CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT No. I

Excise Appeal No.70152 of 2019-[DB]

(Arising out of Order-in-Appeal No.20/COMM/APPEAL/GZB/2017-18 dated 27/04/2018 passed by Commissioner of Central Goods& Service Tax, Ghaziabad)

M/s Sampark Industries Ltd., ...Appellant

(P-215, Site-IV, UPSIDC Industrial Area, Greater Noida)

VERSUS

Commissioner of Central Goods & Service Tax,Respondent

(Ghaziabad)

<u>APPEARANCE:</u>

Shri S. Sunil, Advocate for the Appellant
Shri Santosh Kumar Agarwal, Authorised Representative for the Respondent

CORAM: **HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)**
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO-70249 / 2020

DATE OF HEARING : 03 February, 2020
DATE OF PRONOUNCEMENT: 28 July, 2020

PER: ANIL G. SHAKKARWAR

Brief facts of the case are that the appellant were purchasing Kaoline Coated Paper and subjecting the same with coating of aluminium and were claiming classification under Central Excise Tariff Item No.48101390. The authorities below have held that the goods under question were classifiable under Central Excise Tariff Item No.48115900. Hence the present appeal.

2. Learned Counsel for the appellant has made the following submissions:-

2.1 The issue in controversy is as to whether aluminum coated paper/metalized paper cleared by the appellant during the disputed period merits classification under Central Excise Tariff Heading 48101390 or 48115900 (as claimed by the department).

2.2 The proceedings in the present case commenced on the basis of an audit conducted in the month of November 2010 wherein it was observed by the Audit team that the appellant has misclassified their product namely, metalized paper, a kind of coated paper under Chapter Heading 48026920 by availing concessional rate of duty under Notification No.4/2006-CE dated 01.03.2006. The audit observed that the appellant has classified their product- coated paper under Chapter Heading 48026920 as "Poster Paper" instead of 48115900 and has accordingly short paid the duty during the period Jun 2007 to July 2009.

2.3 On 08.03.2011, the Superintendent wrote to the appellant seeking an explanation to the aforesaid audit observation.

2.4 *Vide* letter dated 07.04.2011, the appellant submitted that the paper cleared by them was covered by layer of Aluminum and cannot be classified under Chapter Sub-Heading 49115900. The sub-heading 48115900 covers paper and paper board coated, impregnated or covered with plastic (excluding adhesives). The appellant's product is not covered or coated with plastic. Therefore, the classification of product as proposed by the audit team is not justified. The appellant suggested at that point of time that the product can, perhaps, be classified as 'Aseptic Packaging Paper' under sub-heading 4899 9092.

2.5 *Vide* letter dated 25.05.2011, the appellant once again wrote to the department submitting that they would be clearing metalized paper as 'Aseptic Packaging Paper' under sub-heading 4899 9092.

2.6 *Vide* letter dated 06.07.2011, the appellant was asked by the Superintendent to give an explanation as to how the qualities of paper are enhanced after metallization of coated paper.

2.7 On 02.08.2011, the jurisdictional range Officer drew samples of finished foods vide Sample Test Memo No 1/2011 which was sent for testing to Govt. laboratory CRCL on 02.08.2011. CRCL was also asked whether the sample paper was 'Aseptic Packaging Paper' or not.

2.8 CRCL, *vide* test report dated 24.11.2011, reported as under:

(i) Each of the two samples is in the form of paper coated on one side with Metal powder (aluminium),
(ii) Each is free from plastic material,
(iii) The product in question does not have characteristic of Aseptic Packaging Paper.

2.9 Without referring to the test report obtained from CRCL, first Show Cause Notice dated 22.12.2011 was issued to the appellant demanding duty for the period June 2007 to July 2009.

2.10 The appellant replied to the first Show Cause Notice *vide* its letter dated 24.01.2012, submitting, *inter alia*, that the CRCL report clearly states that their product i.e. metalized paper sample was free from any plastic coating and, therefore, the proposed classification by the Revenue fails as Tariff Heading 48115900 covers paper and paper board coated with plastic.

2.11 Second Show Cause Notice dated 23.5.2012, was issued to the appellant referring to the test report of CRCL and demanding duty for the period from May 2011 to November 2011. In the said SCN, it was claimed that the appellant's classification of metalized paper as 'Aseptic Packaging Paper' is not correct as the CRCL report clearly states that the product does not have the characteristic of 'Aseptic Packaging Paper'.

2.12 The appellant replied to the second SCN submitting that the classification of the product as proposed by the Revenue is not correct as the appellant's product i.e. paper and paper board is coated with Kaolin (china clay) and inorganic substances and is free from plastic.

2.13 Further 6 SCNs came to be issued to the appellant, all proposing classification of the appellant's product under 4811 5900. Details of the said SCNs are as under:

(i) SCN dated 27.12.2012 demanding duty for the period December 2011 to July 2012.
(ii) SCN dated 22.08.2013 demanding duty for the period August 2012 to May 2013
(iii) SCN dated 23.06.2014 demanding duty for the period June 2013 to March 2014
(iv) SCN dated 16.04.2015 demanding duty for period April 2014 to February 2015
(v) SCN dated 08.02.2016 demanding duty for the period March 2015 to September 2015
(vi) SCN dated 02.11.2016 demanding duty for the period October 2015 to July 2016.

2.14 The appellant in their reply dated 24.01.2014 to SCN dated 22.08.2013, made a categorical assertion that the appellant's product cannot be classified under 48115900 and would merit classification under 4810 1390. It was categorically asserted by the appellant that the appellant's product is coated on one or both side with kaoline (China clay) and inorganic substances i.e. aluminium and, therefore, cannot by any reasoning be classified under the heading proposed by the Revenue.

2.15 Vide Order-in-Original dated 11.012017, all the aforesaid 8 SCNs were adjudicated by a common order by confirming duty demand of Rs 1,52,99,433/-. The Adjudicating Authority in its finding held that the appellant's submission that the presence of plastic is an essential condition to be classified under Tariff Heading 4811 5900 is not correct as the presence of plastic is not necessary as per tariff entry for the goods to be classified under 4811 5900. The reasoning by the Adjudicating Authority was that the description under heading 4811 reads as "paper and Paper Board coated, impregnated or covered with plastics (excluding adhesives) which makes it very clear that he goods i.e. paper and paper board, under this heading may be coated, impregnated or covered with plastic. This would mean that the goods under this heading do not require pre-condition of being covered with plastic. Broadly, the goods covered or not covered with plastic can be classified under the sub-heading. The adjudicating Authority also held that the appellant had declared the nature of coating after the report of the CRCL. Before that, they never declared that the paper is coated with aluminium.

2.16 The learned Commissioner (Appeals) in the impugned Order-in-Appeal upheld the adjudication order by giving benefit only with regard to imposition of penalty.

2.17 The appellant is claiming classification of the product – metalized paper under Tariff Heading 48101390 whereas the Revenue is proposing classification under Heading 4811 5900. The conflicting tariff headings are reproduced hereunder, for ready reference.

<u>Tariff Heading claimed by the appellant</u>

Tariff Item		Description of goods	Unit	Rate of Duty
4810		**Paper and paperboard, coated on one or both sides with kaolin (china clay) or other inorganic substances, with or without a binder, and with no other coating, whether or not surface-coloured, surface-decorated or printed, in rolls or rectangular (including square)**		

		sheets, of any size		
	-	*Paper and paperboard of a kind used for writing, printing or other graphic purpose, not containing fibre obtained by a mechanical or chemi-mechanical process or of which not more than 10% by weight of the total fibre content consists of such fibres:*		
4810 13	--	*In rolls:*		
4810 13 10	---	Imitation art paper	Kg	10%
4810 13 20	---	Art paper	Kg	10%
4810 13 30	---	Chrome paper or paperboard	Kg	10%
4810 13 90	**---**	**Other**	**Kg**	**10%**
4810 14	---	*In sheets with one side not exceeding 435 mm and the other side not exceeding 297 mm in the unfolded state:*		
4810 14 10	---	Imitation art paper	Kg	10%
4810 14 20	---	Art paper	Kg	10%
4810 14 30	---	Chrome paper or paperboard	Kg	10%
4810 14 90	---	Other	Kg	10%
4810 19	--	*Other*		
4810 19 10	---	Imitation art paper	Kg	10%
4810 19 20	---	Art paper	Kg	10%
4810 19 30	---	Chrome paper or paperboard	Kg	10%
4810 19 90	--- -	*Other* *Paper and paperboard of a kind used for writing, printing or other graphic purposes, of which more than 10% by weight of the total fibre content consists of fibres obtained by a mechanical or chemi-mechanical process:*	Kg	10%
4810 22 00	--	Light-weight coated paper	Kg	10%
4810 29 00	-- -	Other *Kraft paper and paperboard, other than that of a kind used for writing, printing or other graphic purpose.*	Kg	10%
4810 31 00	--	Bleached uniformly throughout the mass and of which more than 95% by weight and weighing 150 g/m2 or less	Kg	10%
4810 32 00	--	Bleached uniformly throughout the mass and of which more than 95% by weight of the total fibre content consists of wood fibres obtained by a chemical process,	Kg	10%
4810 39	--	*Other*		
4810 39 10	---	Insulating paper	Kg	10%
4810 39 20	---	Electric insulating press board	Kg	10%
4810 39 30	---	Insulation boards (homogenous)	Kg	10%
4810 39 90	--- -	Other *Other paper and paperboard*	Kg	10%
4810 92 00	--	Multi-ply	Kg	10%

4810 99 00	--	Other	Kg	10%

Tariff Heading claimed by the Revenue

Tariff Item		Description of goods	Unit	Rate of Duty
4811		Paper, paperboard, cellulose wadding and webs of cellulose fibres, coated, impregnated, covered, surface-coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in Heading 4803, 4809 or 4810.		
4811 10 00	-	Tarred, bituminized or asphalted paper and paperboard	Kg	10%
	-	*Gummed or adhesive paper and paperboard*		
4811 41 00	--	Self-adhesive	Kg	10%
4811 49 00	--	Other	Kg	10%
	-	***Paper and paperboard, coated, impregnated or covered with plastics (excluding adhesives)***		
4811 51 00	--	Bleached, weighing more than 150 g/m2	Kg	10%
4811 59 00	**--**	**Other**	**Kg**	**10%**
4811 60 00	-	Paper and paperboard, coated, impregnated or covered with way, paraffin wax, stearine, oil or glycerol	Kg	10%
4811 90	-	*Other paper, paperboard, cellulose wadding and webs of cellulose fibres*		
	---	*Handmade paper and paperboard, rules, lined or squared but not otherwise printed, chromo and art paper, coated, building board of paper or pulp, impregnated, chromo board, raw base paper for sensitizing, coated, surface marbled paper, leather board and imitation leather board and matrix board*		
4811 90 11	----	Handmade paper and paperboard, rules, lined or squared but not otherwise printed	Kg	10%
4811 90 12	----	Chromo and art paper, coated	Kg	10%
4811 90 13	----	Building board of paper or pulp, impregnated	Kg	10%
4811 90 14	----	Chromo board	Kg	10%
4811 90 15	----	Raw base paper for sensitizing, coated	Kg	10%
4811 90 16	----	Surface marbled paper	Kg	10%
4811 90 17	----	Leather board and imitation	Kg	10%

		leather board		
4811 90 18	----	Matrix board	Kg	10%
	---	*Other*		
4811 90 91	----	Grape guard paper	Kg	20%
4811 90 92	----	Asceptic packaging paper	Kg	10%
4811 90 93	----	Thermal paper for fax machines	Kg	10%
4811 90 94	----	Thermal paper in jumbo rolls (size 1 mt and above in width and 5,000 mt and above in length	Kg	10%
4811 90 99	----	Other	Kg	10%

2.18 The main heading 4810 covers paper and paper board coated with kaoline (China clay) or other inorganic substances. The appellant purchases kaoline coated paper either locally or by import. The appellant further undertakes the process of coating of aluminium by passing the said paper through vapours of aluminium vacuum. The CRCL report categorically states that the appellant paper is coated on one side with metal powder i.e aluminium. For bringing the product under heading 4810, it has to be either coated with Kaoline or other inorganic substances. When the report clearly states that the paper cleared by the appellant is coated with inorganic substance, i.e aluminium, the question of bringing the said product under any other heading, does not arise. The Revenue has sought to classify the product under 48115900 without even noticing the fact that tariff heading 4811 covers paper and paper board, coated, impregnated surface decorated or printed other than the goods of the kind described in heading 4803, 4809 or 4810. Since the appellant's product is covered under heading 4810, by virtue of the presence of inorganic substances, the question of bringing it under heading 4811 does not arise. Further, the tariff heading under which the Revenue seeks to bring the appellant's product, reads as under:-

> **"Paper and paper board, coated, impregnated or covered with plastic."**

The CRCL report also clearly brings out the fact that the appellant's product is not covered with plastic. Therefore, the question of bringing the product under the said heading does not arise.

2.19 The authorities below (adjudicating Authority) has sought to deal with the aforesaid submission by stating that the Tariff sub-heading 48115900 do not require the pre-condition of being covered with plastic because from a reading of the heading, it can be paper and paper board which may be coated, impregnated or covered with plastic. The appellant submission, in this regard, is that reading of the heading in such a manner would make the phrase 'with plastic' meaningless. To bring an item under this heading, the paper and paper board should be coated with plastic, impregnated with plastic or covered with plastic. The presence of plastic is, therefore, essential.

2.20 The submission of the appellant shall be further clear if one reads the next Tariff Heading 48116000 which covers *paper and paper board, coated, impregnated or covered with way, paraffin wax, stearine oil or glycerol*. The manner in which the adjudicating Authority has read the heading 48115900, it would make no difference between the heading 48115900 and 48116000 as both the heading cover the activity 'coated, impregnated or covered'. Therefore, the revenue's proposed classification of the product has to be straightway rejected.

2.21 The adjudicating Authority in its order has also given the finding that the nature of coating was declared by the party only after the report of the CRCL and the appellant had not declared the fact before the CRCL report was given. This finding is contrary to the facts on record. In the first SCN dated 22.12.2011, it refers to the reply dated 7.4.2011, submitted by the appellant to the Audit objections clarifying that the appellant product's i.e. Paper and paper board is coated with aluminum and is free from plastic.In fact, the finding of the adjudicating authority of not mentioning the coating of the aluminum makes it clear that if the product paper is coated with aluminium, it will be covered under heading 4810 as the said heading covers paper and paper board coated with inorganic substances. Once the product is classified under Tariff Heading 4810, it would automatically go out of Tariff heading 4811 as the said tariff heading 4811 covers paper and paper board other than of the kind described in 4810. When there is a specific entry for a product, it should prevail over a general entry.

2.22 The onus of establishing that goods are classifiable under a particular tariff entry lays upon the Revenue as laid down in *Hindustan Ferodo Ltd v CCE, Bombay, 1997 (89) E.L.T. 16 (S.C.)*. There is no finding by any of the authorities below as to why the appellant's product cannot be covered under TH 48101390.

3. Heard the learned Authorized Representative for Revenue. He has supported the findings of lower authorities.

4. We have carefully gone through the case records and submissions made by both the sides. We find that lower authorities have classified the goods under Central Excise Tariff Item No.48115900. To qualify classification under Tariff Item

No.48115900, the goods should be other than "bleached, weighing more than 150 g/m^2" and should either be coated with plastic or should be impregnated with plastic or covered with plastic. We also find that CRCL vide its report dated 24.11.2011 have categorically reported that the samples were free from plastic material. We, therefore, hold that the classification arrived at by lower authorities is not sustainable.

5. We, therefore, set aside the impugned Order-in-Appeal and allow the present appeal with consequential relief to the appellant.

(Pronounced on-28 July, 2020)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

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