Hospital & Research Centre v Commissioner of Customs (Import) ACC, Mumbai [2018 (364) ELT 495 (Tri. - Mumbai)]*

6. Accordingly, we set aside the impugned order and allow the appeal.

(Pronounced in open court)

(C J Mathew)
Member (Technical)

(P Dinesha)
Member (Judicial)

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