CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 21974 of 2015

(Arising out of Order-in-Original No. BLR-EXCUS-003-COM-05-15-16 dated 16.06.2015 passed by the Commissioner of Central Excise, Bengaluru-III Commissionerate, Bengaluru.)

M/s. Fourth Dimension India Private Limited
No.440/1, Doddamma Layout,
Bannerghatta Road,
Hulimavu,
Bengaluru – 560 076.

Appellant(s)

VERSUS

The Commissioner of Customs, Central Excise
Bengaluru-III Commissionerate,
Queens Road,
Bengaluru – 560 001.

Respondent(s)

WITH

Central Excise Appeal No. 21978 of 2015

(Arising out of Order-in-Original No. BLR-EXCUS-003-COM-05-15-16 dated 16.06.2015 passed by the Commissioner of Central Excise, Bengaluru-III Commissionerate, Bengaluru.)

Thomas Joseph
Head and Director
M/s. Fourth Dimension India Pvt Ltd.
No.440/1, Doddamma Layout,
Bannerghatta Road,
Hulimavu,
Bengaluru – 560 076.

Appellant(s)

VERSUS

The Commissioner of Customs, Central Excise
Bengaluru-III Commissionerate,
Queens Road,
Bengaluru – 560 001.

Respondent(s)

APPEARANCE:

Shri M. S. Nagaraja, Advocate and Mr. Rajesh Kumar T. R, CA for the Appellant.

Shri Rajiv Kumar Agrawal, Commissioner, Authorised Representative for the Respondent.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20263, 20264 /2024

DATE OF HEARING: 04.12.2023
DATE OF DECISION: 10.04.2024

PER : D.M. MISRA

This is an appeal filed against Order-in-Original No.BLR-EXCUS-003-COM-05-15-16 dated 16.06.2015 passed by the Commissioner of Central Excise, Bangalore.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of display/storage material viz., Floor Stack Display Unit (FSDU), Counter Top Display (CTD), Wire Hangers or Side Kick, Parasite, Marina Road, Cashtill, Shelf Strips, Shelf Trays, Display Signage, Olay PMU, etc., in their premises at Bangerghatta Road, Bangalore. The Preventive Officers of the Department visited the said premises of the appellant and on investigation, it came to their notice that the appellants are engaged in the manufacture of display /storage material which are used as display devices for trade advertisement by industrial houses and their major customers include GSK Asia Pvt. Ltd., Procter & Gamble Home Products Ltd., Britannia Industries Ltd., Pedelite, etc. However, the appellant had not registered with the department and not discharged excise duty at appropriate rate on the value of the clearance of excisable goods. Consequently, goods lying in the said premises in ready for dispatch condition have been seized under Mahazar dated 06.03.2014 and investigation commence by recording statements retrieving records, etc. On completion of investigation, show-cause notice was issued to the appellant on 27.10.2014 with a proposal to consider the process undertaken to manufacture display/storage materials be held as amounting to manufacture under Section 2(f) of the Central

Excise Act, 1944 and proposed classification of the goods manufactured mentioned above under Chapter 9403 of Central Excise Tariff Act, 1985; Central Excise duty amounting to Rs.12,41,79,057/- on the value of the excisable goods manufactured and cleared during the period October 2009 to March 2014 proposed to be recovered with interest and penalty. Also, it is proposed to confiscate the goods seized on 06.03.2014; also penalty of Rs.1,24,00,000/- on Shri Thomas Joseph, Director was imposed. In response to the said notice, the appellant filed their reply on 22.01.2015. Later, on adjudication, the learned Commissioner confirmed the demand with interest and equal amount of penalty, directed confiscation of 782 Nos. of units seized with an option to redeem the same on payment of fine of Rs.1,50,000/-.

3. At the outset, the learned advocate for the appellant has submitted that they are engaged in specialization, design, creative work, printing and preparing the trade advertising material for advertising and promotion of various products and brands in retail outlets for the FMCG companies. The appellants have designers and detailed specialists to formulate solutions to increase brand or product visibility at point of sale in the retail outlets. Various companies places orders for customization of advertising or promotional material for instore marketing materials by way of communication, advertisement, publicity and printing of materials for retail outlets in respect of various products or brands. The appellant places purchase orders on manufacturers/fabricators for supply of the required numbers of display stands or holders as per the design and specifications approved by their customers. The manufacturers supply display stands made of acrylic injection moulds/high impact polystyrene, wood, metal, etc. The customized designs or visuals are printed on vinyl sheets and /or then pasted on paper board, plastic boards, MDF sheets, etc. The printed sheets are also laminated, cut to the required sizes and shapes and pasted on the display devices received from the fabricators by using super glue or

attached by using split pins in case of hanging boards. The display units contain photographs, name, description, price, use, etc., of a single or multiple products or brand. These displaying units are sent to retail outlet to promote the products on occasions like new product launches, re-launch of products, festival promotions, free offers, discounts on sale, etc. The displays for products change seasonally and the promotions of such display range from one week to about 8 weeks. The said activities of the appellant were earlier investigated by the department on the issue of excisability in August 2004 and later dropped by the department.

3.1 The learned advocate has submitted that in response to the investigation by the department, it has been informed that the appellants are engaged in the segment of printing and providing printed "Trade Advertising Material" at the point of sale to FMCG Companies which is classifiable under Chapter Subheading 4901 of the CETA, 1985 attracting 'Nil' rate of duty. The activities carried out by them briefly are as below:

(i) They employ about 30 persons at their Head Office (HO) in Koramangala who are engaged in conceptualization, design and creative work for preparing the Trade Advertising Material;

(ii) Such customized or adopted designs are made suitable for printing and sent to their Hulimavu facility where the said designs are printed on vinyl sheets or paper;

(iii) The designs printed on vinyl sheets and/or paper are then pasted on paper board, plastic boards, MDF sheets, etc.;

(iv) Depending upon the customer's specifications, the above printed material is affixed on stands, hangars, counter top units, floor standing units, etc.;

(v) These stands are purchased from metal fabricators or woodworking units according to the requirements of the customers and these stands are made of metal, wood and other material;

(vi) The appellants receive the display stands in fully finished condition. The printed trade advertising material is cut to sizes and shapes and pasted as per the shape and contour of the stands;

(vii) The stands ready for display with printed trade advertising material are sent to the customers.

Sl. No.	**Product Name**	**Material used in**	**use**
1	FSDU (Floor Stack Display Unit)	MDF/Metal Stand with sun board and Vinyl Printing pasted	Advertisement for COLGATE tooth paste
2	Large Display Unit	MDF/Metal and Vinyl Printing pasted	Advertisement for products stacked aesthetically in hyper markets with large areas and cordoned to avoid disturbance of display
3	Display Signages	Metal, Sun Board or MDF with Vinyl Printing pasted	Boards/Frames with Product Images pasted
4	Counter Top Display (CTD)	Metal, Sun Board or MDF with Vinyl Printing pasted	Product Pamphlets or literature kept near Cash Counters
5	Sachet Hangers	Tubular square metal pipes	Hangers with advertisements pasted hung from walls
6	Floor Stacking Unit (FSU) (**Floor Standing Display Unit)	Metal/Wood Frame with advertisement pasted on it	Floor Standing Display Unit (FSU) is placed on Floor in large Shops with the advertisement of brands or products and demonstration of sample products for visual identification/memory retention
7	Marina Rod	Steel Pipe hangers of bigger size for hanging advertisements	Variety of product advertisements are fixed and hung for display
8	Wire Hanger/ Side Kick	Hangers Advertisements hung	Product advertisements are hung
9	Cash Till	Steel Frame With ad pasted	Display Device near Cash Counters
10	Olay PMU	MDF Sheets in large sizes with ads pasted	Placing the P&G products for display
11	Shelf Strips	Acrylic Sheets with advertisements pasted	Printed Sheets with product advertisements for pasting on shelves

12	Shelf Trays	Acrylic/Thermoform Plastics with product ads	Kept in shelves with description of product
13	Parasite	Metal or MDF with ads pasted	Clipped to the side of shelves for display of products advertised

Large Display

Display Advertising for Clients in Trade Outlets

Reference: Appeal page 75

Printed Sheet pasted on board supplied to Outlet.
The same is Clad on the Display Stand available at the Outlet by Store Staff

Purchased Item

CTD

Cashtill / Parasite Display

After Advertisement Print pasting

Purchased Item

Shelf Strip

After Advertisement Print pasting

Floor Standing Display Unit

Reference: Appeal page 29

Large product demo display with dummy packs to show case new arrival, actual stocks are in shelf unit with product code/pricing etc

Existing Glass Window at Shop

Display Signag

After Print Advertisement pasting Done at Store

Large Display Unit

Reference: Appeal page 29

Consumer awareness program corner created with product dummy display and samplingsection for new sensitive toothpaste launch

3.2 In support of their submission that the display stands were received in fully manufactured condition, the process of printing and pasting of the advertisement material on different types of stands, the appellant had enclosed necessary photographs and supply of the same to various customers. Also, they have relied upon the statements of Shri Avinash, Senior Manager (Finance) dated 14th February 2014 and Shri Thomas Joseph, Director dated 28th February 2014.

3.3 The appellant further submitted that from the photographic evidence and other documents placed on record, it is clear that the appellants have received the display stands as per the approved designs and specifications in fully manufactured condition. There is indeed no scope for any further processing of such already finished products. The appellants neither have any machineries nor facilities and skills to undertake any process to complete the manufacture of the display stands. Thus, the findings of the Commissioner in the impugned order that the appellant procures fabricated skeletons and frames from the vendor's, leading to an inference that only after a certain other processes that the display stands come into existence in the premises of the Appellant is contrary to facts, devoid of merit, based on assumptions and presumptions and making out a case contrary to facts.

3.4 The Ld. Commissioner has failed to appreciate that the manufacturers of stands are liable to pay excise duty on the said fabricated stands in accordance with law. The value of printing of advertisements cannot be included in the value of stands and duty be demanded from the appellants. Further, they have submitted that the Ld. Commissioner has failed to appreciate that the display of advertisement or promotional material in respect of the brand or product to the customers is the sole objective or purpose and the display stand is only a supporting structure on which such advertisement is pasted, a fixed or hung. The printed advertisement conveys to the customer, the details of the product to enable him to make the choice to purchase or not. The advertisement or promotional material for marketing of brands and products is the essence, purpose and objective of the display and not exhibiting a view sample products. The sale of the product is decided by the printed advertisement and the exhibition of the product. It communicates to the customer about the product and definitely serves a purpose of display. The object of the advertisement or promotional material is to enhance sale of the brand or products and not procure furniture. The display stands without advertising material have no independent identity of their own and serves no purpose to the clients. The customers who have purchased the advertisement material have confirmed that these expenses for procuring subject advertisement display stands are accounted under the head of "Advertisement and Sales Promotion". They have referred to the judgement of Hon'ble Supreme Court in **UOI vs. JG Glass Industries Ltd.: 1998 (97) ELT 5 (SC)** which followed the ratio of **Metagraph Private Limited vs. CCE: 1996 (88) ELT 630 (SC)**'s case, wherein the Lordships laid down the two-fold test to examine whether the product is of printing industry.

3.5 Laying emphasis on the argument that the products in question are advertising material, it is submitted that the appellants have undertaken design and artwork for advertisement or promotion of the products and brands in consultations with and as required by the customers. The designs and customised or artwork for advertising the products or brands is made suitable for digital printing on vinyl sheets , PVC foam board sheets, acrylic sheets, HIPS Sheets etc. The printed sheets are laminated, cut to required size and shape and pasted on the display stands received from the manufacturers by using super glue or a fixed by using split pins in case of hanging boards. The display stands contain the printed advertisements or promotional material in respect of the brand and product explaining their virtues, use advantage price discounts offered etc.. These stands are used as 'point of sale Advertising Material' by the customers at the retail outlets/showrooms for increasing the visibility of the Brand and Products to the customers and enhance sale of the products as explained by the customers in their statements furnished to the Department.

3.6 Further they have submitted that the display stands are displayed in the showrooms for a period of one week to about eight weeks and are removed thereafter from the showrooms and disposed of as scrap to make way for different brand or product launch. Therefore, the display stands by themselves without the advertisements have no independent utility and do not serve any purpose for the customers. Thus it satisfies, the twofold test laid down by the honourable Supreme Court in the case of **Metagraphs Pvt. Ltd.** (supra) and **J. G. Glass Industries Ltd.** (supra).

3.7 On the classification of the product, the appellant submitted that it is based on common parlance understanding of how the people in the trade and commerce conversant with the subject generally treat and understand them in the usual course of business. In support they relied the following judgements:

- **CCE vs. DL Steels: 2022 (381) ELT 289 (SC)**
- **CCE vs. Connaught Plaza Restaurants (P) Ltd.: 2012 (286) ELT 321 (SC)**

3.8 It is further submitted that the appellants have been operating in the said premises since 2001. The investigations in 2004 led to the Department proposing its classification as Lit Signages under CSH 9405 and thereafter, no proceeding was initiated by the Department. Now, the department proposed to classify the products as Furniture/Other Furniture under CSH 9403 of CETA, 1985. It is their contention that the subject products containing the advertising or promotional materials are Trade advertising Material classifiable under CSH 49.11 of CETA, 1985. It is their contention that, the department has not adduced any material evidence from any source including from the retail showrooms to establish that the subject Advertising Display Stands are used as 'furniture' or 'other furniture'. It is a well-settled principle of law that the burden of proof with material evidence that the goods are classifiable as 'furniture' or 'other furniture' is on the Department proposing such classification. They have submitted that the main objective or purpose of use of advertisement displays is to improve brand or product visibility and sales and are therefore described as Trade Advertising Material classifiable under Chapter 49.11 and attract the rate of duty.

3.9 Further, referring to Note 2 to Chapter 49 and the description of the goods under Chapter 49.11 and comparing with description of goods under Chapter 9403 they have submitted that in confirming the demand, the learned Commissioner ignored the main or primary purpose of the goods was to store/stack the products for the retail sale and not for just advertising. If such a finding is accepted, then the customers could have brought tracks, cabinet with shelves, etc., from the furniture manufacturers rather than placing orders on the appellants. Therefore, the conclusion of the Commissioner classifying the goods as 'other furniture' is baseless, illogical, contrary to the facts of the case and hence not sustainable. In the impugned order no specific adding has been assigned to each of the products.

3.10 The appellants have further submitted that it is a general principle of law that the classification of the goods is based on the common parlance test, commercial uses test, functionality Utility and Predominant use of the commodity. In support they referred to the following judgements:

(i) CCE vs. Wockhardt Life Sciences Ltd: 2012 (277) ETL 299 (SC)

(ii) Okay Play (India) Ltd vs. CCE, Delhi-III: 2005 (180) ELT 300 (SC)

3.11 On the issue of limitation, the learned advocate for the appellant submitted that all the facts are within the knowledge of the Department. The factory was visited by the preventive officers in August 2004 and statement of the Manager was recorded on 31.8.2004. Records for the previous financial year is including sales invoices for 2003-04, 2004-05, purchase invoices have been withdrawn. The Range Superintendent had advised by letter dated 18.10.200 4 to take registration for manufacture of 'parts of illuminated signs' falling under CETH 9405.90. They had furnished all details as required by the Department. However, the Department did not take any action for the earlier period. Therefore, the finding of the Commissioner that they have discontinued the practice of supply material to the vendors for conversion into promotional materials was trading and not manufacturing like present activities, cannot stand to the reasons. The department would have initiated recovery proceedings for the past period for the activities of manufacture undertaken, even if the same has been discontinued further. Therefore, invoking extended period of limitation on the allegation of suppression of fact cannot be sustainable as held in a number of judgements. The following judgements have been relied upon by the appellant.

- **CC vs. Magus Metals Pvt Ltd: 2017 (355) ELT 323 (SC)**
- **Blue Star Ltd vs. UOI: 2015 (322) ELT 820 (SC)**
- **CCE, Mumbai-III vs. Essel Propack Ltd.: 2015 (323) ELT 248 (SC)**
- **Uniworth Textiles Ltd. vs. CCE, Raipur: 2013 (288) ELT 161 (SC)**
- **CCE, Tamil Nadu vs. Southern Structurals Ltd.: 2008 (229) ELT 487 (SC)**
- **CCE & C, Mumbai vs. Bell Granito Cermica Ltd.: 2006 (198) ELT 161 (SC)**
- **Pushpam Pharmaceuticals Company vs. CCE, Bombay: 1995 (78) ELT 401 (SC)**
- **Pahwa Chemicals Pvt Ltd vs. CCE, Delhi: 2005 (189) ELT 257 (SC)**

- **Continental Foundation Jt. Venture vs. CCE, Chandigarh: 2007 (216) ELT 177 (SC)**
- **Anand Nishikawa Co Ltd vs. CCE, Meerut: 2005 (188) ELT 149 (SC)**

3.12 Also, they have submitted that the appellants were under the *bona fide* belief that the printing of Advertisements for brands and products, pasting them on the stands received from the manufacturers and supplying them to the customers as per their requirement did not attract Excise duty. Thus, there is no deliberate suppression of facts with intent to evade payment of duty. In support they have referred to the following judgements.

- **CCE & C vs. Reliance Industries Ltd.: 2023 (385) ELT 481 (SC)**
- **Sanjay Industrial Corporation vs. CCE, Mumbai: 2015 (318) ELT 15 (SC)**
- **Kiran Ispat Udyog vs. CCE, Rajkot: 2015 (321) ELT 182 (SC)**
- **Jaiprakash Industries Ltd. vs. CCE, Chandigarh: 2002 (146) ELT 481 (SC)**
- **Larsen & Toubro Ltd vs. CCE, Pune: 2007 (211) ELT 513 (SC)**

3.13 Consequently, penalty also not imposable on the appellants. Further, it is submitted that the direction for confiscation of 782 Nos. of subject goods seized on 6.3.2004 with an option to redeem the same on payment of fine of Rs.1,50,000/- and penalty also cannot be sustained since the goods involved are classifiable as 'Trade Advertising Material' under Heading 49.11 of CETA, 1985. When the classification and levy of excise duty is the subject matter of dispute involving interpretation of law, there is no ground to order confiscation of the goods and impose personal penalty.

4. Per contra, learned Authorised Representative (AR) for the Revenue reiterating the order submitted that the appellants were engaged in manufacture of excisable goods viz., display/storage material for which they procured frames,

hangers, skeletons, etc., made to the specifications of the appellants, on which advertising printed material was fixed using processes like threading, fitting nails, fixing printing and pasting the customised prints. On verification of the relevant purchase orders revealed that the supply was for the entire unit. Also referring to the statement of Shri K. Suresh, Purchase Officer dated 07.04.2014, he has submitted that products such as Floor Stacking Units (FSU), Counter Top Display (CTD) and display signage of different heights having shelves for storing products and display. Also, similar statement has been given by Shri Rohit Dandekar, Senior Purchase Manager of Proctor & Gamble Ltd. He also submitted that the supply order is for the entire unit.

4.1 It is submitted that the learned Commissioner taking into account these evidences concluded that the activity of the appellant resulted into manufacture, hence they were liable to discharge duty with interest and penalty on the Company and the Director. Rebutting the contention of the appellant, the learned AR for the Revenue has submitted that goods supplied by the appellants are complete in all respects. There is no denying of the fact that FSU and CTD do have shelves, pockets, where goods are stored. Also, the items sold by the appellant is complete FSU or a CTD. The appellants procure these frames from their vendors and supply the finished products to their customers. The photographs enclosed in the appeal paper-book shows that the appellant worked upon the frames receive and given finished appearance of the final product is what was ordered by their customers. Referring to the judgment of the Hon'ble Supreme Court in M/s. Brakes India Ltd vs. Superintendent of Central Excise: 1007 (3) TMI 120 – SC, he has submitted that the processes carried out by the appellant in their premises resulted into manufacture of finished product i.e., furniture. Further, he has submitted that the meaning of furniture cannot be limited to furniture used in storage or other commonly used meaning. With the advent of modern shopping, display units are also now commonly known as furniture.

Referring to web advertisement that the types of exhibitions stand furniture includes counters, plinths, tables and chairs, showcases, AV stands, iPad holders, literature displays, lecterns. Further explaining the exhibition counters, he has submitted that it provides an area where one can setup laptop and log visitor details for potential leads. They can also be used to display the company’s promotional items and business cards. Counters come in number of shapes and sizes and can be customised with company’s own brand name. Further, he has referred to meaning of plinths, tables and chairs, showcases, AV stands, iPad Holders, etc., in submitting that the right exhibition stand furniture is to complement once stand is an important part of exhibition preparation. These exhibition stand features can really help to stand out amongst the crowd at a trade show.

4.2 The learned AR further submitted that the activities of the appellant are plainly not designing or printing advertisement material, it is supply of finished furniture on which goods can be displayed/stored or in some cases only display of the posters is possible. It may be noted that the finished products which are marketable as display/storage are made by the appellants and the raw skeleton procured by them has no identity a such display/storage furniture. However, as explained in the meaning of the exhibition furniture, simple wall hangings are also called display furniture in the common parlance and are therefore, correctly classified by the adjudicating authority.

4.3 On the issue of limitation, the learned AR has submitted that reiterating the findings of the Commissioner in the Order-in-Original that during the period prior to 2004, the appellants were undertaking trading activity which is different from the activities which they were following at the time of investigation initiated in 2014; hence, the extended period of limitation has been correctly invoked and penalty imposed on the appellants. Also, the learned AR reiterated the findings on the imposition of penalty on the Director in the impugned order by the leaned Commissioner.

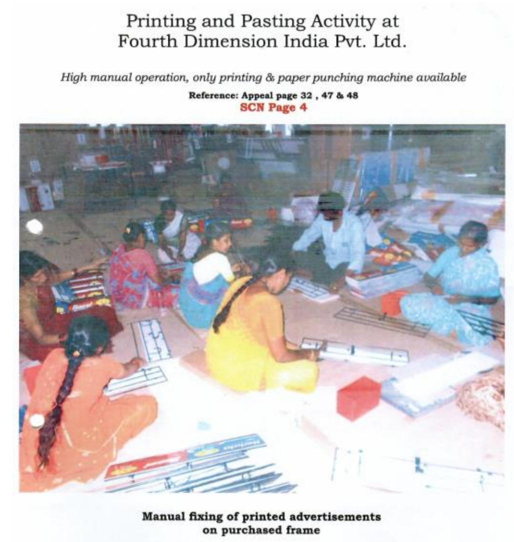
5. Heard both sides and perused the records.

6. The issues involved in the present appeals for determination are, whether: (i) different display units listed above are classifiable under Chapter Heading 4911 or 9403 of CETA,1985 during the relevant period from 01.10.2009 to 31.03.2014; (ii) demand invoking extended period of limitation is justified; (iii) confiscation of the seized goods with an option to redeem on payment of fine is sustainable; and (iv) imposition of penalty on the company and personal penalty on the Director are justified.

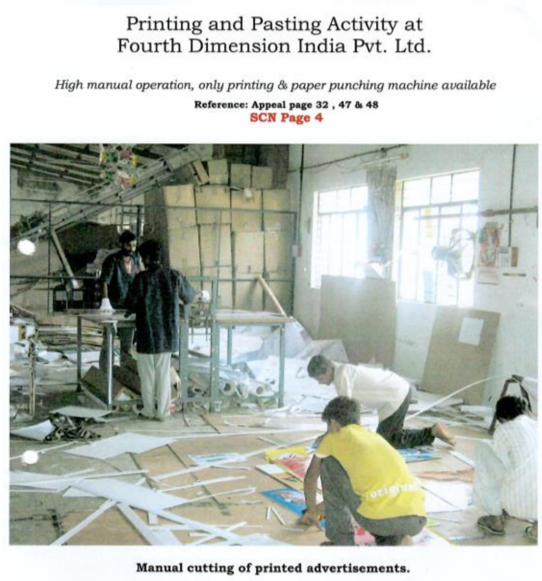
7. Undisputedly the appellants are engaged in manufacture and supply of display/storage units which are claimed to be primarily used as display devices for trade advertisement at retail outlets for their major customers viz., GSK Asia Pvt. Ltd., Procter & Gamble Home Products Ltd, Britannia Industries Ltd., Pedelite, etc.. The Appellant claimed the classification of the said display units under Chapter Heading 49.11 under the category "Other printed matter, including printed pictures and photographs" and subheading "Trade advertising material" attracting 'NIL' rate of duty. The Department on the other hand proposed its classification under Chapter Heading 9403 as "Other furniture and parts thereof" attracting duty at 12% adv.

8. The activities carried out by the appellant has been narrated in their submissions mentioned as above. The appellant procured skeleton steel frames from the fabricators which are made up of various materials like acrylic injection moulds, high impact polystyrene, wood or metal, etc. On the said frames, the appellants fix the customised designs or visuals printed on vinyl sheets and or paper which are pasted on paperboard, plastic

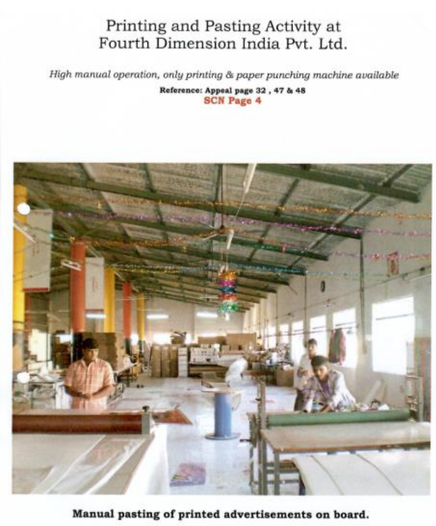
boards, MDF sheets, etc. Various processes are carried out to printout the display units also as narrated in the above paragraphs. The pictorial presentation of the said process is mentioned as below:



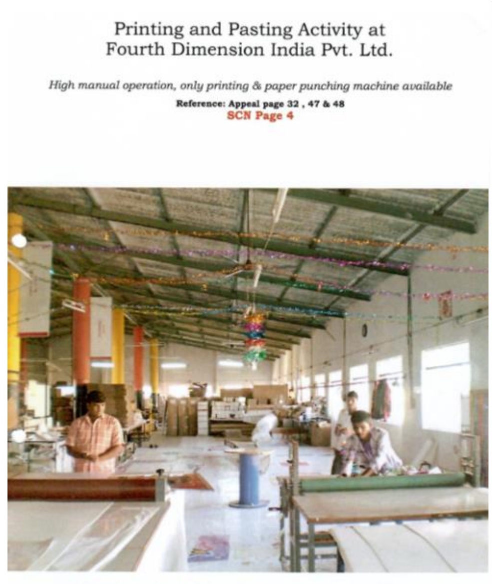
Manual fixing of printed advertisements on purchased frame



Manual cutting of printed advertisements.



Manual pasting of printed advertisements on board.



Manual pasting of printed advertisements on board.

9. The principal argument of the Revenue is that the primary function of the aforesaid display units is for stacking of the materials at the retail outlet and the secondary function is for advertisement of the materials placed for display, hence, classifiable under Chapter Heading 9403 as other furniture; no specific subheading has been assigned by the Revenue.

10. Before addressing the rival contention, the relevant tariff entry and corresponding HSN notes needs to be referred which are reproduced below for easy reference:

Chapter Heading 49.11:

Tariff Item		**Description of goods**	**Unit**	**Rate of duty**
4911		OTHER PRINTED MATTER, INCLUDING PRINTED PICTURES AND PHOTOGRAPHS		
4911 10	-	Trade advertising material, commercial catalogues and the like:		
4911 10 10	---	Posters, printed	kg.	Nil
4911 10 20	---	Commercial catalogues	kg.	Nil
4911 10 30	---	Printed inlay cards	kg.	Nil
4911 10 90	---	Other	kg.	Nil
	-	Other:		
4911 91 00	--	Pictures, designs and photographs	kg.	Nil
4911 99	--	Other:		
4911 99 10	---	Hard copy (printed) of computer software	kg.	Nil
4911 99 20	---	Plan and drawings for architectural engineering, industrial, commercial, topographical or similar purposes reproduced with the aid of computer or any other devices	kg.	Nil
4911 99 90	---	Other	kg.	Nil

HSN Explanatory Note:

49.11 - Other printed matter, including printed pictures and photographs.

4911.10 -Trade advertising material, commercial catalogues and the like

- Other:

4911.91 - -Pictures, designs and photographs

4911.99 - -Other

This heading covers all printed matter (including photographs and printed pictures) of this Chapter (see the General Explanatory Note above) but not more particularly covered by any of the preceding headings of the Chapter.

Framed pictures and photographs remain classified in this heading when the essential character of the whole is given by the pictures or photographs, in other cases such articles are to be classified in the heading appropriate to the frames, as articles of wood, metal, etc.

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 (see Note 12 to Chapter 48). Thus, printed forms (e.g., magazine subscription forms), blank multi-coupon travel (e.g., air, rail and coach) tickets, circular 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. Stock, share or bond certificates and similar documents of title and cheque forms, which also require completion and validation are, however, classified in heading 49.07.

On the other hand, certain articles of stationery with printing which is merely incidental to their primary use for writing or typing are classified in Chapter 48 (see Note 12 to Chapter 48 and in particular the Explanatory Notes to headings 48.17 and 48.20).

The heading includes the following in addition to the more obvious products:

(1) Advertising matter (including posters), year books and similar publications devoted essentially to advertising, trade catalogues of all kinds (including book or music publishers' lists, and catalogues of works of art) and tourist propaganda. Newspapers, periodicals and journals, whether or not containing advertising material, are however excluded (heading 49.01 or 49.02, as appropriate).

(2) Brochures containing the programme of a circus, sporting event, opera, play or similar presentation.

(3) Printed calendar backs with or without illustrations.

(4) Schematic maps.

(5) Anatomical, botanical, etc., instructional charts and diagrams.

(6) 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.

(7) Microcopies on opaque bases of the articles of this Chapter.

(8) Screens made by printing a film of plastics with letters or symbols to be cut out for use in design work.

Such screens simply printed with dots, lines or squares are excluded (Chapter 39).

(9) Maximum cards and illustrated first-day covers not bearing postage stamps (see also Part (D) of the Explanatory Note to heading 97.04).

(10) Self-adhesive printed stickers designed to be used, for example, for publicity, advertising or mere decoration, e.g., "comic stickers" and "window stickers"

(11) Lottery tickets, "scratch cards", raffle tickets and tombola tickets.

The following articles, in particular, are also **excluded** from this heading:

(a) Photographic negatives or positives on films or plates (heading 37.05).

(b) Goods of heading 39.18, 39.19, 48.14 or 48.21 or printed paper products of Chapter 48 in which the printed characters or pictures are merely incidental to the primary use of the products.

(c) Letters, numbers, sign-plates and similar motifs for picture or text, of ceramics, of glass, shop signs and shop windows, bearing a or of base metal, which are classifiable in and 83.10 respectively, or in heading 94.05 if illuminated.

(d) Decorative glass mirrors, whether or not framed, with printed illustrations on one surface (heading 70.09 or 70.13).

(e) Printed "smart cards" (including proximity cards or tags) as defined in Note 4 (b) to Chapter 85 (heading 85.23).

(f) Printed dials of instruments or apparatus of Chapter 90 or 91.

(g) Printed paper toys (e.g., children's cut-out sheets), playing cards and the like, and other printed games (Chapter 95).

(h) Original engravings, prints and lithographs, of heading 97.02, that is, impressions produced directly, in black and white or in colour, of one or of several plates wholly executed by hand by the artist, irrespective of the process or of the material employed by him, but not including any mechanical or photo-mechanical process.

Chapter Heading 94.03

Tariff Item		Description of goods	Unit	Rate of duty
9403		OTHER FURNITURE AND PARTS THEREOF		
9403 10	-	Metal furniture of a kind used in offices:		
9403 10 10	---	Of steel	kg.	12.5%
9403 10 90	---	Other	kg.	12.5%
9403 20	-	Other metal furniture:	kg.	12.5%
9403 20 10	---	Of steel	kg.	12.5%
9403 20 90	---	Other		
9403 30	-	Wooden furniture of a kind used in offices:		
9403 30 10	---	Cabinetware	kg.	12.5%
9403 30 90	---	Other	kg.	12.5%
9403 40 00	-	Wooden furniture of a kind used in the kitchen	u	12.5%
9403 50	-	Wooden furniture of a kind used in the bed room:		
9403 50 10	---	Bed stead	u	12.5%
9403 50 90	---	Other	u	12.5%
9403 60 00	-	Other wooden furniture	u	12.5%
9403 70 00	-	Furniture of plastics	kg.	12.5%
	-	Furniture of other materials, including cane, osier, bamboo or similar materials:		
9403 81 00	--	Of bamboo or rattan	u	12.5%
9403 89 00	--	Other	u	12.5%
9403 90 00	-	Parts	kg.	12.5%

HSN Explanatory Notes 9403

94.03 Other furniture and parts thereof.

9403.10 Metal furniture of a kind used in offices

9403.20 Other metal furniture

9403.30 Wooden furniture of a kind used in offices

9403:40 Wooden furniture of a kind used in the kitchen

9403.50 Wooden furniture of a kind used in the bedroom

9403.60 Other wooden furniture

9403.70 Furniture of plastics

- Furniture of other materials, including cane, osier, bamboo or similar materials:

9403.82 -- Of bamboo

9403.83 -- Of rattan

9403.89 -- Other

- Parts

9403.91 - - Of wood

9403.99 - - Other

This heading covers furniture and parts thereof, not covered by the previous headings. It includes furniture for general use (e.g.. cupboards, show-cases, tables, telephone stands, writing-desks, escritoires, book-cases, and other shelved furniture (including single shelves presented with supports for fixing them to the wall), etc.), and also furniture for special uses.

The heading includes furnitures for:

(1) Private dwellings, hotels, etc., such as: cabinets, linen chests, bread chests, log chests; chests of drawers, tallboys; pedestals, plant stands, dressing-tables; pedestal tables; wardrobes, linen presses; hall stands, umbrella stands, side-boards, dressers, cupboards; food-safes; bedside tables; beds (including wardrobe beds, camp-beds, folding beds, cots, etc.); needlework tables; stools and foot-stools (whether or not rocking) designed to rest the feet, fire screens; draught-screens; pedestal ashtrays, music cabinets, music stands or desks; play-pens; serving trolleys (whether or not fitted with a hot plate).

(2) Offices, such as: clothes lockers, filing cabinets, filing trolleys, card index files, etc.

(3) Schools, such as: school-desks, lecturers' desks, easels (for blackboards, etc.).

(4) Churches, such as: altars, confessional boxes, pulpits, communion benches, lecterns, etc.

(5) Shops, stores, workshops, etc., such as counters, dress racks; shelving units; compartment or drawer cupboards; cupboards for tools, etc.; special furniture (with cases or drawers) for printing-works.

(6) Laboratories or technical offices, such as: microscope tables; laboratory benches (whether or not with glass cases, gas nozzles and tap fittings, etc.); fume-cupboards; unequipped drawing tables.

The heading does not include:

(a) Travelling chests, trunks and the like, not having the character of furniture (heading 42.02).

(b) Ladders and steps, trestles, carpenters' benches and the like not are classified according to their constituent material (headings 44.21, 73.26, etc.)

(c) Builders' fittings (e.g., frames, doors and shelves) for cupboards, etc. to be built into walls (heading 44.18 if of wood).

(d) Waste-paper baskets (of plastics, heading 39.26; of basket or wickerwork, heading 46.02; of base metal, headings 73.26, 74.19, etc.).

(e) Hammocks (generally heading 56.08 or 63.06).

(f) Mirrors designed for standing on the ground, such as cheval-glasses, swing-mirrors for shoe-shops, tailors, etc. (heading 70.09).

(g) Armoured or reinforced safes (heading 83.03). On the other hand, containers specially designed to resist fire, impact and crushing and whose walls in particular do not offer any serious resistance to attempts at breaking them open by drilling or cutting are classified in this heading.

(h) Refrigerators, ice cream machines, etc. (i.e., cabinets, etc., having the character of furniture but also equipped either with a refrigerating unit or with an evaporator of a refrigerating unit, or designed to receive such equipment) (heading 84.18) (see Note (1) (e) to this Chapter). However, ice-boxes, ice-chests and the like, and also insulated cabinets not equipped or designed to contain an active refrigerating element but insulated simply by glass fibre, cork, wool, etc., remain classified in this heading.

(ij) Furniture specially designed for containing or providing a stand for sewing machines, whether or not it has a subsidiary use as furniture when the machine is not in use; protective covers, drawers, extensions and other component parts of such furniture (heading 84.52).

(k) Furniture specially designed as part of apparatus of heading 85.18 (heading 85.18), of heading 85.19 or 85.21 (heading 85.22) or of headings 85.25 to 85.28 (heading 85.29).

(l) Drawing tables fitted with instruments such as pantographs, (heading 90.17).

(m) Dentists' spittoons (heading 90.18).

(n) Mattress supports (heading 94.04).

(0) Standard lamps and other luminaires and lighting fittings (heading 94.05).

(p) Billiard tables, or other furniture specially constructed for games, of heading 95.04, and tables for conjuring tricks, of heading 95.05.

11. From the process of manufacture, it is clear that the item in question is composite in nature i.e., on the metal/PVC frames, printing and advertising materials are pasted. The claim of the Revenue is that the metal frame on which advertising materials are pasted or affixed is a furniture, whereas the claim of the appellant is that the advertisement material is only affixed on the metal frame for support and display. Therefore, to ascertain the correct classification of the said composite goods, the relevant Rule for application in determining the classification is Rule 3(b) of the General Interpretative Rules apprehended to the Tariff. A plain reading of the subrule (b) of Rule 3 makes it clear that the articles which gives the essential character to the composite material be the decisive factory in classifying the composite material. The relevant portion of Rule 3(b) is reproduced below:

> "3. When by application of clause (b) of rule 2 or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows :—
>
> (a) ……..
>
> (b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to clause (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable;"

12. In the impugned order, the Commissioner while confirming the classification under Chapter 9403 observed that the primary function of the impugned goods manufactured and cleared by the appellant is for storing, stacking/display of products which are intended for sale in various retail outlets. Even though such a finding has been recorded by the learned Commissioner, however, not supported by any materials indicating that such are the primary function of the display units.

13. On the other hand, we find, the learned appellant in support of their contention that they are engaged in the service of conceptualisation and advertisement for their clients

emphasised that in this process, they prepare the design of the advertising material depending on the circumstances in which the products are to be advertised by the clients in the retail outlets, then place orders with a fabricators to fabricate and supply the frames necessary for such advertisement. In support of their argument, they have placed on record purchase orders of the clients, wherein the requirement is mentioned as display units (page 82 of the paper-book); also they have placed evidence in the form Bills/ invoices issued by the fabricators in support of the fact that the skeleton/frame i.e. display stand of the advertising material were purchased from the fabricators. The relevant work orders with the fabricators are also placed on record. Besides, the appellant's clients through their letters /certificate emphasised the purpose of use of this material and also the duration for which such advertising material at the outlet are required. The appellant also placed on record that in the books of accounts of the clients, such expenses were reflected under the heading 'Advertisement and Promotion material'.

14. In contrast to such tangible evidence, no material as mentioned earlier has been placed by the Revenue to rebut the said evidences and establish that the display units supplied by the appellant and placed in the retail outlets was to meet the requirement of the retailers for its use as furniture.

15. What is the meaning of 'Furniture' has been explained by the Hon'ble Supreme Court in **Craft Interior Ltd. vs. CCE, Bangalore: 2006 (203) ELT 529 (SC)**. Referring to various dictionary definitions, their Lordships observed that the word 'furniture' has a meaning in common parlance which every layman understands, it commonly refers to chairs, desks, and tables, etc., hence, it should be given a popular meaning of the word furniture.

15.1 Also in the case of **Roplas (INDIA) Ltd. vs. Union of India: 1991 (56) ELT 511 (Bom.),** their Lordships discussing the meaning of 'Furniture' observes as follows:

> "9. In our opinion, it cannot be conceived that such a trolley can be used in a household so as to be called a furniture. The word "furniture" is not defined under the said Act or rules framed thereunder. Ordinarily, furniture would be something which is to furnish or to supplement something for the better use of that thing or place such as for the comfort and convenience of residents of a house, for example, furniture in a drawing room or furniture in a dining room. But where certain articles which are made are exclusively used for a special purpose and which cannot ordinarily be used in a household, they cannot be classified as furniture, irrespective of the fact whether the articles are made of steel, plastic or wood. Examples can be given of operation tables in a hospital or a dentist chair or trolleys used for transporting equipments from one place in the factory to another or for that matter food and medicine trolleys used in hospitals. Even though several characteristics of these above articles may be similar to a household furniture or may have trappings of the furniture, yet such articles which are specially manufactured to suit a particular purpose and use cannot be used in the household ordinarily and therefore cannot be termed as furniture."

Applying the meaning of 'Furniture' as explained by the Hon'ble Supreme Court to the case in hand, it cannot be construed that the display material which has been supplied by the appellant after procuring skeleton- fabricated frames and affixing/pasting the printed material on the same in their premises would result into 'manufacture' of furniture. On the other hand, the purpose and object of the supply of the said printed materials on the procured frames by the appellant would safely be considered as for the primary purpose of advertisement and covered under the scope of Tariff Subheading 4911 1090 as 'Trading Advertising material'.

15.2 This is further clear from the judgment of the Hon'ble Supreme Court in **Metagraphs Pvt. Ltd.** (supra) case explaining what is the product of a printing industry. Their Lordships have observed as follows:

> **"10.** 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 the products of the 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'."

15.3 Similarly in **Classic Strips Pvt. Ltd. vs. CCE, Mumbai: 2001 (131) ELT 281 (Tri.-Mum.)** explaining the scope of printed trade advertising material in the context of competing entries between 49.01 and 94.05, their Lordships analysing the process of furniture at paragraph 7 of the judgment observed that:

> **"7.** The process of manufacture of this product, as we have noted, consists essentially in two stages. The first is to transfer the design from the floppy disc through digital printing to the paper. The second is transfer of the design on the paper of the final sheets. Each of these processes is specifically included in the definition of "printing" contained in Note 2 to Chapter 49. If that is the case, then obviously the combination of these processes will not cease to be printing. The answer posed to the question that the Commissioner frames in paragraph 27 is therefore that the goods are products of the printing industry. In that case, they would not be classifiable under heading 94.05, since there are included elsewhere in the tariff."

This view has been upheld by the Hon'ble Supreme Court as reported at **2015 (318) ELT 20 (SC)**, holding as follows:

> **"4.** It is abundantly clear from the aforesaid details that the process of manufacturing undertaken by the respondent i.e. printing is done by using thermocopied machine and therefore, it would fall under the Head 49.01. By no stretch of imagination, such goods can be classified under the Head 94.05 as no lamps and lighting fittings or search lights or spotlights are used by the respondent for the purpose of illuminated signs or illuminated name plates and sign boards. We, therefore, agree with the finding of the Tribunal. On the

> facts of these cases, we find no merit in these appeals and the same are dismissed."

16. Similarly, consistent views have been adopted by the Tribunals in explaining the scope of printing material in the context of classification of goods under Chapter 4911. In the present case, the appellant explained the process of manufacture carried out in their premises, narrated above, indicated that the Appellant undertake the process of printing of the Advertisement material in their factory and affix the same on the fabricated frames purchased by them from the fabricators. Thus, from the above analysis, it can safely be concluded that the primary object of the display units supplied by the appellant to their clients is for advertising of material and incidental benefit is, while displaying the material, it is placed on the display unit, which cannot convert the display unit as a 'furniture' for storage of the material. Besides, the display units have a short life of one or two weeks, as stated by the customers of the Appellant, that is, till the advertisement of the material or for the occasions of festivals. It is not meant to be used as furniture for longer duration for storage of the material. Therefore, the above display units are correctly classifiable under chapter 4911 and not under Chapter 9403 as alleged by the department.

17. On the issue of limitation, we find that there was a thorough investigation carried out by the department in the year 2004 and communication has been exchanged between the appellant and the department on the issue of excisability of product manufactured and supplied by the appellant to their clients similar to the present one for the period commencing from 2002-2004. The learned Commissioner discarding such plea held that after a letter from the appellant informing that they have stopped the activities and no further action was initiated by the department, in our opinion, is devoid of merit in as much as, as on date of visit of the officers in 2004, past clearances had been effected by the appellant between 2002-2004 undertaking similar activities like the present one without payment of duty. If

the department was of the opinion that it resulted in manufacture of furniture, then recovery should have been affected for the previous period also. In these circumstances, we do not find merit invoking extended period of limitation confirming demand for the period from October 2009 to March 2014 as the facts were within the knowledge of the department much before issuance of the present notice and no mis-declaration or suppression of fact therefore could be alleged.

18. In view of the above finding that the products are classifiable under Chapter Heading 4911, the confiscation of the goods seized alleging its classification under Chapter Heading 9403 cannot be sustained. Also, the demand is barred by limitation. Consequently, penalties imposed on the appellant and the Director is also set aside.

19. In the result, the impugned order is set aside and the appeals are allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 10.04.2024.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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