
(2008) 04 JH CK 0007
In the Jharkhand High Court

Ranchi Medical Research and Development Foundation Ltd.
and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-04-2008

Acts Referred:

Customs Act, 1962 — Section 111
Customs Tariff Act, 1975 — Section 3

Citation : (2008) 3 JCR 242

Hon'ble Judges : M. Karpaga Vinayagam, C.J.; D.G.R. Patnaik, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M. Karpaga Vinayagam, C.J.—Ranchi Medical Research and Development Foundation Pvt. Ltd., the appellants herein, are the writ petitioners. Being aggrieved by the three orders - (1) order dated 4.11.1997 withdrawing the exemption certificates, (2) the order dated 18.12.1997 demanding for the payment of Custom Duty to the tune of Rs. 1,74,12,087/- for importing medical equipments and (3) the order dated 23.1.1998 for seizure of the equipment so imported passed by the respondents u/s 111(1) of the Customs Act, the appellant filed writ petition for quashing the same before the learned Single Judge of this Court.

2. Learned Single Judge dismissed the said writ petition. Challenging the same, the petitioner-appellants filed the present Letters Patent Appeal. The brief facts of the case are as follows:

(i) The appellants established Advanced Diagnostic Centre at Ranchi. Thereupon in the year 1986, they made an application for import of Whole Body C.T. Scanner and claimed exemptions from customs duty.

(ii) The Health Secretary, Government of Bihar, recommended the case of the appellants on the ground that the appellants had fulfilled the criteria laid down

for complete duty exemption as per the notification issued under the Customs Act, On such recommendation, the Government of Bihar issued exemption certificate in favour of the appellant on 1.12.1986 granting exemption from custom duty in respect of import of the Whole Body C.T. Scanner. On that basis, the C.T. Scanner was imported and no duty was paid.

(iii) One Public Interest Litigation was filed before the Delhi High Court seeking for the quashing of the Custom Duty Exemption Certificates illegally issued by the Government in respect of huge quantities of medical equipments, which was alleged to have caused a loss of substantial revenue to the public exchequer.

(iv) The Delhi High Court, having entertained the said PIL, issued various directions and passed orders constituting two committees to enquire into various aspects. One of the Committees called Rosha Committee was entrusted with the duty of inquiring as to whether Customs Duty Exemption Certificates have been issued by the Ministry of Health for individual importers/institutions in accordance with the terms and conditions laid down in the Notification No. 64/88-Cus dated 1.3.1988 or not and also to inquire whether any such certificates have been issued to individual importers who were otherwise not entitled to receive and also to inquire whether the concerned institution has fulfilled the conditions subject to which the exemption was granted.

(v) Accordingly the Rosha Committee issued notice dated 19.5.1997 to the appellants asking them to send the required particulars regarding the diagnostic centre of the appellants in the light of the order passed by the Delhi High Court.

(vi) As required, necessary particulars were sent to the Rosha Committee by the appellants. In the meantime, the appellants received two show-cause notices dated 9.6.1997 by the Additional Deputy Director General (Medical), Health Services, Government of India, the respondent No. 3 asking the appellants to show-cause as to why exemption certificates granted to the appellants should not be withdrawn.

(vii) The appellants gave a reply to the respondent No. 3 requesting that they may not continue the proceedings since the same issue is pending before the Rosha Committee, which issued notice to them, to which they already sent the suitable reply along with the required particulars. Despite this reply, the respondent No. 3, having felt that they did not send the reply to the show-cause notice, issued the order dated 4.11.1997 withdrawing the exemption certificate.

(viii) Thereupon the appellant No. 1 sent a detailed representation to the respondents, giving out various circumstances to show that exemption certificate ought not to have been withdrawn, requested the respondents for recalling of the order dated 4.11.1997.

(ix) In the meantime, the appellants received the office order dated 18.12.1997 issued by the Assistant Commissioner of Customs, Air Cargo Complex, Kolkata, respondent No. 6, directing the appellants to pay the amount of duty for import

of medical equipments in view of the withdrawal of the exemption certificates.

(x) Thereafter the appellants preferred a writ petition for quashing the office order dated 4.11.1997 and 18.12.1997 and for restraining the respondents from taking any steps as against the appellants.

(xi) During the pendency of the writ petition, on 22.1.1998, the officials of the Customs Department had come to Ranchi and had demanded payment of amount. They also warned that in case of default, they would take steps for seizure of the M.R.I. machines for nonpayment. Next day. i.e. on 23.1.1998, they issued seizure notice on 23.1.1998.

(xii) Therefore, appellants filed amendment petition seeking inclusion of additional prayer for quashing the office order dated 23.1.1998 intimating for the seizure in the default of the payment. Thus, they sought for quashing of all the three orders.

(xiii) Learned Single Judge, having considered the matter, ultimately dismissed the writ petition by the order dated 11th July, 2006, rejecting all the prayers.

3. Challenging the same, this LPA has been filed. Elaborate arguments were advanced by both the counsel for the parties. The main point that is being urged by the learned senior counsel for the petitioner-appellants is that the final order withdrawing the exemption certificates had been passed by the respondents on 4.11.1997 in pursuance of the show-cause notice dated 9.6.1997 without proper enquiry, without giving adequate opportunity to the appellants and without any material whatsoever; thereby the principles of natural justice has been violated, which would vitiate the orders in question.

4. Refuting the above submission, the learned Counsel for the respondents strenuously contended that appropriate opportunity has been given by issuing show-cause notice dated 9.6.1997 asking the petitioner-appellants to give explanation and since the appellants did not send reply to the said show-cause notice, the final order had been passed withdrawing the exemption certificates on 4.11.1997 on the available materials and so it cannot be said that the principle of natural justice has been violated.

5. Though the learned senior counsel appearing for the petitioner-appellants has incidentally raised several other points, we feel that it would be sufficient to confine ourselves to this point for consideration as it is urged as the main point.

6. It is not debated by the petitioner-appellants that the Additional Deputy Director, respondent No. 3 herein, issued show-cause notice dated 9.6.1997 to the appellants calling upon them to show-cause as to why the custom duty exemption certificates issued to them be not withdrawn. The ground on the basis of which the show-cause notice was issued was that Advanced Diagnostic Centre run by the petitioner- appellants did not have any Indoor Patient Treatment facilities to provide free treatment to those whose income is less than Rs. 500/- per month and did not keep 10% of all the hospital beds reserved for such

patients and as such, they are not entitled to get exemption from payment of custom duty.

7. Let us reproduce the show-cause notice dated 9.6.1997, which reads as follows:

No. 2.37014-1/92-MG Ministry of Health and Family Welfare Directorate General of Health Services (Medical General Section)

Nirman Bhawan, Maulana Azad Road,

New Delhi--110011, Dated the 9.6.1997,

Telephone : 3018120, Fax : 3018120

NOTICE

Whereas Government of India vide Ministry of Finance Notification No. 64/88-Cus. dated 1.3.1988 exempted all equipments, apparatus and appliances, including spare parts and accessories thereof but excluding consumable item, from-

(i) the whole of the duty of customs leviable thereon under the First Schedule to the Customs Traffic Act, 1975 (51 of 1975); and

(ii) the whole of the additional duty leviable thereon u/s 3 of the said Customs Traffic Act.

subject to fulfillment of certain conditions contained in the notification:

2. Whereas one of the conditions prescribed for the exemption for hospitals specified in para 2 of the TABLE of the said notification is that all indoor patients belonging to families with an income less than rupees five hundred per month are provided free medical surgical or diagnostic treatment and that at least ten per cent of all the hospital beds are reserved for such patients;

3. Whereas conditions for hospitals specified in para 4 of the said TABLE is that when it starts functioning such hospital would be relatable to a hospital specified in paragraphs 1, 2 or 3 of the TABLE, thereby meaning that in case of hospital in the process of being established would be relatable to hospitals specified in para 2 of the said TABLE, after they start functioning and would provide free medical, surgical or diagnostic treatment to all indoor patients belonging to families with an income of less than Rs. 500/- p.m. and would keep at least 10% of all hospital beds reserved for such patients.

4. Whereas Ministry of Finance, Department of Revenue, clarified, vide their Office Memorandum No. 528/149/93-Cus. (TU) dated 17.11.1993 that independent diagnostic centres/laboratories providing only diagnostic treatment and not having any indoor patient treatment facility are not entitled to benefit of exemption under the said notification;

5. Whereas the Supreme Court have held in *Mediwell Hospital and Health Care Pvt. Ltd. v. UOI and Ors.* that 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 low income group (whose income is less than Rs. 500/- p.m.) would be able to receive free treatment in the Institute. The Court further held that this objective 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 such institutions. 6. Whereas a CDEC was issued to you vide Directorate General of Health Services letter No. Z. 37014-1/92- MG dated 7.5.1992 and 28.9.1992 for import of following medical equipment(s) for your Institute:

1. Spares for Whole Body CT scanner
2. Spares of Whole body CT scanner
3. Spares for Whole Body Ct scanner

7. And whereas yours is only a diagnostic centre/laboratory not having indoor patient treatment facilities and thus not fulfilling the obligation of providing free indoor treatment to all patients belonging to families with an income of less than Rs. 500/- p.m. and of keeping at least 10% of all the hospital beds reserved for such patients;

8. Therefore, you are hereby given this notice to show cause as to why the said CDEC and all other CDEC(s) issued to you under the said notification, if any, should not be withdrawn. You are directed to send reply within 15 days from the date of issue of this notice to the State Government with copy to the undersigned. (Under Registered Cover A/D/speed Post). The State authority in turn are being asked to verify the data furnished by you and forward their recommendations to this office duly certified by the State Health Secretary, within 10 days of receipt of your response. If no reply is received from you within this stipulated period, it would be presumed that you are unable to substantiate your continued eligibility to avail and retain the CDEC issued to you as per the provisions of Government of India Notification No. 64/88 dated 1.3.1988.

Sd/- (Dr. (Mrs.) Madhuri Sharma) Addl.

Deputy Director General (Medical)

8. Perusal of the above notice would indicate that 15 days, time were given to file reply to the said show-cause notice and further the State Government was asked to verify the data furnished by the appellants and forward recommendation for consideration before taking any decision on this matter.

9. As indicated above in the earlier paragraphs, Delhi High Court issued various directions including for constitution of two Committees in the Public Interest

Litigation and one of the Committees, being Rosha Committee, was entrusted with the . duty of inquiring as to whether the custom duty exemption certificate has been issued by the Ministry of Health for the institutions which imported machines in accordance with the terms and conditions laid down in the notification dated 1.3.1983. It is also not disputed that Rosha Committee was asked to enquire as to whether any such certificate has been issued to those institutions who are otherwise not entitled to receive them and also to find out whether the concerned institutions have fulfilled conditions, subject to which exemption certificate was issued.

10. Admittedly the said Rosha Committee sent notices to various institutions including the appellants" one on 19.5.1997, asking them the particulars regarding various requirements to be fulfilled by the institutions for the purpose of enquiry in the light of the orders passed by the Delhi High Court. On receipt of this notice, the appellants sent detailed reply to the Rosha Committee and also the documents relating to the issue pending before the Committee. At that point of time, the appellants received show cause notice dated 9.6.1997 sent by the respondents. In that context, the appellants sent reply to the respondents on 16.11.1997 that the issue is pending before the Rosha Committee, which is already in seisin of the matter and they have also sent detailed reply to the Rosha Committee and on that reason, the respondents were requested not to continue with the proceedings till the final decision was taken by the Rosha Committee. Admittedly there was no response to this reply dated 16.11.1997. It is also admitted that the respondents did not receive any reply from the State Government. Under those circumstances, the respondents passed the final order on 4.11.1997 withdrawing the custom duty exemption certificate only on the ground that no reply was received from the appellants and so it has to be presumed and concluded that the conditions for availing the exemption certificate have not been complied with. Thus, the final order has merely been passed cancelling the exemption certificate mainly on the reason that there was no reply from the appellants.

11. Let us now reproduce the final order dated 4.11.1997, which reads as follows:

Z.3/014/71/92-MG (Pt.)

Directorate General of Health Services

(Medical General Section)

Nirman Bhavan,

New Delhi--110011

Dated, the November 4, 1997.

M/s Advanced Diagnostic Centre

Ballabh Booty Road, Bariatu,

Ranchi--834009

Sub. Withdrawal of CDEC under Ministry of Finance Notification No. 64/88-Cus. dated 1.3.1988 and OM No. 528/149-Cus(TU) dated 17.11.1993.

Sir,

Kindly refer to this Dte's notice of even number dated 9.6.1997 whereby you were given an opportunity to show cause as to why the CDEC(s) issued to you vide this Dte.'s letter No. and date indicated below for import of the following equipments(s):

S.No.	Name of equipment(s)	F.No. & date of CDEC	Issued
1	Spares for CT Scanner		
Z.37024/1/92-MG (PL)	dated	7.5.92 & 26.9.92	
2	G.E. Compact Max Plus		
Z.37014/1/92-MG (Pt.)	Megnatic Resonance	dated 22.12.92	Imaging System
3	Spares-CT-X-ray Tube		
Z.37014/1/69-MG	dated	18.1.89 & 21.3.90,	
4	Spares-CT-X-ray Tube		
Z.37014/5/90-MG	dated	5.12.90,	
5	Key Board Printed CKT BD		
Z.37014/5/90-MG	dated	Track Ball	7.8.90,

and all other CDECs issued to you under ministry of Finance notification No. 64/88-Cus. dated 1.3.1988, if any, should not be withdrawn. Your were requested to send your reply within 15 days of issue of the above notice to the State Government with a copy to this Dte. It was made clear that if reply is not received from you within the stipulated period, it would be presumed that you are unable to substantiate your continued eligibility and avail and retain the CDEC(s) issued to you as per provisions of the said notification.

2. That Delhi High Court in their interim orders passed on 1.8.1997 in CWP No. 409/96 filed by the People's Union of Civil Liberties v. UOI directed the Director General of Health Services to consider reply if replied on or before 15.9.1997. The Hon'ble Court also directed not to consider the reply if received after 15.9.1997.

3. The cut-off date fixed by the Hon'ble Delhi High Court is over and no reply has been received either from you or State Government This Dte., on the basis of the information available with it and the fact that you have not responded to the said

notice, has come to the conclusion that M/s Advanced Diagnostic Centre, Ranchi, is only diagnostic centre not having indoor patient treatment facilities and therefore, does not fulfill the conditions for availing and retaining CDEC(s) issued to it.

4. Therefore, the CEDC(s) under reference for import of medical equipments/spares referred to above are hereby withdrawn.

Yours faithfully, Sd/- Dr. (Mrs.) Madhurl Sharma Addl. Deputy Director General Medical

12. As indicated above, the perusal of the above order clearly indicates that the Additional Deputy Director General straightaway came to the conclusion that the appellant-Advanced Diagnostic Centre Is only a diagnostic centre not having indoor patient treatment facilities and therefore, the appellant-Institution Is not entitled to get the custom duty exemption certificate and his conclusion was arrived at only because of the reason that no reply to show cause notice has been received. This would indicate that no other enquiry has been conducted and no steps have been taken to collect materials either through the State Government or through its own sources to arrive at such a conclusion, but it has been concluded that the appellant institution does not fulfill the requirements for being entitled to custom exemption certificate for not having indoor patient facilities etc. on presumption.

13. In the above fact situation, the question that requires to be considered by this Court in this case is this "whether the authority can arrive at such a conclusion merely on the basis of the said presumption since no reply was received against the show cause, without any enquiry or without collecting any other materials?"

14. While dealing with this question, it would be desirable to refer to the relevant observations made by the Supreme Court in the case of Mediwell Hospital and Health Care Pvt. Ltd. Vs. Union of India and others, , which are as follows:

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 obtained the certificate from the appropriate authority and on the basis of that to 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 would give free treatment to all the indoor patients belonging to the families with an income of less than Rs. 500/-p.m. The competent authority, therefore, should continue to be vigilant and check whether the undertakings given by the applicants are being duly complied with after getting the benefit of the exemption notification and importing without payment of customs duty and if on such enquiry the authorities are satisfied that the continuing obligations are not being carried out, then it would be fully open to the authority to ask the persons who have availed of the benefit of exemption to pay the duty payable in respect of the equipments which have been imported without payment of customs duty. Needless to

mention the Government has granted exemption from payment of customs duty with the sole subject that 40% of all outdoor patients and entire indoor patients of the low Income group whose income is less than Rs. 500/- p.m. would be able to receive free treatment in the Institute. That objective 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.

15. From the above paragraph, it is clear that the Supreme Court has laid down the ratio and the mandates to be followed by the authorities before cancelling the exemption certificate and for enforcing realisation of the customs duty from the institutions. The following are the mandates:

(i) The exemption granted in pursuance of the notification shall be construed to cast continuing obligation on the part of the institutions to obtain certificate from the appropriate authority and on the basis of the obligations, the institutions, who have imported equipments without payment of customs duty, shall give free treatment to 40% outdoor patients and free treatment to all the indoor patients belonging to the families with an income of less than Rs. 500/- p.m.

(ii) The competent authority should continue to be vigilant and to check and enquire whether those obligations cast on the institutions are being duly complied with.

(iii) In such enquiry, if the authorities are satisfied that those obligations are not being carried out by the institutions, then the authorities are entitled to ask those institutions to pay the duty payable in respect of the equipments which have been imported.

(iv) The authority, who has granted the certificate of exemption, should ensure that the obligations imposed upon those institutions are being duly carried out.

(v) Only on being satisfied that the obligations have not been carried out, the authorities can enforce realisation of the customs duty from the institutions.

The above mandatory guidelines would make it clear that there must be constant vigil, check and enquiry with reference to the fact whether the obligations are being continuously carried out and only when the authority is satisfied on the basis of the materials collected by the authority that the said obligations have not been discharged, the authority can enforce realisation of the customs duty. This decision has been referred to in the show cause notice itself.

16. As admitted by the learned Counsel for the respondents, the aforesaid decision was the subject matter of review before the M/s. Faridabad Ct. Scan center Vs. D.G. Health Services and others, . The said 3- Judge Bench admittedly confirmed the views expressed by the 2- Judge Bench on these mandatory guidelines, though the Supreme Court did not accept the point relating to

granting of relief to the similarly situated persons, observing that the benefit of exemption notification cannot be extended to the institutions on the ground that such benefit has been wrongly extended to the others. Thus, it is clear that the mandates to be followed by the authority before cancelling exemption certificate and realisation of customs duty as given by 2-Judge Bench in the case of Mediwell Hospital and Health Care Pvt. Ltd. (supra) have been affirmed by the 3-Judge Bench in this case (Faridabad C.T. Scan Centre v. D.G. Health Services and Ors. supra).

17. Let us now see whether those mandates have been followed in this case by the authorities before passing the final order dated 4.11.1997. The impugned order dated 4.11.1997 would clearly indicate that it has taken into consideration the interim order passed by the Delhi High Court constituting the Rosha Committee. It is also specifically stated that the reply must be received by the Rosha Committee on or before 15.9.1997 and if any reply was received after 15.9.1997, it would not be considered. It is further stated in the order that the cut-off date fixed by the Delhi High Court was over and no reply had been received and therefore, it shall be presumed that the appellant-institution was only a diagnostic centre not having indoor patient treatment facilities and did not fulfill the conditions for availing exemption.

18. Though in the show cause notice, as quoted above, does not refer to the Delhi High Court, the order passed by the Delhi High Court has been referred to in the final order. According to the respondents through its final order dated 4.11.1997, since no reply was received by the Rosha Committee as directed by the Delhi High Court within the stipulated time, the authority was constrained to presume that the requirements had not been fulfilled. On the other hand, it is asserted by the learned Senior Counsel for the petitioner-appellants that immediate reply had been sent to the respondent authority informing that they had already sent detailed reply to the Rosha Committee and requesting that since the said reply was pending consideration by the Rosha Committee, the further proceedings need not be continued by the respondents. It is also the case of the petitioner-appellants that in pursuance of the notice issued by the Rosha Committee, they sent required information to the Rosha Committee in time and also sent the documents which were required to be furnished before the Rosha Committee. This was not denied specifically in the counter filed by the respondents. When the respondents have chosen to refer to Delhi High Court order and also the pendency of the matter before the Rosha Committee, there is no reason as to why the reply sent to the Rosha Committee was not considered by the respondents. It is also an admitted fact that after the final order dated 4.11.1997 had been passed, the petitioner- appellants sent detailed reply for consideration in the light of the detailed reply sent to the Rosha Committee which was also enclosed with the said reply to the respondents. This was never considered by the authorities.

19. As indicated above, the only reason for cancelling exemption is non-receipt of

the reply to the show cause notice issued by the respondents and not on the basis of any conclusion arrived at in enquiry conducted. On the other hand, it has specifically been mentioned by the Supreme Court in the case of Mediwell Hospital Health Care Pvt. Ltd., (supra) that the authority has to conduct such an enquiry for collecting materials and on that basis, if the authority is satisfied that the continuing obligations have not been carried out, then alone the authority would be entitled to cancel exemption certificate and to demand for payment of customs duty.

20. Admittedly, the respondents did not get any information from the State Government, nor the respondents conducted any separate discreet enquiry to verify whether those obligations required to be carried out are being carried out or not. As a matter of fact, it is admitted by the respondents themselves that before passing the order of seizure dated 23.1.1998, the respondent officials came to the Centre, inspected the same and informed the appellants that if the demanded amount is not paid, they will be constrained to pass the order of seizure.

21. It is the specific case of the petitioner-appellants that they have sent reply to the Rosha Committee on receipt of the notice issued by the committee on the basis of the Delhi High Court order. It is also admitted fact that the appellants requested through intimation sent to the respondent authority not to proceed further with any action in the light of the fact that they sent a reply to the Rosha Committee before whom the issue is pending. When that being so, the authorities need not hasten to pass final order straightway without any enquiry. If the authority still wanted for separate reply from the petitioner- appellants, it should have sent letter informing the appellants that there must be separate reply to them for the show cause notice sent by them. On the other hand, the final order, which has been passed by the authority, as indicated above, shows that they have taken into consideration the pendency of the enquiry before the Rosha Committee also. As a matter of fact, they have mentioned that the reply from the petitioner-appellants has not been received by the Rosha Committee in time. According to the appellants, this is not factually correct. To say that reply has not been sent to the show cause notice issued to them is one thing, it is another thing to say that the reply has not been received by the Rosha Committee within the cut-off date. In the notice, it is said that the reply by the appellant institution must be sent to the show cause notice dated 9.6.1997. In the final order, it is said that no reply was received by the Rosha Committee. This shows that there is no consistent stand taken by the respondents.

22. Whatever it is, the only ground on the basis of which the final conclusion has been arrived at by the respondents is the failure on the part of the petitioner-appellants to send reply to the show cause notice. This conclusion is not on the basis of any material either collected through its own sources, or any information collected from the State Government.

23. As indicated above, the Supreme Court has specifically stated that the

authority shall be satisfied through the enquiry that the continuing obligations are not being discharged by the applicants. Of course, it is stated in the final order that a conclusion has been arrived at both on the basis of information available with it and on the basis of the fact that no reply is received by the respondents for the show cause notice from the appellants. But it is not stated in the said final order as to what was the information available with it to come to such conclusion. Admittedly the details of the available information not only were mentioned in the order but also not given In the show cause notice issued to the petitioner-appellants. Therefore, it is clear that the conclusion has been arrived at by the authorities without conducting any separate enquiry and without collecting any information either through the State Government or other agencies.

24. Giving no reply cannot be a ground to hold that the authority was satisfied that the appellant-institution was not carrying out the obligations. Even presuming that no reply had been received, the authority ought to have conducted a separate enquiry as indicated in the judgment of the Supreme Court for the purpose of collecting Information about the Institution and also from various other sources regarding the discharge of obligation.

25. If there was no reply, the officials could have conducted inspection of the institution as they did it before the seizure order was passed and after the inspection, the officials could have submitted inspection report before the authority and on that basis, the authority could have come to the conclusion that they were satisfied on the basis of materials referred to in the inspection report that the obligations had not been discharged. Admittedly this was not done.

26. Further after the final order had been passed on 4.11.1997, demand notice was issued for payment of Rs. 1,74,12.087/-. There is no detail in the order as to the basis on which this quantum has been arrived at. This was also done without any opportunity and without prior notice. Mere issuance of show cause notice and mere non-receipt of reply for the same despite the reply having been sent to the Rosha Committee would not be the ground to hold that the authority has been satisfied that the obligations have not been carried out by the institution of the appellant on the basis of the enquiry.

27. In view of the above circumstances we feel that the impugned order dated 4.11.1997 was passed in violation of the principles of natural justice, inasmuch as there is no proper enquiry through which the additional information had to be collected and also for the reason that the alleged information available, as alleged in the final order, through which the purported conclusion has been arrived at, have not been dis-closed in the said order dated 4.11.1997.

28. Though both the learned Counsel have referred to umpteen of decisions of the Supreme Court on various aspects, we feel that it is unnecessary to deal with them as those decisions do not deal with the main point which has been discussed.

29. To put it briefly, the enquiry as envisaged in the case of Mediwell Hospital and Health Care Pvt. Ltd. (supra) by the Supreme Court has not been conducted by the authority, thereby adequate opportunity has not been given to the petitioner-appellants before taking final decision in the matter. Therefore, we, are of the considered opinion that the order dated 4.11.1997 is liable to be set aside and the matter remanded back to the authority for fresh consideration after providing appropriate opportunity to the petitioner-appellants in the enquiry to be conducted. Accordingly the same is ordered.

30. It is made clear that we are not giving any opinion on this issue. As such, it is for the respondents to come to its own conclusion to be arrived at on the basis of the materials collected during the course of enquiry either through the reply from the petitioner-appellants or collected through the other agencies as indicated above.

31. To sum up : In view of the above circumstances, we deem it fit to set aside the order dated 4.11,1997 and the other consequential orders. Accordingly, all the three orders dated 4.11.1997, 18.12.1997 and 23.1.1998 are set aside. Consequently the impugned order of the learned Single Judge also is set aside. The matter is remanded back to the authorities to consider the issue afresh in the enquiry to be conducted to collect the materials after giving adequate opportunity to the petitioner-appellants to put forth their case and on that basis, the respondents are directed to come to the conclusion with reference to the above issue uninfluenced in any way by any of the observations made by this Court. This process must be completed preferably within three months from the date of receipt of this order.

32. This appeal is allowed. However, there is no order as to costs.

D.G.R. Patnaik, J.

33. I agree.