

Johnson and Johnson Ltd. Vs. Commissioner of Central Excise

Johnson and Johnson Ltd. Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/29124

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-18-2002

Reported in : (2003)(154)ELT729Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Johnson and Johnson Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. This is an appeal filed by the Appellants against the decision of the Commissioner of Central Excise, Mumbai-IV, made in Order-in-Original No. 6 of 1999, dated 20-9-1999 whereunder he has classified "UNSTERILISED ABSORBABLE CATGUT SUTURES" manufactured by the Appellant classifiable under Chapter subheading 4201.90 of the Central Excise Tariff Act and confirmed the demand to the extent of duty payable on the said goods for the period 30-11-1998 to 31-3-1999. The order also stated that the duty amount would be quantified by the department and the amount so quantified was intimated in writing to the appellant before 22-9-1999 and the order further directed payment of the same by the assessee forthwith.

2. The appellant has a manufacturing unit at Dharavi, Mumbai where it undertakes manufacture and clearance of a single product namely UNSTERILISED ABSORBABLE CATGUT SUTURES. It is an undisputed position that the product as cleared by the appellants is inevitably used in the manufacture of Sterile

Surgical Sutures which falls for classification under heading 30.06 of the Central Excise Tariff Act, 1985. The issue in controversy in the present proceedings is appropriate classification of the product namely UNSTERILISED ABSORBABLE CATGUT SUTURES under CETA. The assessee claims classification of the product under Chapter sub-heading 0501.99 of the CETA but the department is claiming the appropriate classification under Chapter sub-heading 4201.90, 3. Right from the start of the production from 1962 onwards the appellant treated the product as not excisable goods up to 1975. From 1-3-1975 when tariff item 68 was introduced under the erstwhile tariff classification the product was liable to duty thereunder. However by virtue of then existing notification 118/75 and other notifications, the product was exempt since the entirety of the product was manufactured at Dharavi was used in the manufacture of Sterile Surgical Sutures at company's Mulund plant. The appeal papers referred to the various visit of the officers from 1975 onwards. On 1-3-1986 new Central Excise Tariff was enacted and the assessee's bona fide belief was that the product manufactured by it under Chapter 5 which covered "PRODUCTS OF ANIMAL ORIGIN NOT ELSEWHERE SPECIFIED OR INCLUDED" for which tariff rate of duty was nil. The bona fide belief of the assessee was based on the fact that the product was not specified under any heading of the tariff and would therefore fall for classification under Chapter sub-heading 0501. It is asserted by the assessee in the grounds of appeal that the department was fully aware that the only product manufactured at Dharavi was the product i.e. UNSTERILISED ABSORBABLE CATGUT SUTURES. No steps whatsoever were taken by the department to try and tax the product. It is clearly asserted in the memorandum of grounds that the department was proceeding on the appropriate classification of the product under the tariff and the tariff rate of duty was nil. In October, 1993, the Superintendent of Central Excise, Division H from the Preventive and Intelligence Branch of the department, visited the assessee's Dharavi plant and after discussing with the company officials, was satisfied that the appropriate classification of the product was under Chapter 5 of the CETA attracting nil rate of duty. The range officers also visited in 1994 and were also of the same opinion. This has been highlighted in the Memorandum of grounds. In August, 1998, officers of the department visited the factory and examined the process of manufacture. They recorded statements of Operations

Manager. In February, and March, 1999, letters were exchanged between the assessee and the department and it emerged that the department would like to re-classify the product under Chapter 42 of the CETA. The assessee pleaded before the department that the classification could not merely be changed in this manner and if the department was unable to agree with the claims of the assessee, then the matter should be decided in accordance with law.

This was the gist of the letter written by the company on 22-2-1999 and further correspondence ensued between March and April, 1999 between the parties. Finally a show cause notice dated 3-5-1999 was issued by the respondent. The show cause notice, which will be described later, proposed to change the classification of the product namely UNSTERILISED ABSORBABLE CATGUT SUTURES. The show cause notice inter alia reads as follows :- "1. Cutting of Sheeps' Intestines/guts obtained from outside into Ribbons.

2. Chemical Treatment i.e., Washing, Cleaning and Treating with chemical agents.

3. Mechanical Treatment i.e., passing between two stainless steel rollers and scrapping with a blunt knife.

6. Curing & Drying i.e., curing with Formaldehyde solution and drying overnight in a stretched condition.

7. Preguaging, i.e., mechanically ascertaining the minimum diameter of the rough unfinished strand.

8. Polishing mechanically to a specific diameter to obtain uniform and smooth strands.

9. Inspection & Counting of polished strands for visual defects if any such as machine damage spots, appearance defect etc.

10. The UAS obtained after the above mentioned process are then packed loose in polythene bags for onward despatch outside their plant for fitting with needles and sterilisation by radiation process in the Aurangabad plant of J & J or at their appointed job workers.

11. The process of manufacture as observed above was reiterated and accepted by Shri B. Jayaraman, Operations Manager, J & J, in his statements dt. 8-1-99 & 17-3-99 (Exhibit 'A' & 'B') recorded under Section 14 of C. Ex. Act, 1944. The above process of manufacture was also confirmed by the "process of manufacture" and "process chart" duly signed by Shri. V.R.S. Mani, Manager which was submitted vide J & J letter dt. 20-10-98 (Exhibit 'C', 'D' & 'H').

12. Samples of plain and chromic UAS drawn on 25-8-98 were submitted for testing to the Dy. Chief Chemist vide letter F. No. V/PIH/JJ/21/98, dt. 25-8-98 to ascertain whether the product in question falls under Ch. S.H. 4201.90 as "Articles of Animal Gut (non-sterile)". The Dy. Chief Chemist, Mumbai vide his letter No. C. Ex./42-PI-268/98, dt. 9-9-98 reported that "each of the two samples is catgut (plain & chromed)" (Exhibit 'E').

13. However, the product UAS manufactured by J & J undergoen complex processes. The gut/intestines are first cut into strips. Thereafter these undergo chemical and mechanical cleaning, chromicizing, twisting, pregauging, grinding/polishing which are having a nature and scope much beyond those mentioned in the HSN Explanatory Notes to Chap. 05.04. These processes convert the guts from its natural form to a specifically and consciously designed form of "strands".

Thus the resultant product does not remain in the natural form of "guts" but because of its definite form and shape of "strands", it becomes an "articles of gut" rather than "guts" and therefore is outside the purview of Chapter 05.04 of Explanatory Notes to HSN which correspond to Chapter 5 of CETA 1985." 4. The show cause notice makes the basis of the department's case to reclassify the product under Chapter sub-heading 4201 relying upon the HSN Explanatory Notes relevant to Chapter sub-headings 5.04, 30.06 and 42.06; Clauses 3(a) & (c) of the General Rules of Interpretation to the tariff; Deputy Chief Chemist's test report dated 9-9-1998 and the longer period of limitation was invoked. The assessee replied by its letter dated 2-6-1999 raising various contentions. The main thrust of the appellant's case was that heading 0501 covers products of "animal origin" whereas heading 4201 covers "articles". There is a well recognised distinction

between "products" and "articles". The argument of the assessee is that the "product" in question was not an "article" which should be classified under heading 4201. The judgment of the Andhra Pradesh High Court in the case of State of A.P. v. India Rubbers - 1990 (76) STC 254 was relied on. It was submitted that heading 4201 covers complete article which can be put to immediate human use whereas the product in question require further process before it can be used as sterile surgical suture. The reply also sought to make a distinction between the structure and scheme of Chapters 5 and 42 of the tariff entry and it was submitted that they were wholly distinct from that in HSN. In reply it is argued that the Deputy Chief Chemist report dated 9th September, 1999 was wrong and cross-examination of the Chief Chemist was sought. A personal hearing was held on 25-6-1999 and after hearing, the Commissioner rejected the contention of the assessee. The Commissioner, after referring to various submissions made by the Counsel who appeared before him, held at paragraph 28 thereof that UNSTERILISED ABSORBABLE CATGUT SUTURES manufactured by the assessee is in fact catgut and this has been described by the assessee in its various contemporaneous documents and also statements of its functionaries during the investigation and write-ups furnished by them.

He refers to various case laws especially the Supreme Court's judgments in the case of CCE v. Woodcraft Products Ltd. - 1995 (77) E.L.T. 23 and CCE v. Bakelite Hylam Ltd. - 1997 (91) E.L.T. 13 and also the decision of the Delhi High Court in Manisha Pharma Plasto Pvt. Ltd. v. U.O.I. - 1999 (112) E.L.T. 22. The Commissioner, after referring to the Andhra Pradesh High Court's decision cited by the assessee and also to the principles of Noscitur a Socii and also the case of State v. Hospital Mazdoor Sabha Rohit Pulp and Paper Mills Ltd. v. CCE - 1990 (47) E.L.T. 491 (S.C.), came to the conclusion that the product comes under Chapter sub-heading 4201. He specifically held in paragraph 34 that the only process carried out in their Aurangabad is the sterilisation of the sutures resulting in the manufacture of sterile surgical catgut. He also referred to the decision of the Tribunal in the assessee's own case reported in 1999 (106) E.L.T. 49.

The Commissioner passed the impugned order. Hence the present appeal.

5. Shri Aspi Chinoy, Senior Advocate along with Shri Rohan Shah, Advocate, appeared for the appellant and Shri T.D. Bodade, appeared for the department.

"(A) The basic issues for determination in this Appeal are as follows : (i) Whether Unsterilised Absorbable Sutures - Catgut (UAS) is properly classifiable under Heading 0501.00 of the Central Excise Tariff Act, 1985 (CETA) as claimed by the Appellants or under Heading 4201.90 of the CETA as claimed by the Department (ii) If the Tribunal is of the view that the UAS is to be classifiable under Heading 4201.90 then, whether Modvat Credit can be granted to the Appellants (a) on the inputs which have been used in the manufacture of UAS at the Appellants' Dharavi factory and (b) for immediate availment of the Excise duty paid on the UAS [after adjustment if any under ii (a) above] which can be immediately utilized at Aurangabad factory of the Appellants against the clearance of the final product viz. Sterile Surgical Suture-catgut (3005.90) manufactured by the Appellants at their factory at Aurangabad (A) ON THE PLAIN TERMS OF THE TARIFF AND ITS HEADINGS/NOTES THE UAS ARE CLASSIFIABLE UNDER HEADING 0501.00.

1. At the outset it was submitted that in terms of the provisions of Rule 1 of the General Rules of Interpretation to the CETA, classification is required to be determined according to the terms of the headings and any relative Section or Chapter Notes.

2. On the plain terms of the CETA, the UAS satisfies all of the requirements for classification under Chapter sub-heading 05.01 (products of animal origin, not elsewhere specified or included) viz.: (a) the product (unsterilized catgut sutures) is admittedly of animal origin; (c) it is admittedly not a product which is specified under Chapter Note 1 to Chapter 5 of the CETA as being a product not covered under Chapter 5.

3. By the impugned Order, the Commissioner has held that the UAS cannot be classified under 0501.00 as : (a) the allegedly complex nature of the processes adopted by the Appellants took the UAS beyond the purview/ambit of 0501.00 (b) that the second requirement of classification under heading 0501.00 was not fulfilled as the UAS is allegedly included/classifiable under heading 4201.90 : ARTICLES OF LEATHER, SADDLERY & HARNESS; TRAVEL GOODS;

HANDBAGS & SIMILAR CON-TAINERS; ARTICLES OF ANIMAL GUT (OTHER THAN SILK WORM GUT) Suit cases, vanity cases, executive cases, brief cases and vanity bags all sorts.

4. The first finding of the Commissioner the UAS not being classifiable under Chapter 5 by virtue of the alleged complexity of the Appellant's process is ex facie untenable/incorrect. Chapter 5 sub-heading 0501.00 does not specify the nature of the processes which would fall within the heading and those which would fall beyond. Moreover the processes adopted by the Appellants for manufacture of the UAS are not complex and do not change the character of the product which remains a product of animal origin.

5. (a) Unsterilised sutures are admittedly not specifically mentioned/included in any tariff heading/Chapter. However the Commissioner has held that the UAS are covered by heading/ sub-heading 4201.90 as an "article of animal gut".

(b) the Department does claim any alternate classification.

Accordingly if the Appellant establishes that the UAS does not fall within Chapter 42 of CETA, the impugned Order would not be sustainable and the product would be classifiable under Chapter 5.

(a) from a description and specification of the Articles covered under Heading 42.01 and sub-heading 4201.10 it is apparent that the term "Articles" under Heading 42.01 covers only finished products of ready use or consumption like saddlery, harness, travel goods, suitcases, vanity cases, executive cases, brief cases and vanity bags.

(b) The work "article" in Chapter 42 (i.e.: "articles of leather, ..

articles of animal gut") is used in contradistinction to the term "product" in Chapter 5 ("products of animal origin"). Though the term "article" by itself has a broad connotation, the terms "articles" and "products" as used in Chapters 42 and 5 of the CETA are of different and distinct coverage and import. Contextually "articles" in Chapter 42 would cover finished goods/items of ready consumption or use, whereas the term "Products" in Chapter 5 connotes products of animal origin

which are not finished goods of ready use - products which require further processing before they could become finished products of ready use.

(c) In this context, reference was made to the judgment of the Andhra Pradesh High Court in the case *State of A.P. v. India Rubbers* [1990 (76) STC 254 (AP-DB)] where the tariff utilised both the terms "products" and "articles". The High Court held that there may not generally be a definite demarcation between the words "product" and "article", inasmuch as while "article" meant finished goods. The Hon'ble High Court however held that in the context of the entry which used both the terms, the item in that case, which was not a finished item of immediate use and required further processing, was classifiable as a "product" and not as an "article".

(d) By application of the well-settled interpretation of the doctrine of *Noscitur a Socii*, the general words "articles of leather"/"articles of animal gut" in Chapter 42 and the words "other articles" in heading 4201.90 would take colour from the common identifiable characteristic of the various other items specified in Heading 42.01. It was submitted that the common identifiable characteristic of the items specified in Heading 42.01, is that they are finished goods/items of ready immediate use. Accordingly as per the principle of *Noscitur a Socii* the words "articles" in a Heading 42.01 and sub-heading 4201.90 would have to be interpreted as articles of animal gut which are finished goods/items for ready use.

The UAS cannot be considered a finished article ready for immediate surgical use, as it is NOT sterilised. In fact Sterile Surgical Suture is the finished article of ready use (made demo UAS) and is classifiable under Chapter Heading No. 3005.90.

(e) The Collector has committed a patent error in holding that the doctrine of *Noscitur a Socii* is not applicable to the CETA. It has repeatedly been applied in the context of the CETA in similar situations. Reference was made to the judgments of the Hon'ble Supreme Court in *Rohit Pulp and Paper Mills Ltd. v. CCE* [1990 (47) E.L.T. 491] and in *Pradeep Aggarbatti v. State of Punjab* [1997 (96) E.L.T. 219 (S.C.)]. For example in *Rohit Pulp's* case the term "coated paper" was, by application of the said doctrine and reference to other items which were clearly "industrial papers" restricted/interpreted to include only "industrial coated paper".

7. In the present case once it is established that Chapter 42 does not apply to the UAS it would fall under Heading 05.01 of the CETA. If the UAS does not fall under Chapter 42 as explained above, Chapter 5 would specifically cover UAS and in such a situation there can be no sustainable reference to the provisions of Rule 3(c) of General Rules of Interpretation of the Schedule to CETA. 8. In the impugned Order, reference is made to a judgment of this Tribunal in the case of Johnson & Johnson Ltd. v. Collector of Central Excise, Bombay-III [1999 (106) E.L.T. 49] to claim that Non-Sterile Surgical Suture made of Textile Yarn are classifiable under Heading 56.08 as Articles of Yarn not elsewhere specified and therefore by analogy UAS should also be regarded as an article of animal gut. It was submitted that in reference to the context of the word "article" under Chapter 56 such an interpretation is possible in the above case since the Non-Sterile Surgical Suture dealt with in the above case is a finished article, which are sold to the Hospitals and others by the Appellants in a saleable pack (consisting of 6 reels) and the same are meant for immediate use and consumption in the operation theatre and not an intermediate product, like in the case of UAS - which requires further processing before the same is used as aforesaid. In the context of Chapter 42, the word "article" would not cover an intermediate product required for further manufacture but would cover only "articles" of immediate use and consumption. Therefore, the reference of the Hon'ble Tribunal's decision in Johnson & Johnson v. Collector of Central Excise 9. During the hearing, reference was made to the judgment in the case of Zaffar Mohammad v. State of W.B. [AIR 1976 SC 171] as regards the interpretation of the term "article" in that case. The judgment deals with the issue of interpretation in the context of The Drugs and Magic Remedies (Objectionable Advertisements) Act. The issue under consideration in this case was whether the "new machines of science and electric treatment", in respect of which an advertisement was published, is covered under the term "article" used in the definition of the term "Drug" under Section 2 (b) of that Act and in this case the Hon'ble Supreme Court came to the view that the aforesaid machine is an article. It is submitted that in the context of the use of the word "article" in that Act, the Hon'ble Supreme Court came to its conclusion that a machine is an article. If at all the judgment is to be relied, the said judgment supports Appellants case, as even in that case the machine was intended to be of

ready use for patients. It must be however to be borne in mind that the term "article" must be interpreted in the context of its use.

10. It is submitted that if there is any doubts as to the appropriate classification of the product, it is settled law, by the judgments of the Hon'ble Supreme Court inter alia in *Sun Exports v. Collector* - 1997 (93) E.L.T. 641 (S.C.) = 1998 (21) RLT 111 that the classification should be decided in favour of the assessee.

1. The Order under Appeal is based almost entirely on the HSN Explanatory Notes.

2. As stated above reference to the HSN/HSN Explanatory Notes is NOT permissible as there is no ambiguity and the UAS is classifiable under Chapter 5 on the plain terms of the CETA. 3. In any view of the matter, reference to the HSN Explanatory Notes is not permissible as the headings/sub-headings in Chapters 5 & 42 of the CETA are not aligned with corresponding entries in Chapters 5 and 42 of the HSN. (a) The Customs Tariff Act is aligned entry for with the entries in Chapter 5 and Chapter 42 of the HSN. (b) The Chapters 5 & 42 of Schedule to the CETA is however markedly different from the HSN, inasmuch as it had only one Heading in Chapter 5 and one Heading and two subheadings under Chapter 42. The details as to the divergence between the scheme of heading Chapters 5 and 42 of CETA vis-a-vis the HSN is set out at Ground (c) of the Memo of Appeal (Ref. Pg. 33).

(c) The Legislature has consciously chosen to adopt align the Tariff structure of the Customs Tariff with the HSN and simultaneously adopt a distinct and a non-aligned Tariff Structure for the Excise Tariff. The intent of the Legislature to have a distinct Tariff structure in Excise is fortified by the fact that since 1986 for the last fifteen years the Legislature has not sought to align the Excise Tariff for Chapters 5 and 42 with the HSN although it has done so under the Customs Act.

(d) It was submitted that it is settled law, inter alia, by the judgments of this Hon'ble Tribunal in *CCE, Bombay v. Drop Forgings (India)* [1999 (108) E.L.T. 174 (T) = 1998 (28) RLT 130] and *Binny Ltd. v. CCE, Madras* [1994 (71) E.L.T. 846] that where the scheme of taxing entries under the CETA are distinct from/not fully

aligned with the HSN, the Explanatory Notes to the HSN cannot be referred to and relied upon to determine classification under CETA. The Commissioner has given no valid reason for not following the said judgments. CCE v. Woodcraft Products Ltd. [1995 (77) E.L.T. 23] and CCE v. Bakelite Hylem Ltd. [1997 (91) E.L.T. 13] for justifying reference to the HSN Explanatory Notes, is not appropriate, as those cases do not deal with the situation where the entries in the CETA were not aligned with the entries in the HSN. (f) In a situation such as in the present case where the entries in the CETA are clearly not aligned with the entries in the HSN, it is the judgments in the case of CCE, Bombay v. Drop Forgings (India) [1999 (108) E.L.T. 174 (T) - 1998 (28) RLT 130] and Binny Ltd. v. CCE, Madras [1994 (71) E.L.T. 846] which apply. It was accordingly submitted that in the present case reference cannot be made to the Explanatory Notes in the HSN. (C) EVEN IF REFERENCE CAN BE MADE TO THE HSN EXPLANATORY NOTES, THEY SUPPORT CLASSIFICATION OF THE UAS UNDER CHAPTER 5.

1. Without prejudice to the basic submission that the Explanatory Notes to the HSN cannot be relied for interpreting Headings 05.01 and 42.01, it was submitted that a reference to the HSN Explanatory Notes in fact supports classification of the UAS under Chapter 5.

2. The UAS in the present case is undisputedly used for the manufacture of Sterile Surgical Suture - Catgut under Heading 30.05 of the CETA [Heading 30.06 of HSN].

3. The only specific reference to guts/products used for the manufacture of Sterile Surgical - Catgut under Heading 30.05 of the CETA [Heading 30.06 of HSN], is in the Explanatory Notes to Heading 05.04 of the HSN: "Guts are also used for the manufacture of sterile surgical catgut (heading 30.06)...." 4. The Commissioner has sought to get around this specific explanatory note/stipulated end user by holding that the UAS was an intermediate article which could be classified under Chapter 42.

This is patently incorrect. The HSN Explanatory note to heading 5.04 establishes that the product classifiable thereunder (i.e. processed but unsterilized catgut) is used for the manufacture of sterile surgical catgut. The HSN Explanatory Note

does not mention that the product classifiable under heading 5.04 is used to make an intermediate product (classifiable under Chapter 42), which is in turn used for the manufacture of sterile surgical catgut classifiable under heading 30.06.

5. In the impugned Order there is a reference to the Explanatory Note to Heading 42.06. This Heading does not specifically mention guts used in the manufacture of Sterile Surgical Suture -Catgut, although it makes a reference to guts which have other uses such as guts used in the manufacture of rackets, of fishing tackle and of machinery parts.

6. The reference in the impugned order to the Explanatory Notes to the Heading 32.06 to the effect that "The heading excludes non-sterile surgical material. These are classified according to their nature, e.g. catgut (heading 42.06),.. ..) This reference is not proper as this part of the Explanatory notes refers only to alternative classifications of non-Sterile Surgical Suture material and heading 42.06 is by way of the classification only under heading 42.06.

7. It was submitted that under the HSN the only specific reference to guts used in the manufacture of Sterile Surgical Suture is under Heading 05.04 and in terms of this specification under the HSN Explanatory Notes Heading 05.04 would apply in preference to any other heading.

1. In the alternative to the arguments as to classification it is submitted that if it was held that the UAS is to be classified under Heading 42.01 and therefore subjected to a payment of duty, as per settled law, the Appellant is entitled to (a) abatement on account of eligible Modvat on inputs which have been used in manufacturing the quantities of UAS in question at the Appellants Dharavi factory and (b) Modvat credit on the balance of the Excise duty paid after the adjustment mentioned in 1(a) above, which should become immediately available to the Appellants at their manufacturing unit at Aurangabad, where the UAS is, after processing by a job worker, used in the manufacture of Sterile Surgical Sutures under Heading 3005.90.

2. The Show Cause Notice/impugned Order records that after further processing the UAS is used to manufacture sterile surgical catgut by the Appellants. Having

regard thereto the Appellants should be held entitled to MODVAT credit even though they had not complied with procedural requirements/formalities, as it was their contention throughout that no excise duty was chargeable on the UAS. 3. In this behalf reference was made to the judgment of the Hon'ble Supreme Court in *Formica India Division v. Collector of Central Excise* [1995 (77) E.L.T. 511], which judgment has constantly been followed in various judgments of this Hon'ble Tribunal.

4. It is further submitted that as per various judgments on this issue, any duty to be demanded on the UAS should be quantified and recovered only after setting of the Modvat Credit available as aforesaid and the Appellants should be allowed to immediately take Modvat Credit at their Aurangabad factory of any amount paid by it by way of Excise duty on the UAS." (a) The appellant M/s. Johnson & Johnson Ltd. manufacture "Unsterilised Absorbable Sutures" catgut (UAS). They claimed classification of this products Ch. Hdg 0501.00, as product of animal origin. Department's stand is that product is appropriately classifiable under Ch. Hdg. 4201.90 as Articles of Animal Gut".

(b) Ch. 0501.00 covers products of animal origin (Not elsewhere specified or included) including Guts as per the explanatory notes of Ch. 0501.00 in HSN Guts whether whole or in pieces and whether or not edible, fresh, chilled, frozen, salted in brine, dried or smoked. Thus the limitation of Ch. 0501.00 are clear. Therefore only those products of Gut will fall under Ch. 0501.00 which are either fresh, chilled, frozen, salted in brine, dried or smoked. The manufacturing of UAS involves total 9 process as given in the SCN. It involves so many chemical as well mechanical process to give it a specific uniform diameter and to obtain a smooth strand. Thus it becomes a totally different identifiable article correctly classified under Ch. 4201.90.

(c) Ch. 42 covers, Articles of Animal Gut. The products "UAS" manufactured by the appellant is nothing but article of animal Gut.

(d) The appellant did not dispute that the 'Gut' obtained from sheep undergoes many manufacturing process. The only dispute therefore remains that according to them that the product came out after process of animal Gut is not a finish product

and therefore can't be termed as an article. To this contention they have taken support of Andhra Pradesh High Court decision in one of the sale tax case wherein it is held that "product" is different from "article".

(e) This contention of the appellant is however not correct as Hon'ble Supreme Court in the case of Zaffar Mohammed v. State of West Bengal (AIR 1976 S.C. 171) held that "Article means a piece of goods or property" or a commodity, as any useful thing or any article of commerce.

(f) Thus it can be seen that article is any useful thing which can be bought and sold in the market. During the course of his argument the learned Counsel of the appellant did not dispute regarding marketability of the said article by them. It can be bought and sold. The instances to this effect have been incorporated in the show cause and also in Adjudication order (Para 7 of 010).

(g) Further the argument of learned Counsel for the appellant that an article should be a finished goods for ready to use, is mainly based on first part of the description of Chapter Heading, of Chapter 42. In the said description it covers articles of leather saddling and harness, Travel goods, hand bags and similar containers that pertains to list of articles mentioned in sub-heading 4201.10.

The articles of animal gut does not have such list. Therefore, it will cover all articles of animal Gut (except silk worm gut).

(h) As per the Rules of Interpretation also the said product is classifiable under Ch. 42 of CET. Rule 4 of Rule of Interpretation says that if the classification is not possible as per Rules 1 to 3 of these Rules, the goods to which that are most akin should be classified in the Heading, appropriate to the goods.

(i) MODVAT :- The appellant lastly resorted to Modvat. They requested if the product is classified under Chapter 42, they should be allowed to take Modvat credit for past clearances. They argued before Hon'ble Bench that in many cases the Hon'ble Tribunal has allowed the benefit of Modvat for past clearances.

(j) This is however, not correct, the Modvat scheme is having so many procedural formalities to be followed by the assessee. It involves maintenance of records. The

appellant have not done any thing of this sort. They have not even registered themselves with C. Ex. department.

(k) There may be cases where Modvat credit is allowed by Hon'ble Tribunal, but in such cases the Hon'ble Tribunal have observed that the respective appellants either have been denied Modvat on some inputs, final products itself or they have been denied benefits of exemption under certain Notifications by the Deptt. The Tribunal in such cases consider that, had the department not denied such benefits which otherwise admissible to them, it would have been availed by the particular assessee. In such cases only Hon'ble Tribunal have considered the Modvat benefits.

(l) In the present case, as it could be seen from the brief facts, the department on the contrary tried to bring the assessee under C.Ex. control and requested them time to time to take C. Ex.

registration and every time they refused to do so stating that their products is not coming under C. Ex. net. In such cases it is not possible to consider for the Modvat at this stage.

(m) The assessee also claimed that any duty demanded paid by them may be allowed as Modvat credit at their Aurangabad factory.

(n) This claim of the appellant is baseless, and not supported by any statutory provision. There is no provision in Modvat Rules to allow such type of credit, There is a provision of adjustment of credit under Rule 57E as per which, the Modvat credit, already availed against the specified duty paying documents varied subsequently due to demand or by refund, as the case may be, can be adjusted as per this Rule. Whereas in the present case, duty was not paid originally and credit was not taken by the Aurangabad unit or any other person. Therefore, question of allowing adjustment of credit under this Rule does not at all arise.

8. We have considered the rival submissions. From the show cause notice as extracted above, it is to be seen that the product undergoes certain changes as mentioned above from the raw material stage to finished stage. As far as the

manufacturing process is concerned, we have extracted above the relevant portion from the show cause.

9. The approach of the department is that exclusion note to Chapter 0504 in the Explanatory Note of HSN excludes artificial guts. Therefore it does not fall under Chapter 5. The argument of the assessee proceeds on the following lines. The product namely UNSTERILISED ABSORBABLE CATGUT SUTURES is admittedly of animal origin. It is not elsewhere specified or included and it is admitted not as a product which is specified under Note 1 to Chapter 5 of the CETA as being the product not covered under the CETA. The approach of the assessee is that the judgment pronounced by the Andhra Pradesh High Court in the case of State of A.P. v. India Rubbers - 1990 (76) STC 254 has held that there may not generally be a definite demarcation between the words "product" and "article", inasmuch as while "article" meant finished goods, "products" may or may not be finished goods. The item in that case which was not a finished item of immediate use and required further processing was classifiable as a product and not as an article. It was also emphasised the well settled interpretation of the doctrine of Noscitur a Socii.

10. When we take up this point for consideration, we refer to what is mentioned in item 5 various heads, 0501.00 "products of animal origin, not elsewhere specified or included" whereas in item 42 of Chapter 42 "articles of leather; saddlery and harness; travel goods; handbags and similar containers; articles of animal gut (other than silk-worm gut).

The argument of the learned Counsel is put in a different way. What is contained in Chapter 42 is of the finished goods like leather, saddlery and harness, travel goods, handbags and similar containers and if we look into the term "ARTICLE OF ANIMAL GUT", it will take within its ambit the shadow or the colour of the previous words i.e. before the words "articles of animal gut" namely "articles of leather, saddlery etc.". Here it is an admitted fact that at the Aurangabad plant they undergo further processing as reflected in the show cause notice and extracted above, whereas the products mentioned in item 42 are already finished goods. Therefore, this will not be applicable. No doubt, it was elegantly put by the learned

Senior Counsel for the Appellant that the product in question before the Tribunal could never be considered as an article of animal gut because of the Latin Noscitur a Socii mentioned above and he cited cases referred to in the arguments as well as in the Commissioner's order.

11. Apart from this point, we take up what is contained in the entries in HSN of Chapter 5, Chapter 30 and Chapter 42.

Glands or other organs, dried, whether or not powdered; extracts of glands or of their secretions for organo-therapeutic uses; heparin and its salt; other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included.

Antisera; Vaccines, Toxins, Cultures of micro-organisms (including ferments but excluding yeasts) and similar products.

Medicaments (including veterinary medicaments) - Patent or proprietary medicaments, other than those medicaments which are exclusively Ayurvedic, Unani, Siddha, Homoeopathic or Bio-chemic : - Quinine and its salts, Tonaquin and Cinchona Febrifuge; Dapsone; Isoniazid; Amino-salicylic Acid and its salts; Insulin, all types; Iodochlorohydroxy-quinoline, Diodo-hydroxy-quinoline and salts of Emetine; Ethionamide; Cycloserine and Cycloserine Tartrate; Isoniazidamide; Thiacetazone; Chlorohydroxy-quinoline; Moraxazinamide Hydrochloride; Dehydroemetine Dihydrochloride; Chloramphenicol and its esters for oral and parenteral use; penicillin and Streptomycin including Dihydrostreptomycin in their pure form or as salts or as derivatives and intended for oral or parenteral use; Ethambutol; Hydrochloride (Tubitol) Chloroquine Hydrochloride; Amodiaquine Hydrochloride; Clofazimine, Tolbutamide (oral antidiabetic); Metronidazole; Diethyl carbamazine citrate; Ivermectin and its salts; Rifampicin, Tetracycline Hydrochloride; Chloroquine Hydrochloride; Primaquine Hydrochloride; Pyrimethamine; Mefenamic Acid Hydrochloride; Chloroquine Dihydrochloride; Doxycycline, its salts and esters; Erythromycin, its salts and esters, Mebendazole Medicaments (other than patent or proprietary) other than those which are exclusively used in Ayurvedic, Unani, Siddha, Homoeopathic or Bio-chemic systems.

Medicaments, including those used in Ayurvedic, Unani, Siddha, Homoeopathic or Bio-chemic systems Wadding, Gauze, Bandages and similar articles (for example, Dressings, Adhesive Plasters, Poultices), Impregnated or coated with Pharmaceutical substances or put up in forms or packings for Medical, Surgical, Dental or Veterinary purposes ARTICLES OF LEATHER, SADDLERY AND HARNESS; TRAVEL GOODS. HANDBAGS AND SIMILAR CONTAINERS; ARTICLE OF ANIMAL GUT (OTHER THAN SILK-WORM GUT) (a) Sterile surgical catgut or similar sterile suture materials (Chapter 30); (b) Articles of apparel or clothing accessories (except gloves) lined with furskin or artificial fur or to which furskin or artificial fur is attached on the outside except as mere trimming (Chapter 43); (h) Fittings or trimmings for harness, such as stirrups bits, horse brasses and buckles, separately presented (generally Section XV); (i) Strings, skins for drums or the like, or other parts of musical instruments (Chapter 92); (j) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings); (k) Articles of Chapter 95 (for example, toys, games, sports requisites); or (l) Buttons, press-fasteners, snap-fasteners, press-studs, buttons moulds or other parts of these goods, button blanks of Chapter 96.

Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk-worm gut) Suit cases, vanity cases, executive cases, brief cases and vanity bags all sorts.

(a) Edible products (other than guts, bladders and stomachs of animals, whole and pieces thereof, and animal blood, liquid or dried); (b) Hides or Skins (including furskins) other than goods of heading No. 05.05 and parings and similar waste of raw hides or skins of heading No. 05.11 (Chapter 41 or 43); (c) Animal textile materials, other than horsehair and horsehair waste (Section XI); or (d) Prepared knots or tufts for broom or brush making (heading No. 96.03) 2. For the purposes of heading No. 05.01, the sorting of hair by length (provided the root ends and tip ends respectively are not arranged together) shall be deemed not to constitute working.

3. Throughout the Nomenclature, elephant, walrus, narwhal and wild boar tusks, rhinoceros horns and the teeth of all animals are regarded as "ivory".

4. Throughout the Nomenclature, the expression "horsehair" means hair of the manes or tails of equine or bovine animals.

HUMAN HAIR, UNWORKED, WHETHER OR NOT WASHED OR SCOURED; WASTE OF HUMAN HAIR.PIGS', HOGS' OR BOARS' BRISTLES AND HAIR; BADGER HAIR AND OTHER BRUSH MAKING HAIR; WASTE OF SUCH BRISTLES OR HAIR.HORSEHAIR AND HORSEHAIR WASTE, WHETHER OR NOT PUT UP AS A LAYER WITH OR WITHOUT SUPPORTING MATERIAL.

GUTS, BLADDERS AND STOMACHS OF ANIMALS (OTHER THAN FISH) WHOLE AND PIECES THEREOF.SKINS AND OTHER PARTS OF BIRDS, WITH THEIR FEATHERS AND PARTS OF FEATHERS (WHETHER OR NOT WITH TRIMMED EDGES) AND DOWN, NOT FURTHER WORKED THAN CLEANED, DISINFECTED OR TREATED FOR PRESERVATION; POWDER AND WASTE OF FEATHERS OR PARTS OF FEATHERS.BONES AND HORN-CORES, UNWORKED, DEFATTED, SIMPLY PREPARED (BUT NOT CUT TO SHAPE), TREATED WITH ACID OR DEGELATINISED; POWDER AND WASTE OF THESE PRODUCTS.IVORY, TORTOISE-SHELL, WHALEBONE AND WHALEBONE HAIR, HORNS, ANTLERS, HOOVES, NAILS, CLAWS AND BEAKS, UNWORKED OR SIMPLY PREPARED BUT NOT CUT TO SHAPE; POWDER AND WASTE OF THESE PRODUCTS.CORAL AND SIMILAR MATERIALS, UNWORKED OR SIMPLY PREPARED BUT NOT OTHERWISE WORKED; SHELLS OR MOLLUSCS, CRUSTACEANS OR ECHINODERMS AND CUTTLE-BONE, UNWORKED OR SIMPLY PREPARED BUT NOT CUT TO SHAPE, POWDER AND WASTE THEREOF. NATURAL SPONGES OF ANIMAL ORIGIN.AMBERGRIS, CASTOREUM, CIVET AND MUSK; CANTHARIDES; BILE, WHETHER OR NOT DRIED; GLANDS AND OTHER ANIMAL PRODUCTS USED IN THE PREPARATION OF PHARMACEUTICAL PRODUCTS, FRESH, CHILLED, FROZEN OR OTHERWISE PROVISIONALLY PRESERVED.ANIMAL PRODUCTS NOT ELSEWHERE SPECIFIED OR INCLUDED; DEAD ANIMALS OF CHAPTER 1 OR 3, UNFIT FOR HUMAN CONSUMPTION. For the purposes of heading Nos. 30.03 and 30.04 and of Note 3 (d) to this Chapter, the following are to be treated.

(3) Simple vegetable extracts of heading No. 13.02, merely standardised or dissolved in any solvent; (1) Colloidal solutions and suspensions (other than colloidal sulphur); (2) Vegetable extracts obtained by the treatment of mixtures of vegetable materials, and (3) Salts and concentrates obtained by evaporating natural mineral waters.

GLANDS AND OTHER ORGANS FOR ORGANOTHERAPEUTIC USES, DRIED, WHETHER OR NOT POWDERED; EXTRACTS OF GLANDS OR OTHER ORGANS OR OF THEIR SECRETIONS FOR ORGANO-THERAPEUTIC USES; HEPARIN AND ITS SALTS; OTHER HUMAN OR ANIMAL SUBSTANCES PREPARED FOR THERAPEUTIC OR PROPHYLACTIC USES, NOT ELSEWHERE SPECIFIED OR INCLUDED. HUMAN BLOOD; ANIMAL BLOOD PREPARED FOR THERAPEUTIC, PROPHYLACTIC OR DIAGNOSTIC USES; ANTISERA AND OTHER BLOOD FRACTIONS; VACCINES; TOXINS CULTURES OF MICRO-ORGANISMS (EXCLUDING YEASTS) AND SIMILAR PRODUCTS. MEDICAMENTS (EXCLUDING GOODS OF HEADING NO. 30.02, 30.05 OR 30.06) CONSISTING OF TWO OR MORE CONSTITUENTS WHICH HAVE BEEN MIXED TOGETHER FOR THERAPEUTIC OR PROPHYLACTIC USES, NOT PUT UP IN MEASURED DOSES OR IN FORMS OR PACKINGS FOR RETAIL SALE. Containing penicillins or derivatives thereof, with a penicillanic acid structure, or streptomycins or their derivatives.

Containing other antibiotics - Containing hormones or other products of heading No. 29.37 but not containing antibiotics : Containing alkaloids or derivatives thereof but not containing hormones or other products of heading No. 29.37 or antibiotics MEDICAMENTS (EXCLUDING GOODS OF HEADING NO. 30.02, 30.05 OR 30.06) CONSISTING OF MIXED OR UNMIXED PRODUCTS FOR THERAPEUTIC OR PROPHYLACTIC USES, PUT UP IN MEASURED DOSES OR IN FORMS OR PACKINGS FOR RETAIL SALE. WADDING, GAUZE, BANDAGES AND SIMILAR ARTICLES (FOR EXAMPLE, DRESSINGS, ADHESIVE PLASTERS, POULTICES), IMPREGNATED OR COATED WITH PHARMACEUTICAL SUBSTANCES OR PUT UP IN FORMS OR PACKINGS FOR RETAIL SALE FOR MEDICAL, SURGICAL, DENTAL OR VETERINARY PURPOSES. (a) Sterile surgical catgut or similar sterile materials (heading No.

30.06); (b) Articles of apparel or clothing accessories (except gloves), lined with furskin or artificial fur or to which furskin or artificial fur is attached on the outside except as mere trimming (heading No. 43.03 or 43.04); (g) Cuff-links, bracelets or other imitation jewellery (heading No. 71.17); (h) Fittings or trimmings for harness, such as stirrups, bits, horse brasses and buckles, separately presented (generally Section XV); (ij) Strings, skins for drums or the like, or other parts of musical instruments (heading No. 92.90); (k) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings); (l) Articles of Chapter 95 (for example, toys, games, sports requisites); or (m) Buttons, press-fasteners, snap-fasteners, press-studs, button moulds or parts of these articles, button blanks, of heading No. 96.06.

SADDLERY AND HARNESS FOR ANY ANIMAL (INCLUDING TRACES, LEADS, KNEE PADS, MUZZLES, SADDLE CLOTHS, SADDLE BAGS, DOG COATS AND THE LIKE), OF ANY MATERIAL.

ARTICLES OF APPAREL AND CLOTHING, ACCESSORIES, OF LEATHER OR OF COMPOSITION LEATHER ARTICLES OF GUT (OTHER THAN SILK WORM GUT), OF GOLDBEATHER'S SKIN, OR BLADDERS OR OF TENDONS." 12. When we go through the corresponding entries in HSN and the CETA they do not identically match with each other. Therefore the argument of the learned Senior Counsel for the assessee regarding application of the HSN to the present case has to be accepted which he has forcefully and elegantly put before us. Therefore, we are not referring to the case laws cited by him for the proposition. In fact this point has been urged by the counsel who appeared before the Commissioner as well.

(Please see paragraphs 16 & 17 and the findings of the Commissioner at paragraph 33).

13. But it must be stated that sub-heading 42 which has been extracted earlier in the argument of the Senior Counsel for the assessee as well as in the operative portion of the order, it will be found that in Chapter heading 42 after the words "similar containers" before the words "articles of animal gut" there is a semi-colon. This means that it gives credence and force of the argument of the department. When we see Chapter 42, it starts with articles of leather which includes saddlery

and harness. After the word "harness" there is a semi-colon.

After such semi-colon, starts "travel goods, handbags and other similar containers". When we look at "travel goods" one may say that a person may carry something for travelling i.e. moving from place to place. The handbag is carried even without undertaking such a movement. Between the words "travel goods" and "handbags" there is a coma. A handbag can be kept in a safe place in a place of abode or a place of working, keeping certain things for easy retrieval whenever it is necessary.

Travel goods means like suitcase or a small leather bag where one keeps clothes, toiletry etc. for travel. But the words articles of animal gut which is a specific entry here, we therefore cannot agree with the submissions made by the learned Senior Counsel on behalf of the appellant that we have to derive support from the Andhra Pradesh High Court judgment.

14. As far as the Andhra Pradesh High Court's judgment is concerned, that was a case which was decided under Entry 101(ii) of the First Schedule to the Andhra Pradesh General Sales Tax Act. The question is whether it will fall under Entry 101 dealing with Rubber Products or Entry 41 reading seat cushion etc. The question considered was whether it was a product or an article and also discusses the ejusdem generis principle. We do not think that the fact of a semi-colon has been considered in that case. Here the words "articles of animal gut" are preceded by semi-colon. This type of fact is absent in that case. Hence we cannot follow that case.

15. But however with great alacrity, learned DR brought the judgment of the Supreme Court in Zaffar Mohammad v. The State of West Bengal AIR 1976 S.C. 171 wherein construing the provisions of the Drugs and Magic Remedies (Objectionable Advertisements) Act, the court held as follows :- "That a machine is an "article" requires no great learning either to ex-pound or to understand. A machine is a tangible thing which can both be seen and felt and as such it answers the description of an "article" within the meaning of Section 2(b)(iii) of the Act. The "Shorter Oxford English Dictionary" (Ed. 1964, Vol. 1, p. 102) says that "article" means, inter alia, "a piece of goods or property".

Webster's New World Dictionary" defines an "article" as "commodity" and "commodity" as "any useful thing" or "any article of commerce".

(See Ed. 1962 pp. 93 and 295). Putting it simply, a "machine" is a "thing" and is therefore an "article". Law may not all be common sense and logic may not be the life of law but common sense is not taboo in law courts. A machine is after all intended to be and is conceived as a useful thing and is therefore an article." 16. For the reasons which we hold that (1) the facts of the case of the Andhra Pradesh High Court are different (2) in reply to that, the judgment of the Supreme Court is well taken. We therefore reject the contention raised by the assessee that the Supreme Court judgment supports the assessee's case. But there is no doubt in our mind that it is an article of animal gut. When there is specific entry available denoting the article under consideration, that alone should be considered for classification. Reference may be made to Clause 3(a) of the Interpretative Rules. Moreover, under Interpretative Rules 1 classification has been determined under the terms of heading and according to us the term and content of the heading is very clear, namely article of animal gut.

17. This takes us to the specific plea made by the learned Senior Counsel for the assessee about the heading 3005 of the CETA equivalent to heading 3006 of the HSN. We are not considering Sterile Surgical Catgut. Since we are not referring to the HSN, the argument of the learned Senior Counsel that the product be classified under Chapter 5 cannot be dealt with.

18. The contention of the appellant that it should be entitled to avail of Modvat credit of the duty paid on the inputs used in its manufacture has to be accepted in the light of the decision of the Tribunal in CCE v. Indian Hume Pipe - 1999 (109) E.L.T. 305, National Steel Industries v. CCEPhoenix Mills v. CCE - 1999 (113) E.L.T. 1018.

19. The matter therefore will have to be remanded to the Commissioner for him to satisfy that the inputs that the appellant received were in fact are duty paid and that they were in fact used in the manufacture of the finished product.

20. There are no precedents for classification of these products. As far as marketability is concerned, our attention has not made to any specific grounds in the grounds of appeal before us. If the product is not marketable, how the same could be sold. (Please refer to invoices in SCN at page 68 of the paper book).

21. We are indeed indebted to the eloquent and elegant argument put forth by the learned Senior Counsel on behalf of the appellant and also the learned DR on behalf of the department.

22. Appeal stands disposed of upholding the classification made by the Commissioner and remanding the matter with regard to the question of Modvat claim.

23. While agreeing with the conclusion in the order of the Member (Judicial), that the product should be classifiable in heading 42.01 as an article of animal gut, I would like to say the following.

24. We are concerned herewith whether the product should be treated as an article of animal gut or as a product of animal origin not elsewhere specified or included (heading 05.01) which what the appellant claims, 25. The judgment of the Andhra Pradesh High Court in State of Andhra Pradesh v. India Rubber - 1990 (76) STC 254 does not lend support to the view that an article is a finished product capable of use and commerce, while a product is not. The Court was concerned with the classification of tread rubber, for the purposes of sales tax, either in entry 41 of the First Schedule which read "sheets, cushions, mattresses, pillows, and other articles made of rubber, plastic, foam, synthetic form or other similar material" or entry 101 which read "Rubber products other than those specifically mentioned elsewhere including... (not reproduced)". After referring to the meanings in the dictionary of the words "article" and "product" it found it difficult to distinguish an article from a product and specifically rejected the contention that "article" means finished goods, while "product" may be finished goods or not. It also rejected the contention that item other articles in entry 41 should be construed ejusdem generis with the preceding words. Having regard to the language of the entries it came to the conclusion that it would be more appropriate to place trade rubber as an article. This judgment therefore does not lay down any proposition as

to the scope and applicability of the word "article" or "product".

26. The relevant meanings of the term "product" in the New Shorter Oxford Dictionary is "Nothing produced by an action, operation, a natural process; a result of significance spec; that which is produced commercially for sale". Apart from this, one has to keep in mind, it is relevant to note that the word "product" is often used while referring to an article of a particular kind or of a particular origin. Thus, we speak of products of the vegetable kingdom or products of the milling industry. The counsel for the appellant is therefore perfectly when he says that the suture under consideration is a product of animal origin, specified in Chapter 5. If it were not elsewhere specified in the tariff, the commodity would indeed be classifiable in Chapter 5. It is however so specified in Chapter 42 as an article of animal gut, and hence it cannot be classified in Chapter 5.

27. The contention that the term "article of animal gut" should be read ejusdem generis with the words preceding it is again not acceptable. We do not find anything in the words of the heading which support this view. The heading in fact is an assemblage of various goods, which are common only to the extent that they are often made of leather. It is well to keep in mind that this heading, as the rest of the tariff of which the heading is formed derived from the heading of the Harmonised Commodity Description and Coding System in the Customs Co-operation Council. Chapter 42 of that system has a separate heading for articles of leather, saddlery and harness for any animal, articles of apparel and clothing accessories, of leather or of composition of leather and articles of gut. A comparison of the headings in that Code and in the tariff leads to the clear conclusion that heading 42 of the tariff seeks to keep in one heading the various products and articles classified in separate headings in Chapter 42. The Explanatory Notes to Chapter 42 of HSN say "This Chapter principally covers articles of leather or composition of leather; however headings 42.01, 42.02 also include certain articles characteristically of the leather trade but made from other materials. It further covers certain articles of gut, goldbeater skins, bladders of tendons." It is therefore not appropriate to conclude that the heading was intended to cover finished goods and not articles.

28. I am in agreement with my colleague as to the marketability and availability of Modvat credit.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com