

IGST on import of oxygen concentrators as gift for personal use is unconstitutional

The Hon'ble Delhi High Court in ***Gurcharan Singh v. Union of India & Ors. [W.P. (C) 5149/2021, dated May 21, 2021]*** quashed the notification imposing Integrated Goods and Services Tax ("IGST") on oxygen concentrators which are imported by individuals and are received by them as gifts i.e. free of cost for personal use, without a government agency. Held that, an artificial, unfair and unreasonable distinction has been drawn between persons, who import oxygen concentrators through a canalizing agency and those who obtain imported oxygen concentrators as gifts, for personal use. Such imposition of IGST is violative of Article 14 of the Constitution and is unconstitutional.

Facts:

Gurcharan Singh ("**the Petitioner**") is 85 years old COVID patient, has filed this petition against the imposition of IGST on the import of the oxygen concentrator which has been gifted to the Petitioner for personal use, by his nephew, who is located in New York, U.S.A.

The Ministry of Finance ("**the Respondent**") issued ***Notification no. 4/2015-2020, dated April, 30, 2021***, by DGFT, which amended para 2.25 of its Foreign Trade Policy, 2015-2020 ("**FTP**") to permit import of oxygen concentrators that resulted in exemption from Basic Custom Duty on such items vide ***Notification No. 28/2021-Customs dated April 24, 2021***. Afterwards, the ***Notification No. 30/2021-Customs, dated May 1, 2021*** ("**Impugned Notification**"), was issued whereby, IGST on oxygen concentrators imported by individuals for personal use, that are supplied free of cost, was scaled down to 12% from 28%.

However, another notification, i.e., ***Ad hoc Exemption Order No. 4/2021-Customs, dated May 3, 2021*** ("**Exemption Order**"), was issued, which exempted IGST on oxygen concentrators imported for the purpose of COVID relief, subject to certain conditions that included, where the importer is the State Government or, any entity, relief agency or statutory body, authorised in this regard by any State Government ("**canalising agency**") till June 30, 2021, that stood in contrast to oxygen concentrators which were imported for commercial use.

The Petitioner, has asserted that the imposition of tax is discriminatory, unfair, and unreasonable and impinges upon the Petitioner's right to life and health.

Issues:

- Whether the Respondent's action, of imposing IGST on oxygen concentrators, which were directly imported by individuals, albeit free of cost, without the aid of a canalising agency is violative of Article 14 of the Constitution?
- Whether Article 21 of the Constitution, which includes the right to health and affordable treatment, would require the Respondent to demonstrate that levy and collection of the impugned tax in times of pandemic, war, famine, floods, and such like conditions would subserve public interest?
- Whether Article 21 of the Constitution, imposes on the Respondent, a positive obligation to provide adequate resources for protecting and preserving the health and well-being of persons residing within its jurisdiction?

Held:

The Hon'ble Delhi High Court in ***W.P. (C) 5149/2021, dated May 21, 2021*** held as under:

- Observed that, there is no justification in excluding individuals from the purview of Exemption Order only on the ground that they received oxygen concentrators directly as gifts from their friends and/or relatives located outside the country, whereas it exempted the imposition of IGST on oxygen concentrators that were imported through a canalising agency.
- Thus, is violative of Article 14 of the Constitution on the ground that an artificial, unfair and unreasonable distinction has been drawn between persons, who are similarly circumstanced as the Petitioner and those who import oxygen concentrators through a canalizing agency. Those who obtain imported oxygen concentrators as gifts, for personal use, cannot also be equated with those who import oxygen concentrators for commercial use.
- Further observed that, what is, to be borne in mind, is not the benefits the Respondent has granted up until now, but the action of the Respondent, in not treating, even-handedly, persons, who ordinarily should fall in the same class users. The distinction, drawn, is manifestly arbitrary, unreasonable, unfair and wholly unsustainable.

- Stated that, the Courts and the Respondent have to adopt a humanistic approach, which, is a facet of Article 21 of the Constitution. The failure to do so both, by the Court and by the Respondent, would lead to an unbridgeable gap between law and justice, resulting in, disruption of social order. Therefore, if the Respondent expected its action to be sustained, it ought to have demonstrated that the revenue it would possibly garner, as IGST in respect of oxygen concentrators which are imported in the circumstances, would be appreciably more than the cost incurred to administer the collection of IGST on such transactions.
- Opined that, the Respondent could have, if it intended to treat, persons who are similarly circumstanced as the Petitioner, at par with those who fall under the Exemption Order, extended the exemption to them as well and withdrawn the same once normalcy was restored. The Respondent should relent, or at least lessen the burden of exactions which take the form of taxes, duties, rates and cess, in the very least, in times of war, famine, floods, epidemics and pandemics since such an approach allows a person to live a life of dignity which is, a facet of Article 21 of the Constitution.
- Quashed the Impugned Notification.
- Directed the Petitioner or persons, who are similarly circumstanced, to furnish a letter of undertaking to the authority concerned, stating that the oxygen concentrator is for personal use and not for commercial usage, to obviate misuse of the oxygen concentrators.

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