

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. I

Excise Appeal No. 42141 of 2014

(Arising out of Order-in-Appeal No. 107/2014 (P) dated 17.06.2014 passed by Commissioner of Central Excise (Appeals), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

And

Excise Appeal Nos. 42810 & 42811 of 2014

(Arising out of Orders-in-Appeal Nos. 160&162/2014 (P) dated 22.09.2014 passed by Commissioner of Central Excise (Appeals), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. MAS Computer Forms-Unit II

...Appellant

C-91, PIPDIC Industrial Estate,
16th Cross, Mettupalayam,
Puducherry – 605 009.

Versus

Commissioner of GST and Central Excise

...Respondent

Puducherry Commissionerate,
No. 1, Goubert Avenue,
Beach Road,
Puducherry – 605 001.

APPEARANCE:

For the Appellant : Ms. Akshaya Benjamin, Advocate

For the Respondent : Ms. Anandalakshmi Ganeshram, Authorised Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos. 40257-40259 / 2025

DATE OF HEARING : 17.01.2025

DATE OF DECISION : 21.02.2025

Per Mr. VASA SESHAGIRI RAO

Excise Appeals No. E/42141/2014 has been filed
by M/s. MAS Computer Forms-Unit II (hereinafter referred to

as 'Appellant') assailing the impugned Order-in-Appeal No. 107/2014 dated 17.06.2014 passed by the Commissioner of Central Excise (Appeals), Chennai upholding the demand confirmed in the impugned Order-in-Original No. 04/2011 dated 24.06.2011 while setting aside the penalty imposed.

1.2 Excise Appeals Nos. E/42810 & 42811/2014 have been filed by the Appellant assailing the impugned Orders-in-Appeal No. 161 & 162/2014 dated 22.09.2014 passed by the Commissioner of Central Excise (Appeals), Chennai upholding the demand confirmed in the impugned Orders-in-Original No. 1 & 2/2013 dated 31.01.2013 while setting aside the penalty imposed.

1.3 As the same issue is involved in all the three appeals, the same are being taken up together for common disposal.

2. Facts briefly stated are that, the Appellant, had imported 'Thermal Paper' in jumbo rolls classifying them under Tariff Head 48119099 of Central Excise Tariff Act, 1985 (CETA) and subsequent to import, printed the logo, name and address/ advertisement matter of the bank/customer and after the process of slitting, cutting to size and packaging, effected clearances of "ATM Rolls" by

classifying them under CETH 49019900 of CETA. Since the Appellant was under the notion that Printed Thermal Paper were exempted goods, out of own volition, debited an amount equal to 5% of the value of the printed thermal rolls in terms of sub-rule 3(i) of Rule 6 of Cenvat Credit Rules, 2004 (CCR). However, the department alleged that the product was not printed paper as it was merely a thermal paper bearing customer details and sought to re-classify the product under Tariff Item 4811 9099 of CETA attracting 10% duty with applicable cess. Hence, show cause notices were issued to the Appellant seeking to propose duty & cess under Section 11A of Central Excise Act (ACT) along with applicable interest and proposing to impose penalty under Rule 25 of Central Excise Rules, 2002 (CER). The Ld. Adjudicating Authority have ordered for re-classification of "ATM Rolls" under CETH 4811 9099 of CETA, confirmed the demands proposed and imposed penalty on the Appellant, besides appropriating amounts paid by the Appellant towards duty. The appeal wise details of the demands are as tabulated below: -

Appeal No.	SCN No./Date	Period involved	Duty & Cess demanded (Rs.)	OIO NO./Date	Penalty Imposed (Rs.)
E/42141/14	12/2010	January 2010- November 2010	4,59,616	04/2011 dt.24.06.2011	1,00,000/-
E/42810/14	126/2012 dt.07.12.2012	01.12.2011- 16.03.2012	8,57,271	1&2/2013 dt.31.01.2013	50,000/-
E/42811/14	14A/2012 dated 09.03.2012	February 2011- November 2011	20,40,184		1,00,000/-

Aggrieved, the Appellant filed above appeals before the lower Appellate authority who had while confirming the demands set aside the penalties imposed. Hence the present appeals filed by the Appellant before this forum.

3.1 The Ld. Counsel Ms. Akshaya Benjamin representing the Appellant reiterated the Grounds of Appeal and submitted that the rolls were predesigned/pre-printed to be used for further printing of the bank statements, receipts, balance and transaction details and therefore, the said product which is a result of the process of printing was classifiable under Chapter 49 and not under Chapter 48 and in this regard placed reliance on: -

- i. *Gopson Papers Ltd. vs. CCE [2006 (202) ELT 313 (T)]*,
- ii. *Sai Security Printers Ltd. vs. CCE [2006 (199) ELT 121 (T)]* and,
- iii. *Kayen Print Process (P) Ltd. vs. CCE [2007 (213) ELT 355 (T)]*.

3.2 It was further contended that the findings in the impugned order were misplaced as the goods under question could not be classified under Chapter 48 prior to 17.3.2012 due to insertions to Chapter 14 w.e.f. 17.03.2012 in Budget 2012 which read as follows: -

"14. Notwithstanding anything contained in Note 12, if the paper and paper products of heading 4811, 4816 or 4820 are printed with any character, name, logo, motif or format

they shall remain classified under Chapter 48 as long as such products are intended to be used for further printing or writing"

In the explanatory notes the following instructions were issued:

"A chapter note in chapter 48 is being inserted to provide that if paper and paper products of headings 4811, 4816 or 4820 are printed with any character, name logo, motif or format, they shall remain classified under chapter 48 as long as such products intended to be used for further printing (Clause 141 read with the Seventh schedule refers)"

3.3 The Ld. Counsel has pointed out that this Tribunal had in the Appellant's own case for earlier period *vide* Final Orders Nos. 40423 – 40424 of 2019 dated 07.03.2019 ordered to set aside the Orders-in-Appeal Nos. 142 & 143/2011 dated 25.08.2011 of the Commissioner (Appeals) and confirmed the duty demands with interest and which were per in curium and not binding on the parties as the same was made without considering the binding precedent of the Hon'ble Supreme Court, on a similar issue in the case of *Commissioner of Central Excise Vs. Gopsons Papers Ltd.*, [2015 (324) E.L.T. 5 (S.C.)] wherein it was held as follows: -

"5. It is clear from the above that insofar as the assessee is concerned, it is undertaking the work of printing alone and is supplying to those who place orders in this behalf. The end use of the said product at the hands of the

purchaser is not the concern of the assessee and cannot be the consideration for classifying the goods in question....

6. The aforesaid description of the work done by the assessee makes it clear that it is the printing which it is undertaking and, therefore, it is rightly classified under the heading 49.01. Merely because the thermal paper rolls are the raw material used which is imported or which is cut to different sizes, would not be the relevant factor in determination of the classification. These aspects are covered by the judgement of this Court in 'Headway Lithographic Company vs. CCE, Kolkata [2015 (321) E.L.T. 394 (S.C.)] and "Holostick India Ltd. Vs CCE, Noida [2015 (318) E.L.T. 529 (S.C)]"

3.4 It was averred that the thermal paper roll pre-printed with logo and other marks of customers were to be classified under Chapter 49 only, because printing in this case was not merely incidental but very much related to the primary use i.e. further printing by the machine. It was submitted that the pre-printed matter and the matter to be printed by ATM were interconnected and constituted a single matter. Further, it was pointed out that the existence of blank portions in printed forms do not take them out of "other printed products and articles which was also affirmed in *Gopsons Papers Ltd. Vs Commissioner of Central Excise, Noida [2006 (202) E.L.T 313]*.

3.5 Further reliance was placed on the ratio of the following decisions: -

- i. Mehra Computer System vs. Commissioner C. Ex., [2017 SCC Online CESTAT 12781].*
- ii. In Sai Security Printers Ltd. Vs. Commissioner of C. Ex Faridabad [2006 (199) E.L.T. 121 (Tri.- Del.)]*
- iii. Lovely Offset Printers Vs. CCE, Tirunelveli – [2018 (8) G.S.T.L. 53 (Tri.- Mad.)]*
- iv. Metagraphs Pvt. Ltd vs. Collector of Central Excise, Bombay*
- v. M/s. Universal Print Systems Ltd. Vs The Commissioner [Excise Appeal No. 40774 of 2015]*
- vi. Alpha Carbonless Paper Manufacturing Co. Pvt. Ltd vs. The Commissioner of Central Excise, Belapur [2014-TIOL-224-CESTAT-MUM]*

4. The Ld. Authorized Representative Ms. Anandalakshmi Ganeshram representing the Department affirmed the findings in the impugned order and submitted that the Appellant had mis-classified their products with an intent to evade payment of duty and had contravened the provisions of the ACT and Rules and hence the demands confirmed were sustainable and penalty imposable on the Appellant. She has contended that the classification and dutiability of ATM Rolls manufactured by the Appellant, in their own case, the Tribunal Chennai has decided *vide* Final Order Nos. 40423-20424/2019 dated 07.03.2019 against the Assessee. Hence, it was prayed for dismissal of the appeals filed by the Appellant.

5. We have carefully considered the submissions made by both the sides and also evidences available on records.

6. The issues which arise for consideration in this appeal is whether Printed Thermal ATM Rolls are classifiable under CETH 49019900 or under CETH 48119099 and whether the demands confirmed are sustainable?

7. We find that that the Appellant is engaged in manufacturing of Manifold Business Forms with thermal paper in rolls classifying them under Chapter CETH 49019900 of CETA. As the rate of duty was Nil, the Appellant discharged 5% on the value of the printed thermal rolls as in terms of sub-rule 3(1) of Rule 6 of the CENVAT Credit Rules, 2004. However, the Department issued Show Cause Notices to classify the printed thermal rolls under CETH 48119099 and proposing to demand duty. The Ld. Adjudicating Authority confirmed the demands and imposed penalty whereas the impugned orders while confirming demands set aside the penalties imposed.

8. We find that the issue which arise for consideration is whether a printed thermal paper would merit

classification under heading 48119099 or 49019900. During the relevant period Tariff Item 48119099 read as follows: -

"Paper, paperboard, cellulose wadding and webs of Cellulose fibres, coated, impregnated, covered, surface-coloured, surface decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in Heading 4803, 4809 or 4810"

Tariff Item 4901 reads as follows:

"Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets."

9. The Ld. Counsel for the Appellant has vehemently contended that the subject product is not classifiable under Chapter 48 in view of the amendments brought in Budget 2012. In this context it is relevant to look at Chapter Note 12 to Chapter 48 to appreciate the position of law before 17.03.2012. The Chapter Note is reproduced herein below for ready reference: -

"Except for the goods of heading No. 48.14 or 48.21, paper, paperboard, cellulose wadding and articles thereof, printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods, fall in Chapter 49".

During the Budget 2012 Chapter Note 14 was inserted w.e.f. 17.3.2012 which stated that,

"14. Notwithstanding anything contained in Note 12, if the paper and paper products of heading 4811, 4816 or 4820 are printed with any character, name, logo, motif or format they shall remain classified under Chapter 48 as long as such products are intended to be used for further printing or writing." Further, in the explanatory notes instructions were issued stating that, "A chapter note in chapter 48 is being inserted to provide that if paper and paper products of headings 4811, 4816 or 4820 are printed with any character, name logo, motif or format, they shall remain classified under chapter 48 as long as such products intended to be used for further printing." [Clause 141 read with the Seventh schedule refers]"

The decision to include certain subjects of the printing industry to be retained for levy of duty in chapter 48 was only taken 17.03.2012. The periods during which duty is sought to be levied in these appeals is for the goods cleared from January, 2010 to November, 2010 and February 2011 to 16.03.2012 which supports the view that the product under dispute would not be falling under 4811 before 17.03.2012.

10. We find that Chapter 49 of the Central Excise Tariff Act, details out the various products of the printing industry, whereas Chapter 48 is about paper and paper board, articles of paper pulp of paper or of paper board. No doubt both the chapters refer to the Articles of paper but Chapter 48 is of General nature, whereas Chapter 49 is

specific about printed papers, including products of the printing industry. This opinion finds support from Chapter Note 4 (c) of Chapter 49 which states that the heading 4901 covers printed part of paper book or booklets in the form of assembled or separate sheets or signatures constituting the whole or a part of the complete work. Therefore, there appears to be a clear demarcation as to the intention of the legislature for formulation of these two chapters. Chapter 49 encompasses products of the printing industry, which produces its products by means of printing on paper, whereas Chapter 48 is about Paper and paper Board, Articles of paper pulp of paper or of paper board. The Hon'ble Supreme Court in *Moorco (India) Ltd. vs. CCE, Madras [1994 (74) ELT 5 (S.C.)]* has specifically held that specific entry in tariff excludes residuary entry. Therefore, as per Note 12, except for heading 48.14 or 48.21, paper, paperboard and articles thereof, printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods fall in Chapter 49.

11. We find that the Ld. Counsel has placed reliance on various judgements, and we find it expedient to examine the relevant cases as follows: -

11.1 In *Metagraphs Pvt. Ltd vs. Collector of Central Excise, Bombay supra*, the Hon'ble Apex Court had the occasion to examine on the question of whether a process is incidental or primary and it was held as follows: -

"12. The label announces to the customer that the product is or 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 primary 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 held that "what is exempt under notification is the product of the printing industry. The "product" in this case is the carton. The printing industry itself cannot bring the carton into existence". Let us apply this formula to the facts of this case. The product is the aluminium printed label. The printing industry has brought the label to existence. That being the position and further the test of trade having understood this label as the product of the printing industry, there is no difficulty in holding that the labels in question are the products of the printing industry."

Therefore, applying the above ratio to the present appeal, it is clear that the process of printing on the Thermal rolls brings into the existence of the product ATM Rolls. Where an article is printed with materials, the primary purpose of the printing is to convey the message contained in the article and so would be more appropriately classifiable under the heading 49.01.

11.2 The CESTAT, Mumbai in the case of *Alpha Carbonless Paper Manufacturing Co. Pvt. Ltd. vs. The Commissioner of Central Excise, Belapur [2014-TIOL-224-CESTAT-MUM]* had the occasion to examine a similar issue and classified ATM Rolls, Printed lottery ticket rolls and printed bus ticket rolls as products of the printing industry. The case also took into consideration the Amendment made to the Finance Act, 2012 by the insertion of note 14 under Chapter 48 and held that the same cannot have retrospective operation. The Tribunal has held as follows: -

"5.1 From the HSN explanatory notes, it is seen that heading 4823 excludes products like lottery tickets, scratch cards, raffle tickets and tombolo tickets. Similarly, HSN explanatory notes to heading 4901 clearly shows that "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. Thus, printed forms, travel tickets, circular letters, identity documents and cards printed with messages, notices, etc. requiring only the insertion of particulars, e.g. dates and names are classified in this heading. The said notes further say that tickets for admission to places of entertainment, tickets for travel by public or private transport or other similar tickets are also included in Chapter 49. From the explanatory notes, it is clear that the impugned goods, namely, ATM printed rolls, lottery ticket printed rolls and bus ticket printed rolls would merit classification under Chapter 49 as "products of the printing industry". The decision of this Tribunal in the case of Gopsons Papers Ltd. and Sai Security Printers Ltd. (cited supra) also clearly held that lottery tickets, bus tickets, cheque books, etc.

printed on thermal paper rolls and cut to size are classifiable under heading 4901.90 as products of the printing industry. In the case of Metagraphs Pvt. Ltd. the Hon'ble Apex Court held that if printing brings into existence a product, the resultant product would be a "product of printing industry". In the case before us, it is not in dispute that the printing on the thermal sheets/rolls of paper brought into existence, receipts for the ATM, lottery tickets and rolls for bus tickets. Therefore, printing is not merely incidental to the use of the product as such printing imparts a substantial character and quality to the product. It is true that while actually using, certain particulars are required to be entered in these rolls by the ATM or the lottery machine or in the bus ticket vending machine. Nevertheless the product is specifically meant to be used as ATM receipts, lottery tickets and bus ticket. It is the printing done on the thermal paper which has imparted these characteristics and therefore, it has to be held that printing is not merely incidental to the use of the products. Applying the ratio of the decisions cited supra, it becomes evident that the impugned goods prior to enactment of Finance Bills 2012 merit classification as "products of the printing industry". Further, it is seen that in the Finance Bill 2012 as specific note 14 (supra) was inserted in Chapter 48 to bring within the scope of Chapter 48 certain products of the printing industry. The said amendment was introduced by way of Note 14 to Chapter 48, was only prospective and was not given any retrospective effect. This itself indicates that prior to the insertion of Note 14 to Chapter 48, the impugned products merit classification under Chapter 49."

11.3 In *Sai Security Printers Ltd. Vs. Commissioner of C. Ex., Faridabad* [2006 (199) E.L.T. 121 (Tri.-Del.)] the Tribunal held that the Thermal papers that were imported printed, cut and slit to size were products of the printing industry. In *Kayen Print Process (P) Ltd. Vs Commissioner of C. Ex., Bangalore*, the Tribunal held that printing on paper sheet and paper board would come within the category of the printing industry. Further in the decision of *M/s. Universal Print Systems Ltd. Vs. The Commissioner* [Excise Appeal No. 40774 of 2015], reliance was placed on the decision of the Tribunal, Chennai on *Lovely Offset Printers Vs. CCE, Tirunelveli* [2018 (8) G.S.T.L. 53 (Tri.-Mad.)] and *Johnson and Johnson Ltd vs Collector of Central Excise, Mumbai* to come to a conclusion that a bare perusal of entry 490190 are goods that came out of the place of manufacture as a printed product and covered under the phrase “and other products of the printing industry” and thereby exempted from incurring duty.

11.4 The Hon’ble Supreme Court in *Commissioner of Central Excise vs. Gopsons Papers Ltd.,* [2015 (324) E.L.T. 5 (S.C.)] had the occasion to examine the process of printing which was exactly similar to that of the Appellant herein and held as follows: -

"5. It is clear from the above that insofar as the assessee is concerned, it is undertaking the work of printing alone and is supplying to those who place orders in this behalf. The end use of the said product at the hands of the purchaser is not the concern of the assessee and cannot be the consideration for classifying the goods in question....

6. The aforesaid description of the work done by the assessee makes it clear that it is the printing which it is undertaking and, therefore, it is rightly classified under the heading 49.01. Merely because the thermal paper rolls are the raw material used which is imported or which is cut to different sizes, would not be the relevant factor in determination of the classification. These aspects are covered by the judgement of this Court in 'Headway Lithographic Company vs. CCE, Kolkata [2015 (321) E.L.T. 394 (S.C.)] and "Holostick India Ltd. Vs CCE, Noida [2015 (318) E.L.T. 529 (S.C)]"

11.5 Further, in Mehra Computer System Vs. Commissioner C. Ex., [2017 SCC Online CESTAT 12781], the Tribunal affirmed that, *"if the printing 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."*

12. The ATM rolls which are manufactured and cleared by the Appellant are used in the ATM's for procuring the end statement and they are already pre-printed with

definite markings such as Black bar coding, name of the Bank, logos *etc.*, and this itself makes it clear that the rolls are pre-designed/ pre-printed to be used for further printing of the bank statements and usable as paper rolls. The pre-printed thermal paper rolls are meant for printing by ATM and certain parts of the printed matter already existed on the said Thermal paper rolls. These rolls are not classifiable for any general purpose but only for the specific use of further printing and issuing the statements. Except for this printed matter such rolls have no other use. If Rule 3(a) of the general rules for interpretation of the Central Excise Tariff is applied, the most specific description shall be preferred over general description and hence it prevails over the general description of paper rolls. According to Chapter Note 2 of Chapter 49, the term printed also means reproduced by means of a duplicating machine produced under the control of an Automatic Data processing machine, embossed, Photographed, Photocopied, thermo copied or typewritten. These printed thermal paper rolls, after subjected to the printing process are converted into a printed matter usable only for the purpose relating to such printing and could no longer be used as plain paper rolls.

13. In the present case, in addition to the black bar code, details of transactions, the sheet also contains

instructions on keeping the ATM premises clean, instructions on use of ATM cards safely etc. This further strengthens the point that the product is not merely of incidental use but it is of primary use. The thermal paper cut rolls, printing of paper with logos / marks of customers are not merely incidental but essential to primary use, i.e. providing information of bank statements and receipts. The pre-printed matter and the matter to be printed by ATM are inter connected and constituted a single matter. Further, the existence of blank portions in printed forms do not take them out of "other printed products and articles" which was also affirmed in *Gopsons Papers Ltd. Vs. Commissioner of Central Excise, Noida* [2006 (202) E.L.T 313] cited *supra*. The thermal paper roll pre-printed with logo and other marks of customers are to be classified under Chapter 49 only, because printing in this case not merely incidental but very much related to the primary use i.e. further printing by the machine. It is pertinent to note in this case that the process of cutting/slitting does not convert the product to the primary use but it is the process of printing that converts the product to the primary use. When the printed matter has given essential character they cannot be anything other than the product of the "Printing Industry".

14. The Ld. Authorized Representative Ms. Anandalakshmi Ganeshram has referred to the decision of the Tribunal Chennai in respect of the very same Appellant for prior periods *vide Final Orders Nos. 40423 – 40424 of 2019* dated 07.03.2019, have set aside the order of the Commissioner (Appeals) on the same issue and confirmed the duty demands with interest and Penalty. The relevant part of the Tribunal Order is extracted below for ease of reference: -

" 6. *After going through the facts on record, we find merit in the assertions of the Ld. AR for the Department. CETA 4901 inter alia covers "printed books, brochures, leaflets and other similar matter ...". CETA 4811 inter alia covers "paper, paperboard ... or printed, in rolls or rectangular (including square) sheets...". At first blush, it would appear that there would be difficulty where to classify printed paper. Nonetheless, the defining aspect for classification of such printed paper is provided in Chapter Note 12 of Chapter 48, as per which when such printing is "not merely incidental to the primary use of the goods", such goods will require to be confined to CETA 49.*

7. *The case law of M/s. Metagraphs Pvt. Ltd. (supra) dealt with printed aluminium labels for affixation to fridge, radio, etc. Discernibly, there is no further printing required to be done on such label and it is also evident that they can be considered away affixed to the fridge, radio, etc. So also, pre-printed lottery tickets, which is the subject matter of the decision in the case of M/s. Gopsons Papers Ltd. (supra), are evidently printed ready for use. The printing in both these cases is of prime importance and*

mandatory for the use of the products. However, with respect to the impugned goods viz., the thermal rolls, made to a pre-defined shape for being used in ATMs, there may well be some printing of the name of the bank, logo, etc., but that is merely incidental to the final use of the product, which is, spewing out in printed form the details of the transaction entered into by the bank customer. Printing on such ATM rolls is thus only a pre-printing for identification of the bank ATM concerned and is evidently incidental to their primary use.

8. *We find that the decision in the case of M/s. ITC Ltd. v. Collector of Central Excise, Madras - [1998 \(97\) E.L.T. 401](#) (S.C.) relied upon by the Ld. AR is fully applicable to the facts of this case. In the said judgment, the Hon'ble Apex Court has held that paper/paper-board articles for packaging of cigarettes, printed - the primary use of such articles being in connection with packaging of cigarettes and printing thereon being merely incidental to their primary use, are correctly classifiable under Chapter 48. The relevant portion of the above judgment is reproduced below :*

"We have heard Learned Counsel for the appellant-assessee and the Learned Additional Solicitor General. We are satisfied that the conclusion reached by the Tribunal and its reasons for that conclusion are correct. The conclusion of the Tribunal is stated thus :

In view of the above discussion we find no force in the appellants' contention that the classification of the disputed articles under Chapter 48 of the Customs Tariff Act, 1985 would be ruled out in terms of Note 8 to Chapter 48 on account of printing on the said items being not merely incidental to their primary use. We hold that on account of the primary use of the articles in question being in connection with the packaging of cigarettes and the printing there being merely incidental to their primary use

that would be correctly classifiable under Chapter 48 of the Customs Tariff Act, 1985 and their classification under sub-heading 4901.90 as claimed by the applicants would be ruled out.”

9. *In view of our discussions hereinabove, we find the case in favour of the Revenue. The impugned order of the Commissioner (Appeals) cannot then be sustained and requires to be set aside and therefore, the duty demands with interest and penalty confirmed by the Original Authorities will require to be sustained, which we hereby do. This will have the effect of restoring the adjudication Order No. 98/2010, dated 3-5-2010 and adjudication Order No. 132/2010, dated 23-12-2010 passed by the Original Authorities. The Cross-Objection Nos. E/CO/2/2012 and E/CO/3/2012, being in the nature of responses to the grounds of appeal and in support of the impugned order, are also disposed of accordingly”*

15. We find that the Tribunal in the above order has relied on the decision in the case of ITC Ltd. cited *supra*. In the present case, we are dealing with classification of printed products where printing has been done on Thermal paper. Such printed papers could fall either under Chapter 48 or 49. The chapter note under Chapter 48 clearly holds that only when printing is incidental and not essential for primary use, such printed products would fall under Chapter 48 and when the printing is considered essential, it would fall under Chapter 49. The Hon'ble Supreme Court was not considering such a situation while determining whether the printed cartons would fall under the category of products of printing

industry. In the said case, the issue was whether the printed cartons should be treated as products of printing industry or products of packaging industry. The Hon'ble Supreme Court after noting that the printing industry by itself could not bring cartons into existence, held that such printed cartons could not be considered as products of printing industry. The ratio of the said decision cannot be applied to the facts of the present case which involve determination of classification of the printed products which could fall either under Chapter 48 or 49 depending upon the nature and scope of printing on the products. The Hon'ble Supreme Court, in ITC Ltd. cited *supra* considered appeal against the CEGAT's Final Order Nos. 251 to 256/95-C dated 31.08.1995. On perusal of the said order of the Tribunal, it is noticed that the same dealt with classification of items like printed racks unfolded, printed top lid flats unfolded, printed hanged lid, printed shells/hulls, and slider which are parts/components of packets meant for packing of cigarettes. The Tribunal held that they could not be treated as products of printing industry on the ground "the capacity to contain is essential characteristic of a carton and not the printing work on it which is merely incidental". Tribunal heavily relied on the ratio of the decision in the case of Rolla Trainers Ltd. cited *supra*. The said decision of the Tribunal stands upheld by the Hon'ble Supreme Court. As the decision clearly related to

cartons and its parts whose primary function was to contain, the same cannot be applied to the facts of the present case. Similarly, in the present cases, the printed Thermal paper requires to be considered for classification either under Chapter 48 or under 49 depending upon the nature and scope of printing. Therefore, the decision of the Hon'ble Supreme Court in ITC Ltd. case cannot be applied to the facts of the present case. Further, we note that the Ld. Counsel for the Appellant has vehemently put forth that the Chennai Tribunal's order *vide Final Orders Nos. 40423 – 40424 of 2019* dated *07.03.2019* is per in curium as the same was issued without considering the binding precedent of the order of the Hon'ble Supreme Court in *Commissioner of Central Excise Vs. Gopsons Papers Ltd. [2015 (324) E.L.T. 5 (S.C.)]* cited *supra* in para 3.3. The ratio of the Hon'ble Apex Court judgment in the case of Gopsons Papers Ltd. *supra* is applicable to the facts obtained in this appeal. The Hon'ble Supreme Court decision is binding on all subordinate Courts and Tribunals being the law of the land. Printed Thermal Papers cannot be put to any other use as the printing carried out indicates its primary use and so is rightly classifiable under Chapter Heading 4901 of the Central Excise Tariff Act, as a product of printing industry.

16. After appreciating the facts and issues raised in these appeals and in compliance to the judicial discipline to the orders of the Hon'ble Apex Court in the case of *Commissioner of Central Excise Vs. Gopsons Papers Ltd., [2015 (324) E.L.T. 5 (S.C.)]* and other precedents as relied upon by the Ld. Counsel for the Appellant, the impugned Orders-in-Appeal No. 107/2014 (P) dated 17.06.2014 and Nos. 160&162/2014 (P) dated 22.09.2014 passed by the Commissioner of Central Excise (Appeals) cannot be sustained and so, ordered to be set aside. Consequently, demands confirmed are also ordered to be aside.

17. In the result, the appeals filed by the Appellant are allowed with consequential benefits, if any, as per the law.

(Order pronounced in open court on 21.02.2025)

Sd/-
(AJAYAN T.V.)
 MEMBER (JUDICIAL)

MK

Sd/-
(VASA SESHAGIRI RAO)
 MEMBER (TECHNICAL)