

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).3489/2006

COMMISSIONER OF CENTRAL EXCISE, VAPI

APPELLANT(S)

VERSUS

M/S. THE PAPER PRODUCTS LTD.

RESPONDENT(S)

WITH
C.A. No. 2064/2007

O R D E R

These appeals are directed against the order dated 05.09.2005

passed by the Customs, Excise & Service Tax Appellate Tribunal,
South Zonal Bench, Mumbai (hereinafter referred to as "CESTAT")

holding that the product in question manufactured
by the respondent-assessee which is known as 'shrink sleeve
s' is classifiable under Chapter 39 Sub-heading 3020.19 and not under
Sub-heading 4901.90 as contended by the Revenue. To stat
e the

facts in brief, the assessee is engaged in the manufacture of
of the Plastics Laminated Flexible packing material and one
products which is manufactured is 'shrink sleeves' as pointed out
above. The assessee had filed classification, classifying the said

product under Sub-heading 3920.19.

Signature Not Verified

Under Chapter 39 the aforesaid

id
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ASHWANI KUMAR
Date: 2015.09.08

product
17:55:41 IST
Reason: classified by the assessee pertains to "Plasti
cs and articles thereof". Entry 3920.19 thereof is as under:

"39.20	Other plates, sheets, film, foil and strip, of plastics, non-cellular, whether lacquered or metallised or laminated, supported or similarly combined with other materials or not.	
	-Of polymers of vinyl chloride:	
3920.11	-Rigid, plain	16%
3920.12	-Flexible, plain	16%
3920.13	-Rigid, lacquered	16%
3920.14	-Flexible, lacquered	16%
3920.15	-Rigid, metalized	16%
3920.16	-Flexible, metalized	16%
3920.17	-Rigid, laminated	16%
3920.18	-Flexible, laminated	16%
3920.19	-Other	16%"

In nutshell, case of the assessee is that this product is to be treated as one falling under plastic industry. The Revenue on the other hand is seeking to classify the same under Sub-heading 4901.90. It may be mentioned that Chapter 49 deals with goods which are classifiable as printing products. Therefore, the question for consideration is as to whether the product in question can be treated as that of printing industry or it is covered by plastic industry. It is not in dispute that the assessee is procuring duty paid plastic film in jumbo roles and slit the same to requisite size. It is then passed through a special machine where the slit plastic film gets bent, sealed and cut and emerges in a tabular form. This tabular form is known as 'shrink sleeves'. Since it is done by the assessee for those who require the aforesaid product, there is a printing done on the 'shrink sleeves'. On that basis, argument of the Revenue is that insofar as the assessee is concerned, it is printing on the aforesaid product and, therefore, that is the predominant purpose which would make the product classifiable under the Sub-heading 4901.90 pertaining to printing industry. This argument was disapproved by the assessee with the statement that printing on the 'shrink sleeves' is only incidental and not of primary use. According to the assessee the main purpose of the product is to provide tamper protection to the product inasmuch as it is shatter resistance, enhance puncture resistance and tamper proof packing.

Learned counsel for the Revenue submits that it is not in dispute that it is the primary function of the product that would be the determinative test. In fact, the learned counsel has referred to the judgment of this Court in *Metagraphs Pvt. Ltd. Vs. Collector of Central Excise, Bombay* [1996 (88) ELT 630 (SC)], wherein the court has inter alia held as under:

" In *Rollatainers Ltd. & Another Vs. Union of India & Others* case, this Court was considering whether printed cartons manufactured by the appellants in that case were products of the printing industry. This Court held as follows:-

"We are of the view that to a common man in the trade and in common parlance a carton remains a carton whether it is a plain carton or a printed carton. The extreme contention that all products on which some printing is done, are the product of printing industry, cannot be accepted."

What follows from the aforesaid judgment is that each case has to be considered on its own facts and test determinative, whether a particular product falls within one class or the other depends upon the nature of the product with reference to the facts of each case and to cull out what is the true determining purpose for which the product is used and is treated by the traders as well as consumers

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of the said product. This is so explained by the Court in *Metagraphs Pvt. Ltd. (supra)* in the following manner:

"The label announces to the customer that the product is or is not of his choice and his purchase of the commodity would be decided by the printed matter on the label. The printing of the label is not incidental to its use but primary in the sense that it communicates to the customer about the product and this serves a definite purpose. This Court in *Rollatainers* case held that what is exempt under the notification is the 'product' of the printing industry. The 'product' in this case is the carton. The printing industry by itself cannot bring the carton into existence". Let us apply this above formula to the facts of this case. The 'product' in this case is the aluminium printed label. The printing industry has brought the label into existence. That being the position and further the test of trade having understood this label as the product of printing industry, there is no difficulty in holding that the labels in question are not products of printing industry. It is true that all products on which some printing is done, are not the products of printing industry. It depends upon the nature of products and other circumstances. Therefore the issue has to be decided with reference to facts of each case. A general test is neither advisable nor practicable. We are, therefore, of the opinion that the Tribunal was

not right in concluding that the printed aluminium labels in question are not 'products of printing industry."

When we apply the aforesaid test to the facts of the present case, we are clear in our mind that the printing was only incidental and the main purpose of the product is to provide tamper protection to the product to make shatter resistance, enhance puncture resistance and tamper proof packing.

We may record that the learned counsel for the appellant tried to persuade us to take contrary view by relying upon the another judgment of this Court in Holostick India Ltd. Vs. Commissioner of Central Excise, NOIDA [2015(318) E.L.T. 529(SC), wherein security holograms manufactured using coated metallised film were treated as

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security holograms and were classified under Sub-Heading 4901.90 of the Central Excise Tariff. In fact, reading of this judgment would clearly demonstrate that this is a judgment which helps the assessee and not the Revenue as it is clear from the reading of para 17 thereof which is extracted below:

"It is clear therefore, that the question resolves itself into whether printing is only incidental to the primary use of the goods or is something more than something merely incidental. We have already referred to the process hereinabove and the final product which emerges is a product which is used for security purposes. It is important to remember therefore, that the primary use of the product is security and not the quality of being adhesive. Here again, a simple example will suffice. Take an adhesive tape with a monogram printed upon it. The primary use of such tape is by virtue of its adhesiveness to bind and package containers in which goods are to be stored and transported. Obviously, in such an example, the printed monogram of such adhesive tape would be incidental to the primary use of the said goods - the adhesive tape. By way of contrast, in the present case, the factor of adhesiveness is incidental to the primary use to which the goods are put, namely, that they are to be used for security purposes. Also, the HSN Explanatory Notes are relevant, which according to the judgment of this Court reported in 'Collector of Central Excise, Shillong v. Wood Craft Products Ltd.' [1995 (77) E.L.T. 23 (S.C.)] in para 12 are a safe guide in case of doubt: -

"12. It is significant, as expressly stated, in the Statement of Objects and Reasons, that the Central Excise Tariffs are based on the HSN and the internationally accepted nomenclature was taken into account to "reduce disputes on account of tariff classification". Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. This being the expressly

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed order.

(Ashwani Thakur)

COURT MASTER

(Signed order is placed on the file)

(Renu Diwan)

COURT MASTER