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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/5182/2004-5184/2004,150 /2005,1238/2005-1239/2005 - EX[DB] Date 06/03/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S TRACK PACK (INDIA)LTD.
C-31,SECTOR-58, NOIDA U.P
M/S TRACK PACK (INDIA)LTD.

Appellant
Vs
Respondent

C.C.E.NOIDA U.P

I am directed to transmit herewith a certified copy of **Final order No.** 192-197/2009-**EX[DB]** dated 16-2-09

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
C.C.E.NOIDA U.P
B-123,SECTOR-5,NOIDA U.P
2. Adv. / Consult SH. SURENDER KUMAR, C/O MR.LAJJA RAM
40/159, C.R. PARK, N.DELHI- 110019.

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 Office Copy
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Assistant Registrar
(Excise Appeal Branch)

17. SH. S.K. TOMAR, G.M. C/O
M/S TRACK PACK INDIA LTD.
C-31,SECTOR-38,NOIDA U.P

P.T.O.-2,

SH. S.K. TOMAR,
18. M/S TRACK PACK INDIA LTD.
C-31,SECTOR-58,NOIDA

19. SH. ANIL KUMAR GUPTA, M.D.
M/S TRACK PACK (INDIA)LTD.
C-31,SECTOR-38,NOIDA U.P

~~SH. ANIL KUMAR GUPTA, M.D.~~
~~20. TRACK PACK INDIA LTD.~~
~~C-31,SECTOR-58,NOIDA~~

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 16.2.2009

Central Excise Appeal Nos.5182-5284 of 2004

Arising out of the order in appeal No.299-301/CE/APPL/Noida/04 dated 29.9.04 passed by the Commissioner (Appeals), Customs & Central Excise, Noida.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	NA.
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellant		Respondent
M/s Track Pack (India) Ltd. Shri S.K. Tomar, G.M. (Commercial) Shri Anil Kumar Gupta, M.D.	vs.	C.C.E. NOIDA

Central Excise Appeal Nos.150, 1238, 1239 of 2005

Arising out of the order in appeal No.299-301/CE/APPL/Noida/04 dated 29.9.04 passed by the Commissioner (Appeals), Customs & Central Excise, Noida.

C.C.E., NOIDA	vs.	M/s Track Pack (India) Ltd. Shri S.K. Tomar, G.M. Shri Anil Kumar Gupta, MD

Appearance:

Shri S.K. Tomar, General Manager with Shri Surender Prasad, Advocate for the assessee and Shri C.S. Rajput, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

FINAL Order No. 192-197/07-EX

Per P.K. Das:

The relevant facts of the case, in brief, are that the assesse is engaged in the manufacture of 'Self-Adhesive Hologram Sticker/Sheet and Holographic Film'. Show Cause Notice dated 9.9.03 was issued proposing to classify the said products under sub- heading No.3919.00 denying the claim of the assessee under sub-heading No.4401.90 and demanded duty for the period 16.9.98 to 2.5.02. It has also been alleged that shim development charges should be included in the assessable value. Original authority confirmed the classification under sub-heading No.3919.00 and confirmed demand of duty and imposed penalty of equal amount and penalty of Rs.3.50 lakhs each on the Managing Director and the General Manager. Commissioner (Appeals) only reduced penalties. Hence the assessee company, General Manager and Managing Director have filed these appeals against the demand of duty and penalties. Revenue also filed appeals against the reduction of penalties by the Commissioner (Appeals).

2. Heard both sides and perused record.

3. Learned Advocate for the assesee submits that the assessee had received metalzed polyester film. They undertook the process mainly embossing (Printing) of hologram on their inputs. Thereafter, the embossed metalised film, paper, aluminium, BOPP, acetate film, PVC film is continuously coated on its reverse with pressure sensitive adhesive and dried. It was laminated with silicon coated surface of release paper in the form of a roll to make a laminate roll. He relied upon the decision of the Tribunal in the case of Holographic Security Marking Systems Pvt. Ltd. vs. Commissioner of Central Excise, Mumbai – 2003 (55) RLT 115 (CEGAT-Mum.). He also relied upon the Standing Order No.14/2007 dated 19.12.2007 issued by the Commissioner of Customs, Central Excise & Service Tax, Kanpur wherein it has been held that laminating/metalising

of duty paid film does not amount to manufacture. He submits that the Standing Order was issued on the basis of the decision of the Hon'ble Supreme Court in the case of M/s Metlex (I) Pvt.Ltd. vs. C.C.E., New Delhi – 2004 (165) ELT 129 (SC).

4. Learned DR on behalf of the Revenue reiterates the finding of the Commissioner (Appeals). He relies upon the Tribunal's decision in the case of Holostick India Ltd. v. C.C.E., Meerut II - 2004 (167) ELT 301 (Tri-Del.). It has been held that printed aluminium holographic film laminated on one side with self-adhesive quality on reverse is classifiable as Self-Adhesive Film under heading 39.19. of Central Excise Tariff, 1985. He also submits that by Board's Circular No.195/20/96-CX dated 3.4.96 it has been clarified that photo-identity cards merit classification under sub-heading 4901.90 but classification of holograms cleared as such, may be decided keeping in view the manufacturing process and end-use etc. on merits of each case. He also submits that demand is not barred by limitation as they have suppressed the manufacturing process to the Revenue.

6. After hearing both sides and on perusal of record, we find force in the submission of the learned DR on the merit of classification. We find that identical issue has already been decided by the Tribunal in the case of Holostick India Ltd. (supra). The relevant portion of the said decision is reproduced below:

> ***"7. We have considered the submissions of both the sides. The two rival Headings of the Central Excise Tariff reads as under :***

39.19	***Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes of plastics, whether or not in rolls.***
49.01	***Printed books, newspaper, pictures and other products of the printing industry; manuscripts, typescripts and plans.***

> ***8.The basic contention of the Appellants is that the essential character to the impugned product is imparted by printing and as such the impugned products is classifiable under Heading 49.01 of the Tariff. The process of manufacture as has been detailed in show cause notice dated 4-2-2000 reveals that 'shim' is mounted on the embossing machine and also the***

metallised polyester film in base and roll form; the impression of shim are then transferred from the surface of the said production plates to the surface of their polyester film roll through optimal applications of heat and pressure; the embossed metallised polyester film roll is continuously coated on its reverse with a water-based pressure-sensitive adhesive and dried, and thereafter it is continuously laminated with the silicon coated surface of release paper to make a laminated roll. It is thus clear that the impugned product is laminated as well as is having adhesive quality. The holograms are stuck to various products by their customers. As the product manufactured by the Appellants possesses the quality of self-adhesive, it cannot be classified in Heading 39.20 of the Tariff as the said heading applies to "other plates, sheets, film, foil and strip, of plastics, whether lacquered or metalised or laminated, supported or similarly combined with other materials or not." As the product does not cease to be a self-adhesive product, it has to be classified under Heading 39.19 and cannot be classified under Heading 39.20 merely because one side of it has been laminated.

9.1 The other question which remains to be examined is whether printing of hologram will make the impugned product a product of printing industry so as to be classified under Heading 49.01 of the Tariff. Note 2 to Section VII of the Tariff reads as under :

'2. Except for the goods of Heading No. 39.18 or 39.19, plastics, rubber and articles thereof, printed with motifs, characters of pictorial representations, which are 'ot merely incidental to the primary use of the goods, fall in Chapter 49."

9.2Explanatory Notes of HSN in Section VII clarifies Note 2 as under :

'Goods of Heading 39.18 (floor coverings and wall or ceiling coverings of plastic) and Heading 39.19 (self-adhesive plates, etc. of plastics), even if printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods, do not fall in Chapter 49.'

It is thus apparent that even if printing is of essential nature, the product of 39.19 would remain classifiable under Heading 39.19 and will not be regarded as "a product of printing industry". This view is further strengthened by the Explanatory Notes of HSN below Heading 39.19 which reads as under :

'It should be noted that this heading includes articles printed with motifs, character or pictorial representations which are not merely incidental to the primary use of the goods (See Note 2 to Section VII).'

General Explanatory Notes of HSN below Chapter 49 clearly mentions that "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 merely incidental to the primary use of the goods." For this reason "self-adhesive printed stickers designed to be used, for example, for publicity, advertising or mere decoration, e.g. "comic stickers" and "window stickers" mention in HSN Notes below Heading 49.11 would not cover the products of Heading 39.19. In view of this, the decisions relied upon by the learned Advocate are not applicable to the facts of the present matters. In Holographic Security Marking Systems case the product involved was "stamping foils" falling under Heading 32.12 of the Tariff which was classified under Heading 49.01 after the hologram was printed thereon. The Tribunal observed that "until the product became transformed because of the printing of the material on it, it continued to be stamping foil......". In the present case even after printing, because of Note 2 to Section VII, the product continues to remain classified under Heading 39.19 of the Tariff. We thus hold the classification of the impugned product under Heading 39.19 of the Tariff."

7. We noted that the Tribunal in the case of Holostick India Ltd. (supra) had distinguished .the decision of the Tribunal in the case of Holographic Security

Marking Systems Pvt. Ltd. (supra). In view of that, we hold that classification of the products under Heading 39.19 of Central Excise Tariff Act are appropriate.

8. However, we agree with the submissions of the learned Advocate for the assessee that demand of duty on classification and valuation is barred by limitation. It is seen from the adjudication order that the assessee by their letter dated 10.4.2000 informed the Department regarding the process of manufacture. They have also taken Central Excise registration on 9.2.2001. Further, shim development charges had been mentioned in their records and ledgers. We find that there is a dispute of the classification and valuation of the impugned products and demand of duty for extended period of limitation is not maintainable. We also note that Tribunal in the case of Holostick India Ltd. held that extended period of limitation would not be invoked.

9. In view of the above, we set aside the impugned orders on limitation. Appeals filed by assessee are allowed. Appeals filed by Revenue are rejected.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/