CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/1079/2009-DB

[Arising out of Order-in-Appeal No. 124/2009 dated 25/09/2009 passed by Commissioner of Central Excise (Appeals), Bangalore]

POORNA GRAPHICS
GANESHA TEMPLE COMPOUND, 3RD CROSS
SINGHAINAPALYA, MAHADEVAPURA POST,
BANGALORE

Appellant(s)

Versus

C.C.E.-BANGALORE-I
POST BOX NO 5400...CR BUILDINGS,
BANGALORE,
KARNATAKA
560001

Respondent(s)

Appearance:

Mr. M.A. Narayana, Advocate
CUSECS CONSULTANTS
FLAT 'A'GR.FLOOR, "SEVEN HILLS EXCELLENCY" #33, 2ND CROSS, SBM COLONY, BRINDAVAN NAGAR, MATHIKERE, BANGALORE 560054

For the Appellant

For the Respondent

Date of Hearing: 04/09/2018

Date of Decision:07/09/2018

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON'BLE SHRI P.ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21334/2018

Per : P.ANJANI KUMAR

This appeal is against the Order-in-Original No. 124/2009-C.EX dated 25.09.2009 passed by Commissioner of Central Excise (Appeals), Bangalore. Briefly, the facts of the present case are that the appellants have manufactured excisable goods viz., 'Printed Heat Transfers' and classified the same under 49011020 of the Schedule to CETA, 1985 and clearing the same at Nil rate of duty. On Scrutiny of ER-1 records for December 2006 to November 2007, the Revenue Officer observed that the classification claimed by the appellants is incorrect and the goods are liable to be classified under 49089000.

2. The appellants have submitted that the classification proposed by the Department was under 'Decalcomania Transfers' whereas the impugned goods are only 'Heat Transfers'. The OIO and OIA have failed to appreciate that 'Heat Transfer' is commercially different from 'Decalcomania Transfers' whereas the Decalcomania refers to a 'craze of decorating china ware or glass ware or metal ware'; in Decalcomania transfer inputs with the paper and pigment used are the same whether for use in ceramic industry or glass ware industry or the metal industry whereas in the case of 'Heat Transfers', the input used is the normal printing ink. The report of the Chemical Examiner supported the contention of the appellants. The learned Commissioner (A) has failed to appreciate that the sub-heading no. 49089000 is only a residuary entry and does not specifically cover the impugned goods. On the other hand, sub-heading 49119100 specifically

covers the impugned goods and should be preferred over the entry in sub-heading no. 49089000. If the goods are prima facie classifiable under two headings, the same should be classified in the list of the headings by virtue of provisions of Rule 3(C) of the General Rules for the Interpretation of the Schedule. The Department has also not appreciated the expert opinion placed on record. There is no dispute about the end use impugned goods. The demand is also time-barred as the intention of the appellants in classifying the goods was known to the Department as they were regularly filing the ER-1 returns.

3. The learned AR has reiterated the findings of the OIO and OIA.

4. Heard both sides and perused the records of the case.

5. The brief issue for consideration in the case is as to whether the 'Heat Transfers' manufactured by the appellants merit classification under 49011020 or 49089000 or under 491191000 claimed by the appellants during the adjudication proceedings. For a proper appreciation of the issue, it is required to go through the relevant chapter notes and HSN notes.

5.1 Coming to the classification used by the appellants i.e. 49011020, we find that heading no. 49011020 of Central Excise

Tariff Act refers to pamphlets, booklets, brochures, leaflets and similar printed matter. Apparently the impugned goods are 'Printed Heat Transfers' and do not fall under above heading by any stretch of imagination. We find that the appellants have conceded that point during the proceedings with the lower authorities.

5.2 The following is the description of headings under 4908:

(i) 4908 – Transfers (decalcomanias)
(ii) 49081000 – Transfers (decalcomanias), vitrifiable
(iii) 49089000- Other……

The concerned HSN for 4908 read as under:

Transfers (decalcomanias) consist of pictures, designs or lettering in single or multiple colours, lithographed or otherwise printed on absorbent, lightweight paper (or sometimes thin transparent sheeting of plastics), coated with a preparation, such as of starch and gum, to receive the imprint which is itself coated with an adhesive. This paper is often backed with a supporting paper of heavier quality. The designs are sometimes printed against a background of metal leaf.

When the printed paper is moistened and applied with slight pressure to a permanent surface (e.g. glass, pottery, wood, metal, stone or paper), the coating printed with the pictures, etc., is transferred to the permanent surface.

This heading also covers vitrifiable transfers i.e. transfers printed with vitrifiable preparations of heading 32.07.

Transfers may be used for decoration or utility purposes, e.g., for decorating pottery or glass, or for marking various articles such as vehicles, machines and instruments.

Transfers produced and supplied mainly for the amusement of children are also covered by this heading, as are also articles such as embroidery or hosier transfers which consist of papers on which designs are outlined in pigment which is transferred, usually to a textile surface, by pressure with a heated smoothing iron.

The articles described above should not be confused with the products knows as window transparencies which fall in heading 48.14 or 49.11.

The heading also excludes transfer paper of the types known as stamping, foils or blocking foils, prepared with a coating of metal, metal powder or pigment and used for printing book covers, hat bands, etc. (heading 32.12). Other transfer papers, as used in lithographic work, fall in heading 48.09 or 48.16 as appropriate.

5.3 The heading for 4911 reads as under:

(i) 4911 – Other printed matter, including printed pictures and photographs.

(ii) 491110 – Trade advertising material, commercial catalogues and the like.

(iii) 49111010 – Posters, printed.

(iv) 49111020 - Commercial catalogues.

(v) 49111030 – Printed inlay cards.

(vi) 49111090 – Other….

(vii) 49119100 – Pictures, designs and photographs….

(viii) 491199 – Other…

(ix) 49119910 – Hard copy (printed) of computer software.

(x) 49119920 – Plan and drawings for architectural engineering, industrial, commercial, topographical or similar purposes reproduced with the aid of computer or any other devices.

(xi) 49119990 – Other….

Similarly, HSN notes for 4911 read as under:

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 identify 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 heading 48.17 and 48.20).

5.4 On perusal of the HSN notes for the heading 4911, it is seen that it refers to only printed matter (including printed pictures and photographs) neither the heading nor the HSN notes thereof refer anything closer to the 'Heat Transfers' that is the impugned goods manufactured by the appellants. Therefore, we are not inclined to accept the contention of the appellants that the same is classifiable under 49119100. We do not find that the impugned goods are anywhere similar or closer to the grouping intended under 4911.

5.5 Coming to heading 4908, it is seen that the headings of 4908 refer to decalcomania. The appellants attempted to differentiate this heading by saying that Decalcomania refers to 'Heat Transfers' to glass pottery, wood, metal, stone or paper whereas the impugned goods are used for transferring the printed pictures etc., to textile materials; moreover, the heading 4908 essentially refers to use of pigments whereas they are using printing ink; however, we find that among the classification available, heading 4908 appears to be most closer to the grouping. We find that HSN notes for 4908 includes the following under 4908:

"Transfers produced and supplied mainly for the amusement of children and are also covered by this heading as are also articles such as embroidery or hosier transfers which consist of papers on which designs are outlined in pigments which are

transferred, usually to a textile surface by pressure with a heated smoothing iron".

5.6 In view of this explanation, we find that the impugned goods rightly classifiable under 4908.90 as the type of material envisaged in the HSN notes is similar to the impugned goods. We find that under the description of Heat Transfer Paper under HSN Explanatory Notes to Chapter 48, and heat transfer papers are coated on one side with a thermo sensitive substance, for use in an infra-red copying machine to make a copy of an original documents by transferring a dye compounded with the coating substance on to a sheet of ordinary paper (heat transfer process same as in CCCN Explanatory Notes). The imported paper is used in the manufacture of heat transfer paper, which in turn, would transfer designs on to polyester fabric involving transfer of dyes. By the process involving application of heat and pressure on the paper is transferred to the fabric/garment.

5.7 We find that Commissioner (A) has rightly observed as follows:

Transfer Printing - is a process for transferring a design from paper to fabric. Usually the paper is coloured with dispense dyes which sublime on to fabrics made from synthetic fibers when the paper and the fabric are pressed together in a heated press or calendar (chambers). In simple, it is a method of transfer printing *involving a process of transferring a design from paper to fabric. Usually the paper is coloured with dispense dyes which sublime on to the fabric (made from synthetic fibers) when the paper and the fabric are pressed together in a heated press or calendar. On the basis of the appellants own admission regarding the end use of the impugned goods (used in textile fabric/garment industry). It is clear that it merits classification as transfers produced and supplied mainly for the articles such as embroidery or hosier transfers which consist of papers on which designs are outlined in pigment which is transferred, usually to a textile surface, by pressure with a heated smoothing iron merits classification as Transfers (Decalcomanias) under 49089000 of the Schedule to CETA, 1985.*

5.8 This attribute is sufficiently backed up by the Lab Report dated 05.12.2008 of the Chemical Examiner, Grade-II, CRCL-Chennai which is reproduced as under:

(i) The sample is in the form of white sheets of coated paper cut to size, on one side of which pictures/designs have been outlined which is coated/ covered with adhesive/polymeric composition. The picture/design can be transferred to a textile surface by pressure with a heated iron.

(ii) On similar lines is the report dated 17.03.2009 of the Principal, Government Institute of Textile Technology, Bangalore where emphasis is laid on the efficacy of the impugned goods as a more sophisticated and effective method of transfer printing is that of transferring a design intact by vaporizing it form paper to fabric.

(iii) So is the report dated 10.03.2009 of Shri T.S. Shashidhara, S.J. Polytechnic, Bangalore wherein he has concluded that heat transfers are used in the textile industry for the decoration of fabrics/garments.

5.9 In this regard, it is useful to advert to the principles of Rules of interpretation of statutes wherein "where two or more words having similar meaning are grouped together in a statute, the word having general meaning is taken to have been used in the sense of the accompanying less general word. The rule of law generally known as the *ejusdem generis* is applicable here. Heat Transfer requires to be placed in the group of 'Heat Transfer' only and by no stretch of imagination under Printing material under 4901 or 4908.

6. In view of the above, we find that the proper interpretation of the law and statute demands that the impugned goods are classified under 4908.90. Coming to the issue of suppression of facts, we find that the appellants declared that they are manufacturing 'Heat Transfers'; they have in regularly filing ER-1 returns only because the Department has verified/scrutinized

the records at later date cannot be a conclusive reason for alleging suppression, fraud etc. We find force in the submissions of the appellants as far as limitation is concerned.

7. In view of the above, we find that the impugned goods merit classification under 4908.90; however, we hold that the demand to be restricted to normal period.

(Order was pronounced
in Open Court on **07/09/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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