CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 3145 of 2012

[Arising out of Order-in-Appeal No. 89/CUS/APPL/DLH-IV/2012 dated 09.08.2012 passed by the Commissioner of CE, (Appeals), Delhi-IV, Faridabad]

Touchwood Industries **......Appellant**
487/18, Peera Garhi, Rohtak Road,
New Delhi

VERSUS

Commissioner of Customs, Delhi-IV **......Respondent**
Inland Container Depot, Tughlakabad, New Delhi

<u>APPEARANCE:</u>

Present for the Appellant: None / On merits

Present for the Respondent: Mr. Bhasha Ram & Mr. Amandeep Kumar, ARs

<u>CORAM:</u> HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. 60214/2020

DATE OF HEARING: 18.02.2020
DATE OF DECISION: 20.02.2020

PER: SANJIV SRIVASTAVA

This appeal is directed against Order-in-Appeal No. 89/CUS/APPL/DLH-IV/2012 dated 09.08.2012 of Commissioner of Central Excise (Appeals) Delhi-IV, Faridabad. By the impugned order, the Commissioner (Appeals) upheld the Order-in-Original No. 557/DC/ICD/MS/2011 dated 11.02.2011 holding as follows:

> *"I order the goods be assessed to duty by classifying the same under Customs Tariff heading 49119990."*

2.1 The appellant had filed Bill of Entry No. 4921487 dated 14.10.2011 for clearance of goods by describing them as *"Educational Charts"* and classification under Custom Tariff Heading 49059990 and attracting duty at *"Nil"* rate. They declared the value of the goods as Rs. 32,89,200/-.

2.2 The goods were subjected to 1st Check examination. The shed recorded the following examination report:

> *"O/E 100% of the goods in the presence of representative of CHA and found to contain Educational Charts as per Invoice, P/L and B/L. Description and Quantity checked. As far as nature of goods is concerned, Historical and Elementary Educational charts were found during the examination. Samples put up to group for perusal …"*

2.3 After considering the written submissions made by the appellant vide his letter dated 04.11.2011, the Deputy Commissioner adjudicated the matter as per order referred in para 1, supra.

2.4 Aggrieved the appellant filed the appeal before the Commissioner (Appeals), which has been dismissed by the Commissioner (Appeals) as per the impugned order.

2.5 Aggrieved the appellant have filed this appeal before CESTAT.

3.1 In their appeal, the appellant has assailed the orders of the lower authorities stating as follows:

- The goods imported are educational charts as they impart knowledge in respect of elementary learning such as language, grammar, numerals, mathematical tables, basic hygiene etc. They are in form of single sheet with colour printing on plastic bearing the name of publisher. Thus these are printed material for educational purposes. Examination report recorded by the shed also says so.
- Since the goods are in form of chart containing "Educational Material" in printed form the same as per their understanding merits classification under heading 49059990. The classification made by the lower authorities under Heading 49119990 a is not correct as heading 4911 is residuary heading.
- Alternatively the goods imported by them merit classification as 'Printed Books" under CTH 4901 and exempt from payment of duty under Notification No 21/2002-Cus dated 01.03.2002 (Sl No 160), since they contain valuable information and material for children in printed form having publisher's name and satisfy the essential attributes of "printed book" such as (i) these are available to public at large; (ii) sold at book stores; (iii) recognized internationally as Book and assigned ISBN (International Standard Book Number)
- The decision of Wilco International [1992 (61) ELT 713 (T)] is squarely holding that the goods imported are nothing but Books.

4.1 Matter was listed for hearing on 18.02.2020. Appellant's advocates *"Piyush Kumar & Associates"* have vide their letter dated 17.02.2020 received in the Registry on 17.02.2020, submitted as follows:

> *"In this regard it is respectfully submitted that the above mentioned Appellant is hereby submitting written brief of arguments for kind perusal of the Hon'ble Tribunal and therefore prays Your Honour for disposal of the matter on the basis of*

Memorandum of Appeal as well as brief of arguments, for which act of kindness, the appellant shall ever be indebted."

4.2 Thus on we have heard Shri Amandeep Kumar, Authorized Representative for the Revenue in the matter. We have also examined the sample of the goods imported by the appellant which were produced by the Authorized Representative.

4.3 In the written arguments filed by the Advocates for the appellant, they have reiterated the same grounds as have been stated by them in the Appeal Memorandum.

4.4 Learned Authorized Representative while reiterating the findings recorded by the lower authorities submitted that:-

- The classification of the goods as per the Custom Tariff is to be determined as per the terms of the heading. He referred to the terms of headings, 4901, 4905 & 4911 to argue that the goods are appropriately classifiable under heading 4911 as has been held by the authorities below;
- He also referred to HSN Explanatory Notes for Chapter Heading 4905 and 4911 and argued that as per the HSN explanatory notes for these chapters the goods have been held to be appropriately classifiable under CTH 4911. He relied on the decision of the Hon'ble Apex Court in the case of Wood Craft Products Ltd [1995 (77) ELT 23 (SC)] and the decision of the Mumbai Bench of CESTAT in case of Camlin Ltd [2002 (144) ELT 638 (T-Mum)] to establish that reliance placed by him on the HSN Explanatory Notes, for the determination of the classification of goods under Custom Tariff is justified.
- The exemption claimed by the Appellant under Notification No 21/2002-Cus is not admissible to them as the goods do not satisfy to the basic criteria to be called as goods. The decision of tribunal in case of Wilco referred by the Appellant in their

appeal and submissions is distinguishable and not applicable. In case of Wilco the goods imported were in fact the books as is evident from para 4 and 5 of the said decision.

- In case of Dilip Kumar & Co [2018 (361) ELT 577 (SC)], Hon'ble Supreme Court (Five Member Bench) has clearly laid down that the fiscal statue need to be interpreted strictly as per the words used in the statue and there is no room for purposive or other manner of construction of statue.
- He thus submits that appeal filed merits rejection.

5.1 We have considered the impugned order along with the submissions made in the appeal, written submissions filed, and the arguments advanced by the Authorized Representative at the time of hearing of the appeal.

5.2 The competitive tariff entries under which the Classification has been claimed by the appellant and determined by the Revenue are reproduced below:

4901		*PRINTED BOOKS, BROCHURES, LEAFLETS AND SIMILAR PRINTED MATTER, WHETHER OR NOT IN SINGLE SHEETS*
4901 10	-	*In single sheets, whether or not folded :*
4901 10 10	---	*Printed books*
4901 10 20	---	*Pamphlets, booklets, brochures, leaflets and similar printed matter*
	-	*Other*
4901 91 00	--	*Dictionaries and encyclopaedias, and serial instalments thereof*
4901 99 00	--	*Other*
4905		*MAPS AND HYDROGRAPHIC OR SIMILAR CHARTS OF ALL KINDS, INCLUDING ATLASES, WALL MAPS, TOPOGRAPHICAL PLANS AND GLOBES, PRINTED*
4905 10 00	-	*Globes*
	-	*Other*

4905 91 00	*--*	*In Book form*
4905 99	*--*	*Other*
4905 99 10	*---*	*Geographical, hydrological, astronomical maps or charts*
4905 99 90	*---*	*Other*
4911		*OTHER PRINTED MATTER, INCLUDING PRINTED PICTURES AND PHOTOGRAPHS*
4911 10	*-*	*Trade advertising material, commercial catalogues and the like :*
4911 10 10	*---*	*Posters, printed*
4911 10 20	*---*	*Commercial catalogues*
4911 10 30	*---*	*Printed inlay cards*
4911 10 90	*---*	*Other*
	-	*Other*
4911 91 00	*--*	*Pictures, designs and photographs*
4911 99	*-*	*Other*
4911 99 10	*---*	*Hard copy (printed) of computer software*
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*
4911 99 90	*---*	*Other*

5.3 The appellant while filing the Bill of Entry have claimed the classification of the goods under heading 4905 99 90. From the terms of the entry, it is very clear that heading 4905 is in respect of the maps and globes and not in respect of the educational charts of any other type. This is further very clear from the HSN Explanatory Notes for the heading 4905 which reads as under:

> *"This heading covers all printed globes (for example, terrestrial, lunar or celestial), maps, charts and plans designed to represent the natural or artificial features of countries, town seas, the heavens, etc., conventional signs being used to indicate contours*

etc. Maps and charts incorporating advertising matter remain classified in this heading.

This heading includes, inter alia:

Geographical maps (including sectors for globes), road maps, wall maps, atlases, hydrographic, geographical and astronomical charts, geological surveys, topographical plans (e.g. plans of town or districts)

It also covers printed globes with internal lighting, provided they are not merely toys"

5.4 It is very clear from the examination report and the sample charts produced before us that these charts are not in nature of maps or depicting the terrestrial features. Even appellant on the Bill of Entry have not claimed that these goods are maps of any kind. When it is not even the case of the importers that the imported goods are maps, then they are definitely not justified in claiming the classification under heading 4905. Hence their claim for classification under heading 4905 99 90 has been rightly rejected by the lower authorities. While rejecting the claim of classification under 4905 99 90, the Commissioner (Appeals) in para 8 of the impugned order observed as follows:

"*8. I find that it is an admitted fact on record that the impugned imported goods were educational charts which imparted knowledge in respect of elementary learning such as language, grammar, mathematical, botanical, zoological, basic hygiene etc., and the said charts were printed single sheets and were not in bound form or with a binder. So far as appellants plea for classification of the above educational charts under Custom Tariff Heading 4905 (Sub-Heading 4905 99 90), is concerned, I find that Customs Tariff Heading 4905 covers maps and hydrographic or similar charts of all kinds, including atlases,* *wall maps, topographical plans and globes, printed and as per HSN Explanatory Notes, Chapter Heading 4905 covers all printed globes (for example, terrestrial, lunar or celestial), maps, charts and plans designed to represent the natural or artificial features of countries, town seas, the heavens, etc. conventional signs being used to indicate contours etc, therefore the basic purpose of maps, chart, plans as covered under above Chapter 4905, is to represent the natural or artificial feature of countries, town, seas, the heavens etc., and I agree with the Adjudicating Authority that the classification of the impugned educational charts under Customs Chapter Heading 4905 Heading is not proper."*

5.5 The alternative claim of the appellant that the goods in question should be classified under heading 4901 as printed books and the benefit of exemption and the benefit of exemption at S No 160 of Notification No. 21/2002-Cus dated 01.03.2002 should be allowed to them has been rejected by the Commissioner (Appeals) stating as follows:

"9. So far as classification of the impugned educational charts under Customs Tariff Heading 4901 as "Printed Books" as claimed by the Appellants, is concerned, I find that as per HSN Explanatory Notes, Chapter Heading 4901 cover Books and Booklets consisting essentially of textual matter of any kind, and printed in any language or characters, including, Braille or shorthand but in the instant case the subject goods printed educational charts contained pictures etc being the main material instead of text. Further the benefit of Notification No 21/2002-Cus dated 01.03.2002 as amended, is available to the printed books and printed manuals in bound form or in loose leaf form with a binder and I agree with the Adjudicating authority that the benefit of above Notification No 21/2002-Cus dated 01.03.2002 is not available to the impugned goods as the said goods were

simply printed single sheets and were not in bound form or with a binder. Therefore the classification of the impugned goods as "printed Books" is not at all justified as rightly held in the impugned Order in Original. The judgement of the Hon'ble CESTAT in the case of Wilco International reported as 1992 (61) ELT 713 (T) as relied upon by the appellants has already been discussed by in the impugned Order in Original and I agree with the Adjudicating Authority *that the above judgement is not applicable to the present case."*

The decision of the Tribunal in case of ***Wilco International - 1992 (61) ELT 713 (Tribunal)*** is not an authority where the classification of the goods under Custom Tariff was the issue. In the said case, the goods imported were actually in the form of Books as is evident from para 3, 4 and 5 of the said decision reproduced below:

"3. Shri J C Patel, the Ld. Advocate on behalf of appellants, at the outset, indicated that he is not challenging the order passed by the Additional Collector with regard to the classification under Customs Tariff Act for the purpose of assessment of duty. He is only challenging that part of the order holding that the goods imported are toys and is a consumer item hit by Serial No. 172 of Appendix 2B. In other words he stated that his challenge in the appeal is only against the order of confiscation for ITC violation and imposition of penalty. He also stated that he would seek for permission only to re-ship the goods without fine an penalty.

4. Thereupon he argued on the merit of the appeal with regard to the ITC angle. His arguments can be summed up as below:

5. The item imported is Robert Dunken's Jungle Book which contains board pages of "press out models" which are to be taken out as per the instructions contained in the books. They

> *are to be assembled into the models by the children. He showed us the sample of the disputed item"*

It is settled authority that any decision passed by the statutory authority, is limited to the issue considered and decided by us. When the issue of classification of the goods in dispute was not an issue before the bench then this decision cannot be an authority on the subject.

5.6 Hon'ble Supreme Court in case of ***Dilip Kumar & Company – 2018 (361) ELT 577 (S.C.)*** has laid down the principles of interpretation of fiscal statues and notifications issued under these statues as follows:

> *"25. We are not suggesting that literal rule de hors the strict interpretation nor one should ignore to ascertain the interplay between 'strict interpretation' and 'literal interpretation'. We may reiterate at the cost of repetition that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute. Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute.*
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> *-------------*

52. To sum up, we answer the reference holding as under -
(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.
(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.
(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export Case (supra) stands over-ruled."

By applying the principles of interpretation laid down by the Hon'ble Apex Court as stated above, we are not in position to uphold the contention of the appellant in respect of admissibility of exemption under Notification No. 21/2002-Cus dated 01.03.2002.

5.7 While upholding the classification of the impugned goods under Heading 4911 99 90, the Commissioner (Appeals) in para 10 of her order has observed as follows:

"10. So far as classification of the impugned goods under Customs Tariff Heading 4911 as ordered in the impugned Order in Original is concerned, I find that Chapter Heading 4911 covers "other printed matter, including printed pictures and photographs"" and as per HSN explanatory Notes, Chapter 4911 covers Anatomical, Botanical etc, instrumental charts and diagrams. In the instant case also the impugned educational charts contained pictures for imparting knowledge in respect of elementary learning such as language,. Grammar, mathematical botanical, zoological, basic hygiene etc. and hence the said goods are rightly classifiable under Chapter Heading 4911 99 90 as ordered in the impugned Order in Original. Conclusively, I do

not see any legal infirmity in the impugned Order in Original which I legally sustainable and does not call to any interference."

5.8 We do not find any infirmity in the impugned order determining the classification of the impugned goods under Heading 4911 99 90, which is based on the terms of headings in Customs Tariff and HSN Explanatory Notes for the said heading. However to determine the practice of assessment elsewhere a bit of research undertaken by us made us lay hand on the import data available in respect of the same goods at *"zuaba. com"* which were cleared from the ICD Tughlakabad and Nhava Sheva Port classifying the said goods in same manner. The data downloaded is reproduced in table below:

Date	CTH	Port	Description	COO	NO's	Unit Price	Total Price
16.2.15	49119990	ICD TKD	Educational Charts (Big)	China	161000	8.64	1390725.39
16.2.15	49119990		Educational Charts (Small)	China	126000	4.32	544196.89
16.2.15	49119990		Educational Charts (Small)	China	1000	4.32	4319.02
29.2.16	49119990	Nhava Sheva	Equivalent Fractions Chart (Grade 4) (School Supplies)	USA	10	35	348
29.2.16	49119990		Fish Chart (Grade 3) (School Supplies)	USA	93	42	3,886
29.2.16	49119990		Wipe Off Venn Diagram Chart (Grade 4) (School Supplies)	USA	10	59	592
29.2.16	49119990		Angles Chart (Grade 6) (School Supplies)	USA	7	35	244
29.2.16	49119990		Construction Chart (Grade 2) (School Supplies)	USA	107	35	3,726
29.2.16	49119990		Dictionary Learning Chart (Grade 4) (School Supplies)	USA	10	35	348
29.2.16	49119990		Exploring Reptiles Chart (Grade 4) (School Supplies)	USA	10	42	418
29.2.16	49119990		Healthy Habits Chart (Grade 3) (School Supplies)	USA	93	348	32,382
29.2.16	49119990		Parts Of A Story Chart (Grade 4) (School Supplies)	USA	10	35	348

29.2.16	49119990		Writing A Research Report Chart (Grade 5) (School Supplies)	USA	42	35	1,462
29.2.16	49119990		Birds Chart (Grade 3) (School Supplies)	USA	93	42	3,886
29.2.16	49119990		Elements Of Friction Chart (Grade 4) (School Supplies)	USA	10	77	766
29.2.16	49119990		Insects Chart (Grade 2) (School Supplies)	USA	107	35	3,726
29.2.16	49119990		Mammals Chart (Grade 2) (School Supplies)	USA	107	35	3,726
29.2.16	49119990		Preposition Chart (Grade 5) (School Supplies)	USA	42	35	1,462
29.2.16	49119990		Proofreading Chart (Grade 5) (School Supplies)	USA	42	35	1,462
29.2.16	49119990		Wipe Off Venn Diagram Chart (Grade 7) (School Supplies)	USA	16	59	947
29.2.16	49119990		Exploring Amphibians Chart (Grade 4) (School Supplies)	USA	10	42	418
29.2.16	49119990		Hieroglyphics Chart (Grade 5) (School Supplies)	USA	42	35	1,462
29.2.16	49119990		Literary Genres Chart (Grade 6) (School Supplies)	USA	7	268	1,877

5.9 Hence we do not find merits in the appeal filed by the appellants.

6.1 The appeal is dismissed.

(Order pronounced in the court on 20.02.2020)

(S. S. GARG)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

RA_Saifi