IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2018

CORAM

THE HON'BLE MR. JUSTICE M.DURAISWAMY

W.P.No.23816 of 2008 and
M.P.No.1 of 2008

Apollo Hospitals Enterprise Ltd.,
Ali Towers, Third Floor,
No.22, Greams Road,
Chennai - 600 006
rep by their Chief Executive Officer .. Petitioner

Vs.

1.The Union of India
rep by its Secretary,
Ministry of Finance,
Department of Revenue, New Delhi.

2.The Director General of Health Services,
Nirman Bhavan, New Delhi.

3.The Assistant Commissioner of Customs,
Group 5B & 5C,
Office of the Commissioner of Customs,
Customs House, 33, Rajaji Salai,
Chennai - 600 001. .. Respondents

Petition filed under Article 226 of the Constitution of India to issue Writ of certiorari calling for the records of the 3rd respondent ending with the communication F.No.S23/127, 132, 137/92-Grs - 5B & BC dated 02.09.2008 and to quash the same.

For Petitioner: Mr.C.Manishankar,
for Mr. K.Krishnamoorthy

For Respondent : Mr.V.T.Balaji,
Central Government Standing Counsel
(R1 & R2)
Mr.K.Ravi, Standing Counsel (R3)

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorari calling for the records of the 3rd respondent ending with the communication dated 02.09.2008 and to quash the same.

2.It is the case of the petitioner that they are running a Hospital in Chennai and other places and for the said purpose and in order to give their patients latest medical facilities, imported medical equipment viz., Digital Linear Accelerator Patient Table in the year 1992. The said equipment was imported availing Customs Duty exemption Notification 64/88. According to the petitioner, they are entitled to exemption from Customs Duty under the aforesaid Notification on DGHS (R-2). Being satisfied that the petitioner's comply with the conditions stipulated in the said Notification, DGHS issued a Certificate known as CDEC, based on which the Customs Department permits the petitioner to clear the goods without payment of Duty. According to the petitioner, they imported various medical equipments and their application for issuance of CDEC were not considered by DGHS, but were rejected without affording an opportunity to the petitioner. In these circumstances, the petitioner filed Writ Petitions challenging the said orders. This Court, by order dated 08.06.2001 in W.P.Nos.2110 of 1998, 3652 & 3654 of 1999, set aside the proceedings of the DGHS and remitted the matter back to the respondents for fresh consideration. As against the order passed in W.P.No.2111 of 1998, the 2nd respondent filed a Writ Appeal in W.A.No.520 of 2003 and by order dated 05.04.2004, the Division Bench of this Court granted an order of interim stay.

3.Mr.C.Manishankar, learned Additional Advocate General appearing for the petitioner submitted that the Writ Appeal in W.P.No.520 of 2003 was dismissed for non-prosecution on 15.10.2008.

4.It is also fairly admitted by the learned Central Government Standing Counsel for the respondents 1 & 2 that the respondents have not taken any steps to restore the Writ Appeal, which was dismissed for non-prosecution on 15.10.2008 so far, therefore, as on today, the order passed in W.P.No.2111 of 1998 dated 08.06.2001 has become final. In paragraph nos. 51 to 53 of the order dated 08.06.2001 passed in W.P.Nos. 2110 of 1998, 3652 & 3654 of 1999, this Court has held as follows:

> "...
> 51.Before parting with the case, it is worthwhile to mention that after the rescinding of the Notification 64/88 under the Notification 99/94, the authorities had extended the benefit of the exemption from Customs Duty in respect of the life saving medical equipments under Notification 122/94 dated 3.6.94 and Notification 55/95 dated 16.3.95. Hence wherever the applications for exemption of Duty were pending on the date of rescinding of the Notification 64/88, the authorities are directed to dispose of the same in terms of the subsequent Notification 122/94 and 55/95 as amended from time to time. On the basis of the principles laid down by

the Supreme Court in the judgment in the case of Gajraj Singh v. State Transport Appellate Tribunal (AIR 1997 SC 412) as well as Gurucharan Singh v. Yashwant Singh (AIR 1992 SC 180) where the Apex Court has held that whenever the old Act is repealed and the new Act had been introduced and if under the new Act the procedure had been specified for the disposal of such application, the authorities are bound to consider and dispose of the pending applications filed under the old Act, in accordance with the new Act.

52.Following the same principle, the authorities have to dispose of the pending applications, claiming the exemption of Duty under the Notification 64/88 in accordance with the Notification 122/94 and 55/95, as amended from time to time, since Notification 64/88 had been rescinded in March 1994, it is not under dispute that the subsequent notification have extended the benefit of exemption of Duty for the life saving medical equipments. Hence the pending applications ought to have been considered and disposed of on merits and in accordance with the subsequent notification. The learned Additional Solicitor General also has no serious objection for this.

53.For the reasons stated above, the impugned proceedings in these Writ Petitions cannot be sustained and accordingly the same are set aside and the matters are remitted back to the second respondent Director General of Health Services for fresh disposal in the light of the directions issued above. No cost. Consequently, W.M.P.Nos.5233 & 5235/99 are closed."

5.The learned counsel on either side submitted that following the order passed in the above referred Writ Petitions, the present Writ Petition may be allowed and the matter may be remitted back to the 2nd respondent for fresh consideration.

6.Having regard to the submissions made by the learned counsel on either side, following the order passed in W.P.No.2110 of 1998 dated 08.06.2001, the impugned order dated 02.09.2008 is set aside and the matter is remitted back to the 2nd respondent for fresh consideration. The 2nd respondent is directed to issue fresh notice to the petitioner and after giving due opportunity of personal hearing to the petitioner, shall decide the matter afresh on merits and in accordance with law, as expeditiously as possible.

7.With these observations, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Union of India,
Ministry of Finance,
Department of Revenue, New Delhi.

2.The Director General of Health Services,
Nirman Bhavan, New Delhi.

3.The Assistant Commissioner of Customs,
Group 5B & 5C,
Office of the Commissioner of Customs,
Customs House, 33, Rajaji Salai,
Chennai - 600 001

+ 1 cc to Mr. A.S. Chandrasekharan, Advocate SR.18778
+ 1 cc to Mr.V.T. Balaji, Advocate Sr.18051
+ 1 cc to Mr.K. Ravi, Advocate Sr.19022

W.P.No.23816 of 2008 and
M.P.No.1 of 2008

TM(CO)
EU(26/03/2018)