

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

Excise Appeal No. 1733 of 2011

(Arising out of Order-in-Appeal No. AGS/381/NGP/2011 dated 08.09.2011 passed by Commissioner of Central Excise (Appeals), Nagpur)

M/s. Nagpur Business Forms Pvt. Ltd.
Sarda Kunj, N-84, Central Avenue,
Nagpur 440 018.

Appellant

Vs.

Commissioner of Central Excise, Nagpur
Telangkhedi Road, Civil Lines,
Post Box No.81, Nagpur 440 001.

Respondent

Appearance:

Shri Mayur Shroff, Advocate, for the Appellant

Ms. Anuradha Parab, Assistant Commissioner, Authorised
Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. **A/87348/2019**

Date of Hearing: 25.09.2019

Date of Decision: 25.09.2019

PER: SANJIV SRIVASTAVA

This appeal is directed against order-in-appeal No AGS/381/NGP/2011 dated 08.09.2011 of the Commissioner (Appeals), Central Excise, Nagpur. By the impugned order, the Commissioner (Appeals) upheld the order-in-original No 20/AKG/ADC/CEX/2011 dated 14.01.2011 of Additional Commissioner, Nagpur holding as follows:

- i. "I hold the goods manufactured by the Noticee viz LIC forms, Inland Letter for LIC, Premium intimation letter of LIC, Bank Statement forms & stationeries for other purposes for LIC, Insurance, Banks, Government*

organization and other continuous stationary for various Government department stands classified under Chapter Sub Heading No 4820 40 00 of the Central Excise Tariff Act, 1985 and accordingly confirm the demand of Rs 33,06,758/- (BED 32,10,445/- + Edn Cess Rs 64, 209/- + SHE Cess Rs 32,104/-) (Rupees Thirty Three Lakhs Six Thousand Seven Hundred and Fifty Eight only) and order its recovery under the provisions of Section 11A of the Central Excise Act, 1944

- ii. I order recovery of interest at appropriate rate against the said confirmed demand under Section 11AB of Central Excise Act, 1944 from the Noticee.*
- iii. I impose a penalty of Rs 33,06,758/- Rupees Thirty Three Lakhs Six Thousand Seven Hundred and Fifty Eight only) under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944."*

2.1 Appellants are engaged in the manufacture of various Computer Stationeries, LIC Forms, Bank Statement Forms as per the requirement of LIC, Banks & Govt department as per the requirements of LIC, Bank and Government department, falling under chapter sub heading 482040 of Central Excise Tariff Act, 1985 and paying duty accordingly. They had vide their letter dated 08.05.2009 intimated that these goods as per them more appropriately get classified under heading 4901, attracting "Nil" rate of duty and have accordingly discontinued payment of duty on these goods from 01.05.2009.

2.2 For the period 01.05.2009 to 31.05.2009, the duty amounting to Rs 1,04,276/- along with interest, in respect of the goods cleared without payment of duty, was adjudicated and confirmed by the jurisdictional Assistant Commissioner vide his Order in Original No 06/NGP-1/2010 Dem dated 08.02.2010.

2.3 The appellants have during the period from 01.06.2009 to January 2010, cleared the goods without payment of duty thereby not paying the duty amounting to Rs 33,06,758/-.

Accordingly a show cause notice dated 30th June 2010 was issued to them asking them to show cause as to why-

- i. *“Central Excise duty amounting to Rs 33,06,758/- (BED 32,10,445/- + Edn Cess Rs 64, 209/- + SHE Cess Rs 32,104/-) (Rupees Thirty Three Lakhs Six Thousand Seven Hundred and Fifty Eight only) as detailed in Annexure “A” attached herewith should not be demanded and recovered from them under the provisions Section 11A of the Central Excise Act, 1944.*
- ii. *Interest payable on the amount as would be determined should not be recovered from them under Section 11AB of the Central Excise Act, 1944.*
- iii. *Penalty under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944 should not be imposed on them.”*

2.4 Show Cause Notice was adjudicated by the Additional Commissioner as per his order referred in para 1, supra.

2.5 Aggrieved appellant filed an appeal before Commissioner (Appeal), which was dismissed as per impugned order referred in para 1, supra.

2.6 Aggrieved the appellants have filed this appeal.

3.1 We have heard Shri Mayur Shroff, Advocate for the Appellants and Ms Anuradha Parab, Assistant Commissioner, Authorized Representative for the revenue.

3.2 Arguing for the Appellants learned Counsel submitted that-

- They undertake the printing jobs as per the requirements of the customer. The products of printing industry are specifically covered under Chapter 49 as per Chapter Note 12 to Chapter 48.
- The issue involved in the matter is no longer res-integra and decided in series of decisions as follows:
 - Gopsons paper Ltd [2015 (324) ELT 5 (T)]
 - Data Processing Forms Pvt Ltd [2014 (311) ELT 161 (T-Ahmd)]

- Laxmi Packaging Pvt Ltd [2015 (324) ELT 576 (T)]
- Dy Chief Manager (P&S) Central Railway [2015 (328) ELT296 (T)]
- Sri Kumar Agencies [2016 (344) ELT 507 (T-Bang)]
- Headway Lithographic Company [2015 (321) ELT 394 (SC)]
- Holostick India Ltd [2015 (318) ELT 529 9SC]
- CBEC Circular No 1052/1/2017-CX dated 23rd February 2017.

3.3 Arguing for the revenue learned Authorized Representative re-iterated the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of argument.

4.2 We find that Central Board of Excise and Customs has vide its circular No 1052/1/2017-CX dated 23rd February 2017, clarified as follows:

Circular No. 1052/1/2017-CX, dated 23-2-2017

F.No. 116/29/2015-CX.3

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject : Classification of articles of paper and printing industry - Regarding.

Representations have been received from trade associations that consequent upon insertion of Chapter note 14 (w.e.f. 28-5-2012) to the Chapter 48 of Central Excise Tariff Act, 1985 disputes have cropped up in respect of classification of railway/bus/other tickets/passes, railway ticket rolls and bus ticket rolls, mark sheets/certificates, OMR Sheets/Answer Books with OMR, Answer booklets, inland letter cards, passbooks, applications forms, paper outer strip seal, Railway receipt (RR) and practical notebook. Also, reports received from field formations suggest that there is divergent practice of assessment of these goods. It is therefore, proposed to clarify the classification of these goods

to ensure uniformity in practice of assessment across the country.

2. In this connection, statutory provisions are as under :

(a) As per Rule 3(c) of General Rules for the interpretation of the Schedule, "when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration".

(b) As per Rule 4 of General Rules for interpretation of the Schedule, "goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin".

(c) As per Chapter note 10 of Chapter 48, heading 4820 does not cover loose sheets or cards, cut to size, whether or not printed, embossed or perforated.

(d) As per Chapter note 12 of chapter 48, except for the goods of heading 4814 or 4821, paper, paperboard, cellulose wadding and articles thereof, printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of goods, fall in Chapter 49.

(e) As per Chapter note 14 (inserted on 28-5-2012) paper and paper products of heading nos. 4811, 4816 or 4820 intended to be used for further printing or writing are classifiable in their respective headings even if printing is merely incidental to the primary use of goods.

(f) HSN explanatory note (2) to heading 48.20 excludes educational workbooks, sometimes called writing books, with or without narrative texts, which contain printed textual questions or exercises not incidental to their primary use as workbooks and usually with spaces for completion in manuscript. Further, as per HSN explanatory notes (A) to heading 4901, "...literary works of all kinds, textbooks (including educational workbooks sometimes called writing books) with or without narrative texts which contain questions or exercises (usually with spaces for

completion in manuscript); technical publications....” are classifiable under this heading.

(g) Also, as per HSN explanatory notes to heading 49.01 printed cards bearing personal greetings, messages or announcements (heading 49.09), and printed forms which require the insertion of certain additional information for completion are excluded from this heading.

(h) As per explanatory notes to heading 4907 (F), “Stock, share or bond certificates and similar documents of title are formal documents issued, or for issue, by public or private bodies conferring ownership of, or entitlements to, certain financial interests, goods or benefits named therein. Apart from the certificates mentioned these documents include letters of credit, bills of exchange, travellers’ cheques, bills of lading, title deeds and dividend coupons. They usually require completion and validation.”

(i) As per explanatory note to heading 49.11, “Certain printed articles may be intended for completion in manuscript or typescript at the time of use but remain in this heading provided they are essentially printed matter. Thus, printed forms (e.g., magazine subscription forms), blank multi-coupon travel (e.g., air, rail and coach) tickets, circulars, letters, identity documents and cards and other articles printed with messages, notices, etc., requiring only the insertion of particulars (e.g. dates and names) are classified in this heading.....”. The heading 4911 also includes tickets for admission to places of entertainment (e.g., cinemas, theatres and concerts), tickets for travel by public or private transport and other similar tickets.

3. Hon’ble Apex Court in the case of Holostick India Ltd. v. Commissioner of Central Excise [2015 (318) E.L.T. 529 (S.C.)] has held that holograms would not fall under chapter 39 though they had the self-adhesive property and were primarily goods made of plastic, yet due to the security features of the stickers, the said holograms will be placed under chapter 49. The reason for such a classification was that the security features gave the hologram their essential feature.

4. In the light of above statutory provisions and decision of the Hon'ble Apex Court, classification of the goods *ibid* was examined and it is clarified as under :

(a) *Railway/bus/other tickets/passes –*

- i. *These are loose sheets or cards, cut to size and therefore are not covered under heading 4820 and also the provision of Chapter note 14 is inapplicable in the matter. Printing is not merely incidental to the primary use these goods. Printing alone brings these goods in existence. Explanatory note to heading 49.11 specifically covers these goods. Therefore, these goods are classifiable under heading 4911.*
- ii. *Similarly, railway ticket rolls, bus ticket rolls and like goods, which have cut/identifiable marks for separation of railway tickets/bus tickets therefrom and tickets are easily identifiable therein, are also classifiable under heading 49.11.*

(b) *Mark sheets/certificates - These are loose sheets, cut to size and therefore are not covered under heading 4820 and also provision of Chapter note 14 is inapplicable in the matter. The printing on these documents gives their essential character and on being issued (after completion and validation) by the appropriate authority they have fiduciary value in excess of the intrinsic value. In view of explanatory notes to heading 4907 (F) they are classifiable under heading 4907.*

(c) *OMR sheets - Like mark sheets and certificates these are loose sheets cut to size and therefore are not covered under heading 4820 and also provision of Chapter note 14 is inapplicable in the matter. The printing on these documents gives their essential character. In view of explanatory note to heading 4911 they are classifiable under heading 4911.*

(d) *Answer books with or without OMR, answer booklets and passbooks - These are not loose sheets, cut to size and therefore these are not out of the purview of heading 4820. Printing on these goods is merely incidental and such goods are intended to be used for further printing or writing. Answer books with or without OMR and answer booklets are intended for completion in manuscript while passbooks are intended for completion in*

manuscript or typescript. Provisions of Chapter note 12 and 14 of Chapter 48 and provisions of Rule 4 of General Interpretative Rules are applicable in the matter and therefore these are classifiable under heading 4820.

(e) Inland letter cards - These are loose sheets or cards, cut to size and therefore are not covered under heading 4820 and also provision of Chapter note 14 is inapplicable in the matter. These Inland letter cards are printed with all particulars and shall not undergo any further printing or writing. They contain personal information like notices, reminders, etc. Sometimes these cards require only insertion of particulars like names and addresses. In the situation, where printing on inland letter cards is not merely incidental, goods are classifiable under heading 4911. However, plain letter cards are classifiable under heading 4817, which reads as "envelopes, letter cards, plain postcards and correspondence cards, of paper or paper boards..."

(f) Application forms - These are for example bank account opening forms, forms of telecom companies, education institutions, insurance company forms and similar forms printed on specific order of the concerned bank, telephone companies, etc. These are loose sheets, cut to size and therefore are not covered under heading 4820 and also provision of Chapter note 14 is inapplicable in the matter. Printing on these forms is not merely incidental. In view of explanatory note to heading 4901 and 4911 these forms are classifiable under heading 4911.

*(g) Paper outer strip seals - These strips are used to seal EVMs (electronic voting machines) and are used by the election commission. For example State Election Commission, Haryana is printed on these strip seals. These are basically stickers having a self-adhesive feature where printing brings the product into existence. They have security features like guilloche patterns and anti-photocopy features. Therefore in view of printing not merely incidental and decision of Hon'ble Apex Court in the matter of Holostick India Ltd. *ibid*, these strip seals are classifiable under heading 4911.*

(h) *Railway Receipts (RRs)* - These are continuous computer stationery (4820) and also a document of title (4907). They have security numbering with special features like specific and patterns digit size printed by mechanical boxes using penetrating inks and also hatching of Indian Railway logo in the background. Printing on these receipts is not merely incidental. In view of Rule 3(c) of General Rule for the interpretation of the Schedule, Hon'ble Apex Court decision in the case of *Holostick India Ltd.* *ibid* and explanatory notes to heading 4907(F), these are classifiable under heading 4907.

(i) *Practical notebook* - This notebook contains some texts, questions and spaces for exercises. In view of explanatory notes to heading 4820 and explanatory notes (A) to heading 4901, this is classifiable under heading 4901. However, practical notebook which have merely certain questions followed by blank spaces for writing are classifiable under heading 4820 only.

5. *Field formations may be suitably informed. Past instructions and circulars on the subject shall stand amended to the extent of conflict with the above circular. Hindi version would follow."*

4.3 In view of the above clarification issued by CBEC, we do not find any merits in the impugned order holding the classification of the impugned goods under Chapter Heading 4820.

5.1 The impugned order of the Commissioner (Appeals) is set aside and the appeal allowed.

(Order pronounced in the open court)

(Dr. D.M. Misra)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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