

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2245 OF 2009
(Arising out of SLP(C) No.3554 of 2009)

DR. B.N. HOSPITAL & N. HOSPITAL RES.CENTRE

...APPELLANT (S)

VERSUS

COMMISSIONER OF CUSTSOMS, MUMBAI

...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 2246 OF 2009 @ SLP(C) NO. 4129 OF 2009
CIVIL APPEAL NO. 2247 OF 2009 @ SLP(C) NO. 4286 OF 2009

ORDER

Leave granted.

None appears for the respondent, though served.

The appellant is a Public Charitable Trust registered with the Charity Commissioner. It runs full fledged Multi Speciality Hospital in Mumbai.

On 1st March, 1988, Government of India issued a Notification No 64 of 1988 exempting import of equipments by hospitals from payment of customs duty on fulfillment of conditions prescribed therein. We quote hereinbelow the said Notification:

“In exercise of the powers conferred by sub-section (i) of Section 25 of the Customs Act, 1962 (Act 52 of 1962), the Central Government, being satisfied that it is necessary in the public interest to do so, hereby exempts all equipments, apparatus, and appliances, including spare parts and accessories thereof, but excluding consumable items (hereinafter referred to as the “hospital equipment”), 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, from --

(i) the whole of duty of customs leviable thereon under the first schedule to the Customs Tariff Act, 1975 (51 of 1975); and

(ii) The whole of additional duty leviable thereon under Section 3 of the Customs Tariff Act.

2. In approving the import of any hospital equipment under paragraph 1, regard shall be had to the following factors namely:-

(i) that the hospital equipment in respect of which the exemption is claimed under this notification is not manufactured in India; and

(ii) that the hospital equipment in respect of which the exemption is claimed is necessary for running or maintenance of the hospital.

3. Provided that in the case of import of spare parts, no approval as specified in paragraph 1 will be required subject to the conditions that

(i) the spare parts are imported by the hospital;

(ii) the hospital will, at the time of importation, produce a certificate from the Ministry of Health and Family Welfare or the Directorate General of Health Services that the said hospital falls in one of the categories of hospitals specified in the said Table;

(iii) the Head of the hospital certifies that the spare parts in question are required for the maintenance of an imported equipment in use with the hospital and such parts will not be used for any other purpose.

TABLE

1. All such hospitals as may be certified by the said Ministry of Health and Family Welfare, to be run or substantially aided by such charitable organization as may be approved, from time to time, by the said Ministry of health and Family Welfare.

2. All such hospitals which may be certified by the said Ministry of Health and Family Welfare, in each case, to be run for

providing medical, surgical or diagnostic treatment not only without any distinction of caste, creed, race, religion or language but also-

(a) free, on an average, to at least 40 per cent of all their outdoor patients; and

(b) free to all indoor patients belonging to families with an income of less than rupees five hundred per month and keeping for this purpose at least 10 per cent of all the hospital beds reserved for such patients; and

(c) at reasonable charges, either on the basis of the income of the patients concerned or otherwise, to patients other than those specified in clauses (a) and (b).

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

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

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

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

(i) that there is an appropriate programme for establishment of the hospital,

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

(iii) that such hospital, would be in a position to start functioning within a period of two years, and

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

Provided that --

(a) in the case of a hospital relatable to paragraph 3 of this Table, the importer produces evidence to the Assistant Collector of Customs at the time of clearance of the said hospital equipment that the same is being imported in accordance with the conditions specified in the proviso to that paragraph;

(b) the importer shall give an undertaking in writing to the Assistant Collector at the time of clearance of the said hospital equipment that the importer shall furnish certificates from the said Ministry of Health and Family Welfare or from the Directorate General of Health Services, Government of India, within such period as the Assistant Collector of Customs may specify in this behalf or within such extended period as the Assistant Collector of Customs, on sufficient cause being shown, may allow in each case, to the effect --

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

(ii) that such hospital has started functioning;

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

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

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

Explanation – for the purposes of this notification, the expression “Hospital” includes any Institution, Centre, Trust, Society, Association, Laboratory, Clinic and Maternity Home which renders medical, surgical or diagnostic treatment.”

The issue which arose before the High Court was whether the appellant – hospital fell within Category 1 of the table annexed to the Notification quoted hereinabove. This issue arose because the Director General of Health Services (DGHS) while granting Customs Duty Exemption Certificate (CDEC) wrongly categorized the appellant – hospital in Category 2 instead of Category 1. It is this controversy which ultimately came before the High Court in Customs Appeal Nos. 52, 53 and 55 of 2008.

In this case, vide the impugned Order, the Division Bench of the High Court held that the case is covered by the judgment of the Supreme Court in the case of *Jaslok Hospital & Research Centre Vs. Union of India* reported in 2007 (218) ELT 170 (SC). Following the decision of the Supreme Court in the case of *Jaslok Hospsital* (supra), the High Court dismissed the Customs Appeals filed by the appellant herein.

The narrow issue which, therefore, arises for determination in this case: whether the case of the appellant herein stands covered by the judgment in the case of *Jaslok Hospital* (supra). In that case *Jaslok Hospital* was categorized under Category 2. That categorization was cancelled. There was no challenge to the cancellation of the categorization and without such a challenge an application was made for change in category. Under those circumstances, this Court observed that in order to enable a hospital to claim change in the categorization, the hospital must be in some category on the date on which application is made for change in categorization. It is important to note that in the case of *Jaslok Hospital* (supra), the said hospital applied for re-categorization after

three years of the cancellation/withdrawal of CDEC.

On the other hand, in the present case, we find that the appellant had applied for categorization as Category 1 hospital. On account of the alleged mistake on the part of DGHS, while granting CDEC categorized the appellant herein as category 2 instead of category 1. Further, DGHS cancelled CDEC ex-parte without giving any notice or hearing to the appellant herein stating that the conditions of Category 2 stood violated. This cancellation of CDEC has been quashed by the High Court vide its order dated 26.11.2008. It appears that the impugned order was passed on 1.10.2008, however, vide Order dated 26.11.2008 in Writ Petition No. 651 of 2001, the order of cancellation of CDEC, which was an ex-parte order, has been set aside. In the circumstances, we hold that this case is not covered by the judgment in the case of *Jaslok Hospital* (supra). Therefore, on the date of the application for change in categorization the issue of categorization was a live issue.

On this ground alone we set aside the impugned judgment dated October 1, 2008 in Customs Appeal Nos. 52, 53 and 55 of 2008 and remit the cases to the High Court for fresh consideration in accordance with law.

Accordingly, the appeals stand allowed with no order as to costs.

.....J.
[S.H. KAPADIA]

New Delhi,
April 08, 2009

.....J
[AFTAB ALAM]

ITEM NO.1

COURT NO.3

SECTION III

**S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S**

Petition(s) for Special Leave to Appeal (Civil) No(s).3554/2009

**(From the judgment and order dated 01/10/2008 in CA No. 52/2008
of The HIGH COURT OF BOMBAY)**

DR.B.N.HOSPITAL & N.HOSPITAL RES.CENTRE**Petitioner(s)****VERSUS****COMMISSIONER OF CUSTOMS, MUMBAI****Respondent(s)**

**(With appln(s) for permission to place addl. documents on record,
and prayer for interim relief)**

WITH

**SLP(C) NO. 4129 of 2009 - With appln(s) for permission to place addl. documents on
record, and prayer for interim relief**

**SLP(C) NO. 4286 of 2009 - With appln(s) for permission to place addl. documents on
record, and prayer for interim relief**

Date: 08/04/2009 This Petition was called on for hearing today.

CORAM :**HON'BLE MR. JUSTICE S.H. KAPADIA****HON'BLE MR. JUSTICE AFTAB ALAM**

For Petitioner(s) Mr. Bharat Sangal,Adv.

Mr. Prasenjit Das, Adv.**Ms. Mrinalini Oinam, Adv.****For Respondent(s)**

**UPON hearing counsel the Court made the following
O R D E R**

Leave granted.

None appears for the respondent, though served.

The appeals are allowed with no order as to costs.

(S. Thapar)
PS to Registrar

(Madhu Saxena)
Court Master

The signed order is placed on the file.

