

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.04.2018
Delivered on : 27.04.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.4616 of 2011 and
M.P.No.1 of 2011

G.Kuppuswamy Naidu Memorial Hospital
(Unit of the Kuppuswamy Naidu Charity Trust for
Education and Medical Relief),
Post Box No.6327, Nethaji Road,
Pappanaickenpalayam,
Coimbatore 641 037. Petitioner

-Vs-

- 1.The Deputy Director General (M),
Directorate General of Health Services,
Nirman Bhavan, New Delhi.
- 2.The Commissioner of Customs,
Chennai Air Port,
Air Cargo Complex,
Meenambakkam,
Chennai 600 027. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the case in impugned final order in Ref.C.18018/6/2002-MG-1, dated 25.11.2010, passed by the first respondent and to quash the same and consequently direct the first respondent to issue certificates under Clause 1/category I of the Table to Notification 64/88, dated 01.03.1988 to the effect that the petitioner Hospital is run or substantially aided by the Kuppuswamy Naidu Charity Trust for Education and Medical Relief.

For Petitioner : Mr.T.Ramesh
For Respondents : Mr.G.Karthikeyan,
Assistant Solicitor General

O R D E R

Heard Mr.T.Ramesh, learned counsel for the petitioner and Mr.G.Karthikeyan, learned Assistant Solicitor General of India appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorari and Mandamus, to call for the records of the case in impugned final order in Ref.C.18018/6/2002-MG-1, dated 25.11.2010, passed by the first respondent and to quash the same and consequently direct the first respondent to issue certificates under Clause 1/category I of the Table to Notification 64/88, dated 01.03.1988 to the effect that the petitioner Hospital is run or substantially aided by the Kuppuswamy Naidu Charity Trust for Education and Medical Relief."

3. The case of the petitioner is as follows:-

The petitioner Hospital is a unit of Kuppuswamy Naidu Charity Trust for Education and Medical Relief. The Hospital has been substantially funded by the trust. According to the petitioner, the trust was certified to be a charitable trust under the provisions of Income Tax Act and the certificate to that effect also issued by the Department and the same is valid as on date. Further, the certificate under Section 80G of Income Tax Act has also been periodically issued to the trust and the same is also valid as on date.

4. In the Course of running of the Hospital, the petitioner had approached the respondents for issuance of certificate as per the requirement and the customs notification No.64/88 dated 01.03.1988. As per the notification, if the Hospital requires to import medical equipments attracting exemption of customs duty, they have to obtain certificate from the first respondent to that effect. The petitioner Hospital which is running by the charitable trust, had applied for grant of certificate under notification No.64/88 dated 01.03.1988. While submitting their application, they had inadvertently applied under Sub-clause II of the table annexed to the said notification.

5. On the basis of verification of the application, a certificate was also issued initially by the first respondent. Based on the certificate, the petitioner had also imported various medical equipments and availed the benefit of concession granted under the notification. Subsequently, the first respondent by its proceedings dated 15.11.1999, cancelled/withdrawn the certificate granted to the petitioner Hospital and as a consequences of which, the second respondent initiated proceedings for demand of customs duty by withdrawing the concession extended to the Hospital under notification No.64/88. Challenging the action of the first respondent in withdrawing the certificate, the petitioner approached this Court in W.P.No.11730 of 1998. This Court vide its order dated

08.06.2001, disposed of the writ petition with the following direction as found in paragraph Nos.6 and 7 of the order, are reproduced below:-

"6. When a plea had been raised by the petitioner, it is for the first respondent to consider the same on merits. Without considering the claim of the petitioner as to whether they fell under category 1 of the table of the Notification 64/88, the first respondent had proceeded on the basis that the petitioner falls under class 2 of the table of the said notification which cannot be sustained. Only if a finding is given that the petitioner is not a charitable organisation falling under Clause 1 of the table of the notification 64/88, proceedings can be initiated under class 2 of the table of the said notification. Hence, the impugned order is liable to be set aside.

7. The writ petition is allowed and the impugned order is set aside. The matter is remitted back to the first respondent to consider the case of the petitioner as to whether the petitioner is a charitable organisation or not and thereafter proceed in accordance with law."

6. This Court while passing the above order, has directed the first respondent to consider the plea of the petitioner under category I of the table to notification No.64/88 and only if finding is rendered that the petitioner's case does not fall under Clause I of the table, the authority should consider whether the petitioner is eligible to be considered under Clause II of the table. Thereafter, the second respondent passed the order on 24.10.2001, denying the benefit of custom notification for the reason that the petitioner Hospital did not satisfy the condition under category II of the table. As regards the eligibility of the petitioner under category I of the notification, in the absence of any certificate issued to the effect by the first respondent, the eligibility under category I cannot be considered.

7. In the above circumstances, the petitioner once again approached this Court challenging the orders of the second respondent in W.P.No.929 and 930 of 2002. This Court vide order dated 20.12.2006, set aside the orders of the first and second respondents and once again remitted back to the respondents to re-consider the eligibility of the petitioner by granting the petitioner the opportunity of personal hearing. In pursuance of the direction of this Court, the first respondent has granted the benefit of personal hearing to the petitioner on 27.09.2010. In the personal hearing, it was submitted on behalf of the petitioner Hospital that it was fully guided by Kuppuswamy Naidu Charity Trust for Education and Medical Relief. Therefore,

entitled for issuance of certificate under category I of the table of the custom notification No.64/88. While making a submission, it was also brought to the knowledge of the first respondent about the order passed in this regard, specifically by this Court in W.P.No.11730 of 1998, dated 08.06.2001.

8. However, unfortunately, without considering the submission of the petitioner, the first respondent once again passed an order on 25.11.2010, holding that the petitioner was not eligible to be issued any certificate under category II of the table to notification No.64/88 vide proceedings dated 25.11.2010. Aggrieved by the said order, the petitioner has once again before this Court in the present writ petition.

9. Upon notice, learned Assistant Solicitor General of India appearing for the respondents entered appearance and filed a detailed counter affidavit on behalf of the first respondent.

10. The learned Assistant Solicitor General of India representing the first respondent would submit that the petitioner Hospital did not fulfil the conditions as laid down in table 2 of the notification No.64/88 of the second respondent. Therefore, the first respondent had taken a decision to reject the request of the petitioner for grant of certificate by extending the concession envisaged under the said notification. According to the counter affidavit filed on behalf of the first respondent, from the available records, the inspection team could not find any proof or evidence for free treatment undertaken by the Hospital from 1992. According to the inspection team, the Hospital has not kept any provision so that 10% of beds are earmarked for treatment on economic grounds. Since on the basis of the factual findings by the inspection team, it was found that the Hospital did not fulfil the conditions as laid down for grant of certificate under Table 2 of the notification No.64/88, an earlier certificate which was issued was withdrawn. Therefore, the petitioner was slapped with the demand for payment of customs duty for the medical equipments imported by them.

11. At this, the learned counsel for the petitioner would draw the attention of this Court to earlier direction passed by this Court in W.P.No.11730 of 1998 dated 08.06.2001, wherein, the relevant directions issued by this Court has been extracted supra. The learned Judge of this Court has directed the authority to consider the plea of the petitioner in respect of category I of the table to notification No.64/88 and only after rendering a finding on that aspect, the authority can proceed in accordance with law. In fact, the learned Judge has clearly held that the proceedings can be initiated under table 2 only after consideration of the claim of the petitioner under table 1.

12. The learned counsel for the petitioner would draw the attention of this Court to the impugned order passed by the first respondent dated 25.11.2010, wherein, the first respondent has once again considered the plea of the petitioner under Clause II of the table to notification No.64/88 and concluded that the petitioner Hospital did not fulfil the norms for grant of certificate under the said category. Therefore, the learned counsel would submit that the impugned order suffered from non application of mind and the same has been arbitrarily passed without taking into account the specific direction issued by this Court in the earlier proceedings.

13. This Court has considered the rival submissions of the learned counsel for the petitioner as well as the learned Assistant Solicitor General appearing for the respondents. There appears to be some force in the contention of the learned counsel for the petitioner that this Court in its earlier order dated 08.06.2001 in W.P.No.11730 of 1998 has specifically directed the first respondent to consider the plea of the petitioner in category I of the table to custom notification No.64/88 and thereafter to proceed to consider the request under category II of the table. However, the first respondent has once again committed an error in considering the plea of the petitioner under category II of the table and concluded against the petitioner on the ground that the petitioner did not fulfil the norms and the conditions prescribed under category II of the table.

14. According to the learned counsel for the petitioner, in the customs notification No.64/88, dated 01.03.1998, a table was provided for in respect of category I and II which reads as follows:-

"1.All such hospitals as may be certified by the said Ministry of Health and Family Welfare, to be run or substantially aided by such charitable organisation as may be approved, from time to time, by the said Ministry of Health and Family Welfare.

2.All such hospitals which may be certified by the said Ministry of Health and Family Welfare, in each case, to be run for providing medical, surgical or diagnostic treatment not only without any distinction of caste, creed, race, religion or language but also,

a) free, on any average, to at least 40 percent of all their outdoor patients; and

b) free to all indoor patients belonging to families with an income of less than rupees five hundred per month, and keeping for this purpose at least 10 percent of all the hospital beds reserved for such patients; and

c) at reasonable charges, either on the basis of the income of the patients concerned or otherwise, to patients other than those specified in clauses (a) and (b)."

The learned counsel for the petitioner would therefore impress upon this Court that if the Hospital satisfies the norms prescribed in table I that was enough to entitle them to obtain necessary certificate for exemption of customs duty towards import of medical equipment.

15. This Court finds that the arguments advanced on behalf of the petitioner has a considerable force for the reason that if only the petitioner Hospital satisfies the criteria prescribed under category I of the table, the petitioner Hospital is entitled for issuance of the certificate. Under such circumstances, the impugned order passed by the first respondent by considering the plea of the petitioner only in respect of category II of the table is per se arbitrary and suffered from non application of mind. The present impugned order issued by the first respondent runs contrary to the specific direction issued by this Court in earlier proceedings dated 08.06.2001. When this Court has specifically directed the first respondent to consider the plea of the petitioner in respect of the first category alone before proceeding to consider the plea of the petitioner in the second category of the table, this Court does not find any justification on the part of the first respondent in once again considering the claim of the petitioner under category II of the table. Therefore, this Court is of the considered view that the impugned order passed by the first respondent is clearly arbitrary, unjust and illegal and the same has to be interfered with.

16. For the above said reasons, this Court has no hesitation in allowing the writ petition. The impugned order passed by the first respondent in Ref.C.18018/6/2002-MG-1, dated 25.11.2010, is hereby set aside. The matter is once again remitted back to the first respondent to consider the claim of the petitioner in respect of category I of the table to the customs notification No.64/88, dated 01.03.1998 and in case, the petitioner fulfils the norms as laid down in the said category, the same will be considered favourably and necessary certificate will be issued to the petitioner. It is also open to the petitioner herein to submit any further application for consideration of the claim even under category II of the table, in case, they are presently in the position to fulfil the norms prescribed therein. On such application being made, the first respondent may also consider that application on merits. The first respondent is directed to pass necessary orders in this regard, within a period of three months from the date of receipt of a copy of the order.

17. With these directions, the writ petition stands allowed.
No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

gsk

To

1. The Deputy Director General (M),
Directorate General of Health Services,
Nirman Bhavan, New Delhi.

2. The Commissioner of Customs,
Chennai Air Port,
Air Cargo Complex,
Meenambakkam,
Chennai 600 027.

+1 CC to Mr. G. Karthikeyan, Advocate sr 31487.

+1 CC to Mr. T. Ramesh, Advocate sr 31821

W.P.No.4616 of 2011

SSD(CO)
SP(31/05/2018)



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