IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL SOUTH ZONAL BENCH, CHENNAI

Appeal Nos. E/174 & 175/2012

(Arising out of Order-in-Original No. 26 & 27/2011 dated 23.11.2011 passed by the Commissioner of Central Excise, Chennai – II)

M/s. Comper Products Company — Appellant

Vs.

CCE, Chennai – II — Respondent

Appearance

Shri J. Shankarraman, Advocate for the Appellant
Shri K. Veerabhadra Reddy, JC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **16.04.2018**

Final Order No. **41282-41283 / 2018**

Per Bench

Brief facts are that the appellants are engaged in manufacture of both plain computer stationery as well as printed computer stationery. On verification, it was noticed that the appellants had not registered with the Central Excise Department, though they were manufacturing printed computer stationery also. Department was of the view that printed computer stationery falls under Chapter Heading 48.20 attracting duty while the appellant classified the said goods under Chapter Heading 49 to hold that the goods are not chargeable to duty and the clearances in all units would be within SSI limit. Two show cause notices were issued separately for units at Korattur, Chennai and Ambattur, Chennai proposing to classify the printed computer stationery manufactured by the appellant under Chapter heading 48.20 of CETA, 1985 and also demanding duty, interest and for imposing penalties. After due process of law, the Commissioner confirmed the classification of printed computer stationery to be under CH 48.20 and confirmed the demand in both the show cause notices. Aggrieved the appellants are now before the Tribunal.

2. At the time of hearing, ld. counsel Shri J. Shankarraman adverted to the details of the computer stationery manufactured by the appellants. These include LIC letter, bus pass for school children that is issued by the Tamilnadu State Transport Corporation, conductor license form of TNSTC, Pension Payment Order of Southern Railway, Tax Card of Regional Transport Office, Transport Department, Government of Tamilnadu etc. He argued that all these items would fall under Chapter Heading 49. Printing in these forms is not merely incidental to the primary use of the goods. Each variety

of printed stationery is designed for use of the particular customer. No particular variety of printed stationery has any use to anyone other than the customer to whom it is meant. The goods therefore fall under Chapter Heading 49. It was argued that the appellant was under bonafide belief that the printed computer stationery manufactured by them is classifiable under Chapter heading 49.01 of CETA and chargeable to nil rate of duty. In order to get their belief confirmed, the appellant wrote a letter dated 31.3.2006 to Superintendent of Central excise, Madurai giving all the details about their activities in their units besides stating that they are manufacturing both plain and printed computer stationery. As further follow up, they also wrote letter dated 21.8.2006 to Member (Central Excise and Budget), CBEC, explaining all details of their activities. The officers have not taken any objection to the appellant on the classification of printed computer stationeries under Chapter 49. Based on the above clarification and the studied silence of the department to the letters issued by the appellant, they continued to classify the goods under Chapter 49. Only on 9.10.2007, the officers visited the premises and advised that they are liable to pay duty on printed computer stationery as these would fall under CTH 48.20. The issue whether such items are classifiable under CH 48.20 was considered by the Tribunal in the case of Data

Processing Forms Pvt. Ltd. Vs. CCE, Ahmedabad – 2014 (311) ELT 161.

3. The ld. AR Shri K.Veerabhadra Reddy reiterated the findings in the impugned order. He relied upon the decision in the case of Surya Offset – 2011 (267) ELT 516. He argued that printing in these forms were merely general and therefore would not merit classification under Chapter 49.

4. Heard both sides.

5. The issue is regarding classification of printed computer stationery. Some of the items that are impugned in these appeal are as under:-

a. Printed child plus /career
b. printed child future career
c. Printed lapse notice
d. printed term deposits
e. Printed Money back policy and other polices
f. printed Southern Railway Pension Payment Order etc.

6. We have perused the samples of these documents placed before us. An identical issue was considered by the Tribunal in the case of Data Processing Forms Pvt. Ltd. (supra) wherein the forms have been scanned and made part of the said judgment. We find that the items impugned in the present appeal are identical to the items that were in dispute in the case of Data Processing Forms Pvt. Ltd. (supra). The said decision has been affirmed by the Hon'ble Supreme Court as reported in 2015 (324) ELT 5 (SC). The issue for consideration

therefore being the same the decision rendered in Data Processing Forms Pvt. Ltd. (supra) is applicable in all fours to the case before us. Further, the decision relied by the ld. AR in Surya Offset (supra) has been distinguished by the Tribunal in Data Processing Forms Pvt. Ltd. (supra). The relevant portion of the order is reproduced as under:-

> "18. On plain reading of Chapter Note, it can be seen that motifs, character or pictorial representation which are not merely incidental to the primary use of the goods, fall in Chapter 49. From the list of the products in dispute, it can be seen that pre-printed forms which carry the name and address and other details as required in particular form, are not merely incidental to the primary use of the said form, e.g. the pre-printed form of Excise Invoice is having details printed for particular assessee giving all the details. The primary use of the said form is as an Excise Invoice Form and the name of the company preparing such invoices with its house mark or pictorial representation of the company indicates that the excise form is from a specific company and is merely incidental to the primary use of the goods. The HSN General clarificatory notes which are included in Chapter 49 read as under :
>
> "With the few exceptions referred to below, this Chapter covers all printed matter of which the essential nature and use is determined by the fact of its being printed with motifs, characters or pictorial representations.
>
> On the other hand, besides the goods of heading 48.14 or 48.21, paper, paperboard or cellulose wadding, or articles thereof, in which the printing is merely incidental to their primary use (e.g., printed wrapping paper and printed stationery) fall in Chapter 48. Also, printed textile articles such as scarves or handkerchiefs, in which the printing is mainly for decorative or novelty purposes and does not affect the essential character of the goods, embroidery fabrics and prepared tapestry canvases bearing printed design fall in Section XI.
>
> Goods of heading 39.18, 39.19, 48.14 or 48.21 are also excluded from this Chapter, even if they are printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods.
>
> This heading also includes drawings and sketches for publicity purposes (e.g. fashion drawings, poster designs, design for pottery, wallpaper, jewellery, furniture).
>
> It should be noted that such products fall in the heading only if consisting of originals drawn or written by hand, or of photographic

reproductions on sensitized paper or of carbon copies of such originals.

Maps, charts and topographical plans which, when printed, fall in heading 40.05, are included in this heading if they are the hand-drawn originals or their carbon copies or photographic reproductions on sensitized paper.

Hand-written texts (including shorthand but not including music), and also their carbon copies or photographic reproductions on sensitized paper of such texts, are also included in this heading whether bound or not.

This heading does not cover :

(a) Copying and transfer papers, bearing written or typed texts for reproduction (heading 48.16)

(b) Printed plans and drawings (heading 49.05, 49.11)

(c) Typescripts (including carbon copies) and copies of manuscripts or typescripts obtained by duplicating machines (heading 49.01 or 49.11)"

19. It can be seen from the above reproduced General Notes to HSN that Chapter 49, that they very clearly indicate barring few exceptions, Chapter 49 covers all printed matters of which essential nature and use is determined by the fact of its being printed with motifs, characters or pictorial representation. In our considered view, entire issue needs to be read in context of Chapter Note 12 of Chapter 48, which clearly defines the scope and purport of Chapter Heading 48.20. A plain reading would mean that even if a product falls under the general description of Tariff Heading 48.20, it would not get classified thereunder if the printed motifs, characters or pictorial representations are not merely incidental to the primary use of goods. The products with motifs, characters or pictorial representation may get covered under Chapter Heading 48.20, however by virtue of Chapter Note 12, if the printing is incidental to its primary use, it will fall under Chapter 49. Hence, in our considered view, if the printing that is carried out on the product, itself conveys a message e.g. details of the contractual terms, information of messages received or sent, details of the supplier/manufacturer, advertisement of his products, then in all such cases, the printing cannot be merely incidental to the primary use.

20. It can be seen that for classification of a product under Chapter Heading 49.11, HSN explanatory notes has the following notes :

"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, frames 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.
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> *Certain articles may be intended for completion in manuscript 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., but requiring the insertion of particulars (e.g. dates or 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."* (Emphasis supplied)"

7. Following the decision in the case of Data Processing Forms Pvt. Ltd. (supra), we are of the considered opinion that the impugned items do not fall under Chapter 48.20 but would only fall under Chapter 49. The demand of duty therefore cannot sustain and requires to be set aside, which we hereby do. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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