
(2008) 09 SC CK 0086

In the Supreme Court Of India

Case No : Civil Appeal No's. 4507-4508 of 2002, 1692-1693 of 2003 and 978 of 2005

Camlin Limited

APPELLANT

Vs

Commnr. of Central Excise, Mumbai
Commnr. of
Central Excise, Mumbai Vs Camlin Limited

RESPONDENT

Date of Decision : 03-09-2008

Acts Referred:

Citation : (2008) 132 ECC 294 : (2008) 158 ECR 294 : (2008) 230 ELT 193 :
(2008) 10 JT 49 : (2008) 12 SCALE 325 : (2008) 9 SCC 82 : (2009) 11 Vat
Reporter 28

Hon'ble Judges : V. S. Sirpurkar, J;Ashok Bhan, J

Bench : Division Bench

Advocate : I. Venkatanaraya, Aarohi Bhalla, Shekhar Sharma, for Sujata Kurdukar, Alok Yadav, for M.P. Devanath, Vikas Sharma and Neera Gupta, for B.V. Balaram Das, for the Appellant;

Final Decision : Dismissed

Judgement

Ashok Bhan, J.—These three sets of appeals arise from a common judgment and order dated 30th April, 2002 passed by the Customs, Excise & Gold (Control) Appellate Tribunal, Western Zonal Bench at Mumbai (for short "the Tribunal").

2. The first set of appeals being C.A. Nos. 4507- 4508 of 2002 has been filed by M/s. Camlin Limited (hereinafter referred to as "the Assessee"), whereas the remaining two sets of appeals being C.A. Nos. 1692-1693 of 2003 & C.A. No. 978 of 2005 have been filed by the Revenue.

3. The issues in these appeals are regarding the classification of the "writing inks" being manufactured and captively consumed by the assessee and consequent demand of duty thereon. The inks with their constituents are:

No. NAME OF THE INKS INGREDIENTS 1. 99-MARKER INKS i) KETONIC SOLVENT ii) SOLVENT DYES iii) BINDERS

2. 100-CAMEL FOUNT i) CARBON BLACK (PIGMENT) DRAWING INK ii) SHELLAC BINDER iii)WATER & PRESERVATIVES
3. 07-CAMEL i) CARBON BLACK (PIGMENT) WATERPROOF DRAWING ii) SHELLAC BINDER INK iii)WATER & PRESERVATIVES
4. 09-CAMEL SPL. i) CARBON BLACK (PIGMENT) DRAWING INK BLACK ii) SHELLAC BINDER iii)WATER & PRESERVATIVES
5. 98- CAMEL i) CARBON BLACK (PIGMENT) RAPIDUGRAPH INK ii) SHELLAC BINDER BLACK iii)WATER & PRESERVATIVES
6. 75- DESIGNERS' i) CARBON BLACK (PIGMENT) INDIAN INK BLACK ii) SHELLAC BINDER iii)WATER & PRESERVATIVES
7. 75A- DESIGNERS' i) CARBON BLACK (PIGMENT) INDIAN INK BLACK ii) SHELLAC BINDER iii)WATER & PRESERVATIVES
8. 75B - DESIGNERS' i) CARBON BLACK (PIGMENT) INDIAN INK BLACK ii) SHELLAC BINDER iii)WATER & PRESERVATIVES
9. SKETCHING PEN INK i) ACID DYES ii) BASIC DYES iii)FOOD COLOURS iv) WATER v) HYGROSCOPIC AGENTS (such as GLYCOLS)

4. The finding of the Tribunal qua items mentioned at serial Nos. 2 to 9 in the above chart is that they are "writing inks" and, therefore, exigible to nil rate of duty. With regard to the item at serial No. 1, i.e., "marker ink", the Tribunal has held that the same are not "writing inks" and, therefore, would be covered by Chapter sub-heading 3215.90 and, consequently, exigible to 16% of excise duty. Chapter heading 32.15 reads as under:

32.15 Printing ink, writing or drawing ink and other inks, whether or not concentrated or solid. 3215.10 - Writing ink Nil 3215.90 - Other 16%

5. Initially, the department had approved the classification list submitted by the assessee. According to the assessee, as the classification of the inks manufactured by the assessee had been approved by the revenue, it neither collected any duty from its customers nor claimed any Modvat. Subsequently, the revenue challenged the said approved classification list.

6. The assessee manufactures various kinds of marker pens and sketch pen sets. As per the CBEC Trade Notice reported in (39) ELT-T6, it has been clarified that "marker pens", Hi-liter pens, up- liners were "all" different categories of pens. According to the assessee, since various types of inks mentioned aforesaid are used in one or other types of pens which are instruments for writing such inks are to be considered as "writing inks".

7. It is submitted that initially all types of inks falling under the aforesaid Chapter Heading No. 32.15 were chargeable to duty @ 20%. Subsequently, w.e.f. 1st March, 1997, Chapter Heading No. 32.15 has been revised and accordingly "writing ink" is now classifiable under CSH 3215.10 chargeable to duty at nil rate

and all varieties of ink other than "writing inks" are classifiable under CSH No. 3215.90 chargeable to duty @ 16%.

8. According to the assessee, the legislative intent of the aforesaid amendment was that the units manufacturing pens which are assessed to nil rate of duty should not be paying duty on the inks filled/used in the pens. As the pens manufactured by the assessee are assessed at nil rate, the submission is that the writing inks which are used in these pens are not exigible to the levy of duty. This submission is made on the basis of the letter dated 28th May, 1997 written by the then Finance Minister of India. The relevant extracts of the letter is as follows:

I have had the matter examined. The general rate applicable to products falling under Chapter 32 of the Central Excise Tariff is 18% which is also the rate applicable to artists' and students' colours. However, pens and parts of pens have remained exempted from duty for a long time. A demand was made that writing inks which fall in the same category of goods, may also be exempted from duty. It was also argued that a factory producing pens is required to pay excise duty on writing inks which is anomalous. On examining these requests, we had decided to exempt writing inks also from excise duty.

9. The aforesaid contentions of the assessee which were taken in appeal were accepted by the Commissioner (Appeals) vide his Order dated 28th of March, 1999. After referring to the numerous dictionaries to ascertain the meaning of various terms, it was held that:

In view of the above definition of the words "write" and "writing" it reveals that the method by which the ideas are transformed into symbols, characters, letters or words on any surface including paper is to be considered as writing. Accordingly Fountain pens, Marker Pens, Croquill Lettering Pens, Sketch Pens etc. are the instruments which are being used for transforming the ideas into symbols, characters, letters or words on paper and in that sense these are definitely the instruments of writing.

Even if we see the uses of these instruments, we noticed that they are of multipurpose uses viz. Marker Pens are used for bold writing on notice board, packages, files, envelopes, charts etc. as well the same can be used in drawing also. The same case is with sketch pens, croquill lettering pens also. It can be used for writing purposes also. Apart it is also important to note here that in the C.Ex Tariff description under heading 3215.00. It is mentioned that Printing inks, Writing or Drawing ink and other inks. The word "or" used in between Writing Ink and Drawing Ink itself indicates that both types of inks are synonymous and they are one and the same. Seeing the ingredients of both these types of inks also made it clear that they are same. It is not the case of the Department that the ink claimed by the appellants are printing ink or copying and Lectrographic Ink or inks for duplicating machine or making ink. It only suspects that, it is used in the instruments for colouring, hiliting, sketching etc. which ultimately figuring its

possible classifications as drawing ink. As discussed above even if we accept it as "Drawing Ink" it ultimately falls in the same category of writing- ink.

10. The Commissioner (Appeals) accepted the contention of the assessee that pens are not writing instruments. He further classified all nine types of Inks manufactured by the assessee as "writing ink". He also recorded in his order that he has referred to HSN Chapter 32.15 and Circulars of the Department for the purposes of passing the said Order.

11. Aggrieved by the said order, the respondent- Department filed an Appeal before the Tribunal. The Tribunal partly set aside the aforesaid Order by relying on HSN and held that two inks out of nine manufactured by the assessee being "marker inks and camiligraph (rapidograph) ink" will be assessed to duty under CSH 3215.90.

12. Aggrieved by the said Order dated 29th September, 2000 of the Tribunal, assessee filed Civil Appeal No. 387/2001 in this Court whereby this Court remanded the case to the Tribunal for a fresh decision.

13. Tribunal vide its impugned order dated 30th April, 2002, decided that eight out of nine inks manufactured by the assessee will be considered as writing inks and rate of duty will be Nil. While for one ink being "marker ink", it held against the assessee. It was held that "marker inks" have to be classified under residual entry CSH 3215.90 and is liable to pay duty at the rate of 16%. The Tribunal relied on HSN to reach the said conclusion.

14. Aggrieved against the Order of the Tribunal, three sets of appeals have been filed, one by the assessee and two by the Revenue.

15. The Counsel for the parties have been heard at length.

16. The Indian Central Excise Tariff creates two categories of "writing ink" and residuary entry of "other". The HSN on the other hand creates categories for "printing ink", "other" and then residuary entry of "other". For convenience, the relevant extract of HSN is reproduced herein below:

EXTRACT OF CHAPTER HEADING 32.15

32.15 - PRINTINK INK, WRITING OR DRAWING INK AND OTHER INKS, WHETHER OR NOT CONCENTRATED OR SOLID.

- Printing Ink: 3215.11 - Black 3215.19 - Other 3215.90 - Other (A) Printing inks (or colours) are pastes of varying consistency, obtained by mixing a finely divided black or coloured pigment with a vehicle. The pigment is usually carbon black for black inks and may be organic or inorganic for coloured inks. The vehicle consists of either natural resins or synthetic polymers, dispersed in oils or dissolved in solvents, and contains a small quantity of additives to impart desired functional properties.

(B) Ordinary writing or drawing inks are solutions or suspensions of a black or

coloured material in water, usually with the addition of gum and other products (e.g. preservatives). These includes inks based on iron salts, inks based on logwood extracts or on synthetic organic colours. Indian ink, used mainly for drawing, consists usually of carbon black in suspension in water (with the addition of gum Arabic, shellac, etc.) or in certain animal glues.

(C) Other inks in this heading include:

(1) Copying and hectographic inks (ordinary inks thickened with glycerol, sugar, etc.).

(2) Inks for ball point pens.

(3) Inks for duplicating machines or for impregnating ink-pads or typewriter ribbons.

(4) Marking inks (e.g. based on silver nitrate).

(5) Metallic inks (finely divided metals or alloys in suspension in a solution of gum, e.g., gold, silver or bronze inks).

(6) Prepared sympathetic or invisible inks (e.g. based on credit chloride).

These products are generally in the form of liquids or pastes, but they are also included in this heading when concentrated or solid (i.e. powders, tablets, sticks, etc.) to be used as inks after simple dilution or dispersion.

17. From the reading of the extract of Chapter Heading 32.15 of the HSN, it is evident that the scheme and entry of HSN is completely different from Indian Tariff Entry. It is settled law that when the entries in the HSN and the said Tariff are not aligned, reliance cannot be placed upon HSN for the purpose of classification of goods under the said Tariff.

18. The assessee has produced/filed the chemical composition of its products before the Tribunal as directed. As can be seen from the above, the marking inks mentioned in HSN in Category C (4) are based on Silver Nitrate. The marker ink manufactured by assessee admittedly "does not" contain Silver Nitrate.

19. Further, HSN only described "ordinary" writing or drawing inks in Category B. Even inks for ball point pens are classified under residuary entry "other". The Indian Tariff classification puts "all" writing inks together. The fact that all writing inks are considered same and together can also be seen from the aforesaid letter of the Finance Minister and the trade notices referred to.

20. As per scheme of HSN, "printing inks" are classifiable under specific Chapter Sub Headings 3215.11 and 3215.19 of the HSN and are described under Note "A". All the rest of the inks are covered in residuary heading 3215.90 and are described under Note "B" "ordinary writing or drawing inks" and Note "C" "other inks". It may be noted that scheme of Indian Excise Tariff entry is completely opposite and "printing inks" will fall under residuary entry of CSH 3215.90 and "writing or drawing inks" fall under specific entry 3215.10.

21. The basic contention of the respondent- Department for all practical purposes is that pens are not writing instruments, because if the pens are writing instruments then obviously the inks used in such pens manufactured by the assessee are writing inks.

22. The Tribunal took an extreme example of paint being used as graffiti. The essential function of paint is to provide a protective covering for building structures and use in graffiti is incidental. While markers are described as pens by the Notification of the Department itself and marker inks are used in the said pens - writing instruments, therefore, should be classified as writing inks.

23. Insofar as the inks other than marker inks are concerned, the Tribunal while deciding the same in favour of the assessee has recorded the following findings:

We find no reasons and approve the ground taken by the revenue that the understanding of the word "Writing Ink" has to be restricted and the common parlance understanding of the same has to be considered, while applying to classification under 32.1510. Therefore, when we find that the law is well settled, that HSN notes, have more than persuasive value especially when the headings are full aligned with Central Excise Tariff, we have no hesitation to consider that the Sub classification of ink under 32.15 should be based on constituent material. Material and evidence of end use and on "Writing Instruments", "pens etc." relied upon on both sides are found to be not relevant. Classification in the sub headings is to be made on the basis that "Writing Ink" as per the HSN Head Notes under 32.15, extracted herein supra, which indicate that ordinarily such inks, are based on water. On considering the admitted position that except for the ink type, named as "99-MARKER INKS" in the list of impugned inks before us, extracted in sub-para (a) above, all other inks listed and under consideration, are acqua or water based which would render them to be eligible for classification under sub-heading 32.1510, except "99-MARKER INKS" which not being water based would fall under residuary Head 32.1590.

24. We agree with the findings recorded by the Tribunal insofar as the inks other than marker inks are concerned and confirm the same. Insofar as, marker inks are concerned, we are of the opinion that the marker inks would fall under CSH 3215.10 as the same are used in marker pens which are exempt from the payment of excise duty.

25. The then Finance Minister in his letter dated 28th of May, 1997 had clearly stated that pens and parts of pens have remained exempted from duty for a long time.

26. In our considered view, the Tribunal erred in relying upon the HSN for the purpose of marker inks in classifying them under Chapter Sub-Heading 3215.90 of the said Tariff. The Tribunal failed to appreciate that the entries under the HSN and the entries under the said Tariff are completely different. As mentioned above, it is settled law that when the entries in the HSN and the said Tariff are not aligned, reliance cannot be placed upon HSN for the purpose of classification

of goods under the said Tariff. One of the factors on which the Tribunal based its conclusion is the entries in the HSN. The said conclusion in the Order of the Tribunal is, therefore, vitiated and, accordingly, set aside. We agree with the findings recorded by the Commissioner (Appeals).

27. For the reasons stated above, we dismiss the appeals filed by the Revenue and accept the appeals filed by the assessee. The Order of the Tribunal is confirmed insofar as inks other than marker inks are concerned. Whereas the Order of the Tribunal insofar as it has come to the conclusion that marker inks are exigible to pay duty would fall under Chapter Sub-Heading 3215.90, is set aside. The marker inks would be classifiable under CSH 3215.10. Parties to bear their own costs in all the appeals.