CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. 5

Excise Appeal No. 85357 of 2015

(Arising out of Order-in-Original No. 16/COMMR/M-III/KCG/2014-15 dated 30.10.2014 passed by Commissioner of Central Excise, Mumbai-III)

M/s. Kores (India) Ltd. **Appellant**
301-302, Ashford Chambers,
L.J. Road, Mahim,
Mumbai 400 016.

Vs.

Commissioner of Central Excise, Mumbai-III **Respondent**
3rd & 4th Floor, Vardaan Centre, MIDC,
Wagle Industrial Estate, Thane (W),
Mumbai 400 604.

WITH

Excise Appeal No. 85366 of 2015

(Arising out of Order-in-Original No. 16/COMMR/M-III/KCG/2014-15 dated 30.10.2014 passed by Commissioner of Central Excise, Mumbai-III)

M/s. Quality Ink Ltd. **Appellant**
1st Pokhran Road, Thane

Vs.

Commissioner of Central Excise, Mumbai-III **Respondent**
3rd & 4th Floor, Vardaan Centre, MIDC,
Wagle Industrial Estate, Thane (W),
Mumbai 400 604.

WITH

Excise Appeal No. 85367 of 2015

(Arising out of Order-in-Original No. 16/COMMR/M-III/KCG/2014-15 dated 30.10.2014 passed by Commissioner of Central Excise, Mumbai-III)

U.S. Tambe **Appellant**
Vice President (Taxation),
M/s. Kores (India) Ltd.
301-302, Ashford Chambers,
L.J. Road, Mahim,
Mumbai 400 016.

Vs.

Commissioner of Central Excise, Mumbai-III **Respondent**
3rd & 4th Floor, Vardaan Centre, MIDC,
Wagle Industrial Estate, Thane (W),
Mumbai 400 604.

AND

Excise Appeal No. 85368 of 2015

(Arising out of Order-in-Original No. 16/COMMR/M-III/KCG/2014-15 dated 30.10.2014 passed by Commissioner of Central Excise, Mumbai-III)

A.K. Chopra **Appellant**
Vice President (Taxation),
M/s. Kores (India) Ltd.
301-302, Ashford Chambers,
L.J. Road, Mahim,
Mumbai 400 016.

Vs.

Commissioner of Central Excise, Mumbai-III **Respondent**
3rd & 4th Floor, Vardaan Centre, MIDC,
Wagle Industrial Estate, Thane (W),
Mumbai 400 604.

Appearance:

Shri Ramnath Prabhu, Advocate, for the Appellant
Shri Xavier P.M. Mascarenhas, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 01.01.2024
Date of Decision: 30.01.2024

FINAL ORDER NO. 85050-85053/2024

PER: ANIL G. SHAKKARWAR

Above stated four appeals are taken together for decision since they are arising out of common impugned order-in-original dated 30.10.2014. M/s. Kores (India) Ltd. is the main appellant from whom central excise duty was demanded and the other three appellants are those on whom various penalties were imposed.

2. Brief facts of the case are that the appellant M/s. Kores (India) Ltd. was engaged in the manufacture of goods such as carbon paper, stencil paper, tally paper, correction fluid, plasto carbon ink and various types of ink such as duplicating ink, printing ink, stamp pad ink, ballpoint pen ink, ribbon ink, carbon ink etc. Revenue initiated investigations against M/s. Kores (India) Ltd. and it appeared to Revenue that the said appellant was wrongly classifying ball point pen ink under Central Excise

Tariff Sub-heading No.3215.10 as writing ink which attracts nil rate of duty and they should have classified the said goods under Chapter Sub-heading No. 3215.90 which attracted 16% rate of duty and thus deliberately cleared ball point pen ink without payment of duty when they were required to pay central excise duty. M/s. Kores (India) Ltd. allegedly cleared the said ball point pen ink to M/s. Quality Ink Ltd. by undervaluation. Therefore, M/s. Quality Ink Ltd. along with M/s. Kores (India) Ltd. and other two officials of M/s. Kores (India) Ltd. were issued with a common show cause notice dated 03.10.2003 for the period from 1998-1999, 1999-2000 and 2000-2001. It was alleged in the show cause notice that during the said period M/s. Kores (India) Ltd. did not pay central excise duty amounting to about Rs.30 lakhs on ball point pen ink by misclassifying it as writing ink in place of residuary entry covering other inks under Central Excise Tariff Sub-heading No.3215.90 and that the said goods were classified by the appellant under Central Excise Tariff Sub-heading No.3215.10. It was further alleged that by lowering the values, ball point pen ink was cleared to their own depots at Calcutta and also to M/s. Quality Ink Ltd. who sold the said goods at prices higher than the price at which the goods were cleared by M/s. Kores (India) Ltd. and thus undervalued the clearances and as a result, differential duty was demanded from M/s. Kores (India) Ltd. Further, there was another allegation in the show cause notice that on comparison of clearances put together by adding clearances in all the invoices during the particular year and the production of ink as such stated in the balance sheet for that year, there was a huge difference in the quantities and there was allegation that the differential quantity was cleared clandestinely for the financial years 1998-99, 1999-00 and 2000-01 and as a result, central excise duty to the tune of around Rs.66 lakhs was demanded. There were proposals for imposing penalties on all the four appellants. On contest, the said show cause notice was adjudicated through impugned order-in-original. Learned original authority has confirmed the demand of around Rs.25 lakhs on ball point pen ink holding that ball point pen ink was classifiable under Central Excise Tariff Sub-heading No.3215.90 on referring the issue to the details of the heading under 32.15 as appearing in Harmonized System of Nomenclature (HSN). He has also confirmed the demand of differential duties in respect of clearances to own depot in Calcutta and clearances to M/s. Quality Ink Ltd. He has confirmed the demand of around Rs.54 lakhs on the alleged clandestine removal of various inks. He has appropriated an amount of Rs.9,41,385/- paid under protest during investigation. He has also imposed equal penalty on the appellant. Further, he has imposed penalty of Rs.5,00,000/- each on Shri U.S. Tambe and Shri A.K. Chopra under Rule 173Q of Central Excise Rules, 1944. He has further imposed a penalty of Rs.10,00,000/- on M/s. Quality Ink Ltd. under Rule 173Q of Central Excise Rules, 1944. Aggrieved by the said order, appellants are before this Tribunal.

3. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that Hon'ble Supreme Court of India has held in para 26 of its ruling in the case of Camlin Ltd. vs. CCE, Mumbai reported at 2008 (230) ELT 193 (SC) that when the entries in the HSN and the said Central Excise Tariff are not aligned, reliance cannot be placed upon HSN for the purpose of classification of goods under the said Tariff. He has further elaborated that in HSN heading 32.15 has been broadly classified into printing ink and other ink. Under printing ink, there are two sub-headings such as black printing ink and other printing ink. All other inks other than printing ink are classified under 3215.90 as others whereas in Central Excise Tariff which is scheduled to the Central Excise Tariff Act, 1985 passed by the Parliament, Chapter Heading 32.15 is divided in only two categories – writing ink under sub-heading 3215.10 and the other category as others under 3215.90. He has submitted that it is very clear that HSN is classifying goods under printing ink and others whereas Central Excise Tariff is classifying goods under writing ink and others. It clearly indicates that this present Tariff is not aligned with HSN and, therefore, the finding by Commissioner that on the basis of HSN, ball point pen ink is classifiable under 3215.90 is erroneous. He has further submitted that as per Rule 3(a) of Rules for Interpretation of

Central Excise Tariff, the heading provides the most specific description and shall be preferred to heading providing more general description. It is common knowledge that ball point pen ink is for the purpose of writing and, therefore, ball point pen ink is properly classifiable under 3215.10 as writing ink attracting nil rate of duty by following said Rule 3(a) of Rules for Interpretation of Central Excise Tariff. He has further submitted that once it is established that ball point pen ink does not attract central excise duty, the other allegation that the goods were cleared on undervaluation to depots and to M/s. Quality Ink Ltd. does not survive. He has further submitted that insofar as the allegation of clandestine removal is concerned, Revenue has compared the figures of clearances of various goods through invoices of present appellant which is a unit at Thane, with the figures reflected in balance sheet and that the balance sheet is for two units which are located at Thane and Goa and, therefore, such comparison is incorrect. He has further submitted that had Revenue collected separate information from both the units at Thane and Goa and added them together, then it would have matched the figures of balance sheet. He has further submitted that Revenue has not conducted any investigations about the difference between the total clearances through invoices and total production reflected in balance sheet and made unsubstantiated allegations. He has relied on the decision of this Tribunal in the case of Giriraj Irosteel Company Pvt. Ltd. vs. CCE, Meerut-II reported at 2019 (370) ELT 1649 (Tri.-All.) and submitted that Hon'ble Allahabad High Court's ruling in the case of Continental Cement Company vs. UOI reported at 2014 (309) ELT 411 (All.) was relied on and it was held that clandestine removal needs to be established by investigation into various aspects stated therein such as dispatch particulars from the regular transporters, reimbursement of sale proceeds, details from the regular dealers about the receipt of finished products etc. and the same was not carried out and, therefore, the allegation of clandestine removal is not sustainable.

4. Learned AR has relied on miscellaneous order of Larger Bench passed in the case of G.M. Pens International Ltd. vs. CC,

Chennai reported at 2005 (187) ELT 180 (Tri.-LB). Contesting the said submissions, learned counsel for the appellant has submitted that the said case was pertinent to interpretation of Customs Tariff and Customs Tariff Heading 32.15 is divided in printing ink and other and is aligned with HSN whereas Central Excise Tariff, as stated earlier, is not aligned with HSN and, therefore, the said decision of Larger Bench is not applicable in the present case.

5. We have carefully gone through the record of the case and submissions made. We note that there are two allegations in the present issue. One is regarding classification of ball point pen ink and the other is clandestine removal. Insofar as the issue related to classification of ball point pen ink is concerned, we note that Hon'ble Supreme Court of India has held under para 26 of its ruling 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, in the case of Camlin Ltd. (supra). For the purpose of ready reference, said para 26 is reproduced below:-

*"**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)."*

6. Now it is time to examine whether the entries in HSN and Central Excise Tariff are aligned. The entries in HSN are reproduced below:-

"32.15 – PRINTING 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".

Further, entries under Heading 32.15 in Central Excise Tariff are reproduced below:-

"32.15 – Printing ink, writing or drawing ink and other inks, whether or not concentrated or solid.

3215.10 - Writing ink

3215.90 - Other".

It can be seen that in HSN entries, under Heading 32.15, the goods are divided in printing and other ink whereas in Central Excise Tariff entries, under Heading 32.15, the goods are divided in writing ink and others. Therefore, it can be very safely concluded that entries in Central Excise Tariff are not aligned with entries in HSN and, therefore, as ruled by Hon'ble Supreme Court in the said case of Camlin Ltd., the reasoning accepted by the adjudicating authority cannot sustain and, therefore, we come to a conclusion that ball point pen ink manufactured by the present appellant is classifiable under Central Excise Tariff Sub-heading 3215.10 attracting nil rate of duty. Once it is established that ball point pen ink attracts nil rate of duty, the confirmation of demand of clearance without payment on ball point pen ink and allegation of clearance of ball point pen ink by resorting to undervaluation does not sustain.

7. Now we come to another issue of clandestine clearances. We note from the show cause notice that Revenue has compared total goods manufactured as reflected in balance sheet to the clearances effected on payment of duty by Thane unit and Revenue did not take into consideration goods cleared by Goa unit of the appellant whereas the balance sheet is common for

both the units. Further, we find that no investigation was carried out in respect of the balance amount on which duty is demanded such as dispatch particulars from the regular transporters, realization of sale proceeds and details from the regular dealers and buyers about receipt of finished goods. Therefore, relying on the ruling by Hon'ble Allahabad High Court in the case of Continental Cement Company (supra), we hold that the allegations of clandestine removal are not established.

8. Once it is established that there was no requirement of payment of duty on ball point pen ink and there was no clandestine removal, the question of imposition of penalty on the appellant and the other appellants does not arise.

9. In view of the above findings, we set aside the impugned order and allow all the appeals.

(Order pronounced in the open court on 30.01.2024)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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