IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.04.2023

PRONOUNCED ON : 26.04.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.17899 & 17900 of 2010, 418 & 419 of 2011
and
M.P.No.1 of 2010 and M.P.No.1 of 2011

1.M/s. Apollo Hospitals Enterprises Ltd.,
Ali Towers, IV Floor,
No.22, Greams Road,
Chennai – 600 006.
Rep. herein by
Mr.G.Narotham Reddy

... Petitioner
in W.P.Nos.17899 & 17900 of 2010

2.Sri Gokulam Hospitals Pvt. Ltd
Regd. Office at No.3/60, Mayyanur,
Salem – 636 004
Rep. by its Managing Director
Dr.K.Arathanari

... Petitioner
in W.P.Nos.418 & 419 of 2011

Vs.

1.Union of India,
Rep. by its Secretary,
Ministry of Health & Family Welfare,
Niraman Bhawan, New Delhi.

2.Director General of Health Services,
(Medical General I-Section),
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.

3.State of Tamil Nadu,
Rep. by its Secretary,
Ministry of Health,
Chennai – 600 002. ... Respondents in all WPs

Prayer in W.P.No.17899 of 2010: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 2nd respondent ending with order C18018/7/2003-MG-I dated 23.06.2010 and quash the same.

Prayer in W.P.No.17900 of 2010: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 2nd respondent to issue the Customs Duty Exemption Certificate in respect of the pending applications viz.

i)Application bearing No.MMD:DME:III:CN:11835 dated 26.12.1990.

ii) Application bearing No.MMD:DME:III:CN:12725 dated 18.07.1991.

iii)Application bearing No.DME:III:CN:13907 dated 28.02.1992.

iv)Application bearing No.DEC:APPL:III:92 dated 29.06.1992.

v)Application bearing No.MMD:DME:I:CN:17329/93 dated 20.12.1993.

vi)Application bearing No.MMD:DME:II:CN:93 dated 28.12.1993.

Prayer in W.P.No.418 of 2011: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the

records of the 2nd respondent ending with order C18018/7/2003-MG-I dated 23.06.2010 and quash the same.

Prayer in W.P.No.419 of 2011: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 2nd Respondent to re-issue the Customs Duty Exemption certificates granted to the Petitioner under communications Z.37034/4/95-MG dated 16.06.95; Z.37034/5/94-MG dated 16.06.95 and Z.37034/11/94-MG dated 11.07.95.

For Petitioners	: Mr.C.Mani Shankar Senior Counsel For Mr.K.Krishnamoorthy (in all W.Ps)
For R1 & R2	: Mr.AR.L.Sundaresan Additional Solicitor General of India Assisted by Mr.J.Madan Gopal Rao Senior Panel Counsel (in WP.Nos.17899 & 17900 of 2010) **And** Mr.R.Rajesh Vivekananthan Deputy Solicitor General of India (in WP.Nos.418 & 419 of 2011)
For R3	: Mr.S.Ravichandran (in all WPs)

COMMON ORDER

The writ petitions on hand are instituted, questioning the validity of the order passed by the Director General of Health Services in proceedings dated 23.06.2010, withdrawing the benefit of exemption granted to the petitioners/hospitals from payment of customs duty for the imported medical equipments, apparatus etc.,

BRIEF FACTS OF THE CASE:

2. The petitioners are leading Multi-Specialty Hospitals and pioneer in the field of treatment of serious diseases. Some of the petitioners had received ISO 9002 from the Bureau of Indian Standards. The petitioners/Hospitals require sophisticated equipment to keep up with international standards and therefore, they have to import various medical equipments including Linear Accelerator, Cobalt Therapy Unit, Magnetic Resonant Imager (MRI), CT Scan, etc.,

3. The petitioners/hospitals imported various medical equipments between the year 1985 till 1993 under Customs Notification No.64/88 dated 01.03.1988 and claimed exemption from payment of duty. The petitioners state that they had been complying with the procedures and the conditions

stipulated in the Notification and the 2nd respondent had been issued Customs Duty Exemption Certificate (CDEC) in respect of various equipments imported by the petitioners/hospitals between 1985 and 1993.

4. The 2nd respondent in order to overcome certain medical deficiencies, which were noticed brought out certain modification to overcome the same. Accordingly, the Director General of Health Services, New Delhi issued an order dated 10.08.1993. As per the said letter, the petitioners/hospitals submitted applications to the Health authorities of the State Government, who after visiting the petitioners/hospitals and after carrying out inspections and satisfying themselves with the compliance of the notification issued by the Director General of Health Services, recommends all the cases to the second respondent for issuance of CDECs to the petitioners/hospitals. The petitioners/hospitals have not only been rendering free treatment to those patients as stipulated in the notification, but also to patients referred from Government General Hospitals.

5. As certain applications for granting CDEC were pending for a long time, the petitioners/hospitals made a request to the DGHS to forward the certificates in view of the pressure from the Customs Department.

Thereafter, the 2nd respondent called for certain details, which were also submitted by the petitioners/hospitals. However, by communication dated 28.01.1998, the 2nd respondent rejected the applications for grant of CDEC. That apart, by orders dated 04.02.1999 and 24.02.1999, the 2nd respondent cancelled CDECs already granted on the same reasons as that of the order of rejection dated 28.01.1998.

6. The petitioners were constrained to challenge the above orders in a batch of writ petitions. The said writ petitions along with the other writ petitions filed by the writ petitioners, challenging the demands raised by Customs Department were disposed of by this Court vide order dated 08.06.2001. This Court quashed the proceedings of the 2nd respondent, rejecting the pending application and cancelling the certificates already issued *inter alia* on the ground of violation of Principles of Natural Justice. The question of compliance with the conditions stipulated in the Notification No.64/88 after it was rescinded, was not sustainable. High Court remanded the matter back to the 2nd respondent to decide the matter afresh based on the directions/observations issued by the High Court and disposed of the pending applications under Notification 64/88 as amended from time to time as the Notification had been rescinded in March 1994.

The order passed in the writ petitions were challenged by way of Writ Appeal in W.A.No.2179 of 2002 by the 2nd respondent. The Hon'ble Division Bench of this Court confirmed the orders passed in the writ petitions. Pursuant to the orders passed in the writ appeal, the 2nd respondent once again called for certain details, which were furnished by the petitioners. Thereafter, the 2nd respondent granted personal hearing, which was attended by the petitioners representatives and the petitioners filed written submissions. However, the 2nd respondent without considering the same and disregarding the observations made by the High Court, in order dated 08.06.2001 in the writ petitions, passed the impugned orders, rejecting the applications and cancelling the exemption certificates already submitted. Thus, the writ petitioners/hospitals are constrained to move the present writ petitions.

ARGUMENTS ON BEHALF OF THE PETITIONERS:

7. The learned Senior counsel appearing on behalf of the writ petitioners mainly contended that the common order passed by this Court in W.P.No.2110 of 1998 and W.P.Nos.3652 and 3654 of 1999 are unambiguous with reference to the issues and this Court in clear terms held that the recommendations made by the State authorities by conducting due inspection is binding on the Director General of Health Services, New

Delhi. In the absence of any materials available on record to discredit the inspections conducted by the State authorities, the 2nd respondent / Director General of Health Services ought not to have rejected the applications and cancelled the Customs Duty Exemption Certificate (CDEC) already granted.

8. The learned Senior counsel for the petitioners drew the attention of this Court with reference to the exemption Notification No.64/1988 dated 01.03.1988. The conditions stipulated in the table contemplates free, on an average, to at least 40 per cent of all their outdoor patients and free to all indoor patients belonging to families with an income of less than Rs.500/- per month and keeping for this purpose at least 10 per cent of all the hospital beds reserved for such patients. With reference to the Notification, the Director of Medical Education, State Government Authority recommended the case of the writ petitioners by conducting inspections. While so, there is no reason to form contra opinion in the absence of any materials available on record. Based on the inspection conducted by the Director of Medical Education, the Government of Tamil Nadu also recommended the case of the petitioners to issue Customs Duty Exemption Certificate (CDEC), enabling the medical institutions to import the medical equipments.

9. The learned Senior counsel for the petitioners relied on the orders passed by this Court in W.P.No.2110 of 1998, 3652 & 3654 of 1999 dated 08.06.2001. In the said orders, the High Court considered the provision for free treatment for at least 40% of the outdoor patients are concerned. The petitioners had conducted outdoor medical camps free of cost. The stand of the 2nd respondent / Director General of Health Services is that those camps cannot be taken into consideration for the purpose of compliance of the conditions. In this context, High Court made an observation that those, who are benefited by the treatment not by coming to the hospital but in the outdoor medical camps conducted by the hospital authorities. It was argued before the Court on behalf of the petitioners that, whether Mohammed goes to the mountain or the mountain comes to Mohammed, the result will be the same.

10. It was also argued that, whether the outdoor patients comes to the hospital or the hospital authorities extend their arm to the outdoor patients wherever they are, it will refer only to the free treatment given by the hospital authorities to the outdoor patients. Further, it is contended on behalf of the petitioners that the words “at least 40% on an average” cannot

be construed that strictly 40% of the outdoor patients have to be treated freely. Sometimes it may depend upon the availability of the patients. If no patient who is entitled for such free treatment comes to the hospital, the management of the hospital cannot be blamed for non-compliance of the said conditions.

11. The petitioners have further reiterated that having derived such exemption, whether it is open to the petitioners to contend that after rescinding of Notification 64/88, it is not open to the authorities to enforce the liabilities.

12. The petitioners, those who are benefited by the tax exemption are bound to discharge the liability during the period when the said Notification 64/88 was in force. Thus, it is open to the authorities to enforce such obligations only during the period, when the Notification 64/88 was in force and not for the subsequent period. Therefore, it is for the authorities to establish that the petitioners had violated the conditions imposed under Notification No.64/88 subsequent to their availing of the benefit of the exemption of duty and before the end of February 1994, since Notification 99/94, rescinding the notification 64/88 came into force on 01.03.1994.

13. The learned Senior counsel for the petitioners, relying on the observations made by this Court in the order passed in the writ petitions state that the obligation must be only during the period when the Notification 64/88 was in force and not for the subsequent period.

14. The learned Senior counsel inferred the observations made by the Hon'ble Supreme Court of India in the case of ***Mediwell Hospital & Health Care Pvt Ltd., Vs. Union of India,*** reported in ***(1997) 1 SCC 759***. It is contended that the ruling in ***Mediwell Hospital case (cited supra)*** had been overruled in the later judgment of three Judges Bench in the case of ***Faridabad CT. Scan Centre Vs. D.G. Health Services and Others***, reported in ***(1997) 7 SCC 752***. It is contended that the question of rescinding the Notification 64/88 thereon was considered by the Apex Court as those issues were raised.

15. Based on the above position, this Court passed an order, stating that neither before the Apex Court nor before any other Court, the question of rescinding of the notification had been raised and discussed. When the rescinding of the notification makes the said notification non-existent, it is a

vital question to decide the rights and liabilities of the parties. Accordingly, this Court made an observation that the liabilities arising out of the rescinded Notification 64/88 can be enforced only for the period during which the said Notification was in existence. Hence, it is for the authorities to establish that the petitioners had violated the obligation during the said period.

16. After reiterating the above observations with reference to the issues, this Court remanded back the matter to the Director General of Health Services, New Delhi, for fresh disposal of the applications in the light of the directions issued in that order.

17. The learned Senior counsel for the petitioners solicited the attention of this Court with reference to the findings in the impugned order, which all are in utter disregard to the observations made by this Court in the order passed. The second respondent acted as an Appellate Forum and made an observation that the order passed in the writ petition is contrary to law. Thus, the impugned order in all respects are liable to be set aside as the observations made by this Court in writ orders were not followed nor the issues decided by the Apex Court has been followed.

18. The learned Senior counsel appearing on behalf of the petitioners emphatically contended that the Notification No.64/88 was in force from 01.03.1988 to 01.03.1994 and it was repealed by Notification No.99/94 dated 01.03.1994. The petitioners have complied with the procedures stipulated in 64/88, since the applications submitted by the petitioners were forwarded to the State Government along with their recommendations. The Public Interest Litigation filed before the Delhi High Court in W.P.No.409/96 was two years after the Notification was rescinded. Thus, there is nothing on record to show about the non-compliance of the conditions imposed in Notification 64/88 during the period when the said notification was in force. Therefore, the recourse to Section 159-A of the Customs Act is completely untenable. The petitioners have given free treatment in outdoor centers, wherein their branch hospitals are there. There is no prohibition in the notification for providing such treatments and therefore, the action of the respondents 1 and 2 are untenable.

JUDGMENTS RELIED ON BY THE PETITIONERS:

19. The learned Senior Counsel appearing on behalf of the petitioners relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Mediwell Hospital and Health Care Private Limited Vs. Union of India***

and Others reported in ***[(1997) 1 SCC 759]***. Relying on the paragraph 10 of the judgment, it is contended that "*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 preconditions 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*".

20. Relying on the above observations, the learned Senior Counsel for the petitioner contended that the case dealt with by the Hon'ble Supreme Court of India is about the diagnostic centre run by a private individual purely on commercial basis and therefore, the Hon'ble Supreme Court of India declined to interfere with the order of cancellation of exemption

benefits. However, in the case of the petitioners, it is not diagnostic centres and it is a established Hospital services and therefore, the said judgment cannot be relied on by the respondents for the purpose of sustaining the impugned orders. Throughout the judgment, the Apex Court considered the cases of individual diagnostic centres and therefore, the said judgment is of no avail to the respondents nor by relying the observations in the said judgment, the CDEC's can be cancelled.

21. In the case of ***Faridabad CT Scan Centre Vs. D.G. Health Services and Others*** reported in ***[(1997) 7 SCC 752]***, the Hon'ble Supreme Court's judgment in the ***Mediwell Hospital case*** (cited supra) was overturned by the thee Judges Bench of the Hon'ble Supreme Court of India.

22. In the case of ***Sir Ganga Ram Trust Society Vs. Union of India*** reported in ***[2011 (268) E.L.T. 465 (Del.)]***, wherein, the Delhi High Court held as follows:

> "***23.*** *It must be recalled that the enquiry into whether the hospitals that had imported equipments in terms of Notification No.64 of 1988 had fulfilled the post-import obligations commenced long after the Notification itself was*

withdrawn. The inquiry was conducted only on account of certain directions issued by this Court in a public interest litigation that such enquiry commenced. Consequently, many hospitals that had imported such equipments were required to produce records from 1985 onwards. Some of them might have preserved those records. But many may not have. This inevitably led to litigation with the Respondents insisting on the hospitals producing proof of having satisfied the post-import obligations. In the circumstances, if at the stage of producing such proof any hospital claims that it should have been treated even to begin with as a charitable hospital such plea ought to be examined by the Respondents and not brushed aside only on the ground that such a plea was not raised earlier.

24. *The order dated 8th February, 1984 of the ITAT in respect of the Petitioner for the assessment year 1979–1980 is, in the context of the present case, relevant. It sets out the figures of free services rendered to the patients of the SGRH during the years 1976–1977 and 1981–1982. The order of the ITAT relied on a certificate issued by the DHS that SGRH was "a charitable hospital running a free out patients department and*

maintaining free beds". The ITAT proceeded to observe:

"It is no doubt true that the hospital also had a number of paying beds and it charged the patients who could afford but that fact by itself would not render the income of the hospital as not exempt u/s 10(22-A). Having regard to the predominant object of the society and the restrictions placed in clause 10 of its memorandum and articles of association which has been reproduced above, we do not find anything inconsistent with the claim made by the assessee that the hospital was being run as a public charity on a philanthropic basis. According to us a charity would not be any the less charity just because it runs certain beds in its hospital or nursing home on payment. After all a charity cannot and does not survive on voluntary contribution or subscription alone. In order that it could better provide medical facilities and in order that it could achieve in a better and larger manner the advancement of medical relief, if it charged fees from patients who could afford, it would not lose (sic 'loose') its character of working in a philanthropic manner. In other words, if the assessee hospital was, in order that it became financially viable, supported to an extent

by the fees charged from patients it did not, according to us ceased to be a philanthropic institution engaged in advancement of medical relief. While determining whether an institution is philanthropic or not, three questions that may be asked are:

(i) Is it run for unselfish motives?

(ii) Is it for public in general?

(iii) Is it for general good?

Since, we find that the answers to these three questions are in the affirmative and since we also find that the profit motive stood completely eliminated in the case of the assessee as per clause 10 of its memorandum and articles of association, we would hold that the assessee society was running a hospital solely for philanthropic purposes and not for purposes of profit."

25. *Then there is an enquiry report of the Committee headed by Justice A.S. Qureshi. The terms of reference of the said Committee were as follows:*

"(a) To review the existing free treatment facilities extended by the Charitable and other Hospitals who have been allotted land on concessional terms/rates by the Government.

(b) to suggest suitable policy guidelines for free treatment facilities for needy and deserving patients uniformly in the beneficiary institutions in particular to specify the diagnostic, treatment, lodging, surgery, medicines and other facilities that will be given free or partially free.

(c) To suggest a proper referral system for the optimum utilisation of free treatment by deserving and needy patients.

(d) To suggest a suitable enforcement and monitoring mechanism for the above including a legal framework."

26. *The Committee observed that very few of the hospitals in Delhi were providing free medical services. It observed "but now very few of them are genuinely charitable or social service institutions, such as Sir Ganga Ram Hospital, Batra Hospital, etc." It further observed that "some charitable hospitals provide good free treatment facilities for needy and deserving patients, such as Sir Ganga Ram Hospital, Batra Hospital etc." At this point in time several years after the import of the equipments and several years after the Notification No. 64 of 1988 has ceased to exist, to brush aside the claim of the Petitioner that it should be treated as a charitable*

hospital, would not be justified. Consequently, this Court is of the view that the claim of the Petitioner to be treated as a charitable hospital for the purposes of Notification No. 64 of 1988 ought to be accepted by the Respondents.

Does the Petitioner satisfy the requirement of Para (2)?

27. *The alternative plea of the Petitioner that it satisfies the requirement, of para 2 of the Table appended to Notification No. 64 of 1988 is examined next.*

28. *The scope of enquiry is whether during the time Notification No. 64 of 1988 was in force, i.e., 1st March, 1988 till 1st April, 1994, the post-import obligations were fulfilled by the Petitioner. The inspection undertaken of the SGRH on 17th/18th January, 2001 refers to data after 1995. It does not advert to data submitted by the Petitioner for the period during which the Notification No. 64 of 1988 was in force. Given the fact that the data pertained to patients receiving OPD treatment in the past and those who had received in-patient treatment up to 1st March, 1994, there were no means to verify these details in 2001. Much less would it have been*

possible to verify those details in 2008. The question really revolves around the veracity of the figures furnished by the Petitioner along with its reply dated 31st August, 2000. Those figures cover the period from 1985-89. This is reiterated in a letter dated 25th May, 2001 after the Respondent DGHS withdrew the CDECs by its letter dated 16th March, 2001."

23. In the case of ***Union of India Vs. Seahorse Hospital LTD*** reported in ***[2016 (338) E.L.T. 661 (Mad.)]***, the Division Bench of the Madras High Court dealt with notification Nos.64/88 and 99/94 as under:

"***12.*** *In the order impugned in the writ petition, the appellant/respondent withdrew and cancelled all Customs Duty Exemption Certificate issued to the respondent/petitioner under Notification No. 64/88-Cus, dated 01.03.1988 and also rejected the request for issuance of installation certificate. The orders impugned in the writ petition are dated 05.07.1999 and 06.08.1999. In the above said first order, dated 05.07.1999, date of issuance of Customs Duty Exemption Certificate for each item of equipment is given in Annexure-A. It is seen that Customs Duty Exemption Certificates for all the 23 items*

were issued between 22.02.1989 and 02.04.1990. Admittedly, Notification No. 64/88-Cus, dated 01.03.1988 was repealed by Notification No. 99/1994, dated 01.03.1994. Therefore, the notification was in force from 01.03.1988 to 01.03.1994. The above Customs Duty Exemption Certificates were all issued by the appellant/respondent to all the 23 equipments well within the period, while notification was in force.

14. *It is to be seen whether the authorities can enforce the liability after rescission of Notification No. 64/88. While considering this, it is appropriate to refer the Supreme Court Judgments :*

(1) State of Orissa v. Titaghur Paper Mills Co., Ltd.MANU/SC/0325/1985

(2) State of Rajasthan v. Mangilal Pindwal MANU/SC/0549/1996

17. *In view of the above Judgments, the respondent/petitioner, who benefited the tax exemption are bound to discharge their liability during the period when the said Notification No. 64/88 was in force. The authorities can enforce such obligation only during that period when the notification was in force and not for the subsequent period.*

> ***18.*** *In this case, notification was rescinded on 01.03.1994. The authorities are not correct in cancelling the Customs Duty Exemption Certificates issued under Notification No. 64/88, dated 01.03.1988, saying that the respondent/petitioner had not complied with the conditions for the subsequent period, namely 1994 to 1998.*
>
> ***20.*** *As said by the learned single Judge, all the arguments raised in the writ petition, have been elaborately discussed in the Apollo Hospital's case. We do not see any reason to interfere with the findings and orders of the learned single Judge."*

24. In the case of ***R.G. Stone Urological Research Institute Vs. Union of India*** reported in ***[2011 (263) E.L.T. 366 (Del.)]***, the Delhi High Court held as follows:

> *"**43.** The resultant position from the above discussion would be that as far as the Customs Notification No. 64/88 is concerned, the requirement under Para 2 of the Table to provide free treatment to at least 40% of all their outdoor patients and provide free treatment to all indoor patients belonging to families with an income of*

less than Rs. 500/- per month, would be a continuing obligation but that such obligation would continue till the time the Notification No. 64/88 continued to exist. Such obligation could not be enforced even after the repeal of the said notification, i.e., even after 1st March 1994.

50. *In the considered view of the Court, there is no scope indeed for accepting the contention as put forth by the Respondents. None of the decisions of the Supreme Court discussed hereinbefore or of the Division Bench of the Bombay High Court or the order of the CESTAT held the obligation under the Notification No. 64/88 to continue indefinitely i.e. even beyond the date on which such notification stood repealed and further such obligation was also enforceable beyond the date of repeal. In those cases, what was sought to be enforced was an obligation arising during the period when the said notification was in force.*

51. *Consequently, as far as the present case is concerned, by its impugned action initiated pursuant to the Notification No. 64/88, DGHS at best could seek enforcement of the Petitioner's obligation under Notification No. 64/88 up to 1st March 1994 and not beyond that date.*

54. *As regards the obligations for the period subsequent to 1st March 1994, as already held by this Court, there is no such obligation arising from the Notification No. 64/88 after the date of its repeal. Even otherwise, the Petitioner is entitled to take benefit of the certificate given to it by the Delhi Government on 3rd January 2001 that it continued to fulfill its obligations under the Notification No. 64/88 even up to 31st October 2000. Nothing has been shown to this court to discard the earlier approval by the DHS of the Delhi government of the returns filed by the Petitioner of its compliance of the Notification No. 64/88 up to 1st March 1994. In any event up to the time of the impugned order in November 2000, the correctness or the adequacy of the data furnished by the Petitioner was never questioned. Again as regards the Petitioner's performance of it's obligations under Notification No. 64/88, up to 31st October 2000, i.e. beyond the date of its repeal, there is no reason shown why the report dated 3rd January 2001 of the Director (Administration), Lok Nayak Hospital of the GNCTD should not be accepted."*

25. In the case of ***Share Medical Care Vs. Union of India*** reported in ***[(2007) 4 SCC 573]***, the Apex Court held as follows:

> *"**15.** From the above decisions, it is clear that even if an applicant does not claim benefit under a particular notification at the initial stage, he is not debarred, prohibited or estopped from claiming such benefit at a later stage.*
>
> ***20.** In our opinion, the decision in Mediwell Hospital [(1997) 1 SCC 759 : JT (1997) 1 SC 270] would not take away the right of the appellant to claim benefit under para 3 of the table of the exemption notification. If the appellant is not entitled to exemption under para 2, it cannot make grievance against denial of exemption. But if it is otherwise entitled to such benefit under para 3, it cannot be denied either. The contention of the authorities, therefore, has no force and must be rejected."*

26. In the case of ***Navin C.Nanda National Institute of Echo Cardiography and Cardic Research Vs. Union of India*** reported in ***[2016 (338) E.L.T. 8 (Del.)]***, the Delhi High Court held as follows:

> *"**31.** The strongest point in support of the contention urged by the petitioners is that despite*

the petitioners thereafter pointing out to the DGHS that the above conclusion drawn by the DGHS was not justified since a reply had already been furnished by the petitioners, in the subsequent order dated 17th December, 1997 again, no reference is made to the replies actually furnished by the petitioner not only on 16th July, 1997, but also subsequently. It is also stated that no recommendation was received by the State Government. With the petitioner having furnished the details of the free treatment being given by it to the indoor and outdoor patients in fulfilment of the required conditions attached to the CDEC, the onus shifted to the respondents to have these details verified and to point out to the petitioner if there was anything incorrect or erroneous in the said information furnished by the petitioner. As already noticed herein, the petitioners had furnished this information on more than one occasion and in a proforma as demanded by the DGHS. With there being no reference whatsoever to the information furnished by the petitioner, and the petitioner not having been afforded a personal hearing, the conclusion drawn in the orders dated 4th November, 1997 and 17th December, 1997 that the petitioners have not fulfilled the

conditions in availing the CDEC appear to be wholly unjustifiable. There appears to be a complete non-application of mind to the reply furnished by the petitioner the receipt of which is in fact not denied in the counter affidavit filed by the DGHS.

33. *For the aforesaid reasons, the Court quashes the two Show Cause Notices dated 3rd July, 1997 and 9th July, 1997 and the corresponding orders dated 4th November, 1997 and 17th December, 1997 issued by the DGHS withdrawing the four CDECs issued to Petitioner No. 1. The Show Cause Notice dated 3rd January, 1998 issued by the Customs Department to Petitioner No. 1 is also quashed."*

REPLY BY THE RESPONDENTS 1 AND 2:

27. The petitioners/hospitals availed the benefits of Custom Duty Exemption Certificates (CDECs) on import of hospital equipments as a category (2) institution of the table annexed to 64/88-Customs notification. The continuing eligibility of the hospitals to retain/avail CDEC was examined in terms of the directions of the Hon'ble High Court at Delhi in PUCL matter (409/96) and observations of Hon'ble Supreme Court in

Mediwell Hospital case (CA No.16735/96). Accordingly, a time bound letter was issued to the petitioner hospital on 13.11.1997 to furnish certain informations on fulfillment of conditions of 64/88-Customs notification. From the data made available by the institution directly to this Directorate General of Health Services, New Delhi, the report received from the State Government and from the visit reports of officers of the Directorate General of Health Services, it has been observed that the applicant has been counting the services provided by its Tamabram Centre towards being counted as eligible for grant of CDECs. However, in view of the fact that:-

(i) this centre is located 20 kms away from the location of the equipment;

(ii) the centre mainly caters to the family welfare programme and not to services requiring free OPD/IPD services relating to those diseases for treatment for which the equipments were imported.

28. Therefore, the Directorate General of Health Services/Ministry of Health and Family Welfare has not accepted the claim of the applicant towards rendering free services in terms of the conditions of the notification. Free services rendered in a facility not located at the same site cannot be counted towards discharge of the conditions laid down under para

2 of the Table of the notification through which Government has extended large exemption from custom duty to M/s.Apollo Hospitals for importing of sophisticated high-tech equipments, only to ensure that the benefit of these facilities are also extended to the needy poor patients as envisaged in the notification. Hence, the CDECs issued to the petitioner/hospital were withdrawn vide order dated 28.1.98 and the applications pending for want of deficient information at that point of time were also rejected based on the reasons explained in the order dated 28.01.1998.

29. This Directorate/Ministry of Health and Family Welfare decided to review of all the beneficent institutions that had availed benefits under custom notification No.64/88-Customs dated1.3.88. The petitioners/hospitals were one amongst the institutions investigated as per the directions of Hon'ble High Court of Delhi (WP No.409/96) and observations of Hon'ble Supreme Court in ***Mediwell Hospital case*** (CA Bi. No.16735/96). The CDECs issued to the petitioner hospital were withdrawn as the petitioners/hospitals failed to fulfill the terms and conditions of the notification No.64/88-Customs Notification dated 1-3-88.

30. Aggrieved by the decision regarding withdrawal of the CDECs issued, the petitioners institution filed Writ Petition No.2110-2111/98 before the Hon'ble High Court at Madras. The Hon'ble Court vide order dated 8-6-2001, disposed of the petition with certain directions wherein the Learned Single Judge diluted the conditions of the notification, observing that 40% OPD can be compromised by adding the persons attending the camps. Also the Hon'ble Court categorically stated that there is no need to reserve 10% beds for the economically weaker section and only a provision needs to be made. The matter thus remitted back to the Directorate General of Health Services for fresh disposal. This Directorate preferred to file a Writ Appeal (W.A.No.2179-2181/2002) against the order dated 8.6.2001 passed by the Hon'ble Court.

31. The Hon'ble Division Bench passed order dated 22.12.2008 in the matter of Writ Appeal filed by this Directorate. While upholding the decision of the Hon'ble Learned Single Judge, the Division Bench has only looked at the issue of principles of natural justice and has not examined the technical and other law points which was the ground for the appeal. Abiding by the Hon'ble High Court's order dated 22.12.2008, this Directorate issued notice dated 24.03.2009 to the petitioners/hospitals to furnish the documents

through the State Government to fulfill the post import conditions laid down under notification No.64/88-Customss dated 1-3-88. The petitioners/hospitals furnished the information/documents. The Statement Government has also forwarded the documents in respect of the petitioners/ hospitals.

32. The matter was considered and it was decided that the petitioners/ hospitals may be given an opportunity of personal hearing to substantiate fulfillment of post import conditions of notification No.64/88-Customs dated 01.3.1988. Accordingly vide notice dated 10.7.2009, the petitioners/ hospitals was requested to appear before this Directorate on 30-7-2009 to substantiate fulfillment of condition of the said notification. The representatives of the hospital attended the meeting as scheduled and also furnished a brief written submission at the time of personal hearing.

33. The averment of the petitioner that this Directorate has overlooked the recommendations of the State Government as stipulated in the notification, as well as not considered the directions of the Learned Single Judge, which was sustained by the Hon'ble Division Bench, is not correct. In this connection, it is stated that the exemption notification has to

be implemented and the fulfillment of obligations have to be kept under surveillance. The medium through this could be effected by seeking the help of the State Government in this behalf. There is nothing in the exemption certificate to suggest that the report of the State Government would be binding on the Directorate General of Health Services. This Directorate could certainly come to its own conclusion as to whether the recommendations of the State Government either for grant or cancellation should be accepted or not. Whereas in the case of petitioners/ hospitals, the decision of the Government of India for non fulfilling of the conditions was based on the information provided by the petitioner itself at the time of spot inspection carried out by a team of officers of Directorate General of Health Services.

34. This Directorate has followed the directions of Hon'ble High Court of Delhi in the PUCL matter (CWP 409/96) and observations of Hon'ble Supreme Court in ***Mediwell Hospital case*** (CA No.16735/96), while reviewing the petitioner's case. The petitioner hospital was a beneficiary under 64/88-Customs notification and the eligibility was as such examined within the purview of that notification strictly in the light of observations of the Hon'ble Apex Court in ***Mediwell Hospital case***. The

Apex Court observed that there is a continuous onus on the part of the beneficiary under 64/88-Customs notification to give free treatment to 40% of its OPD patients and to give free treatment to all indoor patients whose income is less than Rs.500/- p.m. This, the petitioners/ hospitals failed to comply with that condition. Hence the benefits of exemption were withdrawn and as such the action of this Directorate is just and on valid grounds.

35. The observation of Hon'ble High Court vide order dated 8.6.2001 that the liabilities arising out of the Customs Notification No.64/88, dated 1.3.88 under which the CDECs were issued earlier has been rescinded vide Notification No.99/94, dated 1.3.94. The judgment of Hon'ble Supreme Court in Mediwell case, which was subsequent to repealing of the notification No.99/94-Customs dated 1.3.94 had held that there is a continuous onus on the part of beneficiary institution to fulfill the said obligations, the DGHS/Ministry of Health and F.W. has the right to withdraw the CDECS on the basis of which the petitioner had imported equipments would take liberty to quote the observations of the Hon'ble Supreme Court in Mediwell Hospital judgment. The Hon'ble Supreme Court observed that "the objective must be achieved at any cost and the very

authority who have granted such certificates 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 realization of the customs duty from them."

36. Notification No.64/88-Customs augmented for Section 25 (1) of the Custom Act and the Act and relevant clause is still in force. The Department of Revenue vide their letter dated 7.3.2002 had clarified the matter as under, which holds that there is a continuing onus on the part of the beneficiary to fulfill the conditions of the notification:-

> "In this regard, it is to state that a Saving Clause has been introduced in the Customs Act, 1962, vide Section 159 "A" according to which any notification rescinded shall not affect the previous operation of the notification nor affect any obligation or rescinded liability acquired under the rescinded notification nor affect any penalty, forfeiture or punishment occurred in respect of any offence committed under or in violation of the rescinded notification or affect any investigation, legal proceeding or remedy in respect of the said notification. Further, as per the provisions of Section 113 and 114 of the Finance Act 2001, the amendment to Customs Act, 1962 i.e., insertion of the Section

159-A and validation of action taken is retrospective w.e.f. 1st February, 1963.

37. With regard to the disposal of pending applications in accordance with notification No 208/81-Customs as amended by notification No.122/94 & 55.95, it is stated that these applications were with reference to the import of hospital equipments during the time the earlier notification No.64 of 1988 was in force. Therefore, whether the concession has been properly availed of by satisfying the conditions attached for invoking the exemption has to be considered only in the light of the earlier notification no. 64 of 1988. Therefore, the pending applications before the Directorate General of Health Services for CDEC certificates have to be considered only in the light of the notification, pursuant to which the applications were made and to direct that such applications should be disposed of on merits in accordance with the subsequent notifications is absolutely meaningless, since the subsequent notification has not imposed any conditions for availing exemption and the equipments itself are life saving equipment, which concession always remained i.e. even during the currency of the notification No. 64 of 1988. Further considering the pending applications under subsequent notification, wherein no conditions have been imposed,

would be frustrating the whole exercise and as such will operate directly against the findings of the Hon'ble Supreme Court in ***Mediwell Hospital case*** that the obligations are continuous one and such action goes against the findings of the Hon'ble Supreme Court.

38. The Directorate General of Health Services issued custom duty exemption certificates under notification No 64/88-Customs dated 1.3.88 based on petitioners undertaking to fulfill the post import conditions and certification and recommendation of the concerned State Government. Pursuant to the filing of a writ petition No.409/96 by Peoples Union of Civil Liberties (PUCL) in the Hon'ble High Court of Delhi and as per observations of Hon'ble Supreme Court in Mediwell Hospital case, this Directorate/Ministry of Health and F.W. has taken up review of all beneficent institutions, who availed benefits under 64/88- Customs Notification. The petitioner case was also reviewed in terms of observations of the Hon'ble Supreme Court in Mediwell Hospital case which was found not fulfilling the post import conditions of the notification as undertaken at the time of importation of the equipments.

39. The petitioners/ hospitals were beneficiaries under the notification dated 1.3.88 and its eligibility was as such examined within the purview of that notification strictly in the light of observations of Hon'ble Supreme Court in Mediwell Hospital case. The Apex Court observed that there is a continuing onus on the part of beneficiaries under the said notification to give free treatment to 40% of its OPD patients and to give free treatment to all indoor patients whose income is less than Rs.500/- p.m. is a continuing onus on the part of beneficiaries under the said notification to give free treatment to 40% of its OPD patients and to give free treatment to all indoor patients, whose income is less than Rs.500/-p.m. But, the petitioners/ hospitals failed to comply. Hence the case rejected on merits. Before rejecting/withdrawing the CDECs issued earlier under 64/88, the petitioners/hospitals were given ample opportunity to substantiate its claim that it fulfilled the conditions contained in the said notification to which the petitioners/hospitals replied and furnished the information to decide the eligibility of the institution. It was observed that the petitioners/hospitals had been counting the services provided by its Tambaram Centre, which is 20Km away from the location of the imported equipments installed towards being counted as eligible for grant of CDECS. Thus, Directorate/Ministry of Health and F.W. cannot accept the claim of the hospital that the free medical

camp conducted by the hospital to be counted for the purpose of reckoning the free treatment for atleast 40% of the outdoor patients. The persons who approached the medical camps cannot be said to be the persons who would otherwise have approached the petitioner/hospital. The free medical treatment contemplated under the said notification should be with a reference to out patients treated at the hospital which includes all the equipments imported availing of the duty exemption benefits. It is not the case of the hospital that all the equipments found in the hospital include those imported the scheme pursuant to notification No.64/88-Customs were also made available to those patients in medical camps. Further, the persons attending the medical camp cannot be even called out patients. The notification dated 1.3.88 entails to provide free medical, surgical or diagnostic treatment. Camps are by and large held for screening the population comprising both healthy as well as unhealthy population. Large number of people attend the camps. Only the cases requiring medical, surgical or diagnostic treatment are referred to the hospitals. The intention of the notification to allow duty free import of high tech cost-intensive equipments is for providing secondary and tertiary health care and make them accessible to patients, who does not have access/affordability to such treatment.

40. The averments of the petitioners/hospitals that as per the notification No.64/88-Customs dated 1.3.88 only a provision should be made for treatment of 40% out patient and 10% of inpatients, free of charge which is totally out of context. Neither the notification nor the Mediwell judgment have put any conditions for the 40% outpatient treatment. The requirement is that the hospital has to give treatment to 40% of its total outpatients.

41. When concession is sought to be availed of on the satisfaction of the condition precedent that conditions in the notification has to be construed strictly against the persons availing the concession. When 10% of the beds have to be reserved for persons belonging to a particular category ie, persons earning less than Rs.500/- p.m., it is no use in saying that no person belonging to the category has complained that the hospital has not provided them with free bed. As a matter of fact, a committee which inspected the petitioner hospital, was not even able to find a board showing the provision of such conditions which was mandatory under the said notification. Unless the people were made aware of the fact of reservation, one cannot be said to belong to that category to avail of such free beds. The reasoning of the petitioner/hospital in this behalf and observation of

Learned Single Judge that the notification itself was not in force when the committee inspected their hospital in 1996, does not hold good as the Hon'ble Supreme Court in the case of Mediwell Hospital which was subsequent to repealing of the notification No.99/94-Customs dated 1.3.94, has clearly interpreted the notification No.64/88-Customs to give free treatment to 40% of its OPD patients and to give free treatment to all indoor patients whose income is less than Rs.500/- p.m. The CDECs issued to the petitioners/ hospitals were conditional subject to fulfillment of these conditions. But, the petitioners failed to comply. Hence the CDECs were rightly withdrawn within the purview of observations of Hon'ble Supreme Court in Mediwell Hospital case. The notification arises from Custom Act. All remedies, saving clause etc., effecting the operations of the notification are provided under the said act. Hence the decision of this Directorate is just and in accordance with law.

42. The Hon'ble Supreme Court in C.A.No.2680/2000, Commissioner of customs (1), Mumbai V/s M/s Jagdish Cancer and research Centre who examined the matter of continuing onus of fulfilling the post of import conditions of the notification No. 64/88-Customs, held that:

"A perusal of the condition in the notification indicates

that on an average, at least 40 per cent of all outdoor patients should be provided free treatment. It is, thus, at least 40 per cent or may be above. It is submitted that condition nowhere indicates that within what period, the prescribed percentage is to be achieved. It is submitted that it should be during the life of the equipment imported. Thus, shortfall of particular year may be made good in the following year. We are not impressed by this argument. It would, not at all, be necessary to prescribe any period to achieve the given percentage of patients treated free. It should generally be all through the period."

43. The Hon'ble Court further held that "the 10% of the total number of beds are supposed to be reserved for patients of such families in the hospital where the equipment is installed. However, it is stated that this Respondent relied upon the observations of Hon'ble Supreme Court in the Mediwell Hospital case who have clearly interpreted the 64/88-Customs notification. The impugned order of cancellation of CDEC is strictly in the light of observations of the Hon'ble Apex Court in the above judgment.

ARGUMENTS ON BEHALF OF THE RESPONDENTS:

44. The learned Additional Solicitor General of India appearing on behalf of the respondents 1 and 2 objected the contentions raised on behalf

of the petitioners by stating that the 2nd respondent / Director General of Health Services, New Delhi is not strictly bound by the recommendations made by the State Government. As per the Notification 64/88, the Director General of Health Services is empowered to look into the manner through which the conditions are complied with and to ensure that the purpose and object of those conditions are fulfilled, since exemption from payment of customs duty is granted based on the undertaking given by the institution. Therefore, the recommendations in the perspective of the State Government is one aspect of the matter and the fulfillment of the conditions stipulated in the Notification is another aspect of the matter, which is to be scrupulously and thoroughly verified by the Director General of Health Services, New Delhi. The rescindment is applicable in respect of the equipments imported after the new Notification. As far as the equipments covered under the exemption notifications are concerned, the institutions are obligated to fulfill the conditions and also their undertaking.

45. The contention of the petitioners that as per the notification No.64/88-Customs dated 1.3.88, the provision should be made for treatment of 40% out patient and 10% of inpatients free of charge is incorrect. No such condition has been stipulated by the Hon'ble Supreme Court of India in

Mediwell Hospital case. The requirement is that the hospital has to give free treatment for 40% of its total outpatients and 10% of the total number of beds are supposed to be reserved for patients of such families in the hospitals, where the equipment is installed. Therefore, the order impugned in the writ petitions, cancelling the CDEC's are made strictly in the light of the observations of the Hon'ble Supreme Court of India in the Mediwell Hospital case judgment. When the concession is sought to be availed off by the institution, it is subject to the satisfaction of the condition precedent. The terms and conditions are to be construed strictly against the institutions availing the concession and therefore, 10% of the beds have to be reserved for persons belonging to a particular category i.e, income is less than Rs.500/- p.m. It is contended that there is no use in saying that no person belonging to the category has complained that the hospital has not provided them with the free bed. The committee, which inspected the petitioner hospital, was not even able to find a board, showing the provisions of such conditions, which was mandatory under the notification. Unless the people were made aware of the fact of reservation, one cannot be said to belong to that category to avail of such free beds. In the case of ***Mediwell Hospital (cited supra)***, the Hon'ble Supreme Court categorically interpreted the notification No.64/88-Customs to give free treatment to 40% of its OPD

patients and to give free treatment to all indoor patients, whose income is less than Rs.500/- p.m. Therefore, the CDECs issued to the petitioner Institute were conditional subject to fulfillment of these conditions. But the petitioners/hospitals failed to comply with the conditions. Thus, the CDECs were rightly withdrawn in view of the observations made by the Hon'ble Supreme Court in ***Mediwell Hospital case (cited supra)***.

46. The learned Additional Solicitor General of India reiterated that the judgment of Hon'ble Supreme Court in ***Mediwell Hospital case (cited supra)*** which was subsequent to repealing of the notification No.99/94-Customs dated 1.3.94 had held that there is a continuing onus on the part of beneficiary institution to fulfill the said obligations. The Apex Court observed that "the objective must be achieved at any cost and the very authority who have granted such certificates 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 realization of the customs duty from them".

47. The Department of Revenue vide their letter dated 7.3.2002 had clarified the matter as under which holds that there is a continuing onus on the part of the beneficiary to fulfill the conditions of the notification. The Notification No.64/88-Customs augmented for Section 25 (1) of the Custom Act and the Act and relevant clause is still in force. Therefore, the petitioners/hospitals have failed to comply with the conditions as well as the undertaking given by them to fulfill the requirements. Thus, the writ petitions are to be rejected.

JUDGMENTS RELIED ON BY THE RESPONDENTS:

48. The ***Mediwell Hospital case*** reported in ***[(1997) 1 SCC 759]*** was relied upon.

49. In the case of ***Sri Sathya Sai Institute, High. Medi. Sciences Vs. Union of India,*** reported in ***2003 (158) ELT 675***, the Apex Court held as follows:

> *"3. We have carefully perused the judgment of this Court in Mediwell's case and also the order of reference. We are of the view that when it was the prerogative of the Government to grant exemption, it was for them to impose appropriate conditions for the same. If that is so, this Court*

need not have interposed by reason of an order as made. Therefore, we think it appropriate that the directions issued in Para 14 of the Mediwell's case shall stand overruled. If necessary, the Government may issue appropriate conditions for fulfilment of exemption".

50. In the case of ***Commissioner of Customs (Import), Mumbai Vs. M/s.Jagdish Cancer and Research Centre***, reported in ***2001 (6) SCC 483***, the Apex Court ruled as follows:

"13. Learned counsel for the respondent has next urged that looking to the total picture of the free treatment provided by the Centre, it is to be noticed that shortfall in providing free treatment is marginal. The percentage of persons provided free treatment cannot be precise. During certain period, it may be a little less or a little higher. He has also drawn our attention to a chart prepared by the respondent and filed with an affidavit before the CEGAT, showing that the treatment provided to outdoor patients is 39.8 per cent and instead of 10 per cent indoor patients it is 8.9 percent. In connection with this submission, it may be observed that this aspect of the matter has been considered by the Commissioner as well as CEGAT in some details and ultimately it has been found that there was a shortfall which is also not disputed by the respondent. A Perusal of the condition in the

Notification indicates that on an average, at least 40 per cent of all outdoor patients should be provided free treatment. It is, thus, at least 40 per cent or may be above. It is submitted that condition nowhere indicates that within what period, the prescribed percentage is to be achieved. It is submitted that it should be during the life of the equipment imported. Thus, shortfall of particular year may be made good in the following year. We are not impressed by this argument. It would not at all, be necessary to prescribe any period to achieve the given percentage of patients treated free. It should generally be all through the period. It being at least 40 per cent, there is hardly any occasion to say that in case there is more than 40 per cent in a given period, that may make good the deficiency in the previous or the following year. In any case, over and above all, it has not been in dispute that the Centre did not have inpatient facility. According to the condition of notification 10% of total beds in hospital, are to be kept reserved for patients of the families having an income of less than Rs.500/- per month. The case of the Centre, in this connection, is that they had an arrangement with another hospital in the proximity which is a sister concern of the Centre, with whom the Centre had entered into an agreement for reserving 10 per cent beds. Payments in respect of these inpatients is to be made by the Centre. We feel that the 10 per cent of the

total number of beds are supposed to be reserved for patients of such families in the hospital where the equipment is installed. The purpose of the Notification for grant of exemption from payment of customs duty would not be served by making payment of expenditure incurred on some inpatients in some other hospital as alleged. It has also not been shown that alleged arrangements had the approval of the concerned authority or that it was brought to their notice at all."

CONSTITUTIONAL PERSPECTIVES AND ROLE OF JUDICIARY:

RIGHT TO HEALTH:

PROVISIONS UNDER PART-IV OF THE CONSTITUTION OF INDIA

51. **Article 38** in this regard provides that, "the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice — social, economic and political, shall inform all the institution of the national life". Thus this is an imposition of liability on state that the State will secure a social order for the promotion of welfare of the people including public health because without public health welfare of people is practically meaningless.

52. **Article 39** further speaks that "the State shall, in particular,

directs its policy towards securing – **(e)** that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

53. **Article 47** imposes duty on the State to raise the level of nutrition and the standard of living and to improve public health. It categorically provides that "the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

ROLE OF JUDICIARY

54. Several human rights instruments, throughout the globe, have recognized 'right to health' as a basic human right. In India, though 'right to health' is not recognized as a fundamental right expressly, the judiciary by its expounded role has recognized it as a fundamental right under Article 21 of the Constitution as an adjunct to the 'right to life'. The responsibility to respect, protect and fulfill the 'right to health' lies not only with the medical

profession but also with public functionaries such as administrators and judges.

55. Some of the important pronouncements on this issue are given hereunder. The Supreme Court, while interpreting Article 21 of the Constitution ruled that the expression 'life' does not connote mere animal existence or continued drudgery through life but includes, inter alia, the opportunities to eliminate sickness and physical disability.

56. In **Francis Coralie Mullin v. Union Territory of Delhi**, 1981(1) SCC 608, it was held that, right to life guaranteed in Article 21 of the Constitution in its true meaning includes the basic right to food, clothing and shelter.

57. The Apex Court, in **Paschim Banga Khet Mazdoor Samity v. State of West Bengal**, (1996) 4 SCC 37, while widening the scope of Article 21 and the government's responsibility to provide medical aid to every person in the country, held that in a welfare state, the primary duty of the government is to secure the welfare of the people. Providing adequate medical facilities for the people is an obligation undertaken by the

government in a welfare state. The government discharges this obligation by providing medical care to the persons seeking to avail of those facilities

In **Unnikrishnan, J.P. v. State of Andhra Pradesh, AIR 1993 SC 2178 , (1993) 1 SCC 645,** it was held that the maintenance and improvement of public health is the duty of the State to fulfill its constitutional obligations cast on it under Article 21 of the Constitution. In Consumer Education and Research Centre v. Union of India, 6 the Supreme Court explicitly held that the right to health and medical care is a fundamental right under Article 21 of the Constitution and this right to health and medical care, to protect health and vigour are some of the integral factors of a meaningful right to life.

58. **In Consumer Education and Research Centre v. Union of India, AIR 1995 SC 636: (1995) 3 SCC 42,** the Supreme Court explicitly held that the right to health and medical care is a fundamental right under Article 21 of the Constitution and this right to health and medical care, to protect health and vigour are some of the integral factors of a meaningful right to life.

59. In **Bandhua Mukti Morcha v. Union of India**, **AIR 1984 SC**

802, the Apex Court addressed the types of conditions necessary for enjoyment of health and said that right to live with human dignity also involves right to 'protection of health'. No State, neither the central government nor any state government, has the right to take any action which will deprive a person the enjoyment of this basic essential.

60. In **Virender Gaur v. State of Haryana, 1995 (2) SCC 577,** the Supreme Court held that environmental, ecological, air and water pollution, etc., should be regarded as amounting to violation of right to health guaranteed by Article 21 of the Constitution.

61. In **Vincent v. Union of India**, AIR 1987 SC 994, it was held that a healthy body is the very foundation for all human activities. In a welfare state, therefore, it is the obligation of the state to ensure the creation and the sustaining of conditions congenial to good health.

62. The Apex Court, in its landmark judgment in **Pt.Parmanand Katara v. Union of India,AIR 1989 SC 2039,** ruled that every doctor whether at a government hospital or otherwise has the professional obligation to extend his service with due expertise for protecting life,

whether the patient be an innocent person or be a criminal liable to punishment under the law. No law or state action can intervene to avoid/delay, the discharge of the paramount obligation cast upon members of the medical profession.

63. In **CESC Ltd. v. Subash Chandra Bose,** AIR **1992 SC 573,585 : (1992) 1 SCC 461,** the Supreme Court relied on international instruments and concluded that right to health is a fundamental right. It went further and observed that health is not merely absence of sickness: "The term health implies more than an absence of sickness. Medical care and health facilities not only protect against sickness but also ensure stable manpower for economic development. Facilities of health and medical care generate devotion and dedication to give the workers' best, physically as well as mentally, in productivity. It enables the worker to enjoy the fruit of his labour, to keep him physically fit and mentally alert for leading a successful economic, social and cultural life. The medical facilities are, therefore, part of social security and like gilt edged security, it would yield immediate return in the increased production or at any rate reduce absenteeism on grounds of sickness, etc. Health is thus a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."

64. In **Mahendra Pratap Singh v. State of Orissa, AIR 1997 Ori 37,** the Court had held "in a country like ours, it may not be possible to have sophisticated hospitals but definitely villagers within their limitations can aspire to have a Primary Health Centre. The government is required to assist people, get treatment and lead a healthy life. Thereby, there is an implication that the enforcing of the right to life is a duty of the state and that this duty covers the providing of right to primary health care.

CUSTOM DUTY EXEMPTION

65. In **Commissioner Of Central Excise, New Delhi vs M/S. Hari Chand Shri Gopal & Ors on 18 November, 2010, the Supreme Court in para 29, 30 and 33 held :**

"22. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the

conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption. In **Novopan India Ltd., Hyderabad v. Collector of Central Excise & Customs, Hyderabad (1994) Supp. 3 SCC 606**, Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State."

66. **In the case of Kasturba Medical College vs The Union Of India on 4 January, 2018, the High court of Karnataka has held on para 14, 16, 19, 20 and 21 as follows :**

"14. Beyond a pale of doubt, the provisions relating to exemption from tax or duties have to be strictly construed and except upon satisfaction of the conditions for grant of such exemptions ***stricto sensu,*** *the exemption from customs duty cannot be given by way of largesse to the beneficiaries, like Hospitals and Medical Institutions in the present case.*

16. Be that as it may, the situation as per the terms of Division Bench's judgment in these circumstances thus reverted back to the conditions as stipulated in the Custom Notification No.64/88-Cus. dated 1.3.1988 ***and therefore, satisfying of the conditions of that Notification stricto sensu became sine qua non for the petitioners to establish before the concerned Authorities.***

19. The facts stated in the impugned order Annexure-A dated 23.1.2015 that CDECs (Exemption Certificates) issued to as many as 392 out of 396 Institutions were revoked is a glaring one. ***It reflects a gross abuse of such customs duty exemption given to the petitioner-Hospitals and other Institutions. Exemption from tax or customs duty is a burden on the public Ex-chequer or public revenue and to that extent, the public loses its money in favour of the beneficiary institutions. Therefore, it is all the more necessary that a strict, meticulous and complete compliance of conditions with the relevant and cogent evidence is proved beyond doubt before the concerned Authorities.***

20. ***The gross abuse of customs duty exemption by these Institutions and as many as 392 Institutions out of 396 given such exemption lost their CDECs, defeats the very purpose for which such exemption was given, for the avowed purpose of providing free medical aid to the poor sections of the***

Society.

21. The petitioners, therefore, do not deserve any liberal or sympathetic view in the matter which is even otherwise prohibited by the settled canons of interpretation of taxing statutes or exemption Provisions, viz., to strictly construe the same.

67. In the case of **Mediwell Hospital Health Care Pvt. Ltd. v. Union of India,** the Supreme Court held :

"10. 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 obtained the certificate*** *from the appropriate authority and on the basis of that to have imported equipments without payment 1 of customs duty to given free treatment atleast to 40% 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 per month.* ***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 without payment of customs duty and if on such enquiry the authorities are satisfied that the continuing obligations 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 when have been imported without payment of customs duty.

Needless to mention the Government has granted exemption from payment of customs duty with the sole subject that 40% of all outdoor patients and entire Indoor patients of the low income group whose income is less than Rs. 500 per month, would be able to receive free treatment in the institute. The 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."

68. In the case of **All India Lawyers Union (Delhi Unit) vs Govt of Nct Delhi and ors :**

"15. The words used in the notification apart, the purpose underlying the exemption unquestionably was to grant

exemption only to hospitals, where the prescribed percentage of patients from the poorest of the poor sections of the Society with a family income of no more than Rs.500/- per month could get free treatment. It was contended by Mr. Shevgoor and perhaps rightly that in ***the current economic scenario with the purchasing power of the rupee on the decline a family income of Rs.500/- is the barest minimum for survival. One can even say that those with that kind of income for an entire family are living on the edge and may be a vanishing special specie. What however is evident from the limit on the income placed by the authority issuing the notification is that it had in mind the poorest of the poor sections of the Society when a provision for exemption of duty on import of equipment was made. The predominant object behind the grant of an exemption, which ran into hundreds of crores if not thousands was to ensure that the poorest in the society have an advantage of being treated free in such hospitals. The colossal amount of duty involved in the exemption could not conceivably be waived or given up by the Government…"***

69. In the case of ***Union Of India vs Moolchand Khairati Ram Trust on 9 July, 2018***, the Supreme court held as follows :

"53. The nobility and obligation of the medical profession have also found statutory recognition in the form of regulations framed by the Medical Council of India in the exercise of the power conferred under section 20A read with section 33(m) of the Indian Medical Council Act, 1956.

54. ***Under Regulation 1.2.1 it is the duty of the member of the medical profession to make available to the patients the benefits of their professional attainments.*** *Regulation 1.2.1 is extracted hereunder: "1.2.1 The principal objective of the medical profession is to render service to humanity with full respect for the dignity of profession and man. Physicians should merit the confidence of patients entrusted to their care, rendering to each a full measure of service and devotion. Physicians should try continuously to improve medical knowledge and skills and should make available to their patients and colleagues the benefits of their professional attainments. The physician should practice methods of healing founded on a scientific basis and should not associate professionally with anyone who violates this principle. The honoured ideals of the medical profession imply that the responsibilities of the physician extend not only to individuals but also to society."*

55. *Under* ***Regulation 1.8, the physician engaged in the practice of medicine has to give priority to the medical interests of the patients and not to the personal financial interests.*** *Regulation 1.8 is extracted hereunder:*

> *"1.8 Payment of Professional Services: The physician, engaged in the practice of medicine shall give priority to the interests of patients. The personal financial interests of a physician should not conflict with the medical interests of patients. A*

physician should announce his fees before rendering service and not after the operation or treatment is underway. Remuneration received for such services should be in the form and amount specifically announced to the patient at the time the service is rendered. It is unethical to enter into a contract of "no cure no payment". ***Physician rendering service on behalf of the state shall refrain from anticipating or accepting any consideration."***

56. Under ***Regulation 2.1*** *it is provided that in the case of emergency the physician must treat the patient. No physician shall arbitrarily refuse treatment to a patient.*

59. The realization of human rights vests responsibilities upon the State. The State has to constantly make an endeavor for realization of human rights agenda, particularly in relation to economic, social and cultural rights. Right to health is provided ***in Article 25 of Universal Declaration of Human Rights of 10.12.1948 (the UDHR).*** *The Article provides that:*

"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old

age or other lack of livelihood in circumstances beyond his control."

65. "...It is very unfortunate that by and large the hospitals have now become centers of commercial exploitation and instances have come to notice when a dead body is kept as security for clearance of bills of hospitals which is per se illegal and criminal act. In future, whenever such an act is reported to the police, it is supposed to register a case against management of Hospital and all concerned doctors involved in such inhumane act, which destroys the basic principles of human dignity and tantamount to a criminal breach of the trust reposed in the medical profession".

67. ***The poor cannot be deprived of the treatment by the best physician due to his economic disability in case he requires it. It is the obligation on the medical professionals, hospitals, the State and all concerned to ensure that such person is given treatment and not deprived of the same due to poverty. That is what is envisaged in the Constitution also. On the making of a doctor, the State spends and invests a huge amount of public money and it is the corresponding obligation to serve the needy and the treatment cannot be refused on the ground of financial inability of the patient to bear it. To such an extent, the right and moral obligation can be enforced and that precisely has been done by issuance of the impugned directions to provide free treatment in IPD and OPD to***

economically weaker sections of society. They have suffered so long and benefit has not percolated down to them of distributive justice and they are deprived of equal justice and proper treatment due to lack of financial means."

ANALYSIS:

70. Exemption Notification No.64/88 Customs dated 01.03.1988 was issued in exercise of powers conferred by Sub-Section (1) of Section 25 of the Customs Act, 1962 (52 of 1962). The Central Government in the "**Public Interest"** exempted all equipments, apparatus and appliances, including spare parts and accessories thereof, by excluding consumable items, the import of which is approved either generally or in each case by the Government of India in the Ministry of Health and Family Welfare, or by the Directorate General of Health Services to the Government of India, as essential for use in any Hospital specified in the Table below and the Table reads as under:

TABLE

"All such hospitals as may be certified by the said 1. 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.

All such hospitals which may be certified by the said 2. 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 percent 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 percent 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).”

71. The issue of importance rest on the factual matrix, which is to be determined by the competent authority for granting exemption from payment of customs duty. The conditions stipulated in the notification No.64/88 is unambiguous that to provide free treatment on an average to at least 40% of their outdoor patients and free treatment 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% of all the hospital beds reserved for such patients.

72. The interpretation of these two conditions must be read in consonance with the purpose and object of granting exemption from payment of customs duty.

73. As we have considered elaborately the Constitutional perspectives, role of the Courts and the liability of the State, the exemption was granted in public interest, in order to achieve the Constitutional goal and the perspectives of the Constitution. Right to Life being a Fundamental Right and medical facilities to be provided is an integral part of Article 21. The Government while expanding the scope of medical facilities to the poor and the poorest of poor, imposed conditions for exemption of customs duty and it is needless to state that the exemption is granted at the cost of public funds. Therefore, the nexus between the exemption from payment of customs duty and the conditions imposed to provide free treatment by the hospitals on availing the benefit of exemption is to be understood holistically in order to ensure that the Constitutional mandates are honoured for the welfare of the people.

74. In the perspective of the Constitution, one should understand that the medical facilities being the basic right to the citizen of our great Nation and the poorest of poor will not be in a position to get specialised treatment, the Government thought fit and granted exemption from public funds and imposed conditions to provide free treatment for at least 40% of their outdoor patients. The writ petitioners have given undertaking that they will abide by the conditions on availing the exemption from payment of customs duty.

75. Question arises, how to assess factually the implementation part of the conditions.

76. The State Government Authorities conducted an inspection and submitted a report. Based on the report, the Government of Tamil Nadu recommended for issuance of CDECs. The petitioners state that the recommendation was made based on the inspection conducted by the Medical Authorities of the State Government and therefore, it is binding on the Director General of Health Services, New Delhi.

77. In this context, mere recommendation would not confer any right on the person to claim exemption. The authority, who granted exemption invoking the powers under the Customs Act, 1962 is empowered to consider the issues based on factual aspects and has got power to draw inferences, if any discrepancies are found in the recommendations. It is not as if mere recommendation is a binding factor for grant of exemption. The Authority i.e., the Central Government in the present case has got powers to scrutinise the manner in which the recommendations are made with reference to the conditions imposed and such power cannot be disputed by the petitioners and therefore, the contentions of the petitioners that recommendation of the State Government is binding on the Central Government is unacceptable.

78. The petitioners have now stated that they have provided outdoor camps at Tambaram and at various other places, wherein they have provided free treatment for more than 40% of the outdoor patients. The petitioners made an attempt to interpret that 40% of their outdoor patients are to be construed as they can give treatment even through camps in any other place.

79. With reference to the said submission, this Court is of the considered opinion that the context and the importance of the conditions are

to be taken into consideration for the purpose of accepting the factual details provided by the hospitals. If at all the petitioners conduct outdoor camps in some other place, it is not possible to utilise the imported medical equipments for those patients. They would have conducted general medical camps for ordinary general diseases and therefore, the poor people would not get an opportunity to get specialised medical treatment through the sophisticated medical equipments imported by availing the customs duty exemption.

80. Thus, providing an outdoor camp medical treatment to poor people undoubtedly would not satisfy the conditions stipulated in the Notification No.64/88. Many number of such medical camps are conducted by NGOs, Voluntary Organisations, State Health Departments and many other persons and even individuals are conducting such medical camps for the benefit of the poor people in their locality. Therefore, established hospitals like that of the petitioners, while availing customs duty exemption, must ensure that specialised medical equipments, apparatus imported are utilised for the benefit of at least 40% of their outdoor patients.

81. "Outdoor Patients" stipulated in the condition in the notification No.68/88 indicates that the patients, who all are coming to the petitioners hospitals and getting free treatment through the medical equipments imported. In other words, for certain diseases, MRI (Magnetic Resonance Imaging) Scan, CT (Computed Tomography) Scan, etc., are taken even for outdoor patients. Therefore, 40% of all the outdoor patients of the petitioners/hospital indicate the patients, who all are coming to the hospital and taking free treatment through the imported medical equipments for which exemption of customs duty is granted.

82. In this context, 10% of the hospital beds are reserved for such patients, if such patients require admission in the hospital. Therefore, the Central Government while issuing notification No.64/88 thought fit that out of 40% outdoor patients, 10% beds are to be reserved for such patients, who all are treated at free of cost in the petitioners/hospitals. Conditions (a) and (b) in the table must be read together and cogently in the context of the purpose and object sought to be achieved by granting exemption from payment of customs duty. The conditions cannot be read in isolation. It is not as if the petitioners can conduct medical camps outside the hospital in order to satisfy the condition and to escape from their committed liability,

which would be more beneficial to the poorest of the poor people. Thus, it is unambiguous that the condition imposed must be understood as 40% of their outdoor patients must be treated free of cost in the petitioners hospital, wherein the imported medical equipments are installed and 10% of the beds are to be reserved in the very same hospital, where the treatment are provided through the imported medical equipments, apparatus, etc., which all are benefited from and out of the exemptions from customs duty.

83. Yet another point raised by the petitioners is that the obligations imposed on the petitioners hospital are not continuous one and after issuance of the subsequent notification in the year 1994, it is rescinded and therefore, the petitioners are not obligated to continue the facility after the subsequent notification issued in the year 1994.

84. The petitioners have emphasised that the petitioners, who were benefited by the exemption of customs duty are bound to discharge the liability during the period when the notification No.64/88 was in force. Thus, the authorities can enforce such obligations only during the period when the notification was in force and not for the subsequent period. Thus, the authorities are bound to establish that the petitioners have violated the

conditions imposed during the subsistence of notification No.64/88 and therefore, the order impugned is beyond the scope of the notification and untenable.

85. In this context, in the case of ***Mediwell Hospital and Health Care Private Limited*** (cited *supra*), the Hon'ble Supreme Court of India made an observation 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 have imported equipments without payment of customs duty to give free treatment to at least 40% of the outdoor patients as well as give free treatment to all the indoor patients belonging to the families with an income of less than Rs.500/- per month. 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 equipments without payment of customs duty and if on such enquiry, the authorities are satisfied that the continuing obligations are not being carried out, then it would be fully open to the authorities to ask the persons, who have availed off the benefit of

exemption to pay the duty payable in respect of the equipments, which have been imported without the payment of customs duty.

86. The 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 off the exemption notification are being duly carried out and on being satisfied that the said obligations had not been discharged, they can enforce realisation of the customs duty from them.

87. No doubt, in the ***Mediwell Hospital and Health Care Private Limited*** case(cited *supra*), the Hon'ble Supreme Court of India made an observation that the hospitals should notify in the local newspaper every month, the total number of patients they have treated and whether 40% of them are indigent persons, earning income less than Rs.500/- per month. However, such notification was found to be not practicable in the subsequent judgment of the Apex Court of India. Therefore, whether or not the petitioners are notifying in the local newspaper as per the ***Mediwell Hospital and Health Care Private Limited*** case(cited *supra*), but they are obligated to comply with the conditions scrupulously since they have

availed the benefit of exemptions from customs duty. Thus, the contentions of the petitioners that such notification was subsequently negatived by the Apex Court may not be relevant in the context of complying with the conditions in its letter and spirit.

88. However, in ***Faridabad CT Scan Centre's*** case (cited *supra*), the Hon'ble Supreme Court of India has considered in respect of Faridabad CT Scan Centre and therefore, the said judgment is of no avail to the petitioners, since the scope of the conditions stipulated and its compliance with reference to the notification No.64/1988 was not elaborately considered in the said judgment. However, the ***Mediwell Hospital and Health Care Private Limited*** case (cited *supra*) was recalled by the Three Judges Bench of the Hon'ble Supreme Court of India in the ***Faridabad CT Scan Centre's*** case (cited *supra*). Even if the judgment was recalled, the Three Judges Bench of the Hon'ble Supreme of India never intended to set aside the purpose and object of the conditions imposed in Notification No.64 of 1988 and its compliance by the hospital on getting the benefit of customs duty exemption. Therefore, the contentions of the petitioners that the ***Mediwell Hospital and Health Care Private Limited*** case has been recalled by the Hon'ble Supreme Court of India in its judgment in the case

of ***Faridabad CT Scan Centre*** is of no relevance since in ***Faridabad CT Scan Centre*** case, the Hon'ble Supreme Court of India has not interfered with the conditions stipulated in the notification No.64/88 and the strict compliance by the hospitals on getting the benefit of customs duty exemption.

89. Pertinently, in the ***Faridabad CT Scan Centre*** case, the Hon'ble Supreme Court of India categorically observed that "*In the case of Mediwell Hospital and Health Care Private Limitted Vs. Union of India, this Court on merits of the case has not taken a view different from the view taken by the Bench in this case while passing the order of dismissal*". Therefore, the Hon'ble Supreme Court of India has not interfered with the factual matrix of the case, more specifically, with reference to the compliance of the conditions stipulated in the Notification No.64/88.

90. In another Three Judges Bench of the Hon'ble Supreme Court of India, in the case of ***Commissioner of Customs (Imports), Mumbai Vs. M/s. Jagadis Cancer and Research Centre*** categorically held that "*We feel that the 10 per cent of the total number of beds are supposed to be reserved for patients of such families in the hospital where the equipment is*

installed. The purpose of the Notification for grant of exemption from payment of customs duty would not be served by making payment of expenditure incurred on some inpatients in some other hospital as alleged. It has also not been shown that alleged arrangements had the approval of the concerned authority or that it was brought to their notice at all".

91. Therefore, the Hon'ble Supreme Court of India in the above cases unambiguously clarified that the purpose and object sought to be achieved through notification with reference to the exemption clause must be considered. Conducting outdoor camps in any other place for general diseases without utilising the imported equipments cannot be considered for the purpose of compliance of the conditions stipulated in the exemption notification.

92. Again another Three Judges Bench of the Hon'ble Supreme Court of India in the case of ***Sri Sathya Sai Institute of Higher Medical Sciences Vs. Union of India (cited supra)*** decided in the year 2003, held that "*the judgment in Mediwell's case and also the order of reference. We are of the view that when it was the prerogative of the Government to grant exemption, it was for them to impose appropriate conditions for the same*".

Specifically, the Three Judges Bench overruled paragraph 14 of the ***Mediwell case*** alone and paragraph 14 of the ***Mediwell's case*** deals with the notification to be issued in the local newspaper every month for the purpose of compliance of the conditions stipulated in the exemption notification. Thus, this Court is not relying on paragraph 14 of the ***Mediwell's case*** judgment. However, the compliance of the conditions are of paramount importance with reference to the grant of customs duty exemption.

93. The petitioners have further relied on the judgment of this Court in W.P.No.2110 of 1998 and 3654 of 1999 dated 08.06.2001, wherein this Court has held that the obligation to provide free treatment is not continuous and after rescindment of notification the petitioners are not obligated to continue the free treatment i..e, after 1994.

94. This Court has elaborately considered the said aspect and as per the judgment of the Hon'ble Supreme Court of India and considering the purpose and object of the exemption granted in public interest, all hospitals importing medical equipments, apparatus, etc., by availing the customs duty exemption are bound to comply with the conditions stipulated in notification No.64/88 continuously. It is a continuing obligation. The

recindment of notification would not exonerate the hospitals from giving up the conditions. So long as the exempted medical equipments are in use, the hospitals are bound to comply with the conditions. The rescindment of the notification would not have the effect of rescinding the conditions imposed, since the condition was imposed in lieu of exemptions granted in payment of customs duty in the interest of public and public interest remains even after recindment and thus, the petitioners are obligated to continue free treatment even after the year 1994.

95. With reference to the order impugned dated 23.06.2010, the Director General of Health Services considered the issue, whether the petitioners did not comply with the requirements of the notification No.64/88-Customs dated 01.03.1988.

96. It is brought to the notice of this Court that the authority is sitting on Appeal in respect of the order passed by the Constitutional Court and thereby disrespected the authority of the High Court. No doubt, such observations are highly unwarranted. The authorities are empowered to consider the facts independently with reference to documents and evidences, since the High Court remitted the matter back for fresh

consideration. While considering the issues afresh, the authorities ought not to have made an observation that the High Court has committed an error or the observations made in the order are contrary to law. In this regard, the conduct of the authority stands deprecated. However, the said erroneous observations or unwarranted comments made by the authority against the High Court, cannot be a ground to invalidate the order, which is otherwise passed on merits.

97. With reference to the issue regarding the compliance of the clause in notification No.64/88, the Director General of Health Services categorically found that the petitioners hospital are the beneficiaries under the Notification dated 01.03.1988. The compliance of conditions are continuing onus. The hospitals were given ample opportunities to substantiate their claim that they have fullfilled the conditions stipulated in the notification. The hospitals have furnished informations regarding the free treatment provided based on the conditions. The Director General of Health Services formed an opinion that the medical services provided by the hospitals through the outdoor camps in another place, which is away from the location of the imported equipments installed cannot be considered. Accordingly, the claims of the petitioners hospital were not accepted as they

conducted free medical camps outside the places and away from the place, where the imported medical equipments are installed. The free medical treatment contemplated under the said notification should be with a reference to outpatients treated at the hospitals, which includes all the equipments imported availing of the duty exemption benefits.

98. The authorized representatives of the hospitals also appeared before the Director along with the documents. The Director of Health Services, New Delhi found that the writ petitioners hospitals have not treated 40% of the outdoor patients and its indoor patients free of cost. Hence, they have not fulfilled the post import conditions as undertaken at the time of importation of goods. Thus, the writ petitioners are found to be not eligible to avail / retain the CDECs issued to them under notification No.64/88 Cus dated 01.03.1988.

99. At the outset, the petitioners could not establish that they have treated 40% of their outdoor patients in the hospital, where the imported medical equipments are installed and further they have failed to establish that 10% of all the hospital beds are reserved for such patients, who have taken free treatment in the hospital, where the imported medical equipments

are installed. These facts are not seriously disputed by the writ petitioners. Contrarily, the writ petitioners have consistently contended that they are not obligated to provide the treatment in the place, where the imported medical equipments are installed. Further, they have contended that they have no continuous obligations. In these aspects, this Court has elaborately considered in the aforementioned paragraphs that the treatment must be provided in the hospital, where the imported medical equipments are installed and the 10% hospital beds are to be reserved for such patients, who have taken free treatment in the hospital, where such medical equipments are installed.

100. When the petitioners themselves have not established that they have reserved 10% beds in the hospital, where the imported equipments are installed and further, they have not proved that 40% of outdoor patients are treated free of cost in their hospitals, where the imported medical equipments are installed, this Court is of the considered opinion that the petitioners are not entitled for the relief as such sought for in the present writ petitions.

101. Thus, the respondents have rightly and legitimately cancelled the Customs Duty Exemption Certificate (CDEC) granted in favour of the petitioners, which is in consonance with the Constitutional principles and the purpose and object of the conditions imposed in the Notification No.64/88 in public interest from public funds, more so, the petitioners have given an undertaking to comply with the conditions.

102. Accordingly, all the Writ Petitions are devoid of merits and stand dismissed. Consequently, connected Miscellaneous Petitions are closed. However, there shall be no order as to costs.

26.04.2023

Jeni/Kak
Index : Yes
Speaking order
Neutral Citation : Yes

To

1.The Secretary,
Union of India,
Ministry of Health & Family Welfare,
Niraman Bhawan, New Delhi.

2.The Director General of Health Services,
(Medical General I-Section),

Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.

3.The Secretary,
State of Tamil Nadu,
Ministry of Health, Chennai – 600 002.

S.M.SUBRAMANIAM, J.

Jeni/Kak

W.P.Nos.17899 & 17900 of 2010
& 418 & 419 of 2011

26.04.2023