



R.K. Jain's

GST-ExCus

Electronic Library for GST, Customs, Excise, EXIM, FEMA & Allied Laws

2001 (134) E.L.T. 683 (Tri. - Mumbai)

IN THE CEGAT, WEST ZONAL BENCH, MUMBAI
S/Shri Gowri Shankar, Member (T) and Krishna Kumar, Member (J)

SARAL RASAYAN PVT. LTD.*Versus***COMMISSIONER OF C. EX., VADODARA***Order No. 2696/2001-WZB/C-I, dated 3-9-2001 in Appeal No. E/2541/96-Bom.*

Varnish - Insulating varnish, based on polyester - None of the sub-headings under Heading 32.08 of Central Excise Tariff Act, 1985 being more specific than any other - Classifiable under 3208.40 ibid. as sub-heading occurs last in numerical order as per under Rule 5 read with Rule 3(c) of the Rules for Interpretation. [para 4]

REPRESENTED BY : Shri S.P. Mathew, Advocate, for the Appellant.
Shri R.D. Bodade, JDR, for the Respondent.

[Order per : Gowri Shankar, Member (T)]. - The question for consideration in this appeal is the classification of insulating varnish, based on polyester manufactured by the appellant.

2. The dispute is applicability of sub-heading 10 and sub-heading 40 of Heading 32.08 to the classification of such varnish. Heading 32.08 and its sub-heading read as follows :

"32.08	Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, or natural resins, whether or not modified, dispersed or dissolved in a non-aqueous medium; solutions as defined in Note 3 to this Chapter
3208.10	Based on polyesters
3208.20	Based on acrylic or vinyl polymers
3208.30	Based on cellulose nitrate or other cellulose derivatives
3208.40	Insulating varnish
3208.90	Other."

3. In his order, the Commissioner says that since the varnish in question is based on polyester it will be classified under sub-heading 10. He finds this more specific than Heading 40 and has applied it.

4. Although the Departmental Representative emphasises this contention, we are not able to agree that except for sub-heading 90 any one of the sub-heading is more specific than any other. They all appear more specific. Therefore one can say that even though the varnish in question is insulating one, since it is based on polyester it will be classifiable under sub-heading 10. It could also be said in equal force that varnish is insulating varnish, its basis is not relevant, it should be classifiable under sub-heading 40. The confusion has arisen as a result of imperfect draughtsmanship. The first, in Headings 10, 20 and 30 Department's classification is required depending upon the basis of the paint or varnish, whereas Heading 40 requires Department's classification depending upon the parties for which the varnish is manufactured. In such a situation the conflict between the sub-heading 40 and other any one of the sub-heading is inevitable. In this case we have to take recourse to the general interpretative rules. Rule 5 makes applicable as in between sub-headings at the same level the provision of the Valuation Rules. Rule 3A will not help in the light of the equal specific description of such sub-heading. Rule 3B will not apply. We have to fall back on Rule 3C. Therefore since Heading 40 occurs last in the numerical order it has to be applied to the goods. The goods would be correctly classifiable under this sub-heading.

5. The appeal is accordingly allowed. Impugned order set aside. Consequential relief according to law.

—
...

Judicial Analysis
for
Saral Rasayan Pvt. Ltd. vs. Commissioner of Central Excise, Vadodara
2001 (134) ELT 683 (Tri.-Bom)

This case was:

- [Followed in 2005 \(184\) ELT 285 \(Tribunal Bombay/Mumbai\)](#)

Printed using R.K. Jain's EXCUS. Copyright © R.K.Jain