

**Bayer Diagnostics Vs. Commissioner of Customs**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Nov-03-2003

**Reported in :** (2004)(166)ELT127Tri(Mum.)bai

**Judge :** S T Gowri, K Kumar

**Appellant :** Bayer Diagnostics

**Respondent :** Commissioner of Customs

**Judgement :**

1. The common question for consideration in these appeals is the eligibility to the exemption contained in Entries 64 & 65 of the Table to notification 65/88. The Commissioner has passed his order in pursuance of the order of the Commissioner (Appeals) to whom the Tribunal had remanded the matter to consider whether the exemption contained in these two entries were available to the goods that the appellant imported.

2. Entry 64 of the Table to the notification exempts from duty Auto Analyser for Bio-chemistry with automatic printer, (component parts covered by notification 65/88). Entry 65 exempts from duty Photometric Auto Analyser. We are concerned in these appeals with two goods, the first is Seac CH 100 Computerised Semi-AutoAnalyser. The importer has claimed the benefit of the exemption contained in Entry 64 and the benefit has been denied on the ground that it is not the Autoanalyser but a semi AutoAnalyser. Similarly, the benefit of the exemption contained in Entry 65 has been denied of parts of Gluco-meter II with memory

blood Glucometer imported by the appellant.

3. Subsequent to the order of the Tribunal, the departmental authorities conducted some enquiries as to the distinction between an AutoAnalyser and Semi AutoAnalyser. The Assistant Commissioner has relied upon the reports of Dr Bipin Shah, a qualified pathologist, Mr Samar Pal, branch manager of Systronics working in the field analytical instruments and Brig (Dr. N.P. Sharma, a pathologist working in the Gujarat Research and Medical Institute. All the three were unanimous in their opinion that in a data analyser multiple tests can be done automatically. Brig N.P. Sharma, specified a number; of features of AutoAnalyser which are absent in the semi AutoAnalyser. Among these are assertion and test samples reagents in measured quantity automatically; entire test procedures are done by the machine without manual efforts; cleaning and fault detection including any defect or test valued greater sensitivity number of tests being carried out many times more than semi AutoAnalyser. We are satisfied that these opinions have been tendered by persons who are considered to be experts. The counsel for the appellant is not able to rebut these opinions by any other technical evidence. His entire argument is that the word AutoAnalyser would cover within its scope the semi AutoAnalyser for which he relies upon the meaning of the word AutoAnalyser in the Random House Compact Unabridged Dictionary to mean "a device that performs chemical analysis automatically" and in the Word Book Dictionary to mean "an electronic or mechanical device that automatically analyses a thing." He also relies upon the Tribunal in K. Mohan & Cos CC 1984 (15) ELT 430 which considered the meaning of the term "automatic." 4. The question really is not whether the semi autoanalyzer with which we are concerned with is automatic or not. No doubt, it performs some of its functions automatically. After the blood with reagents required to separate serum it analyses the sample. However, we note that both entries refer not to "AutomaticAnalyser" but "uto Analyzer" (emphasis added). Clearly the term "AutoAnalyser" is a term that is used in the industry for defining a particular kind of analyser. This is in fact what the pathologists the department consulted have opined. We are therefore satisfied that there is clearly a distinction between the "AutoAnalyser" and "Semi-Autoanalyser" and the appellant has not succeeded in showing that the machines under consideration are AutoAnalyser as specified in the notification it is required to do. It is settled law

that terms of the notification should strictly be construed and upto the person claiming the exemption to show that it is entitled to. On merits, therefore, we are not satisfied that a claim has been made out by the appellant for exemption. We make it clear that we have not considered the question as to whether the requirement contained in Sub-section (2) of Section 27A of the Act that the incidence of duty has been passed has been satisfied.

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