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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-02-2006

Judge : S T S.S., K Kumar

Appellant : Span Diagnostics Ltd.

Respondent : Commissioner of Customs

Judgement :

1. Heard both sides. In this appeal, the appellants are an assessee of Central Excise engaged in the manufacture of Diagnostic Test Kits one of such kits being manufactured by them is AUSTRAGEN LATEX for detection of Hepatitis B. The Diagnostic agent Aus-tragen Hepatitis B in bulk form is imported and cleared duty-free for the last several years.

2. The appellants imported three litres of Latex and claim exemption under notification 23/98-Cus. Sr. No 46(B) by classifying product under Heading No. 3002.00 in bill of entry No. 7146, dated 16-11-1999. They comply the condition No. 5 applicable to such importers as set out in the Customs (Import of Goods at Concessional Rate of Duly for Manufacture of Excisable Goods) Act, 1996 which was required to be followed. They have in pursuance of this stipulation obtained necessary certifications from the Asst. Commissioner of Central Excise, incharge of their factory. The claim for clearance duty-free before the Asst.

Collector of Customs was denied vide his order dtd. 24-2-1999 on the ground that the Austragen Hepatitis B Latex imported was not eligible to benefit of the

notification and the BE's was held to be assessable to duty under heading 3002. In appeal, Commissioner (Appeals) vide his order dtd. 29-11-1999 upheld the order and the Asst. Commissioner of Customs on the following findings: I find that under Sr. No. 46(A) to Notification No 23/98-Cus., dated 2-6-1998, life-saving drugs or medicines (including diagnostic test kits) specified in list 2 are eligible for duty exemption. Under Sr.

No. 46(B) bulk drugs used in the manufacture of life-saving drugs or medicines at 46(A) of (as specified in list 2) also are eligible for duty exemption. Though serial number 46(A) covers life-saving drugs or medicine (including diagnostic kits), serial number 46(B) covers only bulk drugs used in the manufacture of life-saving drugs or medicines. Therefore, bulk drugs used in the manufacture of diagnostic test kits are not eligible for duty benefit under Notification No. 23/98-Cus., dated 2-6-1998.

(a) that Notification No. 208/81 in force till 16-3-1995 specifically covered at entry No. 43/A Diagnostic Agent for detection of Hepatitis B Antigen under the title 11 (A) life saving drugs or medicines". This entry 43A was inserted by an amendment dated 16-1-1985, this would indicate that "Diagnostic Agent Austragen Hepatitis B for detection of Hepatitis B Antigen" is accepted and were known life-saving drugs and medicine.

(b) Similarly Notification No. 23/94 at Sr. No. 8 exempted bulk drugs used in manufacture of life-saving drugs and this life-saving drugs and medicines was referred to as per heading A to notification 208/81; similarly notification 13/1995, dated 16-3-95 included such goods as in this case under the heading of life-saving drugs and medicines; identical exemptions were granted by notification 36/96-Cus., dated 23-7-1996,11/97-Cus., dated 1-3-1997, 23/98-Cus., dated 2-6-1998 and 20/1999-Cusv dated 28-2-1999. Therefore we find that addition of words including Diagnostic life-saving drugs and medicines was used as an abundant precaution and the Diagnostic test kits were always exempted from duty and known and understood to be life-saving drugs and medicines.

(c) There is force in the pleading of the appellants that reading of the Second Schedule to Drugs and Cosmetics Act entry No. 2 & 5B and Section 3(b)(iv) would

indicate that the said goods are known and understood by the present appellant and the Trade which deals with them as life-saving drugs and medicament. In this view of the matter the goods are to be held to be known and understood as life-saving drugs and medicines. Since there is no specific definition for the term in the said notification. We find no merits in the orders of the lower authority in having denied when the product is understood as a life-saving drugs and medicines in bulk drugs form benefit as to be granted. They import in bulk would be covered under heading 34B as claimed by the appellants. We order accordingly and allow this appeal.

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