IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.21539 of 2000

Dr.M.Santosham Hospital Public Trust
No.115, Egmore High Road, Chennai 600 008
rep.by one of its Secretary Dr.Ravi T.Santhosham
...Petitioner

Vs.

1.Union of India (Ministry of Health and Family Planning), New Delhi.

2.The Director General of Health Services New Delhi.

3.Rosha Committee by its Member Secretary New Delhi 110 001.

4.The Commissioner of Customs (M Cell) Air Cargo Complex, Meenambakkam, Chennai. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records in Ref.No.Z.37025/26/87-MG dated 09.11.2000 on the file of the second respondent, whereby the second respondent has declared the petitioner institution as not eligible to retain the benefits of customs duty exemption availed under the notification No.64 of 1988 (Customs) dated 01.03.1988 and quash the said proceedings as it is vitiated by an error apparent on the face of the record further directing the respondents to forbear themselves from proceeding further pursuant to the order passed in this writ petition.

For Petitioner :Mr.S.A.Rajan

For Respondents 1&2 :Mr.G.Karthikeyan,
Addl.Solicitor General

Respondent No.3 :Not ready in notice

Respondent No.4 :Mr.T.R.Senthil Kumar,
Sr.Standing Counsel

O R D E R

(Order of the Court was made by DR.VINEET KOTHARI, J.)

This petition has been filed by the Assessee M/s.Dr.M.Santosham Hospital Public Trust aggrieved by the order dated 09.11.2000 passed by the Director General of Health Services, New Delhi, in which it was held that the Assessee has failed to comply with the conditions of the Notification No.64 of 1988 (Customs) dated 01.03.1988 by not providing free services to 40% of its OPD patients in terms of the said notification for availing the exemption from payment of customs duty for importing the medical equipments to be installed in their hospital.

2. Learned counsel for the petitioner Mr.S.A.Rajan submitted that the petitioner is ready to undertake to pay the customs duty without exemption under the said Notification since the Assessee has no documents and evidence after such long lapse of period, to satisfy the revenue authorities about the compliance of the conditions stipulated in the said Notification No.64/88 dated 01.03.1988 and therefore, the respondent Assessing Authority may be directed to compute such liability of the Assessee towards customs duty. With respect of levy of consequential interest and penalty, he submitted that the Assessing Authority may be directed to consider the case of the Assessee sympathetically.

3.Learned counsel for the Revenue Mr.T.R.Senthil Kumar, Senior Standing Counsel submits that the authority concerned will determine the customs duty payable by the petitioner in these circumstances, however the Assessee should be directed to file a separate application for waiver of interest and penalty, which may be allowed to be considered by the competent authority.

4. In these circumstances, we dispose of the present writ petition, recording the undertaking of the learned counsel for the Assessee that upon determination of the customs duty by

the competent authority of the Customs Department, the Assessee will pay the same without demur as early as possible not later than three months of the determination of the customs duty based on the Bill of Entry to be produced by the Assessee.

5. Learned counsel for the Assessee submitted that the Bill of Entry was furnished to the office of the Deputy Director General (M), Directorate General of Health Services, New Delhi on 13.07.2000 and therefore, the customs authorities may obtain a copy of the same from the said authority and determine the customs duty payable on the basis of the same.

6. Therefore, the Customs Authorities may obtain a copy of the Bill of Entry from the Office of the Deputy Director General (M), Directorate General of Health Services, New Delhi and determine the customs duty payable on the basis of the said document. It is also seen from the records that vide communication dated 01.12.2000, the Assessee has furnished copies of the Bill of Entry to the Deputy Commissioner (M-Cell), Office of the Commissioner of Customs, Air Cargo Complex, Meenambakkam, Chennai. On the basis of the said documents, the competent authority may decide the liability of the Assessee towards payment of Customs Duty. For interest and penalty thereon, the Assessee will be free to move a separate application seeking waiver of the same, which application may be considered by the said competent authority in accordance with law.

7. With the above observations, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

KST
To

1.Union of India (Ministry of Health and Family Planning), New Delhi.

2.The Director General of Health Services New Delhi.

3.The Member Secretary, Rosha Committee New Delhi 110 001.

4.The Commissioner of Customs (M Cell)
Air Cargo Complex, Meenambakkam,
Chennai.

+1cc to Mr.T.R.Senthil Kumar, Advocate SR.9618
+1cc to Mr.G.Karthikeyan, Advocate SR.8468
+1cc to Mr.S.A.Rajan, Advocate SR.8430

W.P.No.21539 of 2000

RGN(CO)
CB(10/03/2020)