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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 5149/2021**

GURCHARAN SINGH

.....Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. Siddharth Bamba and Mr. Chirag
Ahluwalia, Advs.

versus

MINISTRY OF FINANCE (DEPARTMENT OF REVENUE),
GOVERNMENT OF INDIA

.....Respondent

Through: Mr. Zoheb Hossain, Sr. Standing
Counsel for Revenue.
Mr. GD Lohani, Joint Secretary,
Ministry of Finance, Government of
India.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

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06.05.2021

[Court hearing convened *via* video-conferencing on account of COVID-19]

W.P.(C) 5149/2021 & CM No. _____/2021 (to be numbered)

1. Yesterday, i.e., 05.05.2021, we had passed a short order. The object and purpose, behind passing the order dated 05.05.2021, in effect, was to nudge the respondent to take a decision which, in the present circumstances, would ameliorate the difficulties faced, not only by the petitioner, but also by the persons, who are similarly circumstanced.

2. The order passed on 05.05.2021, being brief, is extracted hereafter:

“1. Via the captioned writ petition, a challenge has been laid to the notification bearing no. 30/2021-Customs, dated 01.05.2021, issued by the respondent.

2. This writ petition represents one of those rare writ actions, whereby, a notification issued in the realm of a tax statute has been, inter alia, assailed under Article 21 of the Constitution.

2.1. That tax is an exaction by the State is well known. That its levy and collection, ordinarily, does not encompass equity, is also, well known. But, presently, we are living in difficult times and, therefore, perhaps, the petitioner has invoked Article 21 of the Constitution.

3. Yesterday, i.e., 04.05.2021, we had requested the learned Additional Solicitor General of India [in short “ASG”] to join the proceedings.

3.1. Today, Mr. Chetan Sharma, the learned ASG, along with Mr. Zoheb Hossain has joined the proceedings. Yesterday, i.e., on 04.05.2021 we had also noticed [a fact brought to our attention by Mr. Sudhir Nandrajog, learned senior counsel, who appears on behalf of the petitioner], that the respondent had issued a notification bearing no. 4/2021 - Customs dated 03.05.2021.

4. We are informed by the learned ASG that this notification has exempted imposition of IGST on oxygen concentrators imported by the State Government, or via any entity, relief agency or statutory body, authorised by the State Government. This exemption, according to the learned ASG, is, presently, available till 30.06.2021.

5. We are of the view that since the respondent has gone this far, it could move further, and extend the exemption, to even individuals, to enable them to obtain imported oxygen concentrators by way of a gift, albeit, without having to pay IGST.

6. Both the learned ASG and Mr. Zoheb Hossain have stated before us that they will revert with instructions.

7. Accordingly, list the matter on 06.05.2021.

8. Learned ASG is requested to place the order passed by us today before the Hon’ble Finance Minister, Government of India.”

3. Mr. Zoheb Hossain, who appears on behalf of the respondent, says that the matter is still under consideration.

3.1 We may also note that Mr. G.D. Lohani, Joint Secretary, Ministry of Finance, Government of India has joined the proceedings today. We have heard Mr. Lohani, as well, for a brief while.

4. Since, we were told, that no final decision had been taken; liberty was given to the petitioner, when the matter was called out in the first instance, to file a formal application, with this Court, for issuance of necessary interim directions. Accordingly, the matter was passed over.

4.1. The petitioner has, accordingly, filed the captioned application; which is, unnumbered, as it has been directly filed with the Court Master, albeit, via email.

4.2. The captioned application is taken on record. The Registry is directed to number the same.

5. Mr. Sudhir Nandrajog, learned senior counsel, who appears for the petitioner, seeks ad-interim direction for enabling import of the subject oxygen concentrator, as, in its clearance, impediments are likely to arise at the customs barrier, on account of the impugned notification. Mr. Nandrajog submits that the oxygen concentrator should be cleared, pending a final decision in the instant writ petition, upon the petitioner depositing, with the Court, an amount, equivalent to the IGST presently payable in consonance with the provisions of the impugned notification.

5.1. Mr. Nandrajog says that the petitioner will deposit the requisite amount with the Registry of this Court within the next three days.

6. Given the foregoing circumstances, we are inclined to issue notice both, in the writ petition, as well as in the captioned application. It is ordered accordingly.

6.1. Mr. Zoheb Hossain accepts service on behalf of the respondent.

6.2. A counter-affidavit and/or reply will be filed within one week from today. Rejoinder(s) thereto, if any, will be filed before the next date of hearing.

7. In the meanwhile, in case, the oxygen concentrator, sought to be imported by the petitioner, reaches the concerned customs barrier, the same will be released, subject to the petitioner depositing, with this Court, an amount equivalent to IGST presently payable by him, in accordance with the impugned notification, within three days from today.

7.1. Upon the petitioner depositing the said amount, the Registry will invest the same in an interest-bearing fixed deposit, maintained with a nationalised bank. Intimation, as regards the same, will be furnished to the respondent *via* its counsel, i.e., Mr. Zoheb Hossain.

7.2. Needless to add, if there are any other formalities, connected to the clearance of the subject goods, i.e., the oxygen concentrator, required to be fulfilled, the same shall also be complied with by the petitioner.

7.3. Since the requisite IGST will be deposited by the petitioner, with this Court, the respondent will not levy a charge qua the same on the importing agency, i.e., FedEx Corporation.

8. Furthermore, we are also inclined to appoint Mr. Arvind Datar, learned senior counsel, as Amicus Curiae, to assist the Court, in the instant matter. It is ordered accordingly. Mr. Siddharth Bamba will ensure that the case papers, along with copies of the orders passed, up until now, are also served on Mr. Arvind Datar *via* email.

9. List the matter on 18.05.2021.

RAJIV SHAKDHER, J

TALWANT SINGH, J

MAY 6, 2021/pmc

[Click here to check corrigendum, if any](#)