

**2019-TIOL-2660-CESTAT-BANG**

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH, BANGALORE**

**Appeal No. C/224/2009-DB**

Arising out of Order-in-Appeal No. 143/2008, Dated: 27.11.2008  
Passed by Commissioner of Customs, Bangalore (Appeals)

**Date of Hearing: 18.07.2019  
Date of Decision: 29.07.2019**

**M/s MANIPAL HEALTH SYSTEMS PVT LTD  
98, RUSTAM BAGH AIR PORT ROAD BANGALORE  
BANGALORE KARNATAKA - 560017**

**Vs**

**COMMISSIONER OF CUSTOMS  
BANGALORE CUS  
C.R. BUILDING, QUEENS ROAD  
P B NO 5400, BANGALORE  
KARNATAKA - 560001**

**Appellant** **Rep** **by: None**  
**Respondent Rep by: Mr Madhup Sharan, Asst. Commissioner, AR**  
**CORAM: S S Garg, Member (J)**  
P Anjani Kumar, Member (T)

**Cus** - Assessee have imported 5 sets of Aespire, 2 anesthesia workstation and 6 sets of Aestiva, falling under CTH 90192090 and claimed the benefit of exemption under Notfn 21/02-Cus as amended - The said exemption is granted to ventilators used with anesthesia equipment - The Department contended that the impugned goods were anesthesia workstation and not ventilators as claimed by assessee and hence the benefit of the Notification was not available and the assessee is required to pay a differential duty along with interest and also that the impugned goods needs to be classified under CTH 90189041 - We find that the technical opinion given by the experts in the field indicated that the impugned machines that the ventilators are inbuilt in the anesthesia station and can provide artificial ventilation - When the Notification provides exemption to ventilators, the same shall be applicable in spite of the fact that whether or not they have additional features - It is not mentioned in the Notification that exemption is available to only ventilators - Such a constrictive interpretation would defeat the purpose of the exemption given in the Notification - As it is found in the case of *Datex Ohmeda India Pvt. Ltd.* **2010-TIOL-146-CESTAT-BANG**, that technological advancement should not become an impediment to the avilment of benefit as held by Supreme Court in case of *Lekhraj Jessumal & Sons* - By following the ratio of this Bench decision, appeal of assessee is allowed: CESTAT

**Appeal allowed**

**Case laws cited:**

***Kerala State Electronics Development Ltd. Vs CC, Madras [2002 (147) ELT 1274]... Para 2***

***Collector of Customs & Central Excise Vs Lekhraj Jessumal & Sons [1996 (82) ELT 162 (SC)... Para 5***

***CC ( I & G), New Delhi Vs Datex Ohmeda (India) Ltd. - 2009-TIOL-312-HC-MUM-CX... Para 5***

***Datex Ohmeda (India) Ltd. Vs CC, Bangalore - 2010-TIOL-146-CESTAT-BANG... Para 5***

***Wipro GE Medical Systems Pvt. Ltd. Vs CC, Bangalore - 2010-TIOL-206-CESTAT-BANG... Para 5***

**FINAL ORDER NO. 20602/2019**

**Per : P. ANJANI KUMAR**

The appellants, M/s Manipal Health Systems Pvt. Ltd., have imported 5 sets of Aespire, 2 anesthesia workstation and 6 sets of Aestiva, 3 anesthesia workstation falling under CTH 90192090 and claimed the benefit of exemption under Notification No. 21/02-Cus dated 01.03.2002 as amended. The said exemption is granted to ventilators used with anesthesia equipment. The Department contended that the impugned goods were anesthesia workstation and not ventilators as claimed by the appellants and hence the benefit of the Notification was not available and the appellants required to pay a differential duty of Rs.21,06,270 along with interest and also that the impugned goods needs to be classified under CTH 90189041. A SCN was issued and was confirmed by the OIO dated 04.04.2008. The same was upheld by the Commissioner (Appeals) vide impugned order No. 143/2008 dated 27.11.2008. Hence, the present appeal.

2. Learned Counsel for the appellants submits that they have imported equipment with integrated functionality of anesthesia delivery and ventilation; such equipment performs dual functions of ventilator and anesthesia apparatus and that ventilators other than those used with anesthesia are also eligible for concessional Customs Duty as per the Notification. On perusal of the Notification, it is cleared that the Notification exempts ventilator on a standalone basis and ventilator used with anesthesia apparatus; the function of the legislature is not only to extend the benefit to mere ventilators but also to such sophisticated equipment which have integrated function of anesthesia and ventilator insertion of Sl. No. 363 (A), List 37 (78) of the Customs Notification makes the legislative intent very clear; and merely because of the equipment is technologically advanced with composite/integrated functionality of both anesthesia and ventilation, the exemption cannot be denied. Learned Counsel further submits that they have submitted the expert opinion in support of the case given by Dr. P Saraswathi Devi, Professor and Head of Anesthesiology and Palliative Care and Dr. Shahajananda, Professor and HOD, Department of Anesthesia. Learned Counsel relied upon the decision in the case of *Kerala State Electronics Development Ltd. Vs CC, Madras [2002 (147) ELT 1274]* and this Bench's Final Order No. 21137/2018 dated 14.08.2018 in Appeal No. C/322/2009.

3. Per contra, the Learned AR for the Department reiterated the findings of OIA and OIO.

4. Heard both sides and perused the records of the case.

5. On going through the Notification, we find that the exemption is applicable to standalone ventilators and ventilators used with anesthesia apparatus. We find that the technical opinion given by the experts in the field indicated that the impugned machines that the ventilators are inbuilt in the anesthesia station and can provide artificial ventilation. When the Notification provides exemption to ventilators, the same shall be applicable in spite of the fact that whether or not they have additional features. It is not mentioned in the Notification that exemption is available to only ventilators. Such a constrictive interpretation would defeat the purpose of the exemption given in the Notification. As we have found in the case of *Datex Ohmeda India Pvt. Ltd.*, technological advancement should not become an impediment to the availment of benefit as held by Hon'ble Supreme Court in the case of *Collector of Customs & Central Excise Vs Lekhraj Jessumal & Sons [1996 (82) ELT 162 (SC)]*. By following the ratio of this Bench decision in the Final Order cited supra and the following cases, we allow the appeal of the appellant:

- *CC ( I & G), New Delhi Vs Datex Ohmeda (India) Ltd. - 2009 (241) ELT 359 (Tri. Del.)*  
= **2009-TIOL-312-HC-MUM-CX**

- *Datex Ohmeda (India) Ltd. Vs CC, Bangalore - 2010 (252) ELT 289 (Tri. Bang.)*  
= **2010-TIOL-146-CESTAT-BANG**

- *Wipro GE Medical Systems Pvt. Ltd. Vs CC, Bangalore - 2010 (253) ELT 234 (Tri. Bang.)* = **2010-TIOL-206-CESTAT-BANG**

- *Final order No. A/90651/17/SMB dated 02.03.2017 passed by CESTAT, Mumbai*