IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5728 OF 1997

WITH

CIVIL APPLICATION NO.6180 OF 1998
IN
WRIT PETITION NO.5728 OF 1997

Kalpavruksha Charitable Trust,
Jaysingpur, Dist: Kolhapur,
through its Managing Trustee
Shri Shantinath Jangonda Patil,
resident of Jaysingpur,
District: Kolhapur. .... Petitioner

- Versus -

1) The Union of India
through the Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.

2) The Deputy Director General of
Health Services, (M.C. Section),
Government of India, Ministry
of Health & Family Welfare,
Nirman Bhavan, New Delhi-11.

3) The Secretary,
Public Health Department,
Government of Maharashtra,
Mantralaya, Mumbai-400 032.

4) The Assistant Commissioner of
Customs, Group VB, Appraising
Group B, New Customs House,
Ballard Estate, Mumbai-400 038.

5) The Assistant Commissioner of
Central Excise and Customs
(Preventive), Sangli Division,
Nagar Road, Sangli-416 416.

6) The State of Maharashtra,
through the Secretary,
Public Health Department,
Mantralaya, Mumbai. .... Respondents

Mr. T.S. Ingale for the Petitioner/Applicant.
Mr. R.V. Desai, Senior Counsel with Mr. Rajinder Kumar for Respondent Nos.1 & 2.
Ms Aparna Vhatkar, Asstt. Government Pleader, for Respondent Nos.3 & 6.
Mr. Ashutosh Mishra i/by Mr. Jitendra B. Mishra for Respondent No.5.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : DECEMBER 13, 2016

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. By this petition under Article 226 of the Constitution of India, the petitioner challenges a decision dated 23-9-1997 of respondent No.2 and a demand notice issued by respondent

No.4 on 28-10-1997.

2. The contention raised before us by Mr. Ingale, appearing for the petitioner, is that the impugned decision is *ex facie* illegal inasmuch as the Customs Notification No.64/88, dated 1-3-1988, issued under Section 25(1) of the Customs Act, 1962 was fully complied with. The second respondent failed to consider that the petitioner is a Trust. It is a charitable Trust running a medical diagnostic centre. There is no question of indoor patient treatment facility in the diagnostic centre. The outdoor patients referred for free treatment to the petitioner-Trust at its centre by the Civil Hospital or any other hospital in the locality were indeed provided treatment free of charge. As per the prescribed norms, some patients have been charged nominally. The Charity Commissioner of the State was satisfied that the petitioner is indeed rendering a public service. The diagnostic centre is administered purely on charitable grounds. It is running in losses.

3. In any event, it is submitted that the terms and

conditions of the Notification having been complied with, the State Medical Health Authorities satisfying themselves that the petitioner is utilising imported equipments for the diagnostic centre, then, the demand cannot be sustained.

4. On the other hand, the contesting respondents, relying on the statements made in the affidavit in reply, would submit that this is a clear case of violation of the terms and conditions on which the exemption can be granted or claimed. Once it is a conditional exemption, then, there is no escape from the demand. The writ petition should be dismissed.

5. For appreciating these contentions, we must refer to some basic facts.

6. The petitioner claims to be a Public Charitable Trust and registered under the Bombay Public Trust Act, 1950. It runs a charitable hospital according to it, but styled as Kalpavruksha Diagnostic and Research Centre at Miraj, District Sangli. The first respondent is the Union of India whereas the second

respondent is the Director General of Health Services, Government of India. The third respondent is the Secretary, Public Health Department of the Government of Maharashtra. The respondent Nos.4 and 6 are the Officers exercising powers under the Customs Act, 1962 and the Central Excise Act, 1944.

7. After setting out the aims and objectives of the Trust and the relevant terms and conditions of the exemption Notification, it is stated that the petitioner imported certain medical equipments. The petitioner applied to the Government of India for permission to import these items free of customs duty by availing of this exemption Notification. The second respondent duly verified the application and scrutinised the documents submitted by the petitioner. It permitted the Trust to import these medical equipments for its diagnostic centre by availing of the exemption Notification.

8. On importing, a machinery was duly installed. After some time, the petitioner was in need of some spare parts, some of which were not manufactured in India. Since exemption was

granted while importing the machine, the petitioner-Trust, on 2-2-1990, decided to import the spares, namely, X-Ray Tube from Japan and applied for grant of Customs Duty Exemption Certificate from the second respondent. The second respondent had insisted at the time of import for execution of a Bond favouring the President of India. The Bond was executed for the amount mentioned in the same on 4-8-1993. Annexure-D is a copy of this Bond/Undertaking. When the petitioner imported the X-Ray Tube (spare), it furnished a Bank Guarantee favouring the Department.

9. The petitioner states that all the terms and conditions of the exemption Notification were satisfied. In that regard, Mr. Ingale, appearing on behalf of the petitioner, emphasised that once the equipment is covered by the exemption Notification inasmuch as it is a hospital equipment, then, relying on the explanation to this Notification, which is inclusive, it is apparent that an institution rendering diagnostic treatment is covered by this Notification. Therefore, there was no warrant in demanding any customs duty. The requisite

information was throughout provided. Nothing was held back and rather the third respondent certified that the petitioner is indeed rendering charitable services and has treated certain patients free of charge at its diagnostic centre.

10. Mr. Ingale submits that earlier a writ petition was filed because the respondents, and particularly respondent Nos.4 and 5 were seeking to enforce their orders and directions. That is how this Court permitted the petitioner to make a representation and directed the concerned authorities to consider it in accordance with law. It is upon this direction being complied with, that on 23-9-1997, firstly, the second respondent rejected the request so as to enable the petitioner to avail of the benefit of the exemption Notification and thereafter, based on that the fourth respondent sought to recover the differential customs duty on the imported X-Ray Tube and also to enforce the Bond.

11. With the assistance of Mr. Ingale, we have perused the writ petition and the annexures thereto. The Notification,

copy of which is at pages 46-47 of the paper-book, is issued under Section 25(1) of the Customs Act, 1962, in public interest. It exempts all equipments, apparatus and appliances, including spare parts and accessories thereof, but excluding consumable items, 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 para 1 of the Notification. Then, there are terms and conditions which would envisage that the imported equipment/hospital equipment is required because it is not manufactured in India and that it is necessary for running or maintenance of the hospital. The Table points out as to how hospitals, as may be certified by the Ministry of Health and Family Welfare, to be run or substantially aided by charitable organisation as may be approved, from time to time, by that Ministry would be eligible. However, the terms do not end there for serial No.2 below the Table reads as under:-

> *"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 Cls. (a) and (b).”

12. It may be true as Mr. Ingale would contend that the exemption takes within its import as a hospital even an institution of diagnostic treatment. However, the conditions as stipulated in the Notification and particularly inserted below the Table have to be satisfied. At the time of import, there may have been a certificate which enables availing of the exemption, but it cannot be inferred from that alone that the terms and conditions are complied with. An Undertaking has been given and in clearest terms. It states to produce to the satisfaction of the

Assistant Collector of Customs within a period of three months or such further time, as may be granted by him, the requisite documents. The authorities found that the hospital equipment was indeed installed. Thereafter, the relevant deeds and other particulars were called for. The office of the Deputy Director of Health Services, Kolhapur Circle, issued a certificate and which states that the institution provided diagnostic, preventive or curative care free to 2130 patients out of total out patients attendance in the year 1994-1995, which comes to more than 46%. Thereafter, what one finds is that the said certificate was forwarded to the Government of India (the second respondent). The communication to that effect is to be found at page 63 of the paper-book. Once again there is a reminder issued. The details were provided but having been served with the demand and stating therein that the OPD patients treated free in the hospital of the petitioner during 1994, 1995 and 1996 was 11%, 9% and 13% respectively, which is much below the prescribed minimum level, and there are no indoor patients treatment facilities in the hospital, which is also an undisputed fact, that the petitioner approached this Court. That is how this Court allowed them to make a representation so as to avail of the benefit of the exemption Notification and resist the demand.

13. However, the impugned communications have been issued and demand raised on the footing that diagnostic centres, without indoor patient treatment facilities, are not eligible for customs duty exemption. That is, to our mind, a valid and sound reason. It is consistent with the wording of the Notification. One cannot only take advantage of the fact that an institution of diagnostic treatment can be termed as a hospital and once certified by the Ministry of Health and Family Welfare, they are entitled to avail of the exemption Notification but in each case it must not only be providing medical, surgical or diagnostic treatment irrespective of the patients' caste, creed, race, religion or language but must give free treatment, on an average, to at least 40% of all their outdoor patients and free to all indoor patients belonging to families with an income of less than Rs.500/- per month, and keeping for this purpose 10% of the hospital beds reserved for such patients. On the own showing of

the petitioner, it does not satisfy these conditions. It does not have any facility for treating indoor patients. There are no admissions against that category. Even the treatment provided, namely, the diagnostic treatment is not of the required percentage, as certified by the Director General.

14. To our mind, from a reading of the annexures to the writ petition it is apparent that the demand has been raised after a factual satisfaction. That satisfaction is based on inspection, scrutiny and verification of the records and documents provided by the petitioner itself. Once such is the basis for the demand and we do not find that to be vitiated by perversity or any error of law apparent on the face of the record, then, there is no warrant to interfere in writ jurisdiction. A conditional exemption is available and can be availed of on tendering proof of satisfaction of the terms and conditions thereof, else the exemption cannot be availed of. In the instant case, all the terms and conditions of the exemption Notification were made known and voluntarily accepted by the petitioner. It even executed a Bond and also submitted a Bank Guarantee and as noted by us

herein-above.

15. Once being aware of the clear stipulations in the exemption Notification, but failing to satisfy them, the petitioner was not entitled to any exemption. The demand is rightfully raised and deserves to be confirmed. The writ petition is accordingly dismissed. Rule is discharged but without any order as to costs.

16. In view of dismissal of the writ petition, Civil Application No.6180 OF 1998 also stands dismissed.

17. The interim relief stands vacated forthwith.

(B.P. COLABAWALLA, J.) (S.C. DHARMADHIKARI, J.)