

(2001) 06 MAD CK 0032

In the Madras High Court

Case No : Writ Petition No's. 2110 of 1998 and 3652 and 3654 of 1999

Apollo Hospitals Enterprises Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 08-06-2001

Acts Referred:

Constitution of India, 1950 — Article 14
Customs Act, 1962 — Section 25(1)
Customs Tariff Act, 1975 — Section 3, 3B, 5(1)
General Clauses Act, 1897 — Section 6

Citation : (2001) 133 ELT 58

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Advocate : Habibullah Basha for A.S. Chandrasekharan, for the Appellant; V.T. Gopalan, Addl. Solicitor General of India and M.T. Arunan, C.G.S.C., for the Respondent

Judgement

S. Jagadeesan, J.—The petitioners have filed these writ petitions to quash the proceedings of the Director General of Health Services and

for a mandamus directing the respondents not to give effect to the said proceedings.

2. The petitioner hospital imported certain life saving medical equipments for the purpose of installing the same at their hospital to provide the latest

medical facilities to the patients. Such imports were made by the petitioner taking advantage of the Customs Notification No. 64/88 dated 1-3-88

which granted the benefit of the Customs Duty exemption in respect of those equipments. As per the above notification, in order to claim the

benefit of the exemption of Customs duty, the procedure prescribed by the Director General of Health Services, New Delhi is that the hospital

should apply through the State Government and the Director of Medical Education of the State Government has to inspect the hospital and satisfy

himself with regard ^ to the compliance of the parameters laid down in Notification No. 64/88. Thereafter the Secretary to Government, Health

Department of the State Government recommends the case of the petitioner to the Ministry of Health, Department of Family Welfare, New Delhi.

After considering the claim of the petitioner for the import of such life saving equipments and for exemption of the Customs Duty thereof, it is for

the Director General of Health Services (DGHS in short) to issue the certificate exempting the payment of Customs Duty (hereinafter called the

CDEC). Such certificate are to be produced before the Customs officials and the equipments will be released without the payment of Customs

Duty.

3. The case of the petitioner is that the Director General of Health Services, under the impugned proceedings dated 28-1-1998 in W.P. 2110 of

1998 had kept the application of the petitioner for the issue of the Customs Duty Exemption Certificate for considerable long period and rejected

the same without furnishing the particulars furnished by the petition and in some cases had cancelled the Customs Duty Exemption Certificate

already issued on the ground that the requirement of Clause 2 of the table to Notification 64/88 had not been complied with on the following

grounds :-

(1) The impugned order of cancellation of Customs Duty Exemption Certificate by the Director General of Health Services is arbitrary and in

violation of the principles of natural justice.

(2) The second respondent DGHS ought not to have kept the applications for the Customs Duty Exemption Certificate pending for years together

and reject the same, without giving an opportunity to the petitioner.

(3) The Report relied upon by the Director General of Health Services to come to the conclusion that the petitioners have not complied with

Condition No. 2 of the table to Notification 64/88 is one sided and the petitioners have not been furnished with a copy of such Report. Further the

petitioners have not been given an opportunity to explain the adverse remarks mentioned in the said Report.

(4) Neither the Report relied upon by the second respondent, the Director

General of Health Services, nor the second respondent had taken into consideration of the practical difficulties of individual cases, in the light of the G.O. Ms. No. 999 Health dated 11-6-1990, Director of Medical Education.

(5) The second respondent has totally failed to consider as to whether the non-compliance of the requirement of Clause 2 of the table to

Notification 64/88 is an involuntary action on the part of the petitioners or a wilful one to avoid the fulfilment of such requirement.

(6) The Notification 64/88 dated 1-3-88 had been rescinded on 1-3-94 and as such the compliance of such requirement of Clause 2 of the Table

to the said notification may not arise subsequent to 1-3-94. Hence, it is for the second respondent DGHS to consider the case of the petitioners as

to whether they complied with the requirement of Clause 2 prior to 1-3-94 or not.

(7) When the State Government had recommended the case of the petitioner hospital for exemption of the Customs Duty, it is not for the Director

General of Health Services to reject the application.

(8) The Director General of Health Services totally failed to consider the particulars furnished by the petitioners with regard to the part compliance of the requirement of Clause 2 of the Table to the notification.

4. The respondents 1 and 2 viz. Ministry of Health and Family Welfare and the Director General of Health Services respectively have filed counter

affidavit stating that a public interest litigation was filed before the Delhi High Court by Peoples Union for Civil Liberty in W.P. No. 409 of 1996

alleging that the Health Department has been issuing certificates without proper verification. In the said writ petition, the Delhi High Court had

passed certain orders. On 23-5-96 the Court appointed one Mr. Chandramouli to enquire into the allegation by formulating certain terms of

reference. On 29-8-86 the said Mr. Chandramouli submitted a Report stating that there is prima facie reason to believe the commission of large

scale illegalities at different levels in the Government with respect to the issue of CDEC. By order dated 18-10-96 the Delhi High Court has

appointed two Committees, the first one is an one-man committee, comprising of Mr. S.D. Mohile, the then Member, Central Board of Excise and

Customs. This Committee was to examine the steps taken with regard to the recovery of Customs Duty and to quantify the amount of Customs

Duty foregone in cases where the equipments were released without production of the relevant certificate. The Second Committee, consisting of

several members and headed by Mr. Padam Rosha, a retired Director General (Security), Jammu and Kashmir which Committee had to go into

the cases of grant of CDEC's and identify the cases of commissions and omissions by the officers of Director General of Health Services, Ministry

of Health and Family Welfare and the Customs Department. On 1-5-97 the Delhi High Court on the basis of the Interim Report submitted by the

Second Committee headed by Mr. Rosha, directed the Director General of Health Services to take action in respect of 112 pending applications.

On 28-1-1998 the Rosha Committee was directed to examine all other cases where certificates were issued already. Hence the decision to verify

with regard to the issue of CDEC had been taken as per the direction of the Delhi High Court. As the respondents found that the hospitals in

question did not satisfy the conditions of the notification, the applications for the Customs Duty Exemption Certificate had been rejected. Since the

petitioners have not complied with the requirement of Clause 2 of the table to Notification 64/88 the second respondent Director General of Health

Services passed the impugned order. The second respondent DGHS has come to such conclusion with regard to the non-compliance of the

requirement of Clause 2 of the table to Notification 64/88 by the petitioner on the basis of the Report of the senior officer of his office. When the

officers of the respondent department visited the petitioners hospital and submitted the report with regard to the eligibility criteria, the question of

giving a further opportunity to the petitioners does not arise. The officials who visited the petitioner's hospital had prepared the Report only on the

basis of the information furnished by the petitioner management. Hence on the basis of the Report a decision had been taken by the respondents to

withdraw or revoke all Customs Duty Exemption Certificates already issued under Customs Notification 64/88 and to reject those pending

application of the petitioner institution as they were found to be not fulfilling the obligations set out in the Notification No. 64/88.

5. Mr. Habibullah Basha, the learned Senior Counsel appearing for the petitioners contended that the impugned orders have been passed solely on

the ground that the petitioners have not fulfilled the condition No. 2 of the Table to the Customs Notification No. 64/88 with regard to the free

treatment. His contention is that even though a percentage had been fixed under the said notification for providing free treatment by the petitioner's

hospital, it is not the case of the respondents that the petitioners did not comply with such requirement by avoiding such fulfilment either by evasion

or by refusal. When the persons who are eligible for such free treatment are not available, the petitioners cannot be found fault with from their

entitlement of the Customs Duty Exemption on the ground that they have not fulfilled such condition or requirement. Even as per the terms of the

notification, only provision should be made for and that has been done. Only if it can be established by the respondent that in spite of the

availability of such eligible persons or patients the petitioners had refused to provide the free treatment as contemplated under the notification only

then the petitioners can be said to be ineligible for such Customs Duty Exemption on the ground of non-fulfilment of the requirement of the

conditions of the notification. He also further contended that the impugned order of rejection of the application and the cancellation of the

certificates issued has been made on the basis of some Reports from the officials who visited the hospital innocuously. Such Report of the officials

cannot be made use of against the petitioners. Further, the respondents had not furnished the petitioners with a copy of such Reports in order to

enable the petitioners to submit their explanation or to explain the remarks adverse to them. The non-affording of an opportunity to the petitioners

before passing of the impugned order would vitiate the same on the ground of violation of principles of natural justice. He also contended that the

proceedings initiated by the respondents against the petitioners pursuant to the order of the Delhi High Court is not appropriate or legal since the

said order will not cover the case of the petitioners for want of jurisdiction. So far as the petitioner in W.P. 2110/98 is concerned, the second

respondent, Director General of Health Services had kept the application pending for more than 10 years. The issue of the certificate for

exemption from duty ought to have been considered within a reasonable time. The compliance of Condition No. 2 to the Notification 64/88 cannot

be considered as a condition precedent for the disposal of the application seeking for the Customs Duty Exemption Certificate. Hence the non-

disposal of the applications of the petitioners for the issue of the Customs Duty Exemption Certificate itself is mala fide on the part of the second

respondent, Director General of Health Services. The certificate with regard to the exemption of the Customs Duty ought to have been issued by

disposing of the application. Hence the impugned proceedings of rejection of the application for the issue of the Customs Duty Exemption

Certificate is liable to be set aside.

6. Mr. V.T. Gopalan, the learned Additional Solicitor General on behalf of the respondents contended that the petitioners sought for the Customs

Duty Exemption Certificate on the basis of the Customs Notification 64/88. When they claimed the exemption in terms of the said notification, it is

their duty to establish that they fulfilled the conditions imposed thereunder. In Mediwell Hospital case the Supreme Court has held that the

compliance of the condition imposed under Clause 2 of the Table to the Notification 64/88 is absolutely necessary for the entitlement of the

Customs Duty Exemption Certificate. Any one who do not fulfil the conditions or the obligations contemplated under the said Clause, such persons

are not entitled for the Customs Duty Exemption. The respondents had scrupulously followed the principles laid down by the Supreme Court and

wherever Clause 2 of the Table to the said Notification 64/88 was not complied with, the certificates were cancelled or where the applications are

pending, the same were rejected. It is not the case of the petitioners that they fulfilled the requirement of Clause 2 of the Table to the Notification

64/88. So far as the contention *~ regarding the violation of principles of natural justice is concerned, he vehemently contended that in some of the

cases, particulars were called for by way of proforma and the cases were decided on the basis of the particulars furnished by the petitioners. In

many of the cases, the officials of the second respondent Directorate visited the hospital, gathered particulars and submitted the Report pursuant to

the directions issued by the Delhi High Court through the Rosha Committee. Wherever the Report of the officials revealed the non-fulfilment of

conditions of Notification 64/88, suitable orders were passed by the second respondent either by cancelling the certificate issued or by rejecting

the pending application. When the petitioners are entitled to claim the exemption from Customs Duty on certain conditions imposed under the said

notification, unless it is established that the petitioners had fulfilled the said condition or discharged their obligations as contemplated under the said

notification, it is not open to the petitioners to challenge the impugned orders. When the officials of the second respondent Directorate had visited the petitioner's hospitals and gathered particulars on the basis of the information furnished by the management, the question of violation of principles of natural justice do not arise. The Report of the officials is based on the materials or particulars furnished by the petitioners and hence the Report has to be construed only as the statement of the petitioners. When such Report is to be acted upon by the respondent, there is no need to give any opportunity to the petitioners as the second respondent is acting on the statement of the petitioners themselves. So long as the petitioners are entitled for the benefit of the exemption of Customs Duty under the Notification 64/88, they are expected to discharge the obligation continuously and for ever, even though the said notification was rescinded at a later point of time i.e., 1-3-94. This is because the exemption had been granted only on all expectation of the compliance of the condition and as such the petitioners are liable to discharge their obligation as contemplated under Clause 2 of the said notification. The non-fulfilment would naturally disentitle them from the exemption either granted already or claimed by way of application. Hence the writ petitions are liable to be dismissed.

Subject for consideration:

7. The impugned proceedings in these writ petitions are of two kinds; one is cancellation of the Customs Duty Exemption Certificate already granted and the other is rejection of the application seeking the Customs Duty Exemption Certificate. The petitioners admittedly imported certain life saving equipments pursuant to the Customs Notification 64/88 whereunder the Government had granted the exemption of Customs Duty in respect of those equipments. The case of the respondent is that the petitioners had not fulfilled the obligations specified under the said notification. When once the discharge of obligation specified under the said notification is a condition precedent for the grant of exemption, unless the petitioners establish that they fulfilled such conditions, they are not entitled for the exemption of Customs Duty. Hence it is necessary to consider Clause 2 of the Table to the said notification and also whether the petitioners had not complied with the same.

8. The questions for consideration are :

(1) Whether the petitioners did not comply with the requirement of Clause 2 of the Table to the said Notification 64/88 Customs.

(2) Whether the impugned proceeding is in violation of the principles of natural justice.

(3) Whether the second respondent Directorate is entitled to rely upon the Report of their officials.

(4) Whether the second respondent Directorate is correct in taking into consideration of the innocuous statement given by the petitioner hospital or

their representatives to the visiting officials without knowing the implications therefor.

(5) Since Notification 64/88 was rescinded by subsequent notification whether the officials can enforce the rescinded notification?

9. It is worthwhile to refer the relevant clause in the said notification:

GENERAL EXEMPTION NO. 104B

Exemption to hospital equipments imported by specified category of hospitals (charitable) subject to certification from DGHS etc. - In exercise of

the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is

necessary in the public interest so to do, hereby exempts all equipment, 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 the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975); and

(ii) the whole of the additional duty leviable thereon u/s 3 of the said 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 condition 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

organisation as may be approved from time to time, by the said Ministry of Health and Family Welfare.

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

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

(a) free, on an average, to at least 40 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).

10. In all these cases, the impugned orders were passed solely on the ground that the petitioners had not complied with the Clause 2(a) & (b) of

the Table to said notification. Hence we are not concerned with the other clauses of the said notification, even though the other clauses also

imposed certain conditions.

11. The requirement of Clause 2 is that the hospitals should provide medical,

surgical or diagnostic treatment without any distinction of caste, creed, race, religion or language.

(2) should provide free, on an average, for at least 40 per cent of all their outdoor patients;

(3) 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;

(4) at reasonable charges, either on the basis of the income of the patients concerned or otherwise, to patients other than those specified in Clauses

(2) and (3).

The impugned proceedings came to be passed only on the ground that the petitioners have not complied with the Clauses (2) and (3).

12. The learned Additional Solicitor General relied upon the judgment of the Supreme Court in *Mediwell Hospital and Health Care Pvt. Ltd. Vs.*

Union of India and others, and contended that the compliance of Clause 2 is absolutely essential to claim the exemption, since the Supreme Court

in an unequivocal terms had held as follows :

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 2 which enable the appellant to import the equipment without payment of Customs duty but at the same time

we would like to observe that the very notification granting exemption must be construed to cast continuing obligation on the part of all those who

have obtained the certificate from the appropriate authority and on the basis of that have imported equipments without payment of Customs duty to

give free treatment at least to 40 per cent 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....Needless to mention the Government has granted exemption from payment of Customs duty with

the sole object that 40% of all outdoor patients and entire indoor patients of the low income group whose income is less than Rs. 500 per month

would be able to receive free treatment in the institute. That object 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.

13. However, Mr. Habibullah Basha, the learned Senior Counsel appearing for some of the petitioners contended that the Mediwell Hospital case

was overruled by a Bench of three Judges in the case of M/s. Faridabad Ct. Scan center Vs. D.G. Health Services and others, and as such no

reliance can be placed in the judgment delivered in Mediwell Hospital case.

14. The learned Senior Counsel for the respondent contended that the judgment in Mediwell Hospital case was overruled on only one aspect as to

whether the diagnostic centres are entitled for the benefit of the Customs Duty Exemption Certificate. In the Mediwell Hospital case it has been

held that the diagnostic centre is entitled for such Customs Duty Exemption Certificate on the basis of violation of Article 14 of the Constitution of

India. That has been set aside in the later judgment in Faridabad CT. Scan Centre case. So far as the other discussions made by the learned

Judges of the Supreme Court in Mediwell Hospital case had not been touched in the later judgment and hence those principles will hold the field.

15. I perused both the judgments. In fact I agree with the learned Additional Solicitor General. In Faridabad CT. Scan Centre case the appeal was

already dismissed. By way of review, the learned Judges considered the case of the appellant as to whether the diagnostic centre is entitled for the

exemption of the Customs Duty. They held that the principles laid down in the Mediwell Hospital case that the diagnostic centre is also entitled for

the benefit of the exemption of the Customs duty on the ground that already for some of the diagnostic centers such exemption has been granted

cannot be sustained. In Faridabad CT. Scan Centre case the only question considered by the three Judges is whether Article 14 of the Constitution

of India can be attributed in cases where wrong orders are passed. They held that the benefit of the exemption notification cannot therefore be

extended to the petitioner in that case on the ground that such benefit has been wrongly extended to others. On this ground the decision in

Mediwell Hospital case does not lay down correct law.

16. So far as the compliance of Clause 2(a) & (b) of the Table to the Notification 64/88 is concerned, the Supreme Court has held as extracted

supra in the case of Mediwell Hospital. This has not been overruled by the later

Bench. Hence there cannot be any doubt that the petitioners have to discharge their obligation mentioned in Clause 2 of the Notification 64/88, in order to enjoy the benefit of exemption of Customs Duty.

17. Now the question for consideration is whether the second respondent had arrived at the conclusion that the petitioners had not complied with the conditions specified in Clause 2 of the said Notification either with any material or after verifying such material with the petitioners.

18. As per Clause 1 of the notification, the conditions to be complied with are as follows :

(i) the import of the equipment has to be 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 the use of the hospital specified in the Table;

(ii) while approving the import of the hospital equipment, regard should be taken that the hospital equipment in respect of which the exemption is

claimed is not manufactured in India and is necessary for running or maintenance of the hospital.

19. The "hospitals" mentioned in the Table are -

(i) all such hospitals as may be certified by the said Ministry of Health and Family Welfare, to be run or substantially aided by such charitable

organisation as may be approved from time to time, by the said Ministry of Health and Family Welfare.

(ii) 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 on an average provide free

treatment to at least 40% of all their outdoor patients and to provide free treatment to all indoor patients belonging to families with an income of

less than rupees five hundred per month and keep for this purpose at least 10 per cent of all the hospital beds reserved for such patients and at

reasonable charges either on the basis of the income of the patients concerned or otherwise, to patients other than those specified in the above

category.

20. So far as the stand of the second respondent, Director General of Health Services, is concerned, the petitioners had not complied with the

condition of providing free treatment, on an average, to at least 40% of all their outdoor patients and keeping at least 10% of all the hospital beds

for giving free treatment to all indoor patients belonging to the families with an income of less than Rs. 500/- p.m. The second respondent, Director

General of Health Services has come to the conclusion on the basis of the report submitted by the committee visited the hospital.

21. It is the contention of the learned Senior Counsel for the petitioners that such Report had been prepared by the Visiting Committee by

gathering the materials without informing the petitioners as to the purpose for which the particulars had been sought for. If the purpose had been

revealed to the petitioners, the petitioners could have furnished more details. The petitioners conducted the health care camp free of cost and that

has not been taken into consideration in connection with the free service to at least 40% of the outdoor patients. So far as the reservation of 10%

of the hospital beds for giving free treatment to all indoor patients belonging to families with an income of less than Rs. 500/- p.m. is concerned, it is

contended that even though there is no specific reservation of beds had been made, the management of the hospitals made sufficient provisions for

the free treatment of those who fall under the said category. These aspects had not been taken into consideration either by the Visiting Committee

or by the second respondent, Director General of Health Services. Before ever the Report of the Visiting Committee was accepted, had the

petitioners been given an opportunity by the second respondent, Director General of Health Services, the petitioners could have furnished all the

details to convince the second respondent with regard to the compliance or the satisfaction of the conditions under Clause 2 of the Table to the

notification.

22. The learned Additional Solicitor General vehemently contended that the Report prepared by the Inspecting Committee deserve consideration

because had the petitioners been informed the purpose of the Visiting Committee, then the petitioners might have become cautious enough to

conceal the defects. The Visiting Committee prepared the Report only on the basis of the particulars furnished by the management of the hospitals

and hence the petitioners at this stage cannot be permitted to go back from such statement. The second respondent, Director General of Health

Services had rightly placed reliance on the said Report and found that the petitioners had not complied with the necessary conditions imposed under the said Notification.

23. This Court gave its anxious consideration to the above contention. So far as the provision of free treatment for at least 40% of the outdoor patients is concerned, there is no dispute that the petitioners had conducted outdoor medical camps free of cost. The stand of the second respondent Director General of Health Services is that those camps cannot be taken into consideration for the purpose of compliance of the condition.

24. In my opinion, the stand taken by the second respondent cannot be accepted. When it is contemplated that the hospital has to provide free treatment, on an average, to at least 40% of their outdoor patients, the contemplation is that the hospital authorities should provide an average of at least 40% free treatment to the outdoor patients. The outdoor patients means those who are not admitted as inpatients in the hospital. In that case, the outdoor patients may be of those who come to the hospital for treatment and get the treatment without admitting themselves in the hospital. It may also refer those who are benefited by the treatment not by coming to the hospital but in the outdoor medical camps conducted by the hospital authorities. Whether Mohammed goes to the mountain or the mountain comes to Mohammed, the result is the same. In that since whether the outdoor patients come 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. This vital aspect had been left out for consideration by the second respondent, Director General of Health Services.

25. Apart from this, 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 condition.

26. Similarly with regard to Clause (b) that reservation of 10% of the hospital beds for giving free treatment to the indoor patients belonging to the

families with an income of less than Rs. 500/- p.m., is concerned, one has to take the pragmatic view. When the hospitals are in existence to provide the immediate medical aid, the reservation of 10% for particular category cannot be expected to be followed mechanically. It has to be considered on facts as to whether any one who falls within that category had been refused the necessary medical aid or refused to be admitted in the hospital. The mechanical reservation of 10% of the beds may lead to an anomaly that sometimes the beds have to be kept vacant because of the non-availability of the particular category of families. If this procedure is to be adopted, then the other patients who are in immediate need of the medical aid will be deprived of such assistance. When a human life is to be respected and protected, the hospital authorities cannot be expected to refuse admission for those patients who do not fall under the 10% category reservation, even though the beds under that category are vacant. That is why the question of the refusal to provide the medical aid to those who is the criteria to be taken into consideration and the notification clearly states that provision should be made.

27. In fact the Government of Tamil Nadu had realised the difficulties in monitoring the hospitals with regard to the compliance of the conditions under Clause 2 of the Table of the Notification 64/88. Consequently the Government of Tamil Nadu issued an order in G.O. Ms. No. 999 Health dated 11-6-1990 in the following terms :

After careful examination, the Government direct the Director of Medical Education/Director of Medical Service to examine the application received from Private Medical Institutions for Customs Duty Exemption Certificate on the following conditions :-

(i) Each of the Private Medical Institution, applying for Customs Duty Exemption Certificate may be attached to the nearest Government Teaching

Hospitals/Government Hospital so that 10% of the inpatients whose income is less than Rs. 500/- and 40% of outpatients can be referred to by the

Government Hospitals to the Private Medical Institutions for free Treatment.

(ii) The authority for referring the cases to Private Medical Institutions be vested with the resident Medical Officer of the respective teaching

Hospital.

(iii) In respect of Private Medical Institutions under establishment, it is suggested

that these Institutions should be attached to Government Teaching

Medical Institutions/Government Medical Institutions and they should be made to apply for Customs Duty Exemption Certificates only through the

Heads of Medical Institutions where they are attached.

(iv) If the Private Medical Institutions are not agreeable to treat the cases referred to by Government Hospitals free of charge, their request for

grant of Customs Duty Exemption Certificate will not be considered.

(v) They should also be insisted upon to produce a certificate to the effect that they treat all the patients referred to them by the Government

Institutions free of cost.

Only on this basis, the certificates were also issued.

28. In fact, this is very clear from the judgment of the Supreme Court in Mediwell Hospital case where in paragraph 14 the learned Judges have

said as follows :

In the event of default, there should be coercive official action to perform their obligation undertaken by all such persons. This condition becomes

a part of the exemption order application and strictly be enforced by all concerned including the police personnel when complaints of non-

compliance are made by the indigent persons, on denial of such treatment in the hospital concerned or diagnostic centres, as the case may be.

29. From the above discussion, it is clear that it is open to the authorities to take action as and when any complaint is received from those who had

not been provided the medical aid as contemplated under these conditions. In fact the Supreme Court has taken into consideration of the practical

aspect of the case and observed so. When that be the case, the action of the second respondent Director General of Health Services by

mechanically coming to the conclusion that the petitioners had not complied with the condition on the basis of the Report of the Visiting Committee

or official cannot be sustained; especially in the absence of any reference in the impugned proceedings about such refusal of any treatment by the

petitioner.

30. One more aspect which has to be taken into consideration is even an admission by any one can be explained. When that be the case, it is for

the second respondent Director General of Health Services to provide an

opportunity to the petitioners herein in respect of the Report submitted by the Visiting Committee. When the Report has been admittedly prepared on the basis of the materials collected in an innocuous manner and the petitioners have given the particulars without knowing the purpose for which the particulars were sought for, such statements cannot be taken into consideration in strict sense to hold that the petitioners have violated the conditions of the Notification, without affording an opportunity to the concerned persons to explain the same. In this case, it is admitted that the petitioners have not been given notice to show-cause or the copy of the Report of the Visiting Committee had been furnished to them. It is also the grievance that no opportunity was given before passing of the impugned proceedings. When that be so, on this ground also the order of the second respondent, Director General of Health Services cannot be sustained.

31. Since a batch of cases arises for consideration, it is better to deal with the issues together instead of repeating the same for each writ petition.

In respect of some of the hospitals, the Director General of Health Services, New Delhi did not accept the Certificate issued by the appropriate

authority, namely, the State Government regarding the entitlement of petitioners for the Customs Duty Exemption Certificate. In fact the Director

General of Health Services, New Delhi has taken considerable time i.e., between 7 to 11 years to reject the applications of the hospitals stating

that the Certificate issued by the State Government cannot be accepted in view of the Report submitted by the Inspecting Officers. When once, as

per the guidelines of the second respondent, an appropriate authority of the State Government has recommended the case of the hospitals for the

issue of the Customs Duty Exemption Certificate, the Director General of Health Services has to accept the same. However, if the second

respondent wants to reject the same, it is for the second respondent, the Director General of Health Services, New Delhi to give the reasons

therefore after affording an opportunity to the persons concerned to rebut the charges, if any. Moreover, when the recommendation had been

made by the appropriate authority of the State Government at an earlier point of time and the Report of the inspecting authorities being subsequent

one and that too the gap between two events being enormous one, this Court is of the view that it is not appropriate for the Director General of

Health Services, New Delhi to reject the recommendation of the appropriate authority of the State Government summarily. The Director General

of Health Services, New Delhi ought to have taken note of the fact that the recommendation of the appropriate authority of the State Government

is with regard to the relevant period. Hence the rejection of the recommendation of the appropriate authority of the State Government by the

Director General of Health Services cannot be sustained on this ground also the order of cancellation of the Customs Duty Exemption Certificate

already issued or the rejection of the application of the hospital seeking for such Customs Duty Exemption Certificate are liable to be set aside.

The effect of repeal of the notification :

32. It is the contention of the learned Counsel for the petitioners that the Notification 64/88, where the benefit of exemption of the Customs Duty

was granted to the hospital like the petitioners and the obligation of the free treatment and reservation of bed had been imposed on the petitioners,

had been rescinded by the subsequent Notification No. 99/94, dated 1-3-1994 which is as follows :

Notification

...

No. 99/94-Customs

New Delhi, dated the 1st March, 1994

10 Phalguna, 1915 (Saka)

G.S.R. (E) - In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central

Government, being satisfied that it is necessary in the public interest so to do, hereby rescinds the following notifications of the Government of India

in the Ministry of Finance in the Department of Revenue and Banking or the Department of Revenue and Insurance or the Department of Revenue,

as the case may be, namely :-

171. No. 64/88 - Customs, dated the 1st March, 1988.

Since several other notifications from the year 1957 to 1993 had been rescinded, it is unnecessary to extract the entire details, as they are not

concerned for the cases on hand.

33. On the basis of this notification, it is contended that the Notification No.

64/88 is no longer in force and as such the authorities cannot cancel the certificates issued already or reject the pending applications. When once the notification is repealed, it has to be held that it is no longer a valid notification for any punitive action. Hence on this ground also the impugned proceedings are liable to be set aside.

34. However, the learned Additional Solicitor General contended that when once certain benefits were conferred and obligations imposed under the notification and such notification is rescinded or repealed, the law is clear on this aspect that the benefits accrued on the persons cannot be taken away and similarly the liabilities arising out of such notification can be enforced. The petitioners having the benefit of the exemption of Customs Duty, it is not open to them to plead that they are not liable to discharge the obligations contemplated under the said Notification 64/88.

Since the Apex Court in the Mediwell Hospital and Health Care Pvt. Ltd. Vs. Union of India and others, held that the obligation being a continuous one, it is always open to the authorities to take action against the petitioners for the violation of such conditions. Hence the impugned proceedings are quite valid.

35. While considering this question, it is worthwhile to refer the two judgments of the Supreme Court. In the case of State of Orissa and Others

Vs. Titaghur Paper Mills Company Limited and Another, it has been held as follows :

Yet another contention raised by the contesting respondents with respect to the impugned provisions was that the two notifications dated

December 29, 1977, having been made in "supersession" of all previous notifications issued on the subject, the effect was to wipe out all tax

liability which had accrued under the notifications dated May 23, 1977. The High Court held that to hold that the liability was so wiped out would

amount to giving a retrospective effect to the notification dated December 29, 1977, and as the Legislature had not conferred upon the State

Government the power to issue notifications having retrospective effect, to so hold would be to render the said notification void. The High Court

referred to a number of decisions on the question of the power to make subordinate legislation having retrospective effect. We find it unnecessary

for the purpose of deciding this point to refer to any of the authorities cited by

the High Court. Both the notifications dated December 29, 1977, are in express terms made with effect from January 1, 1978. They do not at all purport to have any retrospective effect and, therefore, they could not affect the operation of the earlier notifications dated May 23, 1977, until they came into force on January 1, 1978. Further, both Section 3 and Section 5(1) in express terms confer power upon the State Government to issue notifications "from time to time". Section 3 provides that "the State may, from time to time by notifications, declare..." goods liable to purchase tax. Prior to January 1, 1978, the provision to Sub-section (1) of Section 5 provided that "The State Government may, from time to time by notification, fix a higher rate not exceeding thirteen per cent or any lower rate of tax..." Section 5(1) as amended with effect from January, 1978, provides that "the tax shall be levied, at such rate, not exceeding thirteen per cent... as the State Government may, from time to time by notification, specify". Thus, the power of the State Government to issue notifications under these two sections is to be exercised by it "from time to time" and, therefore, the State Government can u/s 5(1) issue a notification and repeal and replace it by another notification enhancing or lowering the rate of tax and similarly it can issue a notification u/s 3 declaring particular goods or class of goods to be liable to tax on the turnover of purchases and subsequently by another notification repeal that notification with the result that the particular goods or class of goods will from the date of such repeal be again liable to pay tax on the turnover of sales. In the notifications dated December 29, 1977, the word "supersession" is used in the same sense as the word "repeal" or rather the words "repeal and replacement". The Shorter Oxford English Dictionary, third edition, at page 2084, defines the word "supersession" as meaning "The action of superseding or condition of being superseded". Some of the meanings given to the word "supersede" on the same page in that dictionary which are relevant for our purpose are "to put a stop to; to render superfluous or unnecessary; to make of no effect; to annul; to take the place of (something set aside or abandoned); to succeed to the place occupied by; to supply the place of a thing". Webster's Third New International Dictionary at page 2296 defines the word "supersession" as the "the state of being superseded; removal and replacement". Thus, by using in the

notifications dated December 29, 1977, the expression ""in supersession of all previous notifications"" all that was done was to repeal and replace

the previous notifications by new notifications. By repealing and replacing the previous notifications by other notifications, the result was not to

wipe out any liability accrued under the previous notifications. If this contention of the respondents were to be accepted, the result would be

startling. It would mean, for example, that when a notification has been issued u/s 5(1) prescribing a rate of tax, and that notification is later

superseded by another notification further enhancing the rate of tax, all tax liability under the earlier notification is wiped out and no tax can be

collected by the State Government in respect of any transactions effected during the period when the earlier notification was in force.

36. In *State of Rajasthan Vs. Mangilal Pindwal*, the Supreme Court has held as follows :

As pointed out by this Court, the process of a substitution of statutory provision consists of two steps; first, the old rule is made to cease to exist

and, next, the new rule is brought into existence in its place. (See: *Koteswar Vittal Kamath Vs. K. Rangappa Baliga and Co.*, . In other words, the

substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. As regards repeal of a statute the law

is thus stated in *Sutherland on Statutory Construction*:

The effect of the repeal of a statute where neither a saving clause nor a general saving statute exists to prescribe the governing rule for the effect of

the repeal, is to destroy the effectiveness of the repealed Act in future and to divest the right to proceed under the statute, which, except as to

proceedings past and closed, is considered as if it had never existed.

(Col. I, para 2042, pp. 522-523)

37. From the above principles laid down by the Apex Court, it is clear that the result of repeal of a statute, the statute as repealed ceased to exist

with effect from the date of such repeal. But at the same time the repeal does not affect the previous operation of the law which has been repealed

during the period it was operative prior to the date of such repeal.

38. If this principle is to be applied in this case, the Notification No. 64/88 came into effect from 1-3-1988 and it was in force till the end of

February, 1994. The notification under which the earlier Notification 64/88 was

rescinded along with several other notifications came into force on

1-3-94. Hence from 1-3-94 the Notification No. 64/88 cannot be said to be in existence or in force in the eye of law.

39. Section 6(b) of the General Clauses Act makes it clear that in respect of the matter if anything is done, under the repealed statute, the same

cannot be invalidated after its repeal; but it will be rendered operative if no right was accrued or had accrued and no liability had been incurred

prior to repeal. What is unaffected by the repeal of statute is a right acquired or accrued under it.

40. Similarly Sub-section (c) of Section 6 preserves rights and privileges acquired and accrued on the one side and the corresponding obligation

and liability incurred on the other side so that if no right had accrued under the repeal statute, there is no question of any liability being preserved.

41. If this is taken into consideration along with the principles laid down by the Apex Court in the above cases, it is clear that the benefits acquired

or accrued by the petitioners cannot be taken away such as the certificate issued already cannot be cancelled.

42. However, the question remains for consideration is whether the liability arising out of such extended benefit can be enforced or not, or in other

words whether the penal action of cancelling the certificate can be made or not, when the petitioners failed to discharge the obligations arising out

of the rescinded notification.

43. Having derived such exemption whether it is open to the petitioners to contend that after the rescinding of Notification No. 64/88, it is not open

to the authorities to enforce the liability. The answer is simple, in view of the judgments of the Supreme Court referred to above. The petitioners

those who benefited the tax exemption are bound to discharge the liability during the period when the said Notification 64/88 was in force. Hence

it is always open to the authorities to enforce such obligation only during that period when the Notification No. 64/88 was in force and not for the

subsequent period. So it is for the authorities to establish that the petitioners had violated the conditions imposed under Notification No. 64/88

subsequent to their availing 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 1-3-94.

44. From the counter affidavit filed by the respondents, it is clear that only in 1996 steps were taken to verify and statements were obtained from

the petitioners. It is not clear as to whether the respondents had collected the materials only in respect of the relevant period during which the

Notification 64/88 was in force and whether the petitioners had failed to discharge their obligation during that period. On this ground, the impugned orders are liable to be quashed.

45. However, Mr. V.T. Gopalan contended that in Mediwell Hospital case, (1997) 2 SCC 759 the Apex Court has held that the discharge of the

obligation is continuous one. Even though the Supreme Court in M/s. Faridabad Ct. Scan center Vs. D.G. Health Services and others, overruled

the decision in Mediwell Hospital and Health Care Pvt. Ltd. Vs. Union of India and others, on the question whether a diagnostic centre is entitled

for the exemption of duty or not, in other respects the observations made by the learned Judges in Mediwell Hospital case was not touched in the

later judgment.

46. When that be the case, on the principle laid down by the Supreme Court in Sub-Inspector Sadhan Kumar Goswami and Others Vs. Union of

India (UOI) and Others, it is not open to the petitioners to raise new additional ground in order to deviate from the settled law laid down by the

Supreme Court.

47. I carefully considered this contention of the learned Additional Solicitor General. The question for consideration before the Supreme Court in

the Sub-Inspector Sadhan Kumar Goswami and Others Vs. Union of India (UOI) and Others, case is whether the petitioners are entitled to seek

a relief which was negated by the Supreme Court for those who are similarly placed as that of the petitioners. In fact, in the said case, a group of

persons called "C" and "D" employees claimed special duty allowance. In an earlier writ petition filed by those who are identically placed as the

petitioners, the Apex Court has held that they are not entitled for such special duty allowances. The Apex Court held that the said judgment will be

binding on the petitioners also and it is not open to the petitioners to contend that they were not parties to the earlier proceedings and they can not

be permitted to raise new grounds to canvass the correctness of the judgment in that case.

48. On this principle, it is contended by the learned Additional Solicitor General that when the Apex Court has held in the Mediwell Hospital and

Health Care Pvt. Ltd. Vs. Union of India and others, that those who got CDEC have to discharge the obligation continuously, it is not open to the

petitioners herein to contend that the Notification 64/88 had been rescinded and as such their obligation also ceases.

49. In my view, the above contention of the learned Additional Solicitor General cannot be countenanced. In the Mediwell Hospital and Health

Care Pvt. Ltd. Vs. Union of India and others, the question arose for consideration is whether the diagnostic centers are entitled for the benefit of

the exemption of Customs Duty under Notification No. 64/88. The learned Judges held that the petitioner therein, being a diagnostic centre, is

entitled for such benefit on the ground that similar diagnostic centres were granted benefits. This ruling had been overruled in the later judgment of

three Judges Bench in the case of M/s. Faridabad Ct. Scan center Vs. D.G. Health Services and others, So far as the discharge of obligation is

concerned, it has been held that it is a continuous obligation. But, however, the question of rescinding the Notification No. 64/88 and the

consequences thereon was not considered by the Apex Court, as that issue was not raised.

50. 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 nonexistent, it is a vital question to decide the rights and liabilities of the parties. Hence

this Court had discussed this question, as supra and found 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 only during that period. If that is established, only then it is open to the authorities to proceed further.

51. Before parting with the case, it is worthwhile to mention that after the rescinding of the Notification 64/88 under the Notification 99/94, the

authorities had extended the benefit of the exemption from Customs Duty in respect of the life saving medical equipments under Notification

122/94 dated 3-6-1994 and Notification 55/95 dated 16-3-1995. Hence wherever the applications for exemption of Duty were pending on the

date of the rescinding of the Notification 64/88, the authorities are directed to dispose of the same in terms of the subsequent Notification 122/94

and 55/95 as amended from time to time, on the basis of the principles laid down by the Supreme Court in the judgment in the case of Gajraj Singh

etc. Vs. The State Transport Appellate Tribunal and others etc., as well as M/s. Gurcharan Singh Baldev Singh Vs. Yashwant Singh and others,

where the Apex Court has held that whenever the old Act is repealed and the new Act had been introduced and if under the new Act the

procedure had been specified for the disposal of such application, the authorities are bound to consider and dispose of the pending applications

filed under the old Act in accordance with the new Act.

52. Following the same principle, the authorities have to dispose of the pending applications, claiming the exemption of Duty under the Notification

64/88 in accordance with the Notification 122/94 and 55/95, as amended from time to time, since Notification 64/88 had been rescinded in

March, 1994, it is not under dispute that the subsequent notification have extended the benefit of exemption of Duty for the life saving medical

equipments. Hence the pending applications ought to have been considered and disposed of on merits in accordance with the subsequent

notification. The learned Additional Solicitor General also has no serious objection for this.

53. For the reasons stated above, the impugned proceedings in these writ petitions cannot be sustained and accordingly the same are set aside and

the matters are remitted back to the second respondent Director General of Health Services for fresh disposal in the light of the directions issued

above. No cost.

Consequently W.M.P. Nos. 5233 & 5235/99 are closed.