



## ***ALO Law Office- IDT Tax / Arbitration / Litigation***

**Date: 08.07.2025**

# **CESTAT Bangalore Upholds Duty Exemption for Phoenix Medicare**

## **Background**

Phoenix Medicare Pvt. Ltd. imported autosuture surgical tools such as staplers, trocars, and protak devices, classifying them under CTH 9018 9099 and claimed concessional duty benefits under:

- Notification No. 21/2002-Cus. dated 01.03.2002 (Sl. No. 82, List 37)
- Notification No. 6/2006-CE dated 01.03.2006 (Sl. No. 61(b))

The assessing officer denied the exemption, contending that the goods were surgical tools—not accessories—and hence were not covered under the relevant notifications.

## **Commissioner (Appeals) Ruling**

On appeal, the Commissioner (Appeals) allowed the benefit, relying on expert medical opinions stating:

- The autosuture products were integral accessories to endoscopic/laparoscopic surgeries.
- They were essential to enhance performance and execution of such surgical procedures.

## **CESTAT Observations & Findings**

The Tribunal examined the grounds raised by the Revenue, including reliance on *3M India Ltd. v. CC, Bangalore*, which stressed strict interpretation of exemption notifications.

However, the CESTAT ruled in favour of the respondent, observing:

- Expert medical certificates confirmed that the products were used in advanced surgical procedures (e.g., colostomy, ileal conduit).
- The tools were not merely general-purpose instruments, but specific accessories for endoscopic/laparoscopic medical equipment.
- Classification under HSN 9018, which includes surgical staplers, aligned with their use and nature.
- The Revenue failed to rebut expert evidence or present contrary findings.

### **Final Decision**

- The appeal filed by the Revenue was dismissed.
- The exemption benefit under Notification No. 21/2002-Cus. and 6/2006-CE was upheld.
- The Commissioner (Appeals)'s order was affirmed.

### **Legal Significance**

This ruling is significant for importers and healthcare suppliers because it:

- Confirms specialized surgical tools qualify as accessories for exemption, when linked to listed equipment.
- Reinforces the importance of expert medical opinion in interpreting accessory classification.
- Highlights that multifunctionality alone doesn't disqualify an item, if its role in the surgical process is substantiated.

*This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id [intelconsul@gmail.com](mailto:intelconsul@gmail.com) or on his Mobile +91-9999005379.*

**Source: CESTAT Bangalore**

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**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
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BANGLORE-560009

**COURT-2**

**Customs Appeal No.1715 of 2010**

*[Arising out of the Order-in-Appeal No.91/2010 dated  
30.4.2010 passed by the Commissioner of Customs  
(Appeals), Bangalore.]*

**The Commissioner of Customs (Appeals)**

**....Appellant**

SP Complex,  
IV Floor,  
No.16/1, Lalbagh Road,  
Bangalore – 560 027.

**Vs.**

**M/s. Phoenix Medicare Pvt Ltd**

**....Respondent**

No.26, 18<sup>th</sup> Cross, 9<sup>th</sup> Main  
7<sup>th</sup> Sector, HSR Layout,  
Bangalore – 560 094.

**Appearance:**

Mr. K. Vishwanath, AR

**....For Appellant**

None

**.... For Respondent**

**CORAM:**

**HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)**  
**HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)**

**Date of Hearing: 24/08/2023**

**Date of Decision: 22/12/2023**

**FINAL ORDER No. 21437 of 2023**

**Per R. BHAGYA DEVI:**

The respondent M/s. Phoenix Medicare Private Limited filed a Bill of Entry No.102012 dated 31.03.2009 for clearance of goods namely staplers, versaport, trocar, protak surgical tools classifying the same under Customs Tariff Heading 9018 9099. They declared the goods as parts and accessories of medical equipment specified

at Sl.No. 82 of List No. 37 of the Notification No.21/02 Cus. dated 01.03.2002 and Sl. No.61(b) of Notification No.6/2006-CE dated 1.3.2006 seeking concessional rate of duty. The assessing officer denied the benefit of the Notification on the ground that the imported goods staplers were used for stapling the operated parts of the body after completion of endoscopic/laparoscopic surgery. Assailing this order, they filed an appeal before the Commissioner (Appeals) on the ground that the goods are not multifunctional but are to be considered as accessories for endoscopic/laparoscopic surgery. The Commissioner (Appeals) after examining the expert's opinions, who stated that the autosuture products are essential for endoscopic/laparoscopic surgeries as they enhance the performance during the surgical procedures, hence allowed the benefit of the exemption Notification. Aggrieved by this order, Revenue is in appeal before us.

2. The Revenue is in appeal on the ground that the goods are surgical tools and not accessories of laparoscopic/endoscopic surgery. Any exemption Notification has to be interpreted strictly and the burden relies on the respondent to prove that these are falling under Sl. No.82 of List 37 of the said Notification, hence it is requested that the Order-in-Original should be restored denying the benefit of the Notification.

3. The Authorised Representative reiterated the grounds of appeal and also the findings of the lower authority. He relied on the decision in the case of **3M India Ltd. vs. CC, Bangalore:**

**2020 (373) E.L.T. 385 (Tri.-Bang.)** wherein the Tribunal following the decision rendered in the case of **Commissioner of Customs (Import), Mumbai vs. Dilip Kumar & Company: 2018 (361) E.L.T. 577 (SC)** held that the exemption Notification needs to interpreted strictly without giving any room for ambiguity. None appeared for the respondents.

4. The Original Authority on verification of the production catalogue furnished by the importers found that the goods were used for stapling (autosuture) the operated parts of the body after completion of endoscopy / laparoscopic surgery. It is also on record that a video CD had been produced and it was noticed that these goods were used for surgical procedure. A copy of the certificate from Doctor Shri Ravishankar Bhat of M/s. Radhakrishna Hospital, Bangalore certified that "these autosuture products are used for gastro surgical procedures like joining and closing colostomy etc." Further, Dr. K. R. Ashok Kumar, Professor and Head of the Department of Surgical Gastroenterology in his letter dated 30.06.2009 has stated as follows:

"Auto Suture products such as GIA staples, DST EEA/PPCEEA Circular Staplers, Endo GIA Instruments, DST EEA, Orvil, various types of Endo Clips and Clip appliers, endo stitch instruments, hand instruments, ligating clips, GIA/Endo GIA/Endo GIA Reticulator Disposal Loading Units, Versaport/Visiport (Trocars) etc., manufactured by Tyco Healthcare are used in gastro intestinal surgeries in addition to Ostomy management viz., surgically critical creation or closing of an artificial operating in such procedure as Colostomy, Ileocolostomy, Ileal Conduit, Urostomy. These essential accessories of Endoscopic/Laparoscopic equipment enhance the performance during the above surgical procedures".

4.1 But based on the fact that the scissors, knives, forceps, clamps, clips, needle holders are classifiable separately under 9018 9021 to 9018 9029 and endoscopes, fibroscopes and laparoscopes are classified under 9018 9044, 9018 9095, and 9018 9096, the original authority holds that these items cannot be treated as parts and accessories of laparoscopes or fibroscopes and accordingly, denies the benefit of the Notification. The Commissioner (Appeals) in the impugned order has clearly held that *"The surgical tools under import form part and parcel of these surgeries. The doctors' opinion, who are experts in the field also needs consideration. For entitlement of benefit Sl. No.363 (A) and 363 (B) the conditions are that the medical equipments and other goods falling under Chapter 90 or any other chapter should be specified in list 37 of the Notification or the goods should be accessories of medical equipments listed in List 37. The experts says that autosuture products are essential for endoscopic/laparoscopic equipments as they enhance the performance during the above surgical procedures."* Accordingly, extends the benefit of the Notification. The Revenue has not produced any evidence to counter the experts' opinion and based on the experts opinion, it is very clear these are used for surgical procedures including for laparoscopy / endoscopic surgeries. As per HSN under chapter 9018 which is meant for `instruments and appliances for human medicine or surgery includes surgical staplers for inserting staplers to close the wounds. Therefore, the question is whether they are eligible for the benefit of the notification as per Sl. No.363(B) as accessories of List 37 of the

Notification No.21/2002-Cus. For the purpose of clarity, it would be pertinent to reproduce Notification No.21/2002-CE along with relevant clauses of List 37, which reads as:

S. No.	Chapter or Heading No. or sub-heading No.	Description of goods	Standard rate	Additional duty rate	Con- dition No.
(1)	(2)	(3)	(4)	(5)	(6)
363.	90 or any other Chapter	The following goods, namely :- (A) Medical equipment (excluding Foley Balloon Catheters) and other goods, specified in List 37; (B) Accessories of the medical equipment at (A) above; (C) Parts required for the manufacture, and spare parts required for the maintenance, of the medical equipment at (A) above (D) Continuous Ambulatory Peritoneal Dialysis (CAPD) Fluid contained in a solution bag with or without tubing system	5%   5% 5%	Nil   Nil Nil	-   11 -

**List 37 (See S. No. 363 of the Table)**

(1) to (21)..... (22) Ostomy products (Appliances) for managing Colostomy, Illostomy, Ureterostomy, Ileal Conduit Urostomy Stoma cases such as bags, belts, adhesives seals or discs or rolls adhesive remover, skin barriers micropore surgical tapes, bag closing clamps karaya seals paste or powder, irrigation sets, plastic or rubber faceplates, flanges, male or female urinary incontinency sets, skin gels, in parts or sets (23) to (81)..... (82) Fibre optic endoscopes including, Paediatric resectoscope/audit resectoscope, Peritoneoscopes, Arthroscope, Microlaryngoscope, Fibreoptic Flexible Nasal Pharyngo Bronchoscope, Fibreoptic Flexible Laryngo Brochoscope, Video Laryngo Brochoscope and Video Oesophago Gastroscope, Stroboscope, Fibreoptic Flexible Oesophago Gastroscope.

5. The expert's opinions as recorded by the authorities clearly show that these items auto suture products are essential for Endoscopic/Laparoscopic equipment and this fact is not disputed. As rightly held by the Commissioner (Appeals), the fact that they are multifunctional units will not make them ineligible as long as they are found to be accessories for the items list at Sl. No.22/82 of List 37 and Sl. No.61(b) of Notification No.6/2006-CE dated 1.3.2006. The Revenue has not placed anything on record to disprove the same. In view of the above, we do not find any justification in interfering with the order of the Commissioner (Appeals).

6. In view of the above, the impugned order is upheld and appeal is dismissed.

*(Order pronounced in open court on 22/12/2023.)*

**(P. A. AUGUSTIAN)**  
**MEMBER (JUDICIAL)**

**(R. BHAGYA DEVI)**  
**MEMBER (TECHNICAL)**

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