

SUPREME COURT OF INDIA

Bharat Diagnostic Centre

Vs.

Commissioner of Customs

C.A.No.2114 of 2007

(H.L.Dattu, R.K. Agrawal and Arun Mishra JJ.)

31.07.2014

ORDER

1. This appeal is placed before us in view of the order of reference made by two learned Judges of this Court dated 17.01.2008. The Referral order reads as under:

"One of the premises on the basis whereof the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Bangalore proceeded to fasten the liability upon the Appellant herein is that the diagnostic centers would not be entitled to the benefit of any exemption for payment of customs duty under Notification No. 64/88 dated 1.3.1988, which was in force for the period 1.3.1988 to 1.3.1994. It appears that the aforementioned findings are based on a stray observation made in paragraph 10 of a Division Bench Decision of this Court in *Mediwell Hospital & Health Care Pvt. Ltd. v. Union of India and Ors.*, [MANU/SC/1378/1997 : 1997 (1) SCC 759] which is to the following effect:

"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."

Our attention, however, has been drawn to the said notification dated 1.3.1988 from a perusal whereof it appears that the Explanation appended to paragraph 4 thereof defines "Hospital" for the purpose of the said notification, to include any institution, centre, trust, society, association, laboratory, clinic and maternity home which renders medical, surgical or

diagnostic treatment. To us the said definition appears to be a broad one which inter alia may include any clinic where diagnostic treatment is rendered. Moreover, Appellant although a Limited Company is administered by a trust. Its founders and promoters and their sister institutions are well known in the field of cancer research. Incidentally, we may notice that a part of paragraph 11 and paragraph 14 of the aforesaid judgment have been overruled by this Court in Faridabad C.T. Scan Centre v. D.G. Health Services and Ors., [MANU/SC/0944/1997 : 1997 (7) SCC 752] and Sri Sathya Sai Inst., High. Medi. Sciences v. Union of India, [2003 (158) ELT 675 (SC)] respectively.

It is useful also to place on record that a large number of decisions rendered by the CESTAT, including Surlux Diagnostics Ltd. v. Collector of Customs, Bombay, [1994 (71) ELT 569 (Tribunal)], have held that a diagnostic center situated in the premise of a Hospital even though owned by different party would answer to the description of the term "Hospital". Learned Additional Solicitor General has also drawn our attention to a decision of the Andhra Pradesh High Court, which also we would like to place on record, in the case of Kailash Diagnostic and Research Center P. Ltd. v. D.G. of Health Services, 2003 (153) ELT 281 (A.P.).

We, therefore, are of the opinion that with a view to declare the law clearly on the subject, the matter should be considered by a larger Bench. We are, therefore, of the opinion that the matter should be referred to larger Bench.

Let the records of this case be placed before Hon'ble the Chief Justice for passing appropriate orders".

This Court while referring the matter were not prepared to accept the observations made by two Judges Bench of this Court in the case of Mediwell Hospital & Health Care Pvt. Ltd. v. Union of India And Ors. reported in (1997) 1 SCC 759, wherein the Court has observed as under:

"..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...".

2. The Central Government has issued Notification No. 63/88-CUS, dated 01.03.1988 granting exemption to hospital equipments imported by specified category of hospitals (charitable) subject to certification from the Directorate General of Health Services (for short, "the DGHS") to the Government of India. We are not going into the conditions that are prescribed for seeking exemption under the aforesaid notification. For the purpose of answering the reference, it is suffice to extract only the explanation appended to the notification dated 01.03.1988. The explanation reads as under:

"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."

(emphasis supplied)

3. It would be pertinent at this stage to take note of the rules regarding the interpretation of the word 'includes' as has been used in the given notification above. Furthermore, we would take note of the well-established and settled principles of law with regard to the construction of a notification, and in particular an exemption: notification as existing in the given reference.

4. With regard to the interpretation and construction of a notification granting exemption, it is settled that at the first instance, strict interpretation would apply, that is to say in the case of ascertaining its applicability. Thereafter, the Court may adopt the liberal approach within the particulars of the said notification. The case of *Gammon (I) Ltd. v. Commr. of Customs*, MANU/SC/0739/2011 : (2011) 12 SCC 499, reiterated the well-settled position of law that a provision providing for an exemption has to be construed strictly. The following cases would, further make the position of law clear on this point.

5. In the case of *Commr. of Customs (Imports) v. Tullow India Operations Ltd.*, (2005) 13 SCC 789, it was held that:

"... The principles as regards construction of an exemption notification are no longer *res integra*; whereas the eligibility clause in relation to an exemption notification is given strict meaning wherefor the notification has

to be interpreted in terms of its language, once an Assessee satisfies the eligibility clause, the exemption clause therein may be construed liberally. An eligibility criteria, therefore, deserves a strict construction, although construction of a condition thereof may be given a liberal meaning."

6. In the case of *A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala*, (2007) 2 SCC 725, it was held that:

"... The general principles with regard to construction of exemption notification are not of much dispute. Generally, an exemption notification is to be construed strictly, but once it is found that the entrepreneur fulfils the conditions laid down therein, liberal construction would be made."

7. Further in the case of *Collector of Customs (Preventive) v. Malwa Industries Ltd.*, (2009) 12 SCC 735, it was held that:

"... An exemption notification should be read literally. A person claiming benefit of an exemption notification must show that he satisfies the eligibility criteria. Once, however, it is found that the exemption notification is applicable to the case of the Assessee, the same should be construed liberally."

8. While defining or explaining the meaning of a word or phrase in a statute, the word 'include' is generally used to enlarge the meaning of those words or phrases. When the word 'include' is used as such, those words or phrases must be construed as comprehending not only such things as they signify according to their natural import or as per common parlance, but also those things which the interpretation or explanation clause declares that they shall include. This principle has been enumerated in several decisions of this Court.

9. In the case of *South Gujarat Roofing Tiles Manufacturers Assn. v. State of Gujarat*. MANU/SC/0314/1976 : (1976) 4 SCC 601, a three-judge Bench of this Court held that:

"... It is true that "includes" is generally used as a word of extension, but the meaning of a word or phrase is extended when it is said to include things that would not properly fall within its ordinary connotation. We may refer to

the often quoted observation of Lord Watson in *Dilworth v. Commissioner of Stamps* [1899 AC 99, 105-106] that when the word "include" is used in interpretation clauses to enlarge the meaning of words or phrases in the statute:

"these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include." Thus where "includes" has an extending force, it adds to the word or phrase a meaning which does not naturally belong to it...."

10. Again, in a three-judge Bench decision in the case of *ESI Corpn. v. High Land Coffee Works*, MANU/SC/0607/1991 : (1991) 3 SCC 617, this Court observed that:

"... The word "include" in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction. The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include. [See (i) *Stroud's Judicial Dictionary*, 5th edn. Vol. 3, p. 1263 and (ii) *C.I.T. v. Taj Mahal Hotel*, MANU/SC/0239/1971 : (1971) 3 SCC 550, (iii) *State of Bombay v. Hospital Mazdoor Sabha*, MANU/SC/0200/1960 : (1960) 2 SCR 866.]"

11. Having glanced through the well established and settled principles of interpretation, it would be appropriate to revert back to the apparent controversy as found in *Mediwell's case* (supra).

12. In *Mediwell's case* (supra), this Court while considering the exemption notification has observed that a diagnostic centre run by a private individual purely on commercial basis may not be entitled to the exemption under the notification.

13. The observations made by this Court can be understood as under:

Firstly, if a diagnostic centre is run by a private individual purely on a commercial basis, that centre would not be eligible and entitled to the exemption under the notification. The learned Judges may be justified in saying so for the reason, the exemption notification provides that the hospital should 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 ` 500/- 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).

14. As we understand from the observations made in *Mediwell's case* (supra), the Court was trying to observe that if an individual is running a diagnostic centre purely on a commercial basis, that is without providing treatment free of cost to at least 40 percent of all their outdoor patients and free to all indoor patients belonging to families with an income of less than ` 500/- per month, the same would not be entitled for exemption under the notification. Therefore, we cannot take exception to the observations made in *Mediwell's case* (supra).

15. However, to make things clear, we observe that the notification has an explanation which we have already extracted. It explains the meaning of the expression "Hospital" to include an institution, a centre, a trust etc., including a diagnostic centre. We have also taken note of the principle that the word 'includes' in a definition or explanation clause would extend the meaning of the word as declared by the said clause, even if the same may go beyond its natural meaning. If that is so, in our opinion, we are of the considered view that the diagnostic centre

is also eligible for claiming exemption under notification dated, 01.03.1988., provided it fulfills all the conditions envisaged under the said notification.

16. Coming to the facts of the case, the Appellant was running a diagnostic centre. According to the Appellant, the same was affiliated to the Bharat Cancer Hospital and Institute of Oncology.

17. The Appellant in order to make use of the exemption notification dated, 01.03.1988, had approached the DGHS for grant of Customs Duty Exemption Certificate as provided under the notification. On the request so made by the Appellant, the DGHS had granted the exemption certificate. The Appellant making use of that exemption certificate had imported machinery and had claimed exemption from payment of customs duty and the same was granted to the Appellant.

18. On a subsequent date, after notification No. 98/94-Cus dated 01.03.1994, the competent authority, i.e. the DGHS, after issuance of a show-cause notice to the Appellant had withdrawn the exemption certificate issued previously. The Appellant being aggrieved by the said withdrawal had approached the Writ Court. For the reasons best known to the Appellant, the same came to be withdrawn. Since the exemption certificate that was granted earlier was withdrawn by the competent authority, the Customs authorities had issued a demand notice, inter alia, directing the Appellant to pay the customs duty. In the notice so issued, apart from others, they have also stated that since the Appellant had not complied with the conditions enumerated under the notification, it is not eligible for claiming exemption from payment of the duty element under the Customs Tariff Act, 1975.

19. If for any reason, the Appellant was aggrieved by the said withdrawal of the exemption certificate by the competent authority, or was of the opinion that the conditions in the given notification may not apply upon them on account of its apparent expiry, the appropriate course of action would have been to make an effective challenge to the same before the appropriate forum. In our opinion, having questioned the withdrawal of the earlier exemption certificate, if the Appellant has withdrawn the writ petition, a challenge to the same would no longer be open to the said Appellant.

20. Thereafter, the Custom Authorities issued a demand notice directing the Appellant to pay the customs duty, which may have been for some other reasons including the withdrawal of the exemption certificate by the DGHS. We cannot take exception to the demand so made by them for the simple reason that the Appellant would be eligible for exemption from payment of duty only if it had obtained an exemption certificate from the DGHS. If the foundation on which the Appellant was entitled to claim exemption, i.e. the exemption certificate, before the Customs Authorities was withdrawn by the competent authority, the natural consequences must follow, that being the non-applicability of the exemption from custom duty. As a consequence of the absence of a valid exemption certificate, the Appellant would be liable to pay appropriate custom duty.

21. In the instant case, the DGHS duly issued an exemption certificate but subsequently the same was withdrawn by the same authority. If for any reason the Appellant was aggrieved by such withdrawal, it should have questioned the same. Since having questioned the said withdrawal and having withdrawn it later on, we are of the opinion that the Appellant cannot take exception to the duty demand made by the Respondent. In view of the above, while answering the referral order, we dismiss the appeal filed by the Appellant.

Ordered accordingly.