

(2014) 09 SC CK 0180

In the Supreme Court Of India

Case No : Civil Appeal No. 6575 Of 2003, 5000 Of 2006, 1049 ,1397, 5596
5653, 6117, 6118 , 6600, 6920, 7165 Of 2008, 1333, 3986, 4059 Of
2009, 6789, 6790 Of 2010

M/S Grant Medical Foundation

APPELLANT

Vs

Commissioner Of Customs, Mumbai

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Citation : (2015) 12 SCC 432

Hon'ble Judges : Dipak Misra, J;Vikramajit Sen, J

Bench : Division Bench

Advocate : V. Sridharan, Alok Yadav, Rachit Jain, M. P. Devanath, E. C. Agrawala, Sridharan, Alok Yadav, Debmalaya Banerjee, Diulpreet Singh, Avjit Saxena, Jaimeet Kaur, Manik Karanjawala, D. M. Nargolkar, Praveena Gautam, Aniruddha P. Mayee, Charudatta Mahindrakar, A. Selvin Raja, Arshad Hidayatullah, Pratap Venugopal, Makarand Joshi, Niharika, V.M. Doiphode, Padmini Sundaram, Rajesh Kumar, Parag Tripathi, Manasi Kumar, B. Krishna Prasad, K. Radhakrishan, Binu Tamta, Rahul Kaushik, Anil Katiyar

Judgement

CIVIL APPEAL NO.5596/2008:

Heard Mr. V. Sridharan learned senior counsel appearing for the appellant along with Mr. Alok Yadav and Mr. K. Radhakrishan learned senior counsel along with Ms. Binu Tamta appearing for the respondent.

After arguing at some length, Mr. Shridharan submitted that the Tribunal vide paragraph 36.5 in the appeal of the present assessee-appellant has remitted the matter to the Commissioner with a direction that he should look to the eligibility criteria enshrined in Notification 65/88 and extend the same to the assessee if found admissible. The learned counsel has drawn our attention to the said Notification and, on that bedrock has submitted that the Commissioner may be directed to consider the said direction within a stipulated time frame.

The relevant part of the said Notification reads as follows:

"35.6 The learned DR contended that once it is admitted that the CDECs were withdrawn in the year 2000, the cancellation will have effect from the date of clearance irrespective of the fact whether the same was withdrawn before or after issue of show cause notice or order-in-original and in support thereof he referred to the decision of the Karnataka High Court in the case of Chaparral Health Services 2001 (130) ELT 34 (Kar.) (para 6, 7 & 8). As regards charging registration fee he referred to the decision of Medical Relief Society case and Kerala High Court decision in Maulana Hospital wherein it has been observed that treatment starts with registration and therefore charging of registration fee will amount to violation of notification. He also referred to the Tribunal decision in Baijerbai Wadia Hospital for Children 2005 (188) ELT 306 (T) where charging of registration fee at the rate of Rs.10/- from outdoor patient and Rs.20/- from indoor patients was held as amounting to violation of conditions of notification No.64/88. As regards reservation of beds it was submitted that it was mandatory that 10% beds are specifically reserved as has been held by the Karnataka High Court in Medical Relief Society case. He also invited attention to the information submitted by the hospital regarding free treatment given to the indoor patients from which it was evident that medicines were also being charged for from most of the patients."

Be it stated, the said Notification contains a table which need not be reproduced. In our considered opinion, the submission made by Mr. Shridharan is absolutely fair and we accept the same and accordingly, it is directed that the concerned Commissioner shall consider the direction issued by the Tribunal in the backdrop of the Notification which we have reproduced hereinabove within a period of three months after affording an adequate opportunity of hearing to the appellant.

We may hasten to add that for availing an opportunity of hearing before the Commissioner, the assessee-appellant shall deposit 40% ad valorem if the same has not been realised from him.

The appeal is accordingly disposed of without any order as to costs. Needless to say, barring the direction of the deposit as a condition precedent, we have not addressed to any aspect, namely, the applicability of Notification or modification of rate of interest. No order as to costs.

CIVIL APPEAL NO.5653/2008:

The present appeal is disposed of in terms of the order passed in Civil Appeal No.5596 of 2008.

CIVIL APPEAL NOS.6117-6118/2008:

In these appeals the assail is to the order passed by the Customs, Excise & Service Tax Appellate Tribunal in Appeal No. C/662/03 and Appeal No.C/1364/02, Mr. Shridharan learned senior counsel submitted that the Tribunal in the appeal has not dealt with the impact of Notification No.65/88 as the same was not an issue before the Tribunal. In our considered opinion, the case of the appellant-

assessee should be considered by the concerned Commissioner whether his case would be covered by the Notification No.65/8 dated 1.3.1988 as well as the Notification No.118/86 dated 7.2.1986 as both the notifications, as submitted by the learned counsel, have relevance. Regard being had to the totality of the circumstances, we direct that the Commissioner should consider whether the appellant can avail the benefit under the aforesaid Notifications. We may hasten to add that we have not expressed any opinion as regards the admissibility of the benefit or imposition of interest. We may further add that the Commissioner shall decide the matter within a period of six months after affording an adequate opportunity of hearing to the appellant. We would have directed the assessee-appellant to deposit 40% of the duty as a condition precedent, to afford opportunity of hearing but as the same has already been deposited, as submitted by Mr. Shridharan, we do not impose the said condition. With the aforesaid modification in the order passed by the Tribunal, these appeals stand disposed of without any order as to costs.

CIVIL APPEAL NO.1397/2008

Mr. Shridharan very fairly submitted that nothing survives in this appeal in view of the order passed in C.A.Nos.6117-6118/2008. It is accordingly disposed of.

CIVIL APPEAL NO.5000/2006:

Mr. Shridharan learned senior counsel who had argued the matter at length on the earlier occasion, having been down to path of solemn wisdom has abandoned the assail to the judgment and order of High Court on merits. The singular submission is that even assuming the judgment and order of the High Court are correct the assessee-appellant would only be liable to pay the duty at the relevant time of import and in that event he would be covered by the Notification 65/88 dated 1.3.1988 whereunder the rate of duty was 40%, and the Notification 118/86 dated 7.2.1986 which is also relevant.

The learned counsel would further contend that the Tribunal in certain cases has directed the Commissioner to consider the applicability and admissibility of the said Notifications to the assessees and if the notifications are applied the appellant-assessee would only be liable to pay the duty as per the rate fixed by the Central Government at the relevant time. Without entering into the justifiability of the submission, we only direct the Commissioner to consider the rate of duty leviable on the assessee in the backdrop of aforesaid Notifications referred to hereinabove.

We have been apprised by Mr. Shridharan that the entire duty amount levied by the Revenue has already been deposited. Therefore, we direct the Commissioner to consider the claim put forth by the appellant-assessee within a period of four months, after a specific application in that regard, is filed before the Commissioner within a period of four weeks from today. Needless to say, the Commissioner shall afford an adequate opportunity of hearing to the appellant-assessee.

With the aforesaid directions, the appeal stands disposed of with no order as to costs.

CIVIL APPEAL NO.6600/2008:

Heard Mr. Arshad Hidayatullah, learned senior counsel appearing for the appellant. In this appeal the challenge is to the order passed by the Customs, Excise & Service Tax Appellate Tribunal in Appeal No. C/21/2003-MUM. Learned senior counsel restricted his submission for remanding the matter in the backdrop of the notifications earlier referred to. Regard being had to the totality of the circumstances, we direct that the Commissioner should consider whether the appellant can avail the benefit under the aforesaid Notification. We may hasten to add that we have not expressed any opinion as regards the admissibility of the benefit or imposition of interest. We may further add that the Commissioner shall decide the matter within a period of six months after affording an adequate opportunity of hearing to the appellant. We would have directed the assessee-appellant to deposit 40% of the duty as a condition precedent, to afford opportunity of hearing but as the same has been deposited, submitted by Mr. Shridharan, we do not impose the condition. With the aforesaid modification in the order passed by the Tribunal, these appeal stands disposed of without any order as to costs.

CIVIL APPEAL NO.6920/2008:

Heard Mr. D.M. Nargolkar counsel learned counsel for the appellant. In this appeal the assail is to the order passed by the Customs, Excise & Service Tax Appellate Tribunal in Appeal No. C/40/01. The present appeal is disposed of in terms of the order passed in Civil Appeal No.6600 of 2008. No order as to costs.

CIVIL APPEAL NOS.6789-6790/2010, C.A. No.4059/2009 & C.A.No. 3986/2009:

The present appeals are disposed of in terms of the order passed in Civil Appeal No.6600 of 2008. No order as to costs.

CIVIL APPEAL Nos.1049/2008, C.A.NO.7165/2008,C.A.No.1333/2009 & C.A.NO.6575/2003:

List these matters next week.