

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

W.A.No.2827 of 2012
and M.P.No.1 of 2012

1. The Union of India
Rep. by Ministry of Health & Family Welfare
New Delhi.
 2. The Directorate General of Health Services,
New Delhi.
 3. The Union of India
Rep. by Secretary,
Ministry of Finance,
New Delhi.
 4. The Commissioner of Customs
Airport Customs,
Chennai.
 5. The Commissioner of Customs (Appeals)
Custom House,
Chennai - 1.
 6. The Assistant Commissioner of Customs
Air Cargo Complex,
Meenambakkam,
Chennai - 27.
- Appellants / Respondents 1 to 6

Vs.

Seahorse Hospitals Limited
Formerly known as Advanced Medical Care Limited,
Rep. by authorized signatory,
A.Rajasekaran. Respondent / Petitioner

Writ Appeal filed under Clause 15 of Letters Patent, against
the order of this Court, dated 05.12.2006 made in W.P.No.18133
of 2001.

Writ petition is filed under Article 226 of the Constitution of India praying this Hon'ble Court to issue a Writ of certiorarified Mandamus to calling for the records of the second respondent in number z.37034/4/89-MG(Pt.I) dated 5.7.1999 confirmed in No.C.18018/5/99-MT dated 6.8.1999, and quash the same and direct the second respondent to issue necessary installation certificate for the machines more fully described in the Schedule attached to the Writ Petition.

For Appellant : Mr.A.Kumaraguru, SCCG

For Respondent : No appearance

JUDGMENT

(Judgement of the Court was delivered by
P.KALAIYARASAN, J)

The instant writ appeal arises from the order, dated 05.12.2006 made in W.P.No.18133 of 2001.

2. The facts in nutshell, leading to the filing of the intra court appeal are that the appellant / petitioner, being a public limited company has established and is administering a Hospital in the city of Trichy; that the petitioner decided to acquire certain sophisticated machines for the Hospital; that the petitioner wanted to avail benefit of Notification No.64/88, dated 01.03.1988 introduced by the Union of India, in exercise of the powers under Section 25 (1) of Customs Act, 1962 and the petitioner sought certificate for exemption of duty under the aforesaid Notification and Customs Duty Exemption Certificate was accordingly, issued after the State Government gave its recommendation. The machines were installed and the authorities issued a certificate of installation, evidencing the installation of the aforesaid machines. Meanwhile, due to financial constraints, there was change of management with new set of promoters. The new management could not trace various records contemplated under the Notification for the years 1989 to 1994. This prompted the petitioner to approach the authorities for the issuance of the installation certificate. The Joint Directorate of Health Services, who is the District Medical Officer, inspected the hospital and issued a installation certificate on 06.03.1997 in respect of all the 23 machines.

3. One of the conditions to be complied with by the Hospital to claim relief under Notification 64/88 relates to the providing of medical, surgical or diagnostic treatment not only without any distinction of caste, creed, race, religion or language, but also free on average to at least 40% of their

outdoor patients and free to all indoor patients, belonging to families with an income of less than Rs.500/- per month and for keeping for this purpose, 10% of the hospital beds reserved for such patients. The petitioner had complied with these conditions, to the maximum possible extent and also took several steps to keep the general public about the availability of free service to the needy, in terms of the notification, through various Non-Governmental organizations.

4. The Government of Tamil Nadu passed G.O.Ms.No.999, dated 11.06.1990, requiring the Government Hospitals to refer 10% of the inpatients, whose income is less than Rs.500/- per month and 40% of out patients to the Private Medical Institutions, who claim Customs Duty Exemption Certificate.

5. The Central Government also realised the problem in following the said notification and therefore, repealed the same, by Notification No.99/94, dated 01.03.1994. The petitioner was not required to observe the formalities after the said date. The petitioner had also taken necessary steps to conduct rural medical camps, to bring about the awareness of such facilities among the needy people.

6. On 24.11.1998, a field inquiry was conducted through C.S.U of Trichy Commissionerate of Customs and Central Excise and since the Hospital appears to have failed to fulfil the conditions of Customs Notification 64/88, action was initiated.

7. The respondents initiated steps and called upon the petitioner to pay the duty payable on the machines so imported. The petitioner, therefore, filed W.P.No.7887 / 98 and this Court passed an order on 06.08.1998 directing the second respondent therein, to consider the application of the petitioner and issue the necessary certificate.

8. The second respondent passed an order on 05.07.1999, holding that the petitioner had failed to fulfil the obligation stipulated under the notification and hence, not eligible to the installation certificates in respect of all the 23 machines and withdrew all the Customs Duty Exemption Certificate already issued, as cancelled. The petitioner was not given a proper opportunity to produce several documents, to show that they were in compliance of the requirements. Therefore, the writ petition has been filed.

9. The learned Single Judge allowed the writ petition, following the Judgment in Apollo Hospitals Enterprises Limited v. Union of India, reported in (2001) 133 ELT 58, as the question raised by both sides was elaborately discussed in the above Judgment.

10. The learned counsel appearing for the appellant strenuously contends that Apollo Hospital's case is not applicable on the case on hand, as the period specified under the order impugned in the writ petition is not covered by the Notification. He further contends that as per the Judgment of the Hon'ble Supreme Court in Mediwell Hospital v. Union of India, reported in 1997 (89) ELT 425 (SC), every notification granting exemption must be construed to cast continuing obligation on the part of all those who have obtained the certificate from the appropriate authority and this has been last cite off.

11. No one appeared for the respondent.

12. In the order impugned in the writ petition, the appellant / respondent withdrew and cancelled all Customs Duty Exemption Certificate issued to the respondent / petitioner under Notification No.64/88-Cus, dated 01.03.1988 and also rejected the request for issuance of installation certificate. The orders impugned in the writ petition are dated 05.07.1999 and 06.08.1999. In the above said first order, dated 05.07.1999, date of issuance of Customs Duty Exemption Certificate for each item of equipment is given in Annexure-A. It is seen that Customs Duty Exemption Certificates for all the 23 items were issued between 22.02.1989 and 02.04.1990. Admittedly, Notification No.64/88-Cus, dated 01.03.1988 was repealed by Notification No.99/1994, dated 01.03.1994. Therefore, the notification was in force from 01.03.1988 to 01.03.1994. The above Customs Duty Exemption Certificates were all issued by the appellant / respondent to all the 23 equipments well within the period, while notification was in force.

13. As averred in the counter by the appellants / respondents, a field enquiry was conducted through C.S.U of Trichy Commissionerate of Customs and Central Excise on 24.11.1998, in order to verify the fulfilment of the conditions, as per Customs Notification No.64/88, dated 01.03.1988. In the orders impugned in the writ petition, it is mentioned that the inpatient treatment provided free for the year 1995, 1996 and 1997 was in the percentage of 2.2%, 2.7% and 1% respectively. It is further mentioned that OPD data provided is only for the year 1996-97 and 1997-98, wherein it is mentioned that free patients were treated in OPD are 20.8% and 0.5% respectively, which are less than the minimum stipulated under the Notification. Therefore, during the inspection conducted on 24.11.1998, non-compliance of conditions as stipulated under Notification No.64/88 was noticed for the years from 1995 to 1998.

14. It is to be seen whether the authorities can enforce the liability after rescission of Notification No.64/88. While

considering this, it is appropriate to refer the Supreme Court Judgments :

(1) State of Orissa v. Titaghur Paper Mills Co., Ltd.,
MANU/SC/0325/1985

(2) State of Rajasthan v. Mangilal Pindwal,
MANU/SC/0549/1996

15. In State of Orissa v. Titaghur Paper Mills Co., Ltd., reported in MANU/SC/0325/1985, it has been held by the Hon'ble Supreme Court as follows :

"Yet another contention raised by the contesting respondents with respect to the impugned provisions was that the two notifications dated December 29, 1977, having been made in "supersession" of all previous notifications issued on the subject, the effect was to wipe out all tax liability which had accrued under the notifications dated May 23, 1977. The High Court held that to hold that the liability was so wiped out would amount to giving a retrospective effect to the notification dated December 29, 1977, and as the Legislature had not conferred upon the State Government the power to issue notifications having retrospective effect, to so hold would be to render the said notification void. The High Court referred to a number of decisions on the question of the power to make subordinate legislation having retrospective effect. We find it unnecessary for the purpose of deciding this point to refer to any of the authorities cited by the High Court. Both the notifications dated December 29, 1977, are in express terms made with effect from January 1, 1978. They do not at all purport to have any retrospective effect and, therefore, they could not affect the operation of the earlier notifications dated May 23, 1977, until they came into force on January 1, 1978. Further, both Section 3 and Section 5(1) in express terms confer power upon the State Government to issue notifications "from time to time". Section 3 provides that "the State may, from time to time by notifications, declare..." goods liable to purchase tax. Prior to January 1, 1978, the provision to Sub-section (1) of Section 5 provided that "The State Government may, from

time to time by notification., fix a higher rate not exceeding thirteen per cent or any lower rate of tax.." Section 5(1) as amended with effect from January, 1978, provides that "the tax shall be levied, at such rate, not exceeding thirteen per cent... as the State Government may, from time to time by notification, specify". Thus, the power of the State Government to issue notifications under these two sections is to be exercised by it "from time to time" and, therefore, the State Government can under Section 5(1) issue a notification and repeal and replace it by another notification enhancing or lowering the rate of tax and similarly it can issue a notification under Section 3 declaring particular goods or class of goods to be liable to tax on the turnover of purchases and subsequently by another notification repeal that notification with the result that the particular goods or class of goods will from the date of such repeal be again liable to pay tax on the turnover of sales. In the notifications dated December 29, 1977, the word 'supersession' is used in the same sense as the word 'repeal' or rather the words "repeal and replacement". The Shorter Oxford English Dictionary, third edition, at page 2084, defines the word "supersession" as meaning "The action of superseding or condition of being superseded". Some of the meanings given to the word 'supersede' on the same page in that dictionary which are relevant for our purpose are "to put a stop to; to render superfluous or unnecessary; to make of no effect; to annul; to take the place of (something set aside or abandoned); to succeed to the place occupied by; to supply the place of a thing". Webster's Third New International Dictionary at page 2296 defines the word "supersession" as the "the state of being superseded; removal and replacement". Thus, by using in the notifications dated December 29, 1977, the expression "in supersession of all previous notifications" all that was done was to repeal and replace the previous notifications by new notifications. By repealing and replacing the previous notifications by other notifications, the result was not to wipe out any liability accrued under the previous notifications. If this contention of the respondents were to be

accepted, the result would be startling. It would mean, for example, that when a notification has been issued under Section 5(1) prescribing a rate of tax, and that notification is later superseded by another notification further enhancing the rate of tax, all tax liability under the earlier notification is wiped out and no tax can be collected by the State Government in respect of any transactions effected during the period when the earlier notification was in force."

16. In *State of Rajasthan v. Mangilal Pindwal*, reported in MANU/SC/0549/1996, it has been held by the Hon'ble Supreme Court as follows :

"As pointed out by this Court, the process of a substitution of statutory provision consists of two steps; first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. (See: *Koteewar Vittal Kamath v. K. Rangappa Baliga & Co.-*). In other words, the substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. As regards repeal of a statute the law is thus stated in *Sutherland on Statutory Construction*:

"The effect of the repeal of a statute where neither a saving clause nor a general saving statute exists to prescribe the governing rule for the effect of the repeal, is to destroy the effectiveness of the repealed Act in future and to divest the right to proceed under the statute, which, except as to proceedings past and closed, is considered as if it had never existed."

17. In view of the above Judgments, the respondent / petitioner, who benefited the tax exemption are bound to discharge their liability during the period when the said Notification No.64/88 was in force. The authorities can enforce such obligation only during that period when the notification was in force and not for the subsequent period.

18. In this case, notification was rescinded on 01.03.1994. The authorities are not correct in cancelling the Customs Duty Exemption Certificates issued under Notification No.64/88, dated 01.03.1988, saying that the respondent / petitioner had not

complied with the conditions for the subsequent period, namely 1994 to 1998.

19. The contention of the learned counsel for the appellant citing the Hon'ble Supreme Court Judgment in the case of Mediwell Hospital v. Union of India, reported in 1997 (89) ELT 425 (SC), that the obligation being a continuous one, the authorities can take action against the respondent / petitioner for the violation of the conditions is not sustainable, in view of the reasons stated supra, following the aforesaid two Judgments of the Hon'ble Supreme Court.

20. As said by the learned single Judge, all the arguments raised in the writ petition, have been elaborately discussed in the Apollo Hospital's case. We do not see any reason to interfere with the findings and orders of the learned single Judge.

21. In fine, the writ appeal fails and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Ministry of Health and Family Welfare,
Union of India,
New Delhi.

2.The Directorate General of Health Services,
New Delhi.

3.The Secretary,
Union of India,
Ministry of Finance,
New Delhi.

4.The Commissioner of Custom(Appeals)
Custom House, Chennai-1.

5.The Assistant Commissioner of Customs,
Air Cargo Complex,
Meenambakkam, Chennai-27.

6.The Commissioner of Customs,
Airport Customs, Chennai.

+1cc to Mr.A.Kumaraguru, Advocate Sr.34822

W.A.No.2827 of 2012

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srg 04/07/2016



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