

THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY
AND
THE HON'BLE SRI JUSTICE S. ANANDA REDDY

Date: 31—10—2005

W.P. No. 11132 of 2002

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Between:

Mahavir Hospital & Research Centre,
Rep. by its Superintendent, Hyderabad.
...Petitioner.

a n d

Union of India, rep. by its Secretary, Health,
Ministry of Health & Family Welfare, New Delhi and
others.
...Respondents.

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O R D E R: (per Sri B. Sudershan Reddy, J)

The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a writ order or direction, particularly one in the nature of Certiorari, calling for the records leading up to and including impugned proceedings No.Z.37011/18/92-MG dated 4.3.2002 on the file of 2nd respondent by nullifying the same as arbitrary and illegal. The petitioner accordingly prays for issuance of consequential direction directing restoration of Customs Duty Exemption Certificate issued on 28.2.1994 for import of “Bennet Micro – Fine Kilo Hertz High Frequency Memography System” by classifying it under para 3 of Exemption Notification No.64/88 – Customs dated 1.3.1988.

In order to consider as to whether the impugned proceedings suffer from any infirmities as such requiring our interference and as to whether the petitioner is entitled for any relief as prayed for in this writ petition, few relevant facts may have to be noticed.

The Director General of Health Services, Delhi passed an order dated 11.12.2000 that the petitioner – Hospital and Research Centre failed to fulfil the post import conditions giving free OPD treatment to 40% of its OPD patients and to give free treatment to all indoor patients whose income is less than Rs.500/- per month stipulated under the Notification No.64/88 – Customs. The authority accordingly declared that the petitioner-institution is not eligible to retain Customs Duty Exemption Certificate earlier issued to it under the said notification and accordingly it was withdrawn as cancelled with immediate effect.

The petitioner filed W.P. 2257 of 2002 challenging the legality of the proceedings dated 11.12.2000 issued by the Director General of Health Services where under the CDEC earlier issued to it has been withdrawn. The contention raised by the petitioner was that it made a detailed representation to the Deputy Director General (M),

Directorate of Health Services, New Delhi on 24.4.2001 praying that the CDEC which was issued on 28.2.1994 may be restored with the modification that the petitioner-hospital falls under Category (3) under the table annexed to the Notification or irrespective of the fact that whether the hospital falls under Category (3) or Category (2) as the proceedings of Notice dated 22.9.1999 are not valid.

This Court, after elaborate consideration of the matter did not interfere with the order of cancellation of CDEC, but directed the representation made by the petitioner to be disposed of within two months from the date of receipt of a copy of the order. The writ petition was accordingly disposed of by orders dated 6.2.2002. The said order has become final.

There is no record disclosing that the petitioner had applied to the 3rd respondent for stay of the proceedings dated 11.12.2000 and any stay as such has been granted. It is thus clear that the proceedings dated 11.12.2000 cancelling/withdrawing the CDEC have attained finality.

However, pursuant to the directions of this Court and having considered the representation of the petitioner, the Director General of Health Services (MG Section) passed a detailed order dated 4.3.2002, which is impugned in this writ petition.

In the impugned order the 2nd respondent, while adverting to the change of category of the petitioner-hospital in terms of Notification No.64/88 – Customs, observed that the petitioner-hospital applied for grant of CDEC as a Category (2) institution undertaking to fulfil the conditions stipulated therein. The authority also noted that the State Government had also certified/categorized the petitioner-institution as Category (2) institution in the said notification. It is at the request of the petitioner and based on the State Government's recommendation, CDEC was issued to the petitioner as Category (2) institution. The 2nd respondent took the view that the petitioner is bound by the conditions of Category (2) of

the table annexed to the Notification. The request of the petitioner to change the petitioner-institution into Category (3) was accordingly rejected.

Learned counsel for the petitioner in this writ petition, *inter alia*, contends that the very application filed by the petitioner-institution for grant of CDEC has been misconstrued by the respondents. The petitioner-institution never applied for grant of CDEC claiming as Category (2) institution. The proceedings, according to the learned counsel for the petitioner, are thus vitiated by non-application of mind. Learned counsel for the petitioner even made an attempt to show us a copy of the application, stated to have been applied by the petitioner-institution under Category (3) but not under Category (2).

We are not impressed by the submission of the learned counsel for the petitioner. This belated stand taken by the petitioner-institution cannot be entertained for more than one reason. The CDEC was granted to the petitioner as early as on 28.2.1994. The certificate, in clear and categorical terms, declares that the petitioner-hospital falls under Category (2) of the table annexed to the said Notification. It is based on the recommendation made by the Government of Andhra Pradesh vide its letter dated 3.10.1992. The petitioner, at no point of time, claimed that the institution does not fall under Category (2) of the table annexed to the Notification No.64/88 – Customs dated 1.3.1988. The petitioner quietly enjoyed the benefits of the Certificate granted on 28.2.1994 until its withdrawal by the respondents herein vide proceedings dated 11.12.2000. It is thus clear that the petitioner-institution, for a period of more than six years, did not raise its little finger in the matter and claimed that it does not fall under Category (2) of the table annexed to the said Notification. This attempt of the petitioner claiming that it falls under Category (3) did not also receive any positive approval of this Court in its judgment dated 6.2.2002 in W.P. No. 2257 of 2002. It is for the first time that the said plea has been taken by the petitioner in the said writ petition. This afterthought on the part of the petitioner cannot be

countenanced and, therefore, we are not impressed by the submission made by the learned counsel for the petitioner.

This Court in W.P. 22734 of 1996 and batch dated 31.12.2004 took the view that the conditions, based on which CDECs were granted, became part of the exemption order. It is further observed:

“Failure to discharge the obligations undertaken by the petitioner at the time of import of the goods has been construed as non-compliance of the obligations under which exemption was granted, and the goods in question are liable to be confiscated in terms of Section 111(c) of the Customs Act.

.....

This is for the reason that the petitioner availed of the exemption pursuant to the specific undertaking given by it to satisfy the obligations prescribed for Category para 2 of the Notification. Therefore, it is not open to the petitioner to seek alteration of those conditions on the plea now being advanced that its case falls under category para 3. We find no substance in the submission of the petitioner that it is entitled to consideration under a different category and that the respondents are bound to consider its case in category para 3 of the notification after the date of import”. (Emphasis is of ours).

Obviously, the petitioner had given an undertaking as is required under the Notification No.64/88 – Customs dated 1.3.1988 and only upon such undertaking the respondents have granted CDECs. The petitioner thus having availed the benefit of CDECs, now cannot be permitted to turn round and contend that its case falls under Category (3) and not under Category (2) of the table annexed to the Notification. The petitioner cannot be permitted to blow hot and cold according to its choice.

For the aforesaid reasons, we find no merit whatsoever in this writ petition and the same shall accordingly stand dismissed without any order as to costs.

B. Sudershan Reddy, J. _____

_____ **S.**
Ananda Reddy, J.

Date: 31—10—2005.

MVB.