

PETITIONER:
MEDIWELL HOSPITAL & HEALTH CARE PVT. LTD.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 17/12/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIAK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

PATTANAIAK, J.

Leave granted.

The appellant, had applied to respondent no, 2, Director General of Health Services, Ministry of Health and Family Welfare for grant of necessary certificate which would enable the appellant to import certain hospital equipments without payment of import duty in accordance with the notification no. 64/88-customs dated 1.3.1988. The said respondent no.2 having refused to issue the certificate in question,- the appellant filed a Writ Petition in the High Court of Punjab and Haryana which was registered as C.W.P. No. 1310 of 1995. The said Writ Petition having been dismissed by the High Court by the impugned judgment dated 31.1.1996 the appellant has approached this Court.

The case of the appellant in the nutshell is that the Government of India in exercise of power conferred by Sub-Section (1) of Section 25 of the Customs Act, 1962 (hereinafter referred to as 'The Act') had exempted levy of customs duty on import of hospital equipments imported by specified category of hospitals (Charitable) subject to certification from the Director General of Health Services. The appellant who had established a Modern Heart Institute and Research Centre at Chandigarh being desirous of importing sophisticated equipments like Stress Test System, Colour Doppler Holter Monitor Recorder, Tread Mill Test Machine, applied to the Director General for issuance of a certificate so that the machinery imported would not be liable for levy of customs duty. The respondent no. 2, by his letter dated 2.2.1993 after scrutinising the project report submitted by the appellant and on being satisfied that the import of the equipments are essential for use in any hospital granted certificate for importing Marquette Max though the appellant was intending to import Marquette Case 15. On receipt of the certificate dated 2.2.1993 the appellant applied for amendment of the exemption certificate. But no action was taken by the respondent no.2. Ultimately the imported equipment arrived in India on 22nd March, 1993 and the appellant released the same on furnishing Bank Guarante. Thereafter the appellant

approached the respondent no.2 for grant of exemption certificate but as no order was passed by respondent no.2 the appellant approached the High Court by filing a Writ Petition which was registered as W.P. No. 10717 of 1993. The said Writ Petition was disposed of by order dated 16.2.1994 directing the respondent no.2 to take a final decision on the application of the appellant within 10 weeks and it was further ordered that the Bank Guarantee furnished by the appellant will not be encashed till then. On 12.8.94 the respondent no.3 after due enquiry recommended for grant of certificate of exemption to the appellant but notwithstanding the said recommendation the respondent no.2 by his order dated 26th December, 1994, refused to grant the exemption certificate for import of Marquette Case 15 which is undoubtedly one of the most essential and modern equipment necessary for combating the heart ailments. The appellant, therefore, had no other alternative than to file the Writ Petition registered as W.P. No. 1310 of 1995 which was dismissed by the impugned order dated 31st January, 1996. Hence this appeal by Special Leave.

The High Court in the impugned order came to the conclusion that the appellant is merely running a Diagnostic Centre and is not a hospital and as such the exemption notification dated 1.3.1988 will not cover the case of the appellant. The High Court also came to the conclusion that the appellant has got a commercial venture and the conditions stipulated in the exemption notification have not been satisfied and, therefore, the appellant was not entitled for issuance of mandamus for the grant of certificate in question.

Mr. Arun Jaitley, learned senior counsel appearing for the appellant contended that the expression "hospital" in the exemption notification brings within its sweep a Diagnostic Centre also and bearing in mind the object with which the notification has been issued there is no justification for giving a narrow construction to the word "hospital". The learned senior counsel also contended that all the pre-conditions enabling import of hospital equipments without paying the customs duty as per the notification have been duly satisfied by the appellant and the High Court was in error in coming to the conclusion that the conditions precedent have not been satisfied. Mr. Jaitley, learned senior counsel lastly urged that similar Diagnostic Centres as that of the appellant have already been granted exemption certificate by respondent no.2 on the basis of which equipments in such Diagnostic Centres have been imported without payment of customs duty and refusal in the case of the appellant is a hostile discrimination without any reasonable nexus and as such must be held to be arbitrary and violative of Article 14 of the Constitution and, therefore, a Writ of Mandamus must be issued to respondent No.2 for grant of certificate of exemption.

Mr. Mahajan, learned senior counsel appearing for the Union of India, on the other hand contended, that the High Court rightly came to the conclusion that Diagnostic Centre will not come under the purview of the exemption notification and there is no error in such conclusion of the High Court which requires to be interfered with by this Court in exercise of power under Article 136 of the Constitution. The learned senior counsel further contended that the exemption notification having indicated certain obligations on the part of the person who import equipments without paying any customs duty and those obligations not being carried out, the respondent no. 2 was wholly justified in refusing to grant the exemption certificate and the High

Court did not commit any error in dismissing the Writ Petition. So far as the allegations of the appellant regarding discrimination are concerned, neither there has been any reply to the same by the respondents nor any authority of the respondents nor in course of hearing any arguments had been advanced by the learned counsel appearing for the Union of India.

In view of the rival submissions the questions which arose for our consideration are:

1. Whether a Diagnostic Centre is entitled to seek for issuance of a certificate to enable it to import equipments without payment of customs duty;
2. Whether in the facts and circumstances of the present case, more particularly in the absence of any denial of the allegations made by the appellant it is possible for the Court to come to the conclusion that there has been a discriminatory treatment between appellant and person similarly situated, and if so, whether there is any nexus for the same.
3. Whether the appellant had complied with all the pre conditions stipulated in the exemption notification for being entitled to the issuance of a certificate by the respondent no.2 for import of the equipment in question without payment of customs duty.

Coming to the first question it is seen that Section 25 of the Customs Act enables the Central Government, if it is satisfied that it is necessary in the public interest so to do to exempt generally or subject to such conditions as may be specified description from the whole or any part of the duty of customs leviable thereon by a notification in the Official Gazette. In exercise of the aforesaid power under Section 25 of the Customs Act the Central Government issued a notification no. 64/88-customs dated 1.3.1988 granting exemption from payment of customs duty to the import of all equipments, apparatus and appliances subject to the approval of the Government of India in the Ministry of Health and Family Welfare or by the Director General of the Health Services to the Government of India to the effect that the import of the equipment in question is essential for use in any hospital. The notification in question also provided certain condition to be satisfied by the hospitals in question which intend to import the equipment before claiming the exemption under the notification. The said conditions are enumerated in the table to the notification which is extracted hereinbelow:-

- "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 an average, to at least 40% 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 per cent 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)."--

Clauses 3 and 4 of this notification also indicate the pre-conditions to be satisfied before the certificate in question is issue. Clauses 3 and 4 are extracted hereinbelow in extenso:-

"3. Any such hospital in respect of which the said Ministry of Health and Family Welfare, may, having regard to the type of medical, surgical or diagnostic treatment available there, or the geographical situation thereof, or the class of patients for whom the medical, surgical or diagnostic treatment is being provided, certify either generally or in each case, that the hospital even though it makes a charge for the said treatment, is nevertheless run on non-profit basis and is deserving of exemption from the payment of duty on the said hospital equipment under this notification.

Provided that the hospital equipment in respect of which the exemption is claimed, is imported by such hospital by way of free gift from donor abroad or has been purchased out of donations received abroad in foreign exchange.

Provided further that where the said hospital equipment has been purchased out of donations received abroad in foreign exchange, the hospital has been permitted to maintain an account abroad by the Reserve Bank of India for the purposes of receiving funds donated overseas.

4. Any such hospital which is in the process of being satisfied and in respect of which the said Ministry or Health and Family Welfare is of opinion--

i) That there is an appropriate programme for establishment of the hospital.

ii) that there are sufficient funds and other resources required for such establishment of the hospital,

iii) that such hospital, would be in a position to start functioning

within a period of two years, and
iv) that such hospital, when starts functioning would be relatable to a hospital specified in paragraph 1, 2 or 3 of this Table, and the said Ministry of Health and Family Welfare certifies to that effect;

Provided that -

a) in the case of a hospital relatable to paragraph 3 of this Table the importer produces evidence to the Assistant Collector of Customs at the time of same is being imported in accordance with the conditions specified in proviso to that paragraph the importer shall give an undertaking in writing to the Assistant Collector at the time of clearance of the said hospital equipment that the importer shall furnish certificates from the said Ministry of Health and Family Welfare or from the Directorate General of Health Services, Government of India, within such period as the Assistant Collector of Customs may specify in this behalf or within such extended period as the Assistant Collector of Customs, on sufficient cause being shown, may allow in each case, to the effect:-

i) that such hospital equipment has been installed in the hospital; and

ii) that such hospital has started functioning;

c) the importer shall furnish, at the appropriate time, the certificates referred to in (b);

d) the importer executes a bond in such form and for such sum as may be specified by the Assistant Collector of Customs binding himself to pay, on demand an amount equal to the duty leviable on the said hospital equal to the duty leviable on the said hospital equipment:-

i) if such hospital starts functioning with the period specified therefore, as is not proved to the satisfaction of the Assistant Collector of Customs to have been installed in such hospital, or

ii) if such hospital does not start functioning within the period specified therefore.

EXPLANATION for the purposes of this notification, the expression Hospital includes any Institution, Centre, Trust, Society, Association, Laboratory, Clinic and

Maternity Home which renders medical, surgical or diagnostic treatment."

It is true that no importer can claim absolute exemption from payment of customs duty as a right. The normal rule is that every import attracts duty under the Customs Tariff Act unless otherwise exempted by a notification issued by the Central Government in exercise of power under Section 25 of the Act and the person claiming exemption certificate should establish that the pre-conditions prescribed under the notification are fully satisfied. In the context of the dispute between the parties and on reading the exemption notification as a whole it appears that the government intended to exempt such hospitals from payment of customs duty on import of equipments which are certified by the Ministry of Health and Family Welfare to the effect that it provides medical, surgical or diagnostic treatment. Thus a Diagnostic Centre run by a private individual purely on commercial basis may not be entitled to the exemption under the notification issued by the Central Government. The conclusion of the Central Government as well as that of the High Court on this score, therefore, may not be held to be incorrect and the appellant may not be entitled to seek for issuance of mandamus to respondent no.2 on this ground.

But when the second question is examined we find sufficient force in the arguments of learned senior counsel appearing for the appellant which has been specifically averred in the application for Special Leave and not denied by the respondents that several such individual Diagnostic Centres not attached to any hospital have been granted the exemption certificates by respondent no.2 enabling such Diagnostic Centres to import equipments without payment of customs duty. In courts of hearing of this application on 30th September, 1996, faced with the averments made by the appellant the counsel for the respondent sought for three weeks' time to file affidavit of the competent official explaining whether exemption to the similar institute has been granted, and if so, under what circumstances and as to why the same would not be granted to the appellant. Though the time granted to the respondents was again extended by further two weeks' by order dated 28.10.1996 on the request of the counsel appearing for the respondents but ultimately no affidavit came to be filed on behalf of the respondents nor in course of hearing the counsel appearing for the respondents was able to advance any argument on that score. In this view of the matter when other Diagnostic Centres have been already granted the certificate enabling them to import equipments without paying customs duty in terms of the notification issued by the Central Government under Section 25(1) of the Customs Act we see no reason to deny the said exemption certificate to the appellant. On facts alleged it cannot be disputed that the appellant intended to import latest equipment for Cardio Vascular Imaging System. When respondent no.2 has already granted certificates in favour of several such Diagnostic Centres, as alleged in the Special Leave Application, refusal on his part to grant such certificate to the appellant without any justifiable reason tantamounts to a discriminatory treatment meted out to the appellant which on the face of it is violative of Article 14 of the Constitution of India. In view of our conclusion, as aforesaid, we have no doubt in our mind that the order of respondent no.2 refusing to grant certificate to the appellant is liable to be struck down and the High Court also committed serious error in rejecting the Writ Petition

filed by the appellant.

Coming to the third question we have carefully considered the materials on record as well as the notification of the Central Government dated 1.3.1988 containing several obligations on the part of the person who are availing benefit of the exemption notification. On going through the same we are satisfied that the appellant also had given necessary undertaking as required under the notification and, therefore, is otherwise entitled to avail of the benefit of the notification in question.

While, therefore, we accept the contentions of Mr. Jaitley, learned senior counsel appearing for the appellant that the appellant was entitled to get the certificate from respondent no.2 which would enable the appellant to import the equipment without payment of customs duty but at the same time we would like to observe that the very notification granting exemption must be construed to cast continuing obligation on the part of all those who have obtained the certificate from the appropriate authority and on the basis of that to have imported equipments without payment of customs duty to give free treatment atleast to 40 per cent of the out door patients as well as would give free treatment to all the indoor patients belonging to the families with an income of less than Rs. 500/- p.m. The competent authority, therefore, should continue to be vigilant and check whether the undertakings given by the applicants are being duly complied with after getting the benefit of the exemption notification and importing the equipment without payment of customs duty and if on such enquiry the authorities are satisfied that the continuing obligation are not being carried out then it would be fully open to the authority to ask the person who have availed of the benefit of exemption to pay the duty payable in respect of the equipments which have been imported without payment of customs duty. Needless to mention the government has granted exemption from payment of customs duty with the sole object that 40% of all outdoor patients and entire indoor patients of the low income group whose income is less than Rs.500/- p.m. would be able to receive free treatment in the Institute. That objective must be achieved at any cost, and the very authority who have granted such certificate of exemption would ensure that the obligation imposed on the persons availing of the exemption notification are being duly carried out and on being satisfied that the said obligations have not been discharged they can enforce realisation of the customs duty from them.

It is needless to reiterate that all the persons including the appellant who had the benefit of importing the hospital equipment with exemption of customs duty under the notification should notify in the local newspaper every month the total number of patients they have treated and the 40% of them are the indigent persons below stipulated income of Rs.500/- per month with full particulars and address thereof which would ensure that the application to treat 40% of the patients free of cost would continuously be fulfilled. In the even of default, there should be coercive official action to perform their obligation undertaken by all such persons. This condition becomes a part of the exemption order application and strictly be enforced by all concerned including the Police personnels when complaints of non-compliance were made by the indigent persons, on denial of such treatment in the conerned hospital or diagnostic centres, as the case may be.

Subject to the aforesaid observations, the impugned order of respondent no. 2 as well as that of the High Court

are set aside and respondent no. 2 is directed to re-consider the matter and issue necessary certificate to the appellant within a period of three months from the date of receipt of the order. Since the appellant has already imported the equipment on furnishing bank guarantee. On production of the necessary certificate issued by respondent no.2 enabling the appellant exemption from payment of customs duty the bank guarantee would stand discharged. But availability of such concession by the appellant would be subject to the direction and conditions as stated earlier.

The appeal is accordingly allowed. But in the circumstances there will be no order as to costs.

JUDIS