IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-04-2026

CORAM

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

C.M.A.No.1205 of 2008
& M.P.No.1 of 2008

The Commissioner Of Customs (Imports),
Customs House,
Rajaji Salai, Chennai-1. … Appellant

Vs.

1.M/s.Vinodhagan Memorial Hospital P. Ltd.,
No.3120 And 3121, Trichy Road,
Thanjavur – 613 007.

2.Customs Excise And Service Tax Appellate Tribunal,
South Zonal Bench,
Shastri Bhawan Annexe,
1st Floor, 26, Haddows Road.,
Chennai-600 006. … Respondents

Prayer: Appeal under Section 130 (1) of Customs Act, 1962, to set aside the impugned Final Order No.123 of 2007 dated 12.02.2007 (received on 06.03.2007) on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Shastri Bhawan Annexe, 1st Floor, 26 Haddows Road, Chennai – 600 006.

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

For Respondents: Mr.Hari Radhakrishnan

J U D G M E N T

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

The Appeal is by the Department on being aggrieved by the order of Customs, Excise and Service Tax Appellate Tribunal. The respondent herein imported CT Scanner machine, availing the benefit of tax exemption under Notification No.64 of 1988. In the said notification, there was a post-import condition on the importer that he should provide 10% of the services for the patients whose monthly income is less than Rs.500/- per month. Obviously, in this case, the appellant has failed to comply with the said condition. Consequently, a show cause notice was issued on 27.12.1999 for confiscation of the equipment and penalty for violation. Since the equipments by the time was disposed, final order of fine in lieu of confiscation and penalty of Rs.9 lakhs for violation passed.

2. Aggrieved by the same, the appellant preferred an appeal before the Commissioner (Appeals), which came to be dismissed. On further appeal, the Customs, Excise and Service Tax Appellate Tribunal, Chennai, confirmed the order of the authorities. However, the Tribunal reduced the penalty from Rs. 9 lakhs to Rs. 1 lakh. The order reads as below:-

> 8. *As held by the Hon'ble Supreme Court in Mediwell Hospitals' case, hospitals claiming the benefit of*

Customs Notification No.64/88 had continuing liability to comply with the conditions therein. This liability did not come to an end even when the Notification was rescinded inasamuch as Section 159 A of the Customs Act saved departmental proceedings for enforcing fee liability under the Notification against the hospital as held by this Bench in the case of Jaya Nursing Home case (supra). In view of the continuing nature of the liability under the Notification, the demand of duty is not hit by the limitation prescribed under Section 28 of the Customs Act.

9. Learned Commissioner did not confiscate the goods as it was not available with the department. He however held to be liable for confiscation under Section 111 (o) of the Customs Act. The adjudicating authority also imposed a penalty on the appellants for rendering the goods liable for confiscation. The appellants have not succeeded in challenging the confiscation order, nor have they shown that they did not render the goods liable for confiscation. Hence a penalty under Section 112(a) of the Customs Act is irresistible. However, in the facts and circumstances of the case, we are of the view that a penalty of Rs.9 laksh to too much. We reduce the same to Rs.1 laks (Rupees One Lakh only). In the result, the impugned order will stand sustained, with modification as to quantum of penalty.

3. Challenging the reduction of penalty from Rs.9 lakhs to Rs.1 lakh, the Department is before this Court by way of C.M.A.No.1208 of 2008 and this Court admitted the appeal on the following substantial questions of law.

> *"Whether the Honourable Customs, Excise and Service Tax Appellate Tribunal was justified in reducing the penalty and the same is correct or otherwise.?"*

4. The primary issue that arises for consideration is whether the proceedings initiated against the appellant by issuance of the show cause notice dated 27.12.1999 barred by limitation under Section 28 of the Customs Act.

5. It is not in dispute that the appellant imported the equipment in the year 1992 and availed the benefit of Notification No.64/88. The said notification came to be rescinded on 01.03.1994 by Notification No.99 of 1994 is also not in dispute. Though the obligation under the notification may be construed as a continuing obligation, any action for enforcement of such obligation, even if saved under Section 159A of the Customs Act, must necessarily be initiated within the period of limitation prescribed under Section 28 of the Act.

6. In the present case, the maximum period of limitation for the Department to take action is five years. The said period has to be reckoned from the date on which the notification was rescinded, i.e., 01.03.1994. Thus, the limitation period expired on 28.02.1999. However, the show cause notice was issued only on 27.12.1999, which is beyond the prescribed period of limitation.

7. In such circumstances, this Court is of the view that the proceedings against the appellant is barred by limitation. Once the confiscation proceedings is held to be time-barred, the question of imposition or reduction of penalty which is an action in consequence has to automatically fail. Accordingly, the substantial question of law framed in this appeal is answered against the Department.

8. In the result, the Appeal filed by the Department stands dismissed. 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

To,
1. The Customs Excise And Service Tax Appellate Tribunal,
South Zonal Bench,
Shastri Bhawan Annexe,
1st Floor, 26, Haddows Road.,
Chennai-600 006.

Dr. G.JAYACHANDRAN, J.
AND
SHAMIM AHMED, J.
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