



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-04-2026

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**THE HONOURABLE DR JUSTICE G. JAYACHANDRAN
AND
THE HONOURABLE MR.JUSTICE SHAMIM AHMED**

C.M.A.No.1086 of 2007
& M.P.No.1 of 2007

M/s.Vinodhagan Memorial Hospital (P) Ltd.,
3120 & 3121 Trichy Road,
Thanjavur - 613 007.

... Appellant

Vs.

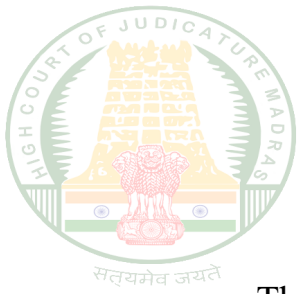
The Commissioner Of Customs,
Customs House,
Rajaji Salai, Chennai 600 001.

... Respondent

Prayer: Appeal under Section 130 of Customs Act, 1962, against the final order No.123/07, dated 12.02.2007 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai in Appeal No.C/150/2001 preferred against the Order in Original No.69/2001-CAU dated 23.03.2001 passed by the Commissioner of Customs, Chennai.

For Appellant: Mr.Hari Radhakrishnan

For Respondent: Mr.A.P.Srinivas,
Senior Standing Counsel



JUDGMENT

(Order of the Court was made by G.Jayachandran J.)

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The appeal is directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai, confirming the levy of fine in lieu of confiscation issued under Section 111(o) of the Customs Act and the penalty imposed under Section 112(a) of Customs Act.

2. The short point involved in this case is that as under:-

The appellant had imported a CT Scanner machine and availed the tax benefit provided under Notification No.64/88. The said benefit was coupled with certain obligations to the importers, viz., that he should provide minimum 10% service for the patients whose monthly income is less than Rs.500/-. This post-import condition been violated by the appellant and the same been established through evidence. The case of the Department is that the obligations is a continuous obligation and having breached the said obligation, the importer, namely the appellant herein, is liable for penalty as well as confiscation of the equipment, or in alternate to pay fine in lieu of confiscation.

3. However, the contention of the appellant is that, in view of exemption notification No.64/1988 having been reconciled on 01.03.1994 through Notification No.99 of 1994, the show cause notice issued on 27.12.1999 is



hopelessly barred by limitation. It is further contended that, under Section 28 of the Customs Act, for any misdeclaration or duty not levied, short-levied or paid erroneously, proceedings can be initiated within one year and in exceptional cases, regular proceedings should be initiated within 5 years. Whereas, in the present case, the regular proceedings by way of show cause notice was initiated after five years from the date of rescission of the exemption notification.

4. On facts, both the Commissioner as well as Tribunal have concurrently held that the appellant has grossly violated the post-import conditions imposed under Notification No.64/1988.

5. While admitting the appeal, this Court has framed the following substantial questions of law:

“1. Whether the Hon’ble Tribunal has interpreted the Notification 64/88-Cus., dated 01.03.1988 in the right perspective?”

2. Whether Section 159 A of the Customs Act has an overriding effect to the ruling of the High Court?”

3. Whether the demand of duty is legally correct?”

6. The Learned Counsel appearing for the department, in response to the above submissions rely upon the judgment of this Court in ***M/s.Arogya Scan and Research Centre P.Ltd., vs. Customs, Excise and Service Tax Appellate***



Tribunal and another (C.M.A.No.432 of 2011 dated 12.04.2017). He submitted that, in a similar facts, this Court had framed the substantial question of law in connection with the limitation and held in favour of the Department in the light of Section 159A, which saves action taken even after the exemption notification withdrawn, modified or reconciled.

7. We have given our anxious consideration to this issue and examined the judgment cited by the Learned Counsel for the department.

8. We find that the limited issue which is now raised by the learned Counsel for the appellant, in the light of Section 28 of the Act, does not arise in the case cited. In that case, proceedings were initiated by issuance of show cause notice on 27.12.1999 i.e., well within period of five years of limitation.

9. Whereas, Section 159A deals with the Saving of actions initiated pending or subsequent to the exemption notifications and circulars withdrawn, rescinded or modified.

10. No doubt, the obligation cast upon the appellant is a continuous obligation. However, after the rescission of the exemption notification, for taking any coercive action not only the saving clause to be satisfied but such



action must be within the limitation period prescribed under the Statute.

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11. In this case, the import of the CT Scanner equipment was in the year 1992 availing the benefit of the exemption notification No.64/88. The post-import obligation ceased on 01.03.1994 *vide* notification No.99/1994. In this case, the Department on the strength of Section 159A could have taken action within five years from the date of rescind of the obligation i.e., 28.02.1994. To take any penal action, the limitation prescribed under Section 28 is one year and in exceptional cases upto 5 years. The limitation in this case expired on 28.02.1999. However, the show cause notice issued only 27.12.1999, which is beyond the period of limitation. On this ground, the appellant is entitled to succeed.

12. Accordingly, the Appeal is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(Dr. G.JAYACHANDRAN, J.) & (SHAMIM AHMED, J.)

08-04-2026

Index :Yes/No.

Neutral Citation :Yes/No.

bsm



C.M.A.No.1086 of 2



To,

1. The Commissioner Of Customs,
Customs House,
Rajaji Salai, Chennai 600 001.

2. The Customs, Excise and Service Tax Appellate Tribunal,
Chennai.



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