

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75477 of 2021

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/AKR/320/2021 dated 24.03.2021 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Perfect Writing Instruments Pvt. Ltd. : **Appellant**
C/o. JB's, 108, M.G. Road, Fancy Bazar,
Guwahati, Assam – 781 001

VERSUS

Commissioner of Customs (Port) : **Respondent**
Custom House, 15/1, Strand Road, Kolkata – 700 001

AND

Customs Appeal No. 75253 of 2023

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/AKR/118/2023 dated 13.02.2023 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Perfect Writing Instruments Pvt. Ltd. : **Appellant**
C/o. JB's, 108, M.G. Road, Fancy Bazar,
Guwahati, Assam – 781 001

VERSUS

Commissioner of Customs (Port) : **Respondent**
Custom House, 15/1, Strand Road, Kolkata – 700 001

APPEARANCE:

Shri Vikrant Kackria and Shri Tanuj Kakrinia, Advocates for the Appellant

Shri Subrata Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 75732-75733/ 2024

DATE OF HEARING / DECISION: 12.03.2024

Order : [PER SHRI K. ANPAZHAKAN]

The present appeals have been filed against the orders of the Ld. Commissioner (Appeals).

1.1. **Customs Appeal No. 75477 of 2021** has been filed against confirmation of IGST of Rs.2,51,850/- along with imposition of Fine of Rs.5,00,000/- and penalty of Rs.25,000/- against the appellant.

1.2. **Customs Appeal No. 75253 of 2023** has been filed against confirmation of IGST of Rs.25,20,469.50/-.

2. The facts of the case are that the appellant imported parts/tips of ball pen from China. They filed Bill of Entry No. 2058819 dated 14.02.2019 for import of items declared as 'Parts for Ball Pen Tips (Blank for Ball Pen Tips) NM6 Alloy 1.60MM*7.10MM' classifying the same under HSN 960899990 of the First Schedule of Customs Tariff Act, 1975, chargeable to Basic Customs Duty @5% under Notification 50/2017-Cus dated 30.06.2017. To similar effect, 13 Bills of Entry were filed by the appellant declaring the items as aforesaid. For the purpose of IGST, the appellant claimed benefit of Sl. No.232 of Notification 01/2017-Cus dated 28.06.2017. As per the Sl. No. 232 of the Schedule II of the Notification 01/2017, the appellant claimed IGST @12% for the goods imported. On examination of the goods imported by the appellant, the officers opined that the items imported are liable to pay IGST @18% as per Sl. No.453 of the Schedule III of the Notification 01/2017.

2. Show Cause Notices dated 08.04.2019 and 20.01.2020 were issued to the appellant alleging that tips and balls are parts of refill and since there is no specific subheading allotted to these parts, they are classifiable under the residuary heading as 'others' in 960899, specifically under the sub-heading 96089990 of the Customs Tariff Act. The Notices rejected applicability of IGST @12% under Sl. No.232 of Schedule II of the Notification 01/2017 and propose to re-assess the same under Sl. No. 453 of Schedule III of the Notification 01/2017, as per Section 17(5) of the Customs Act, 1962.

3. The Notices were adjudicated by the Ld. Additional Commissioner of Customs (Port), Kolkata vide Orders-in-Original dated 18.06.2019 and 16.11.2020 wherein he has rejected the IGST rate of 12% claimed by the appellant in respect of Bill of Entry No. 2058819 dated 14.02.2019 and in respect of 11 out of 13 Bills of Entry relating to the other Notice, thereby re-determining the impugned goods under 18% IGST under the residuary entry 96089900.

3.1 On appeal, the Ld. Commissioner (Appeals) upheld the said Orders-in-Original vide the impugned Orders-in-Appeal dated 24.03.2021 and 13.02.2023. Aggrieved against the impugned orders, the appellant has filed these appeals.

4. The appellant submits that for the purpose classification of the imported goods and levy of IGST, the General Rules for the Interpretation ("GIR"), Chapter Notes and Additional Notes under the GIR must be considered. The IGST Goods Rate Notification must be read with reference to 'Headings' in the Customs Tariff Act along with their respective Section

and Chapter Notes and the General Rules of Interpretation.

4.1. The appellant submits that they have classified the goods imported by them under the Heading 9608 of the First Schedule to the Customs Tariff Act; that as per **Chapter Note 1(d) of Chapter 96** of the First Schedule to the Customs Tariff Act, this Chapter does not cover parts of general use, as defined in Note 2 of Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39). As such, it is their contention that **all identifiable parts of items (falling under Chapter 96), which are not of general use, shall be classified with the main item under same tariff heading.**

4.2. The appellant further submits that classification of the impugned goods as 'parts of ball point pens' under heading 9608 is already accepted by the Department; in paragraph 4 of the Show Cause Notice dated 08 April 2019, it is stated that the impugned goods were examined and samples were drawn on 18 March 2019; upon examination, the impugned goods were "**found to be 'tips' i.e. parts of ball point pen as declared in bill of entry**". It is submitted that when the goods are parts and accessories of writing instruments (Ball Pen), as per the HSN Explanatory Notes for "Parts" under CTH 9608, all sorts of Pens including Ball Point Pens and the Parts of such Pen are covered under Heading 9608.

4.3. The Appellant referred to clarification issued by CBIC (TRU) vide **Circular No. 113/32/2019-GST dated October 11, 2019 ("Circular No. 113")** regarding applicability of GST on the parts and

accessories suitable for use solely or principally with a medical device. By the said Circular No. 113, it was clarified that **same rate of GST would be applicable on the parts and accessories suitable for use solely or principally with a medical device as the rate of GST on the medical device and such parts would not be classified under residuary entry.**

4.4. They further cited **Circular No. 155/11/2021- GST dated June 17, 2021** ("***Circular No. 155***") which clarified the GST rate on laterals and parts of Sprinklers or Drip Irrigation System; they claim that paragraph 3 of Circular No. 155 makes it abundantly clear that parts, if not specifically mentioned in the GST rate schedule, shall attract the GST as applicable to the respective heading wherein they are classifiable on the basis of Heading Description, Section Notes, Chapter Notes etc.

4.5. The appellant also contends that as per **Chapter Note 1(d) of Chapter 96** of the First Schedule to the Customs Tariff Act, this Chapter does not cover parts of general use, as defined in Note 2 of Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39); as such, all identifiable parts of items (falling under Chapter 96), which are not of general use, shall be classified with the main item under same tariff heading.

4.6. It is therefore contended by the appellant that both these Circulars, as discussed *supra*, have clarified on the basis of Explanation (iii) and (iv) of the IGST Goods Rate Notification itself, which states that the said notification must be read with reference to

'Headings' in the Customs Tariff Act along with their respective Section and Chapter Notes and the General Rules of Interpretation. They also contend that similar analogy can be applied to the present case to state that impugned goods are suitable for use solely or principally with the ball point pens only, thus, should be classifiable with ball point pens, i.e., under S.No. 232 of Schedule II under the IGST Goods Rate Notification.

4.7. The appellant submits that the impugned Orders-in-Appeal are silent on Circular No. 113, which was submitted by them in writing to the appellate authority at time of personal hearing; Circular No. 155/11/2021-GST (supra) further strengthens the Appellant's contention. However, the appellant submits that the Id. appellate authority has not given any findings in the impugned order regarding its non-applicability of these Circulars in the instant case.

5.7. The appellant also referred to the decision made by the GST Council in its 14th GST Council meeting held on May 18 & 19, 2017. The aspect of classification of goods in GST was discussed and following was agreed (as per extract of signed minutes of the meeting):

*"29.1. The Secretary drew attention to paragraph 6 of the agenda notes to agenda item 9 in Volume – 3 and stated that **GST rates would generally be prescribed at the 4-digit HS Classification, unless a carve out was required to specify the rate for a good at 6 or 8-digit levels.** He proposed that for GST purposes, the classification of goods and the Rules for Interpretation thereof as given in the*

First Schedule to the Customs Tariff Act, 1975 be relied upon. The Council agreed to this proposal.

(Emphasis supplied)

It is pertinent to note that at several entries in the tariff schedule, the rates have been prescribed at 6-digit (sub-heading) or 8-digit (tariff line) level. If the intention of the IGST Goods Rate Notification was to cover only ball point pens and not their parts then the entry could have been "960810" (Ball point pens) at Serial No. 232 of Schedule II of the IGST Goods Rate Notification instead of "9608" which covers all the items under HSN 9608 except otherwise specifically excluded. Thus, it is evident that the intention of the GST Council was to cover the entire heading 9608 (other than Fountain pens, stylograph pens) at Serial No. 232 of Schedule II of the IGST Goods Rate Notification.

5.8. The appellant referred to the Compliance Portal launched by CBIC and contended that on the Compliance Information Portal, **there is no option to classify goods of HSN 96089990 under the residuary entry S.No. 453** of Schedule III of the IGST Rate Notification 001/2017. Apparently, even as per CBIC, the goods classifiable under HSN 96089990 are covered by the specific entries for Heading 9608 and as such the impugned goods are not covered by residual entry 453 of Schedule III.

5.9. The appellant submits that the present issue regarding the classification of parts of pens had come up before the Hon'ble Tribunal in the case of **M/s Camlin Limited V/s commissioner of Central Excise, Mumbai-III reported as 2000 (121) ELT**

178 (Tri) which has been upheld by the Hon'ble Supreme court as reported in 2001 (128) E.L.T. A72 (S.C.).

5.10. From the above, it is clear that parts of pens which are specially designed merits clarification along with pens only.

5.11. In view of the above submissions, the appellant prayed for setting aside the impugned orders.

6. The Ld. Authorized Representative for the Revenue reiterated the findings in the impugned orders.

7. Heard both sides and perused the appeal documents.

8. We observe that the appellant imported certain goods and declared them as 'Parts of Ball Point Pen Tips: Blank Ball Pen Tips made of NM6 alloy' classifying the same under HSN 960899990 of the First Schedule of Customs Tariff Act, 1975, chargeable to Basic Customs Duty @5% under Notification 50/2017-Cus dated 30.06.2017. For the purpose of IGST, the appellant claimed benefit of Sl. No.232 of Notification 01/2017-Cus dated 28.06.2017. As per the Sl. No. 232 of the Schedule II of the Notification No. 01/2017, the appellant claimed IGST @12% for the goods imported. On examination of the goods imported by the appellant, the officers opined that the items imported are liable to pay IGST @18% as per Sl. No.453 of the Schedule III of the Notification 01/2017. Thus, the dispute in these appeals is with respect to eligibility of Sl. No. 232 of Notification No

1/2017-IGST(Rate) to the goods imported by the appellant.

8.1. We observe that the Department has demanded IGST by holding that the goods imported would fall under Sl. no. 453 of the above mentioned Notification as against the claim of the appellant under Sl. No. 232 therein. The said serial numbers of the aforesaid Notification are reproduced hereunder: -

S. No.	Chapter Heading / Sub-heading / Tariff item	Description of Goods
232.	9608	Pens [other than Fountain pens, stylograph pens]
453	Any Chapter	Goods which are not specified in Schedule I,II, IV,V&VI 18%

8.2. From the above entries, we observe that Entry No. 232 specifically covers parts of pens whereas Entry No.453 is like a residuary entry which covers the 'Other goods' not elsewhere specified. In the present case, we observe that the appellant has classified the goods imported by them under the Heading 9608 of the First Schedule to the Customs Tariff Act, which reads as under:

**"BALL POINT PENS; FELT TIPPED AND
OTHER POROUS-TIPPED PENS AND
MARKERS; FOUNTAIN PENS; STYLOGRAPH
PENS AND OTHER PENS; DUPLICATING
STYLOS; PROPELLING OR SLIDING
PENCILS; PEN HOLDERS, PENCIL HOLDERS
AND SIMILAR HOLDERS; PARTS**

**(INCLUDING CAPS AND CLIPS) OF THE
FOREGOING ARTICLES, OTHER THAN
THOSE OF HEADING 9609"**

(emphasis supplied)

8.3. As per **Chapter Note 1(d) of Chapter 96** of the First Schedule to the Customs Tariff Act, this Chapter does not cover parts of general use, as defined in Note 2 of Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39). As such, **all identifiable parts of items (falling under Chapter 96), which are not of general use, shall be classified with the main item under same tariff heading.** We observe that the classification of the impugned goods as 'parts of ball point pens' under heading 9608 has been accepted by the department. The examination report of the impugned goods states that the goods were **"found to be 'tips' i.e. parts of ball point pen as declared in bill of entry"**.

8.4. When the goods are parts and accessories of writing instruments (Ball Pen) it would be pertinent to refer to extracts of the HSN Explanatory Notes for "Parts" under CTH 9608 as reproduced below:

The heading also covers identifiable parts not more specifically included elsewhere in the Nomenclature. For example:

"Pen nibs of any design including unfinished nibs roughly cut to shape : clips; refills for ball point pens, comprising the ball point and the ink reservoir; holders for the ball points or felts of marking stylographs; ink-flow regulators; barrels for pens or pencils of this heading; filling or propelling mechanisms; ink sacs of rubber or other

materials; point protectors; interchangeable renew nib units comprising nib, feed and collar; nib points (or pen points) which are small balls made from platinum alloys or from certain tungsten alloys used for pointing the tips of pen nibs to prevent premature wear."

(emphasis supplied)

8.5. From the perusal of the above provisions, it is apparent, that all sorts of Pens including Ball Point Pens and the Parts of such Pen are covered under Heading 9608. Once parts of the pens are classified under the heading 9608, then the goods would be eligible for the benefit of IGST @12% as provided in Sl. No. 232 of Schedule II to Notification 01/2017.

8.6. We observe that CBIC (TRU) vide **Circular No. 113/32/2019-GST dated October 11, 2019** ("**Circular No. 113**") clarified the applicability of GST on the parts and accessories suitable for use solely or principally with a medical device. By the said Circular No. 113, it was clarified that **same rate of GST would be applicable on the parts and accessories suitable for use solely or principally with a medical device as the rate of GST on the medical device and such parts would not be classified under residuary entry.**

8.7. Further, **Circular No. 155/11/2021- GST dated June 17, 2021** ("**Circular No. 155**") clarified the GST rate on laterals and parts of Sprinklers or Drip Irrigation System. Relevant portion of the Circular No. 155 is reproduced below:

"2. The GST rate on Sprinklers or Drip Irrigation System along with their laterals/parts are governed by S. No. '195B' under Schedule II of notification No. 1/2017- Central Tax (Rate), dated 28th June, 2017 which has been inserted vide notification No. 6/2018- Central Tax (Rate), dated 25th January, 2018 and reads as below:

S. No.	Chapter Heading/ Sub-heading/Tariff Item	Description of Goods	CGST rate
195 B	8424	Sprinklers; drip irrigation systems including laterals; mechanical sprayer	6%

3. The matter is examined. The intention of this entry has been to cover laterals (pipes to be used solely with with sprinklers/drip irrigation system) and such parts that are suitable for use solely or principally with 'sprinklers or drip irrigation system', as classifiable under heading 8424 as per Note 2 (b) to Section XVI to the HSN. Hence, laterals/parts to be used solely or principally with sprinklers or drip irrigation system, which are classifiable under heading 8424, would attract a GST of 12%, even if supplied separately. However, any part of general use, which gets classified in a heading other than 8424, in terms of Section Note and

*Chapter Notes to HSN, **shall attract GST as applicable to the respective heading.***

(emphasis supplied)

8.7.1 Paragraph 3 of Circular No. 155/11/2021-GST (supra) makes it abundantly clear that parts, if not specifically mentioned in the GST rate schedule, shall attract the GST as applicable to the respective heading wherein they are classifiable on the basis of Heading Description, Section Notes, Chapter Notes etc. As per **Chapter Note 1(d) of Chapter 96** of the First Schedule to the Customs Tariff Act, this Chapter does not cover parts of general use, as defined in Note 2 of Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39). As such, all identifiable parts of items (falling under Chapter 96), which are not of general use, shall be classified with the main item under same tariff heading.

8.8. We observe that CBIC **Circular No. 113/32/2019-GST dated October 11, 2019** also supports this view. The said Circular clarifies the applicability of GST on the parts and accessories suitable for use solely or principally with a medical device. By the said Circular No. 113/32/2019-GST, it was clarified that **same rate of GST would be applicable on the parts and accessories suitable for use solely or principally with a medical device as the rate of GST on the medical device and such parts would not be classified under residuary entry.** We observe that the impugned goods are suitable for use solely or principally with the ball point pens only, thus, should be classifiable with ball point pens. Circular No. 155/11/2021- GST dated June 17, 2021, which clarified the GST rate on laterals

and parts of Sprinklers or Drip Irrigation System also supports this view. Accordingly, as per the clarifications issued by the Circulars mentioned above, we hold that the impugned goods are Parts of Pens, eligible for availment of IGST @5% as provided under S. No. 232 of Schedule II under the IGST Goods Rate Notification 01/2019-Cus dated 28.06.2017.

8.9. We also find that the present issue regarding the classification of parts of pens had come up before the Tribunal in the case of **M/s. Camlin Limited V/s commissioner of Central Excise, Mumbai-III reported as 2000 (121) ELT 178 (Tri)** which was upheld by the Hon'ble Supreme court as reported in *2001 (128) E.L.T. A72 (S.C.)*. The relevant part of the said decision is reproduced below: -

"6. The perusal of chapter 96 would show that parts are specifically listed in only some of the headings. There is no guidance given in the chapter note as to the classification of parts. Section XX does not contain any notes thereunder and therefore the guidance is not available from this part also.

7. Section XVI which covers the chapters relating to machinery etc., vide note 2 gives general guidelines as to the classification of parts. The guiding principles are that where certain parts are suitable for use solely and principally with the particular kind of machine, such parts would deserve to classify along with that particular machine and parts of general purpose would be classifiable as per their parent heading. It appears to us that although other Sections do not contain similar directions, the application of this note could be made to the goods covered under chapters falling under other Sections also. Section XVI refers to note 2 of section XV. Section XV covers articles of base metals which phrase would apply to ferrules before us. The phrase 'parts of general use' also occurs in section XVII note 2(b). Chapter XIX vide note 1(b) also refers to parts of general use excluding them from the coverage of that chapter. There are certain other chapters also with similar provisions. The conclusion to be drawn from the coverage of the chapter is where the parts are not of general use but the parts are designed solely for use in a particular article

covered under that chapter, then that part would merit classification under that heading which covers the article in which it is used.

8. The clarification given in the HSN which relates not to pencils but to pens would also point to this presumption. Barrels for pens and pencils could be made of metals. Seen by themselves these would be 'tubes'. The unfinished pen nibs would fall under those Tariff headings which cover the base metals. Ink sacs of rubber would ordinarily fall under heading 40.09. They are made to fall under heading 96.08 because they are identifiable parts and are made specifically for use in the manufacture of pens. The same logic should apply to the goods falling under heading 96.09 also although there is no specific nomenclature covering the parts.

9. The guidelines for classification are given in the Interpretative Rules but in a number of judgments the function to be discharged by a particular article has also been taken into account as aid for such classification. The function aspect has prevailed in the following judgments:

(1) Reckitt & Coleman Co. Ltd. - [1994 \(71\) E.L.T. 44](#)

(2) Shivaji Works Ltd. - [1994 \(69\) E.L.T. 674](#).

10. In their decision in the case of CCE v. A.C.C. Ltd. - [1989 \(44\) E.L.T. 271](#) the Tribunal considered the primary function of mill bolts as fastening of two articles together and therefore classified the same under item No. 52 in preference to the residual item 68. In a recent judgment of the Supreme Court (J.B.A Printing Inks Ltd. v. CCE - [2000 \(115\) E.L.T. 24](#) the sole and principal use of radiator assembly was considered by the Supreme Court. The Court accented the functionality of the product in upholding the department's contention that the radiator assembly merited classification under heading 84.09 in preference to the residuary heading 84.79.

11. On the aspect of functionality we find that the aluminium ferrules are solely designed for use in the pencils and therefore become parts meriting classification under the same entry as the lead pencils.

12. Consequentially the appeal is allowed. Consequential relief is ordered."

8.10. In view of the above discussions and by relying on the decision cited above, we hold that the impugned goods are eligible for availment of IGST @5% as provided under S.No. 232 of Schedule II

under the IGST Goods Rate Notification 01/2017 dated 28.06.2017. Accordingly, we hold that the demand of IGST confirmed in the impugned orders is not sustainable and hence we set aside the same. Since the demand of IGST is not sustained, fine and penalty imposed in the impugned orders is also set aside.

9. In view of the above discussion, we set aside the impugned orders and allow the appeals filed by the appellant.

(Operative part of the order was pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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