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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-03-2000

Reported in : (2000)(120)ELT123TriDel

Appellant : Commissioner of Central Excise

Respondent : Technik Industries

Judgement :

1. The appeal has been filed by the revenue against the finding of the Commissioner, which is as follows : "I have gone through the records of the case very carefully. I accept appellants' contention that Writing and Drawing inks have been used as synonymous terms as indicated by the description in the chapter Heading 32.15, and therefore, the sub chapter Heading 3215.10 will also cover drawing inks. However, I observe that the adjudicating authority while ordering the classi-ficatio* of subject inks under sub chapter Heading 3215.90 has not given a clear finding that the same are not covered by the category of other inks. On going through the HSN, I observe that marking inks have been specifically mentioned as covered by the other category of "other inks". Accordigly, I set aside the order in original and allow the appeal subject to the satisfaction of the jurisdictional Assistant Commissioner that none of the three inks used in sketch pens, permanent markers and hi-liter pens are covered by the category of "other inks"."

2. The grounds taken in appeal and retreated by the S.D.R., Shri H.K.Jain, are as follows : Chapter Heading 32.15 of the C.E.T.A. includes printing ink, writing or drawing ink and other inks whether or not concentrated or solid.

The chapter Heading 32.15 was bifurcated w.e.f. 1-3-1997 in subheadings 3215 and 3215.90 covering writing inks and other inks respectively. Sub-heading 3215.10 covers only writing inks and rest all the inks viz. printing inks and drawing inks are classifiable under subheading 3215.10, drawing inks cannot be classified under this subheading only because word "or" has been used between writing and drawing inks in the main heading. On plain reading of the tariff subheading it is clear that only writing inks have been mentioned under sub-heading 3215.10 and drawing inks have been specifically excluded. Therefore, the Commissioner (Appeals) has erred in classifying drawing ink under sub-heading 3215.10 of CETA, 1985.

The basic question, involved in the instant case is whether the writing ink and drawing ink are same or not. Basically, the writing ink can be used for drawing purpose but the drawing ink can not be used always for the writing purpose. Writing ink will only be usable when it is in liquid form to maintain flow and celerity but this feature does not apply in toto in respect of the drawing ink. That is why drawing ink can not be taken in sub-heading 3215.10 though the same was stated as writing ink or drawing ink in main tariff Heading 32.15. Thus there is a distinction between writing ink and drawing ink and with this view only writing ink classified under sub-heading 3215.10 and was exempted from duty during the said period and that is why Govt. did not include the drawing ink in chapter sub-heading 3215.10 in the exempted category at the time of bifurcation of chapter Heading 32.15 on 1-3-1997. In view of the above, drawing ink will not be covered by subheading 3215.10 and should fall under 3215.90 in the category of other inks.

3. Advocate Shri Naveen Mullick submits that there is no difference between the drawing and writing inks and marker inks, being manufactured by them and they are not manufacturing ball point inks and marker inks using silver nitrate. He also added that the use of raw-material in three kinds of inks being manufactured i.e. hi-liter pen ink, marking pen ink and sketch pen ink are the same and they have filed the necessary declarations before the excise authorities.

4. We find that Heading 3515 of CETA and HSN is the same as the sub-headings under CETA w.e.f. 1-3-1997 have been sub-divided into 3215.10 for writing inks at

nil rate and 3215.90 for other inks at 18 per cent. The heading covers printing inks, writing or drawing ink, other inks in whatever concentrations of forms. The scope of writing ink from the head notes under HSN is found to cover and include drawing inks; copying and hectographic inks, ball point pens, duplicating machines, typewriter ribbons, marking inks, metallic inks and other specified inks e.g. invisible inks fall under the category of other inks. Therefore, we find sketch pen and drawing inks would be covered under the Heading 3215.10 for writing inks, while marker inks and hi-liter inks, which are specialised kind of inks, would fall under Heading 3215.90.

5. Classifications in this case are decided accordingly. The matter is remanded back to the Assistant Commissioner to work out the demands accordingly. The appeal is partly allowed, as indicated above.

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