

CAMLIN LIMITED

v.

COMMNR. OF CENTRAL EXCISE, MUMBAI  
(Civil Appeal Nos. 4507-4508 of 2002)

SEPTEMBER 3, 2008

[ASHOK BHAN AND V.S. SIRPURKAR, JJ.]

*Central Excise Tariff Act, 1985 – Chapter Sub-Heading 3215.10 or 3215.90 – Marker inks, Camel fount drawing ink, waterproof drawing ink, spl.drawing ink black, rapidograph ink black, designers' Indian ink black and sketching pen ink – Classification of – Held: Inks other than marker inks are writing inks – Thus, classifiable under CSH 3215.10 and exigible to nil rate of duty – Marker inks are used in marker pens – Hence, classifiable under CSH 3215.10 and exempt from payment of excise duty – Tribunal erred in relying upon HSN for classifying marker inks under CSH 3215.90 – Entries under HSN and Indian Tariff Entry are completely different – When entries in HSN and the said Tariff are not aligned, reliance cannot be placed upon HSN for classification of goods under the said Tariff – Thus, order of tribunal to that extent is set aside – Interpretation of statutes.*

**Appellant-assessee is engaged in manufacturing of various kinds of marker pens and sketch pens. With regard to levy of excise duty, tribunal relying on HSN held that camel fount drawing ink, waterproof drawing ink, spl.drawing ink black, rapidograph ink black, designers' Indian ink black and sketching pen ink manufactured by assessee, were writing inks. They were classifiable under CSH 3215.10 and exigible to nil rate of duty. Marker inks not being writing inks, was classified under residual entry CSH 3215.90 and exigible to 16% of excise duty.**

**The questions which arose for consideration in these**

A appeals was with regard to the classification of writing inks and marking inks manufactured and captively consumed by assessee for exigibility to excise duty.

Allowing the assessee's appeal and dismissing the Revenue's appeals, the Court

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HELD: 1.1 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". 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. 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. [Paras 16 and 17] [1231,C; 1232,G]

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1.2 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 letter of the Finance Minister and the trade notices referred to. 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. [Paras 19 and 20] [1233,B-E]

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1.3 The assessee has produced/filed the chemical composition of its products before the Tribunal. The

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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. [Para 18] [1232,H; 1233,A-B]

1.4 The findings recorded by the Tribunal insofar as the inks other than marker inks that they were classifiable under CSH 3215.10 and exigible to nil rate of duty, is accepted and is confirmed. The marker inks would be classified under CSH 3215.10 as the same are used in marker pens which are exempt from the payment of excise duty. 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. One of the factors on which the tribunal based its conclusion is the entries in the HSN. Therefore, the said conclusion in the order of the tribunal is vitiated. The order of the tribunal that marker inks are exigible to pay duty would fall under Chapter Sub-Heading 3215.90, is set aside. The findings recorded by the Commissioner (Appeals) are concurred with. [Paras 24, 26 and 27] [1234,F-G; 1235,A-C; 1235,D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4507-4508 of 2002

From the final Judgment and Order No. CI/1237-38/02-WZB/2002 dated 30.4.2002 of the CEGAT, Western Regional Bench at Mumbai in Appeal Nos. E/2312-R/99-BOM & E/3179-R/99-BOM

WITH

C.A. Nos. 1692-1693 of 2003 & 978 of 2005

I. Venkatanaraya, Aarohi Bhalla, Shekhar Sharma (for Ms. Sujata Kurdukar), Alok Yadav (for M.P. Devanath), Vikas Sharma and Neera Gupta (for B.V. Balaram Das) for the Appearing Parties.

The Judgment of the Court was delivered by

A **BHAN, J.** 1. These three sets of appeals arise from a common judgment and order dated 30<sup>th</sup> April, 2002 passed by the Customs, Excise & Gold (Control) Appellate Tribunal, Western Zonal Bench at Mumbai (for short "the Tribunal").

B 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.

C 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 DRAWING INK	i) CARBON BLACK (PIGMENT) ii) SHELLAC BINDER iii) WATER & PRESERVATIVES
3.	07-CAMEL WATERPROOF DRAWING INK	i) CARBON BLACK (PIGMENT) ii) SHELLAC BINDER iii) WATER & PRESERVATIVES
4.	09-CAMEL SPL. DRAWING INK BLACK	i) CARBON BLACK (PIGMENT) ii) SHELLAC BINDER iii) WATER & PRESERVATIVES

5.	98- CAMEL RAPIDUG-RAPH INK BLACK	i) CARBON BLACK (PIGMENT) ii) SHELLAC BINDER iii) WATER & PRESERVATIVES	A
6.	75- DESIGNERS' INDIAN INK BLACK	i) CARBON BLACK (PIGMENT) ii) SHELLAC BINDER iii) WATER & PRESERVATIVES	B
7.	75A- DESIGNERS' INDIAN INK BLACK	i) CARBON BLACK (PIGMENT) ii) SHELLAC BINDER iii) WATER & PRESERVATIVES	C
8.	75B- DESIGNERS' INDIAN INK BLACK	i) CARBON BLACK (PIGMENT) ii) SHELLAC BINDER iii) WATER & PRESERVATIVES	D
9.	SKETCHING PEN INK	i) ACID DYES ii) BASIC DYES iii) FOOD COLOURS iv) WATER v) HYGROSCOPIC AGENTS (such as GLYCOLS)	E
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			G

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

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A 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:-

B "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%"

C 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.

D 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".

F 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. 1<sup>st</sup> 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%.

G 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 H by the assessee are assessed at nil rate, the submission is

that the writing inks which are used in these pens are not exigible A  
to the levy of duty. This submission is made on the basis of the  
letter dated 28<sup>th</sup> 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 B  
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 C  
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 D  
taken in appeal were accepted by the Commissioner (Appeals)  
vide his Order dated 28<sup>th</sup> 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 E  
"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 F  
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 G  
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 H

A 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  
B 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  
C Electrographic 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."

D 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  
E 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  
F "marker inks and camiligraph (rapidograph) ink" will be  
assessed to duty under CSH 3215.90.

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

13. Tribunal vide its impugned order dated 30<sup>th</sup> April, 2002,  
decided that eight out of nine inks manufactured by the  
assessee will be considered as writing inks and rate of duty will  
H 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

A 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.

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(C) Other inks in this heading include:

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

(2) Inks for ball point pens.

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

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

E (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).

F 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."

G 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.

H 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

A concerned, the Tribunal while deciding the same in favour of the assessee has recorded the following findings: -

B "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."

G 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.

H 25. The then Finance Minister in his letter dated 28<sup>th</sup> 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.

N.J. Civil Appeal Nos. 4507-4508 of 2002 allowed  
and Civil Appeal Nos. 1692-1693 of 2003  
and C.A. No. 978 of 2005 dismissed.