

Sri Ram Impex Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-17-2000

Reported in : (2001)(127)ELT172Tri(Mum.)bai

Appellant : Sri Ram Impex

Respondent : Commissioner of Customs

Judgement :

1. The question for consideration in this appeal is whether catheters imported by the appellant are accessories of haemodyliser, and hence entitled to the benefit of entry 320 of the Table to Notification 16/2000. The entry exempts, inter alia medical equipment specified in list 28 of the notification, and accessories of such medical equipment.

Haemodylisers form part of list 28. Therefore, accessories of haemodyliser are exempt from duty. In the order impugned in this appeal, the Commissioner (Appeals) confirmed the order of the Assistant Commissioner that these catheters were consumables and therefore not in the nature of accessories of haemodyliser.

2. A haemodyliser filters the blood of the person connected to it and returns that blood to his body. It is used to perform the function of the kidney and is used in case of repeat failure. The catheter is put simply, is the pipe to carry the blood from the patient to the haemodyliser, or the pipes that return the filtered blood to the patient. It is not in dispute that the catheter in effect would only be capable of one dias use and has to be disposed of thereafter. This is no doubt why it has

been described as a consumable although it does not get consumed. However, we fail to see why by the fact of an article being consumable by itself renders it not to be an accessory. All moving parts of machinery are consumables in the sense that they wear out in use. For example, blades of wind screen wipers fitted to a car are consumables in that they wear out or get hardened and are to be replaced periodically. That does not render them not capable of being considered as accessories of the motor vehicles.

3. The other reason furnished for not considering catheters as accessories is that they do not contribute to the efficiency or effectiveness of a piece of equipment without changing its basic function. The Supreme Court in its judgment in *Mehra Bros. v. Joint Commercial Officer* - 1991 (51) E.L.T. 173 had laid down the test to determine whether the article is an accessory or not. It said, "The correct test to determine whether an article is an accessory or not is whether the article or articles in question would be adjunct or accompaniment or an addition for the convenient use of another part of the main article or adds to the beauty, elegance or comfort for the use of an article, or is supplementary or secondary to the main or primary importance." It cannot be disputed that the catheter is an unavoidable adjunct or accompaniment to the haemodialyser. Unless the blood is carried to the haemodialyser for filtration and returned to the patient, in both cases through the catheter, the haemodialysers cannot function.

There will be nothing for it to dialyse. To that extent, therefore, the catheter should be considered an adjunct or accompaniment for the convenient use of the haemodialyser. The fact that the Director General Health Services in its opinion dated 24-2-1994 to M/s. Intra Medica Exim (P) Ltd., New Delhi has informed it after consulting an expert in nephrology, that catheters of the kind specified in the letter are accessories of haemodialyser lends weight to this conclusion. The goods were therefore entitled to the benefit of the notification.

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