

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Single Member Bench

Court – I

Customs Appeal No. 30218 of 2023

(Arising out of OIA No. HYD-CUS-HYC-APP-051-22-23 (APP-I) dt.29.12.2022 passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad)

Nano Hospitals Pvt Ltd

7-1-57/B & C, Syam Karan Road, Anand Bagh,
Ameerpet, Hyderabad – 500 016

.....Appellant

VERSUS

**Principal Commissioner of Customs
Hyderabad - Customs**

GST Bhavan, Opposite LB Stadium,
Basheerbagh, Hyderabad – 500 004

.....Respondent

Appearance

Shri L.V. Rao, Advocate for the Appellant.

Shri M. Anukathir Surya, Authorized Representative for the Respondent.

Coram:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER No. A/30268/2024

Date of Hearing: 17.11.2023

Date of Decision: 08.04.2024

[Order per: ANIL CHOUDHARY]

The Appellant – Nano Hospitals Pvt Ltd is a 100 bed multi-specialty hospital, with specialization in cardiology, cardio thoracic surgery, etc., and are having IEC No. 0911024425. They filed Bill of Entry No. 7104688 dt.17.01.2022 through the Customs House Broker – M/s SRNK Logistics Pvt Ltd, seeking clearance of imported goods (second hand/used) viz., Puritan Bennett 7200 series ventilator, Drager Medical Babylag 2000 Neonatal Ventilator, Fresenius Medical 5008 Cordiax Dialysis Machines and Taema Alys Ventilator. The consignment is covered under H/BL No. EMLTTLS21110065 dt.04.12.2021 and Invoice No. F2110-00062 dt.29.10.2021 issued by M/s Alternup Medical, Zile Moulin, BD Jean Moulin, Pontcharra-Sur-Turdine, France-6990, with the invoice value declared as 3625 EUR.

2. The requirement of pre-registration for import of notified medical devices which includes dialysis machines, the Central Drugs Standard Control Organization (CDSCO), Director General Health Services, Ministry of Health Services, Ministry of Health & Family Welfare, have issued order dt.18.04.2021 providing that importers and manufacturers are required to take import/manufacturing license from Central Licensing Authority or State Licensing Authority as the case may be w.e.f. 01.04.2021. This order was subsequently vide order dt.03.11.2021, extended the time period to 30.06.2022 or till the time the Central Licensing Authority or the State Licensing Authority takes a decision with respect to application of the said order.

3. That in compliance with the abovementioned instructions, the appellant has applied to the Central Licensing Authority i.e., CDSCO, to grant import license in respect of Dialysis Machine (Fresenius Medical 5008 Cordiax Dialysis Machine). A personal hearing was granted on 17.05.2022 by the Deputy Commissioner, which was attended by the authorized representative of the appellant and detailed submissions were made before the Adjudicating Authority by him with a request to release the imported goods. Thereafter, the Deputy Commissioner passed the OIO dt.27.05.2022, wherein he observed that the subject goods imported are used Critical Care Equipment meant for re-use, which are specifically covered under Basel No. B1110 of Schedule VI of the Hazardous and Other Waste Management Rules, 2016 and the same are prohibited for import read with Rule 12(6), *ibid*. Accordingly, the Deputy Commissioner ordered for confiscation of the impugned goods valued at Rs.5,62,961/- under section 111(d) of Customs Act read with Hazardous and Other Waste Management Rules, 2016 and ordered for re-export of the goods to the supplier at the cost of the importer within 30 days from the date of receipt of the order. The Adjudicating Authority has also imposed penalty of Rs.20,000/- on the appellant/importer under section 112(a) of the Customs Act, 1962 *ibid*.

4. Being aggrieved, the appellant/importer filed appeal before the Commissioner (Appeals), who vide the impugned OIA dt.29.12.2022 was pleased to reject the appeal upholding the OIO.

5. Being aggrieved, the appellant is before this Tribunal. Learned Counsel for the appellant *inter alia* urges the following grounds:

- 5.1. That the Adjudicating Authority has passed the adjudication order without issuing any SCN as required under section 124 of the Customs Act. Thus, impugned order is vitiated for lack of jurisdiction with the Adjudicating Authority for passing the order. It is sine qua non for the Adjudicating Authority to serve SCN, which gives him the jurisdiction to pass the adjudication order. It is evident on the face of record that no SCN was issued and only a notice dt.25.04.2022 was issued stating that – “Further, during examination, it is found that the items imported were used only. As per Hazardous Waste Management Rules 2016, used medical items listed in Schedule II are prohibited as per import policy. Hence you are requested to submit all the import documents immediately to this office for further proceedings.” Thus, evidently, no SCN proposing confiscation containing list of allegations was issued. Thus, the adjudication order is both bad in law and also against the principles of natural justice.
- 5.2. It is further evident from the letter dt.25.04.2022 issued by the Deputy Commissioner of Customs that the goods under import are listed in Schedule II and are prohibited. This is also erroneous as the goods imported by the appellant fall under Schedule VI of the Hazardous and Other Waste Management Rules, 2016.
- 5.3. It is further urged that the Commissioner (Appeals) has observed and accepted that it is evident from the records that no SCN was issued by the Adjudicating Authority/Deputy Commissioner.
- 5.4. Further, admittedly, the imported goods were not scrap and were medical devices/machines having minimum residual life of 5 years or more, as certified by the Chartered Engineer and thus, these were not e-waste/hazardous waste. The supplier of the goods in the invoice dt.29.10.2021 has also certified that the goods in question are in good working condition. Further, the value of the imported goods is not ‘nil’ or ‘zero’ or anything near to it. The appellant has declared the value in the Bill of Entry at 3625 EUR and further, the Chartered Engineer has valued the said goods at more value than the declared value. Further goods in question were imported for actual user by a multi-specialty hospital for use in the hospital and not for trade.

5.5. As the goods have been certified having residual life of 5 years or more by the Chartered Engineer, such goods do not fall in the definition of 'waste' under Rule 3(38) of the Hazardous and Other Waste Management and Transboundary Movement Rules Rules, 2016. Learned Counsel relies on the ruling in the case of CC vs M/s SP Associates, Arihant Enterprises [2021 (9) TMI – CESTAT Chennai]. Accordingly, learned Counsel prays for allowing the appeal with consequential benefits.

6. Learned AR for Revenue opposes the appeal and relies on the findings in the impugned order. Further, he relies on the following rulings:

- a) Skylark Office Machines vs CC, Chennai [2020 (7) TMI 517 (Tri-Chennai)]
- b) Black Gold Technologies vs UOI [2020 (9) TMI 137 (Mad.)]
- c) Med Piic Solution Inc. vs ASO, New Delhi [2021 (5) TMI 326 (Mad.)]

7. Rebutting the submissions and reliance placed by learned AR on the aforementioned case laws, learned Counsel for the appellant urges that the ruling in Skylark Office Machines (supra) is not relevant and distinguishable on the facts and circumstances of the instant case. In the said case of Skylark Office Machines, the Chartered Engineer has not certified the extent of residual life of the imported goods and also not certified that the imported goods are not e-waste/hazardous waste. Whereas, in the facts of the present case, the Chartered Engineer has certified that the imported goods have minimum residual life of 5 years or more and are not e-waste/hazardous waste.

8. It is further urged that the ruling of Hon'ble Madras High Court in the case of Black Gold Technologies (supra) is also not relevant as the facts and circumstances are totally distinguishable. So far the ruling in the case of Medi Piic Solution Inc is concerned, the facts herein are totally different, as in the present case, the Revenue got the goods verified by the Chartered Engineer and his report has neither been rejected nor any doubt was expressed by the Adjudicating Authority, which has also been noted by the Commissioner (Appeals). Thus, in the light of such facts, the impugned order is bad and fit to be set aside.

9. Having considered the rival contentions, I find that admittedly, the goods – used medical devices, were found to be in good working condition having minimum residual life of 5 years or more as certified by the Chartered Engineer. Accordingly, I hold that in view of such admitted facts, the goods under import

do not qualify in the definition of 'waste' as defined under Rule 3(38) of Hazardous and Other Waste Management Rules, 2016. I further find that the impugned order is vitiated for lack of jurisdiction, which is a primary requirement and I hold that the Adjudicating Authority lacks jurisdiction to pass the order, as admittedly no SCN was served in accordance with section 124 of the Customs Act.

10. In view of my aforementioned findings and observations, I allow the appeal and set aside the impugned order. The appellant shall be entitled to consequential benefits/relief, including release of the goods for home consumption on payment of applicable duty. I further hold that in the circumstances, the appellant shall not be liable to any demurrage and other port charges for the delay in clearance, which is wholly attributable to Revenue.

11. Appeal allowed.

(Pronounced in the Open Court on 08.04.2024)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)