

**(2015) 08 SC CK 0135**

**In the Supreme Court Of India**

**Case No : C.A. Nos. 1174 and 3202 of 2006**

Commissioner of Customs

APPELLANT

Vs

Ge Be Ltd. and Others

RESPONDENT

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**Date of Decision : 06-08-2015**

**Acts Referred:**

**Citation : (2015) 322 ELT 785 : (2015) 9 SCALE 116**

**Hon'ble Judges : A.K. Sikri, J; Rohinton Fali Nariman, J**

**Bench : Division Bench**

**Final Decision : Dismissed**

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## **Judgement**

1. The issue involved in these appeals is whether various imported ultrasound systems imported by the Respondents herein are covered by exemption Notification No. 16/2000 -Cus : MANU/CUST/0037/2000 dated 1.3.2000. In C.A. No. 1174 of 2006 the items imported are medical probes whereas in C.A. No. 3202 of 2006 the items imported are ultrasound systems, probes, and their parts and components. The common question that arises for decision is whether the exemption is available for Ultrasonic Equipments (A-scan/pacchy meters) to persons like the Respondents who import various systems having not merely the feature of A scan, but the feature of B scan and M scan as well.

2. By the order in original in both the cases, the Commissioner has referred to a history of various exemption Notifications dealing with the same systems. Ultimately, the exemption Notification of 2000 was held to be restricted only to a specific type of ultrasound system, namely, A scan and if it had additional feature, such as B scan and M scan, those were excluded by implication. CESTAT in the impugned judgment has reversed this finding and has come to the conclusion that systems having additional features would not be denied the exemption.

3. We have been shown in some detail the judgment of the Commissioner as well as CESTAT.

4. We find that a little explanation is necessary to understand what exactly ultrasound scanners having A, B and M mode scan mean. The Commissioner's order in both appeals explained these modes and states that A mode is otherwise called an amplitude mode by which sound waves are transmitted through the probe into the body and different tissues and structures in the said body are either reflected or absorbed -by these waves depending on their characteristics. The reflected waves are received by the transducer which generates an electrical signal depending on the intensity of the wave.

5. B mode is also known as the brightness mode. In this mode, an ultrasound system electronically maps the intensities of reflected waves into patterns of black and white based on a grey scale on CRT monitors.

6. The M mode is also known as the motion mode. The reflected sound wave signals are plotted on a time line. The transducers then generate sound waves from an electrical signal from reflected sound waves and finally this comprises of arrays of peizo-electric crystals interconnected to electrical systems.

7. In order to better understand what exactly is the subject matter of exemption in the Notification dated 1.3.2000, a foray into the history of this Notification becomes a little important. All these Notifications are made under Chapter 90 of the Customs Tariff dealing with the import of medical equipments and their parts. The earliest Notification i.e. the Notification of 27.04.1988 made under Customs Tariff 90, describes the equipment covered by it as sight saving equipment. Item 4 of the table of this Notification is a little important and reads as follows: "Ultrasonic Equipment (A scan/B scan/pacchy meter/cleaners." It is important to note that for the purposes of this Notification the ultrasonic equipment that could claim exemption under it could either be A scan or B scan or pacchy meters or cleaners.

8. In a similar Notification dated 16.03.1995, a reading of the said Notification shows that the only difference is that whereas the earlier Notification of 1988 was restricted to sight saving equipment, the said restriction has now been removed. Insofar as item 4 is concerned, it continues exactly as before.

9. We were cited a tariff conference conclusion of 1996 which clarified the scope of the second Notification of 16.03.1995 as follows:

"Conference Conclusion: The issue placed before the Conference related to exemption of duty to Ultra Sound Scanners under Notification No. 57/95-Cus (SI. No. 4). The doubt has arisen in view of the fact that the earlier notification had omitted the exemption to sight saving equipments by speciality including this form in the body of the notification. The Conference felt that since the present notification does not incorporate any such qualification or restriction exemption should be available as long as the goods are covered by the notification."

10. Two other Notifications follow this Notification, namely Notification dated 02.06.1998 and 28.02.1999. On a cursory reading of the aforesaid notifications it

becomes clear that Entry No. 4 is now changed and reads as under:

"(4) Ultrasonic Equipment (A scan/Pachy meter)".

11. On a reading of the aforesaid Notifications it becomes clear that the exemption granted earlier has been enlarged in one respect. It has been enlarged insofar as the equipment that is imported need not be sight saving equipment. It is, however, narrowed insofar as the particular equipment that is to be exempted is concerned - B scan and cleaners are now conspicuous by their absence in two Notifications of 1998 and 1999.

12. This brings us to the Notification with which we are immediately concerned on the facts of the present appeal. The Notification dated 01.03.2000 being important for the determination of this appeal insofar as it relates to ultrasonic equipment, is set out herein below:

"Ultrasonic equipment (A scan/Pachy meter)".

13. It will be noticed that this Notification only continues the scheme of the provision of the last two Notifications which as we have already noticed restricts ultrasonic equipment only to A scan and pachy meters. We have also been referred to a subsequent Notification dated 01.03.2001, which Notification continues Entry 4 as it is but reintroduces the fact that the equipment should be sight saving equipment, which was contained in the first Notification of 1988.

14. Shri Yashank Adhyaru, learned senior Advocate appearing on behalf of the Revenue has contended before us that the Commissioner is right in looking into the history of these Notifications and ultimately deciding that the ultrasound equipment that is imported in these appeals must only be restricted to A scan and cannot have other features as well. He also argued before us that a cursory reading of List 29 of the Notification of 2000 would show that specific equipments alone are exempted and for this purpose he referred us to Entries 8 and 9 as examples which read as under:

"(8) Operating glasses (2X, 4X, 6X)/Binomag,

(9) Gonioscope, 3 mirror lens, special lenses for laser delivery, special diagnostic lenses (14D, 20D, 90D), Endo lens."

15. Per contra, Learned Counsel for the Assesseees has argued before us, supporting the judgment of the Tribunal in these appeals, that so long as the ultrasonic equipments imported contained the feature of A scan it is irrelevant whether they contained other features as well and would be liable to be included in the exemption Notification. He also made a specific argument based on a clarification made on 02.03.2001 so far as the later Notification of 2001 is concerned. According to him, the scope of the customs duty exemption available for equipment such as the present, even though they may be restricted to specific use in Ophthalmological equipment only, the clarification states that if such equipments can be used in multiple applications in addition to their use as

Ophthalmic applications, the benefit of exemption is not to be denied. This very argument found favour with the Tribunal judgment contained in CA. No. 3202/2006.

16. We have heard Learned Counsel for the parties. In our judgment we feel that the Commissioner in both the appeals was correct in referring to the history contained in the Notifications issued before the relevant Notification of 01.03.2000. This history unmistakably shows that when ultrasound equipment contained the feature or mode of B scan, it was specifically so stated and exempted. The dropping of this feature in the subsequent Notifications assumes some significance in these cases. Quite apart from this, we also feel there is force in the arguments of Sh. Adhyaru that the other entries in List 29 also show that specific equipments mentioned therein alone are to be granted exemption.

17. We need only to hark back to a first principle in the construction of exemption notifications that in case of ambiguity, they have to be strictly construed and only if the subject clearly falls within the language contained therein is the exemption to be granted.

18. It now remains to consider the argument based on the clarification on the budgetary changes made in 2001. We are afraid that the very paragraph relied upon by Learned Counsel for the Assesseees makes a clear distinction between "specified equipments" and "multiple application for use". If the equipment is one specified under the exemption notification, it may be used for multiple purposes. This is not the same as stating that the notification itself should be read so as to extend what is "specified equipment" therein. On this score also, therefore, we agree with the Learned Counsel for the Revenue.

19. We have been informed by Learned Counsel for the Assesseees that the Tribunal judgment in the present appeals does not deal with two other points that arise for consideration - whether the extended period of limitation could be availed of by the Revenue on the facts in these cases and whether the Assesseees are exempted under another Notification.

20. While we set aside the Tribunal judgments in these appeals and restore those of the Commissioner, we remand these matters to the Tribunal to decide the other points raised by the Assesseees. As these are old appeals, we request the Tribunal to take up these matters for hearing as early as possible. The appeals are disposed of in the above terms.