CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

C/448/2008-DB, C/608/2008-DB C/609/2008-DB

[Arising out of Order-in-Appeal No. 47/2008 dated 31/03/2008 passed by the Commissioner of Customs, Bangalore]

[Arising out of Order-in-Appeal No. 68/2008 dated 29/05/2008 passed by the Commissioner of Customs, Bangalore-I]

[Arising out of Order-in-Appeal No. 69/2008 dated 29/05/2008 passed by the Commissioner of Customs, Bangalore-I]

Wipro GE Healthcare Pvt. Ltd. No.4, Kadugodi Industrial Area, Bangalore – 560 067	**Appellant(s)**
Datex Ohmeda (India) Pvt. Ltd. No.4, Kadugodi Industrial Area Bangalore – 560 067	**Appellant(s)**
Wipro GE Medical Systems Pvt. Ltd. No. 4, Kadugodi Industrial Area, Bangalore – 560 067 Karnataka	**Appellant(s)**

Versus

Commissioner of Customs and Service Tax, Bangalore C.R. Building, Queens Road, P.B. No. 5400, Bangalore – 560 001 Karnataka	**Respondent(s)**

Appearance:

Mr. MNS Nagaraj, CA	For the Appellants
Mr. Madhupsharan, Assistant Commissioner, Mr. N. Jagadish & Mrs. Kavitha Poduwal, Superintendents (AR)	For the Respondent

Date of Hearing: 12/02/2018
Date of Decision: 12/02/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. V. PADMANABHAN, TECHNICAL MEMBER

Final Order Nos. 20419 - 20421 / 2018

Per: V. PADMANABHAN

In respect of all the three appeals listed above, the issue is common and hence these appeals are disposed of by this common order.

2. The appellants imported "Anesthesia Ventilatory System" and filed Bill of Entry claiming the benefit of Notification No. 21/2002 Cus. dated 01.03.2002 (Sl. No. 363 (A), list 37 item 30 read with Notification No. 6/2006 CE dated 01.03.2006 (Sl. No. 61) which provides concessional rate of customs duty as well as CVD. The Department denied the benefit of the said Notification and assessed the goods on merits under Chapter Heading 90192090 as "Anesthesia Apparatus and instruments". Against the Order-in-Appeal denying the above benefits, the present appeals have been filed.

3. With the above background, we heard Mr. M.N.S. Nagarajan, learned CA representing all the appellants as well as Mr. Madhupsharan, Mr. N. Jagadish and Mrs. Kavitha Poduwal, Departmental Representatives representing the Revenue.

4. The learned counsel for the appellants submit that the issue regarding the eligibility of Notification in respect of the very same equipment imported earlier had come before the Tribunal in other cases and the issue has been settled in their favour granting the benefit of the said Notification. In this regard, he relied on the following cases:

a) *CC (I&G), New Delhi Vs. Datex Ohmeda (India) Ltd. - 2009 (241) E.L.T 369 (Tri.-Del.)*
b) *Dates Ohmeda (India) Pvt. Ltd. Vs. CC, Bangalore - 2010 (252) E.L.T. 289 (Tri.-Bang.)*
c) *Wipro GE Medical Systems Pvt. Ltd. Vs. CC, Bangalore - 2010 (253) E.L.T. 234 (Tri.-Bang.)*

5. Learned Departmental Representatives justified the impugned orders.

6. After hearing both sides and on perusal of record, we note that the benefit of the above Customs Notification was allowed in favour of the appellants in the cases cited by the appellants.

In the case of **CC, Delhi Vs. *Datex Ohmeda (India) Ltd.*** (supra), the Tribunal observed as follows:

> *"6.2 The Department wants to consider the ventilator with anesthesia apparatus as a mere anesthesia delivery system. The respondents want to treat the same as ventilator system with in-built anesthesia device. The Notification grants exemption to ventilator used with anesthesia apparatus. The claim of the respondents that the imported goods are covered by the description in the Notification is well founded. It cannot be merely considered*

as anesthesia delivery system. We find the ventilator and the anesthesia apparatus are supplied in an integrated manner. It has not been claimed by the Department the ventilator system is detachable and useable separately. The submission that the cost of stand alone anesthesia apparatus is meagre compared to the cost of the impugned goods is also relevant and the same does not support the claim of the Department that the ventilator is merely an additional feature. Therefore, we agree with the submissions of the learned Advocate for the respondents that the impugned goods can be considered as ventilator used with anesthesia apparatus and eligible for the exemption claimed."

7. By following the above decision and noting that the issue is no more *res integra*, we hold that the appellant will be entitled to grant the benefit of the Notification. In the result, the impugned orders are set aside and all the appeals are allowed.

(Order was pronounced and dictated
in Open Court on **12/02/2018**)

(V. PADMANABHAN)
TECHNICAL MEMBER

(S.S GARG)
JUDICIAL MEMBER

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