

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Excise Appeal No.40362 of 2015

(Arising out of Order-in-Original No. 06/COMMR/CE/2014 dated 10.12.2014 passed by the Commissioner of Central Excise, Tirunelveli)

M/s. Kanam Latex (P) Ltd.

Ananthanadarkudy
Asaripallo PO, Nagercoil – 629 201.

Appellant

Vs.

Commissioner of GST & Central Excise

Central Revenue Buildings, NGO 'A' Colony
Tirunelveli – 627 007.

Respondent

APPEARANCE:

Shri Hari Radhakrishnan, Advocate for the Appellant

Shri Anoop Singh, JC, Authorized Representative for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)

Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40963/2024

Date of Hearing: 02.05.2024

Date of Decision: 25.07.2024

Per M. Ajit Kumar,

This appeal is filed by the appellant M/s. Kanam Lates (P) Ltd., against Order in Original No. 6/2014 dated 10.12.2024 passed by the Commissioner of Central Excise, Tirunelveli.

2. Brief facts of the case are that the appellants are engaged in carrying out the process of printing, cutting and folding of a special paper and supplying the finished goods for use in the surgical glove industry. It appeared that they have cleared the said goods without payment of duty and without adhering to the provisions of Central Excise Act, 1944 and the Central Excise Rules, 2002. The said goods appeared to be used as a primary packing for a pair of surgical / examination gloves. During the course of audit by the Central Excise

audit party, it was observed that the paper cover manufactured for packing of the gloves, was classified by the appellant under Chapter 48173090 of the CETA, 1985 attracting nil rate of duty. This classification appeared to be wrong since the description under Chapter 481730 covers only 'boxes pouches, wallets and writing compendium of paper or paper board, containing an assortment of paper stationary.' Since the paper wrapper arising out of the process of printing, cutting and folding does not contain any "assortment of paper stationary", it does not qualify to be classified under Chapter 48173090. It was felt that the correct classification of the product appeared to be under Chapter 48239013 of CETA, 1985. After due process of law, the adjudicating authority held that the 'paper wrapper' was classifiable under Chapter 48239013 of CETA and confirmed the demand of Rs.2,79,82,707/- for the period 1.9.2008 to 28.2.2014 along with interest and imposed equal penalty under sec. 11AC of the Central Excise Act, 1944. Hence the present appeal.

3. Shri Hari Radhakrishnan, learned counsel appeared for the appellant and Shri Anoop Singh, Joint Commissioner (AR) appeared for the respondent.

3.1 The learned counsel for the appellant submitted that the appellant had classified the goods under heading 4817 3090. The heading 4817 covers boxes, wallets and writing compendiums, of paper or paper board, containing an assortment of paper stationery. It therefore, clearly covers wallets made out of paper. The said heading is specific and applies to the goods in question. Since there is no definition for the term 'wallet' in the tariff, reliance can be placed on the dictionary meaning of the said word. He submitted that the product

is also advertised and sold in the market as a paper wallet. Hence as per common parlance test and trade understanding, the product is known as a wallet. Without prejudice to the submissions on merits, he submitted that the demand was time barred. The matter was known to the department and was under protracted correspondence hence no suppression of fact or intention to evade duty can be alleged. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Uniwoth Textiles Ltd vs. Commissioner of Central Excise, Raipur** reported in 2013 (288) ELT 161 (SC). He prayed that the impugned order be set aside.

3.2 The learned AR Shri Anoop Singh submitted that the original authority after physically examining the goods found that the same was neither a pouch, nor a box, not even a wallet containing any assortment of paper stationery. A box or pouch or wallet is used to hold things in a secured manner and in normal parlance it connotes a holder which is open on one end with the other 3 sides closed, but it is not so in the case of the impugned goods. The goods manufactured by the appellant is nothing but a cover used as a primary packing material for packing surgical / examination gloves. He referred to the article "Stationery", A Dictionary of English Manuscript Terminology, 1450–2000 (Oxford: Oxford University Press, 2008), cited in Wikipedia, wherein 'stationary' was referred to as 'commercially manufactured writing materials, including cut paper, envelopes, writing implements, continuous form paper, and other office supplies. Stationery includes materials to be written on by hand (e.g., letter paper) or by equipment such as computer printers.' He stated that the subject goods have got nothing to do with stationary material. It's a cover used as a packing

material for gloves. He was of the opinion the the heading CETH 4823 makes it more clear by referring to paper cut to size. He also placed reliance on the Tribunal judgment in the case of M/s MAA Printers [TMI 776 2017 (8)], M/s Shubham Prints [TMI 491 2018 (9)] and M.s Smash Colour Prints [2015 (7) TMI 583]. He prayed that the appeal may be dismissed.

4. We have carefully gone through the appeal papers and have also heard the rival parties. Two issues are at dispute, Firstly the classification of the goods and secondly the issue of the notice being time barred. We would at first examine the issue of classification. It would at this stage be relevant to reproduced the Tariff headings 4823 9013 preferred by the department and 4817 3090 of CETA, 1985 as favoured by the appellant;

482390 Braille paper, cellulose in sub board of sheet, packing and wrapping paper; paper for cigarette filter tips paper cone for loud speaker; patterns made of paper for leather footwear, leather garments, patterns made of paper for articles of apparel and clothing accessories products consisting of sheets of paper and paper board impregnated coated or covered with plastics(including thermostat resins or mixtures thereof or chemical formulations, containing melamine phenol, or urea formaldehyde with or without curing agents or catalysts) compressed together in one or more operations, decorative laminates:

48239011 Braille paper

48239013 Cellulose in sole board or sheet

48239013 Packing and wrapping paper

4817 Envelopes, letter cards, plain post cards and correspondence cards of paper or paperboard; boxes porches, wallets and writing compounding of paper or paper board, containing an assortment of paper stationery.

48171000 Envelops

48172000 Letter cards, post cards and correspondence cards

481730	Boxes pouches, wallets and writing compendiums of paper paperboard containing an assortment of paper stationary:
48173010	Writing blocks
48173090	Other
*****	*****
482390	Braille paper, cellulose in sub board of sheet, packing and wrapping paper; paper for cigarette filter tips paper cone for loud speaker; patterns made of paper for leather footwear, leather garments, patterns made of paper for articles of apparel and clothing accessories products consisting of sheets of paper and paper board impregnated coated or covered with plastics(including thermostat resins or mixtures thereof or chemical formulations, containing melamine phenol, or urea formaldehyde with or without curing agents or catalysts) compressed together in one or more operations, decorative laminates:
48239011	Braille paper
48239013	Cellulose in sole board or sheet
48239013	Packing and wrapping paper

5. We find that the process of manufacture of the impugned product, is that special paper in reel form is fed into the machine where the product details and user instructions are printed on the paper and then it is cut to sizes and machine folded. The resultant end product is known as 'surgical glove inner wrap' or 'surgical glove inner wallet' by the trade. A single sheet of the inner wrap is used for wrapping both the left and right hand (pair), latex surgical / examination gloves and are marked / indicated on the exterior of the inner wrap. The goods as examined by the Original Authority were also shown to us. It was found to be printed with written material on the outside and open on three sides. It was seen that a pair of single use surgical / examination gloves are placed within the fold of the inner wrap, in a manner that the gloves while in the fold are fully covered and not in physical contact with each

other. These are further put into a box with other such inner wrapped gloves in sets for the purpose of sale. The inner wrap enclosing the gloves maintains its dimensional stability within the box. A sterile glove pair can be taken out of the box and placed on a clean surface, while still in the inner wrap. The wrap with three sides open, is designed in a manner that by pulling open its edges as indicated there on, one can access the gloves easily. The user then must grasp the bottom edge of the glove and with the glove resting on the wrapper slip it onto his hands. Thus, the manner of design and purpose of the inner wrap is to help provide a sterile cover and easy use thereby avoiding contamination of the surgical gloves after manufacture to the point of its use.

6. The Hon'ble Delhi High Court in its judgment in **Amazon Wholesale India Private Limited Vs Customs Authority of Advance Ruling, New Delhi & anr.** [CUSAA 76/2022 & CM APPL. 23914/2022 (Stay), dated: 11/12/2023] has stated as under, with respect to the different tests for classification;

“37. In our considered opinion, the tests evolved by courts in connection with the issue of classification such as nomenclature, common parlance, principal function, primary and incidental purpose are all aids and rules of guidance liable to be cumulatively borne in consideration in order to ascertain the true character of a product. While none of those tests are accorded preeminence, it is ultimately for the authorities to ascertain which of those rules would merit adoption and represent an accurate understanding of the nature of the product.”

(emphasis added)

Hence it would be essential to cull out the nature of the product, before arriving at the proper classification of the impugned goods.

7. The appellant has sought to classify the product under heading 4817 as a 'wallet'. 'Boxes, wallets and writing compendiums, of paper

or paper board, containing an assortment of paper stationery' mentioned under heading 4817 of CETA, 1985 and relied upon by the appellant, are basically in the nature of goods used to store or carry smaller items. The appellant has stated that the **Merriam-Webster Dictionary** defines wallet as a bag for carrying miscellaneous articles while travelling, a container that resembles a money wallet such as an usually flexible holding case fitted for carrying specific items. Therefore, a wallet is defined to be any article which is used to carry or hold any item. Since there is no definition for the term 'wallet' in the tariff, reliance can be placed on the dictionary meaning of the said word. Therefore, the product in question is clearly a wallet.

8. The impugned goods though also known in the trade as 'surgical glove inner wallet' are not wallets as commonly understood. We find that the ability of the written language to precisely convey technical information and description of products as done by mathematical symbols and formula, especially in the case of legal matters, enactment or notifications, may not at all times be achieved. It is this context that the Apex Court in **Pyarali K. Tejani Vs. Mahadeo Ramchandra Dange & Ors** [[1973] INSC 196 / 1973 Latest Caselaw 196 SC] held that in the field of legal interpretation, dictionary scholarship and precedent-based connotations cannot become a universal guide or semantic tyrant, oblivious of the social context, subject of legislation and object of the law.

9. Even going by the dictionary meaning the impugned goods do not perform the main function of storing or carrying the gloves. The nature and purpose of the inner wrap is to provide a sterile cover to the surgical gloves and is designed to facilitate the easy and

uncontaminated wearing of the gloves by the users, who are generally in the medical profession. It is not designed to store and carry goods by hand and is open from three sides. This is different from a wallet, which is a product that can be securely closed and is used to store and carry small personal items and miscellaneous articles, by hand. The inner wrap is hence used as a packing and wrapping paper for surgical gloves and is appropriately classification under tariff heading 4823 9013 of CETA as determined by revenue. This being so the classification of the goods under heading 4817 3090 has correctly been rejected.

10. As regards the issue of time bar the appellant has stated that vide their letter dated 16.09.2007 they had intimated the process of manufacture to the jurisdictional Assistant Commissioner and the Asst Commissioner vide his letter dated 17.09.2007 had accordingly granted permission for sub-contracting to the EOU unit of the appellant company. In the annexure to the permission letter dated 17.09.2007, the detailed process carried out by the appellant company was clearly stated. The above documents would evidence and establish all the facts relating to the activity carried out by the appellant company was in the knowledge of the Department. Therefore, they submitted that the extended period of limitation cannot be invoked in the present case. Revenue on the other hand has stated that the averment of the appellant is not at all correct. In fact, based on the audit objection, the field officials have examined the issue in depth and sent the proposal to issue the show cause. After a thorough examination of the facts of the case and legal aspects, the show cause notice was issued which took some time.

11. We find that the issue involves the classification of a product known in the trade as 'surgical glove inner wrap' or 'surgical glove inner wallet'. 'Wallet' figures under tariff heading 481730 of CETA, 1985. Even though we have found that the classification of the product under the said heading is not correct due to its characteristics, the appellant could not be blamed for having thought otherwise. There is no suppression of fact that has been brought out by revenue, nor is an intention to evade payment of duty discernable. Hence the demand under the extended period of time has to fail along with the imposition of penalty.

12. Having regard to the discussions above, we uphold the classification of the goods under tariff heading 4823 9013 of CETA 1985, as determined in the impugned order but limit the demand of duty to the normal period with appropriate interest. We set aside the penalty imposed. The appeal is thus partly allowed. The appellant is eligible for consequential relief as per law, if any. The appeal is disposed of accordingly.

(Pronounced in open court on 25.07.2024)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

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