Biogenics (India) Ltd. Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-28-2003

Reported in : (2003)(157)ELT289Tri(Mum.)bai

Judge : S T Gowri, A Wadhwa

Appellant : Biogenics (India) Ltd.

Respondent : Commissioner of Customs

Judgement :

1. The question for consideration in this appeal is whether the appellant was entitled to the benefit of the exemption contained in Notification 208/81 in respect of the freeze dryer imported by it. In the order impugned in this appeal, the Commissioner (Appeals) has confirmed the decision of the Assistant Commissioner denying the benefit of the exemption on the ground that the goods have not been shown to be life saving medicine as specified in the Notification.

2. The appellant is absent and unrepresented despite notice. We have read the memorandum of appeal and other papers and heard the Departmental Representative.

3. The Notification exempts from duty life saving drugs specified in the schedule to it and drugs or medicines or equipment not specified therein, which were certified by the specified officials of the office of the Director General, Health Services, New Delhi, in each individual case to be life saving drug, medicine, equipment,

accessories or spare part and such certificate be produced at the time of clearance. The appellant had produced before the Commissioner (Appeals) a certificate issued by one of the specified officials of the Director General, Health Services, New Delhi. The Commissioner (Appeals) has rejected the certificate on the ground that it does not conform to the requirement contained in the Notification. On a reading of the certificate, we are of the view that he is right. The certificate does not state that the lyophiliser, which is another name for the freeze dryer, imported by the appellant is itself a life saving equipment. All that it says is that the lyophiliser is "usually required for manufacture of sera and vaccines." Even if it is assumed that it is essential for the manufacture of sera and vaccines, it does not follow that it is by itself a life saving equipment. The requirement contained in the Notification has thus not been complied with.