IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 05.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.1402 of 2013
and M.P.Nos.1 & 2 of 2013
and M.P.No.1 of 2015

Apollo Hospitals Enterprise Ltd.,
Third Floor, Ali Towers,
No.22, Greams Road,
Chennai-600006,
Represented by their
Vice President (Purchase),
Mr.G.Narathom Reddy. ...Petitioner

Vs.

1. Commissioner of Customs,
New Custom House,
GST Road, Meenambakam,
Chennai 600 027.

2. Deputy Cpmmissioner of Customs,
(Medical Cell - Acc),
Office of the Commissioner of Customs,
New Custom House,
GST Road, Meenambakam,
Chennai 600 027.

3. Assistant Commissioner of Customs,
(GR Medical Cell),
Office of the Commissioner of Customs,
New Custom House,
GST Road, Meenambakam,
Chennai 600 027. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records pertaining to the communication dated 12.12.2012 in F.No.S23/350/90-Acc (medical cell) on the file of the second respondent and quash the same.

For Petitioner : Mr.C.Mani Shankhar
Senior Counsel for
Mr.K.Krishnamoorthy

For Respondents : Mr.V.Sundareswaran
Senior Standing Counsel

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ORDER

This writ petition has been filed seeking to set aside the communication dated 12.12.2012 in F.No.S23/350/90-Acc (medical cell) on the file of the second respondent.

2. The facts of the case in a nutshell are as under:

2.1 Claiming a sum of Rs.62,92,109/- being the duty leviable for non-production of Customs duty exemption certificate from the Director General of Health Services towards the import of two medical equipments viz., Pulsolith Laser and Colour Doppler, demand notices were sent to Indian Hospital Corporation Limited (in short " the IHCL") on 25.06.1998 and other dates.

2.2 The said demand notice came to be confirmed by an order dated 06.04.1999 by the Assistant Commissioner of Customs, wherein, he has proposed to finalize the provisional assessment of the imported medical equipments viz., Pulsolith Laser and Colour Doppler and thereby confirmed the demand. The IHCL has filed an appeal against the said order, which came to be rejected, finalizing the provisional assessment through an order dated 09.12.1999. As against the order in appeal, the IHCL has filed an appeal before the CESTAT.

2.3 While the matter was pending before the CESTAT, the IHCL had merged with the Apollo Hospitals Enterprise Limited (hereinafter would be referred to as "the petitioner"), the petitioner herein, on 18.04.2000.

2.4 At this stage, the petitioner had paid the entire demand amount on 22.06.2007. On the same day, the respondent had called upon the petitioner to pay the interest amount of Rs.1,06,62,212/-.

2.5 Objecting to such demand of interest, the petitioner had given its reply on 18.09.2007, pursuant to which, the petitioner was extended with an opportunity of personal hearing. Written submissions were made during the course of personal hearing on 23.11.2007 and thereafter, there was not much progress.

2.6 After five years, on 09.01.2012, the petitioner was issued with summons calling upon them to appear for personal hearing in connection with the demand of interest earlier made. The petitioner once again was extended with an opportunity of personal hearing through summons dated 02.02.2012, pursuant to which, the petitioner also appeared before the respondents and submitted their written submissions on 24.02.2012. A copy of the written submissions is produced before this Court.

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2.7 In this background, the impugned demand notice dated 12.12.2012 came to be passed.

3. Heard Mr.C.Mani Shankhar, learned Senior Counsel representing Mr.K.Krishnamoorthy, learned counsel on record for the petitioner and Mr.V.Sundareswaran, learned Senior Standing Counsel for the respondents.

4. The learned Senior Counsel for the petitioner would submit that though an opportunity of personal hearing was extended to the petitioner before the second respondent herein and the petitioner had raised several objections substantiating that they were not liable to pay the demand amount, none of the objections has been considered by the second respondent herein, while the impugned demand notice dated 12.12.2012 had been made. On this ground, the learned Senior Counsel would submit that since these objections have not been considered, the same would amount to violation of the principles of natural justice and therefore, the petitioner would be entitled to seek indulgence of this Court to invoke its powers under Article 226 of the Constitution of India.

5. Mr.V.Sundareswaran, learned Senior Standing Counsel for the respondent, on the other hand, would submit that what is under challenge in the present writ petition is only a notice calling upon the petitioner to pay the demand amount and in view of Section 18 (3) of the Customs Act, 1962, the petitioner is liable to pay the interest amount.

6. I have perused the demand notice dated 12.12.2012, which is a single line demand, made without consideration of any of the objections raised by the petitioner. As a matter of fact, such demand in the year 2012, has been made on the action which came to be initiated way back in 1998. Originally, when the petitioner was summoned to participate in the enquiry in connection with levy of interest, on 23.11.2007, the petitioner had given various objections which was kept in abeyance unreasonably for more than five years. Thereafter, the second respondent seems to have reopened the issue on 09.01.2012, calling upon the petitioner to participate in the personal hearing. It is the consequence of those proceedings that the petitioner had appeared and given its written submissions on 24.02.2012.

7. I am unable to appreciate the conduct of the respondents in issuing the summons and calling upon the petitioner to participate in personal hearing and when the petitioner had participated and raised several objections, none of those

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objections has not even been referred to in the impugned demand notice. Apparently, the impugned notice itself is a non-speaking order with non-application of mind. It is a well settled proposition that when objections of these nature are raised before the statutory authorities, such objections should be given due consideration by such authorities and non-consideration of the same would amount not only to violation of the principles of natural justice but also would amount to non-application of mind.

8. On this sole ground, the petitioner is entitled to succeed.

9. The learned Senior Counsel submitted that the petitioner is not entitled to pay the interest in the impugned demand. This Court is of the view that since the impugned demand is being set aside only on the ground of non-consideration of the objections, it would be appropriate to remand the matter back to the respondents for fresh consideration. Since this Court had made observations to the effect that the second respondent had not applied his mind, it would not be appropriate to remand back the matter to the second respondent again and therefore, the first respondent herein is called upon to consider the petitioner's objections, as a special case.

10. With the above observations, the demand notice dated 12.12.2012 in F.No.S23/350/90-Acc (medical cell) on the file of the second respondent is set aside and the matter is remanded back to the first respondent. The petitioner is also at liberty to file their additional objections, if any, within fifteen days from the date of receipt of a copy of this order. On receipt of such additional objections, if any, the first respondent herein shall consider all the objections raised by the petitioner, including the original objections dated 24.02.2012 and pass appropriate orders on its own merits and in accordance with law, after extending due opportunity of personal hearing to the petitioner. Such an exercise shall be completed as expeditiously as possible.

In the result, this writ petition stands allowed. Connected M.P.s are closed. No costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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   New Custom House,
   GST Road, Meenambakam,
   Chennai 600 027.

+1 cc to M/s.C.Mani Shankhar,Advocate Sr.No. 66760
+1 cc to M/s.V.Sundareswaran, Advocate Sr.No.66839

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