IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PURTI PRASAD PARAB
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WRIT PETITION NO. 6927 OF 2012

K. Jayanthi Mohan ….Petitioner

V/s.

Union of India and Ors. …Respondents

ALONGWITH
WRIT PETITION NO. 7136 OF 2012

Pushpa P. Tolia ….Petitioner

V/s.

Union of India and Ors. …Respondents

Dr. Sujay Kantawala a/w Mr. Brijesh Pathak for Petitioners.
Mr. J.B. Mishra a/w Mr. Dhananjay B. Deshmukh for Respondents.

CORAM : K.R. SHRIRAM &
MILIND N. JADHAV, JJ.
DATED : 15th JULY, 2022

P.C.:

1. On 12th September 2013 following order came to be passed:

Heard learned Counsel for the parties.

2 RULE. Learned Counsel for the respondents waives service.

3 Prima facie, we find substance in the contention of the petitioner that the hospital equipments imported claiming the benefit of Notification No.64/88 dated 1.03.1988 were released to the petitioner, consequent to the order of adjudication dated 09.01.2001 only imposing redemption fine and penalty. No duty demand was confirmed. However, it was only in 2009 that the demand for duty on the Hospital Equipments were made. This was on the basis of Section 125(2) of the Customs Act 1962 and made without being preceded by an adjudication of the duty payable. This adjudication of duty payable was important as even if the

> *benefit of Notification No.64/88 dated 1.03.1988 was not available, the petitioner could have submissions to make in respect of computation as well as claim the benefit of other Notifications, if available.*
>
> *4. Therefore in view of the above, till the final disposal of the Writ Petitions, by way of interim relief, the respondents shall not recover the alleged amount of Customs duty with interest as demanded in the demand notices, Exhibits G and K to the Petition.*

2. Dr. Kantawala relies upon the judgment of the Hon'ble Apex Court in ***Fortis Hospital Ltd. vs. Commissioner of Customs, Import***[1] where the Hon'ble Apex Court has held had once the show cause notice has been issued under Section 124 proposing only confiscation of imported machinery and imposition of penalty and nothing was stated about payment of duty but there was no determination of the amount of duty payable in the adjudication order, the duty cannot be demanded separately.

3. Mr. Mishra agrees in fairness states that ratio of the said judgment would apply to the facts of these two petitions as well. Accordingly rule is made absolute in terms of prayer clause – (b) which reads as under:

> *(b) This Hon'ble Court be pleased to issue Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ, order or direction calling for the records and proceedings in the Petitioner's case and all other records pertaining thereof and after considering the validity, legality and propriety thereof, be pleased to quash and/or set aside the impugned actions/notices, Exhibit G and K to the Petition, allegedly demanding customs duty with interest.*

1 2015 (318) E.L.T. 551 (S.C.)

4. Petitions disposed.

(MILIND N. JADHAV, J.) **(K.R. SHRIRAM, J.)**