

**Pointec Writing Instruments Pvt. Vs. Commr. of Cus.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT

**Decided On :** Jun-18-2004

**Reported in :** (2004)(170)ELT591Tri(Bang.)

**Judge :** S Peeran, M T K.C.

**Appellant :** Pointec Writing Instruments Pvt.

**Respondent :** Commr. of Cus.

**Judgement :**

1. This appeal arises from Order-in-Appeal No. 108/2003-Cus., dated 6-10-2003. The appellants are challenging the correct classification of ballpoint ink for the purpose of CVD. The appellants claimed the classification of the goods under sub-heading 3215.10 as 'writing ink' while the department has classified under the residuary heading 'Other' falling under chapter sub-heading 3215.90.

2. Learned Counsel submits that the issue is no longer res Integra and the Tribunal, in the case of Line Pen and Plastic Ltd. v. CC, Kolkata - 2003 (156) E.L.T. 126 (Tri. - Kolkata) has held that Ball Point Pen Ink which is water based and used for writing is classifiable only under sub-heading 3215.10 and not under the residuary heading 'Other' falling under sub-heading 3215.90, as claimed by the Revenue. He submits that the issue is a covered one and the appeal is required to be allowed. CC, Madras v. G.M. Pens (International) Ltd. - 2001 (133) E.L.T. 720 (Tri.-Chennai) which refers to marker pen ink which has been held to be classifiable under the residuary reading 'Other'. So, likewise, he referred to the

judgment rendered in the case of C.C.E., Mumbai v. Camlin Ltd. - 2002 (144) E.L.T. 638 (Tri.-Mumbai) which refers to Camel Fount drawing ink, Camel Waterproof drawing ink, Camel Special Drawing Ink Black, Camel Rapidograph Ink black, Designer's Indian Ink Black, Sketch Pen Ink which were all held to be classifiable under Tariff Heading 3215.10 and not under the residuary heading. Learned DR also submits that the Revenue appeal had been admitted by the Apex Court and notice has been ordered on the stay application. He refers to 2003 (157) E.L.T. A139.

4. On a careful consideration of the submissions, we notice that the Tribunal, in the case of Linc Pen and Plastic Ltd. (supra), has dealt with Ball Point Pen Ink and has clearly held that the same is classifiable under sub-heading 3215.10 of the Central Excise Tariff and not under the category residuary heading "Other" falling under 3215.90 as claimed by the Revenue. The DR has referred to the judgment of CC, Madras v. G.M. Pens (International) Ltd., which refers to 'marker pen ink' and not the 'writing ink' and hence the citation referred to by the DR is distinguishable. We also notice that the Tribunal, in the case of CCE v. Camlin Ltd. dealt with drawing ink, water proof drawing ink, sketching pen ink etc. in which although the Heading 3215.10 has been upheld but the apex court has admitted the appeal. The items are different and not specific to ball point writing ink which is the subject matter of this appeal which is covered by the judgment of Linc Pen and Plastics Ltd. Therefore, there is no ground to take a different view in the matter from the one taken by Line Pen and Plastics Ltd. Respectfully following the ratio thereto, the appeal is allowed.

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