In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No.E/50074-50075/2015
(Arising out of Order-in-Original No.17/2014-2015 dated 29.09.2014 passed by Commissioner, Central Excise, Delhi-II)

M/s Universal Offsets
Shri Vikas Gupta …Appellant

Vs

CCE Delhi-II …Respondent

Appearance:
Present for the Appellant : Shri B.L. Narsimhan, Advocate
Present for the Respondent : Shri M.R. Sharma, DR

Coram:
HON'BLE MR ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of hearing: 26.12.2017
Date of decision: 01.01.2018

Final Order No.50001-50002/2018

Per B. Ravichandran,

These two appeals are against common impugned order dated 29.09.2014 of Commissioner of Central Excise, Delhi. The main appeal is by M/s Universal Offsets, engaged in the manufacture of books, calendars, cards, envelopes, carry bags, forms, etc. The second appeal is by partner of the main appellant, against imposition of penalty. The dispute in the present appeal mainly relates to classification of various products manufactured and cleared by the main appellant during the period November, 2008 to October, 2013. Details of products, disputed tariff classifications with applicable duty demand are as below:

| S.No. | Item | Appellant's Classification | Department's Classification | Total amount |
|---|---|---|---|---|
| 1. | Envelope/Outer/jacket/Sim sleeve or Pouch | 4817 10 00 | 4819 50 90 | Rs.84,06,512/- |
| 2. | Forms | 4911 99 90 | 4820 10 90 | Rs.40,12,751/- |
| 3. | Start-up Kit(SUK)/Kit | 4911 99 90 | 4819 50 90/ 4820 10 90 | Rs.21,96,278/- |
| 4. | Carry bags | 4911 10 90 | 4819 40 40 | Rs.48,362/- |
| 5. | Pads | 4820 10 90 | 4820 10 90 | Rs.3,21,470/- |
| 6. | Score card | 4909 00 90 | 4820 10 90 | Rs.72,454/- |
| 7. | Hangers-Mill Board | 4911 10 90 | 4823 70 30 | Rs.24,13,973/- |
| 8. | Hangers – Plastic | 4911 10 90 | 3926 90 69 | |
| 9. | Printed Sheet | 4901 99 00 | -- | Rs.37,080/- |
| 10. | Printed matter | 4901 99 00 | -- | Rs.20,36,710/- |
| 11. | Scrap | -- | 4707 90 00 | Rs.15,02,649/- |

2. Out of the various products listed above, the appellant is not contesting the classification, as ordered by the Revenue, with reference to S.No.5 (Pads). The classification of other goods and dutibility of scrap of paper is contested in the present appeal.

3. We have heard the ld Counsel for the appellant and the ld AR for the Revenue, at length. We have also perused the appeal records and various relied-upon case laws. We have also seen the samples of these products. We are considering the submissions of the appellant with reference to the finding recorded in respect of each of the items mentioned above.

4. **Envelope/Outer/jacket/Sim Sleeve or Pouch/ <u>Start-up Kit (SUK)/Kit</u>**

We note that the appellant is engaged in making goods mentioned as "Envelope". These envelopes are essentially supplied to telecom companies who used the same to keep the information brochure, sim card and other details relating to telephone connection. The Revenue held a view that these envelopes are to be considered as paper bags since these are neither used for correspondence nor contain paper stationery. Accordingly, the classification was ordered to be made under CETH 4819 50 90. The appellant claimed classification under CETH 4817 10 00/4911 99 90. The classifications as per the tariff entries are as below:

| | |
|---|---|
| 4816 90 90 --- | Other |
| 4817 | Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard, boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery |
| 4817 10 00 - | Envelopes |
| 4819 | Cartons, boxes, cases, bags and other packing containers of paper, paperboard, cellulose wadding or webs of cellulose fibres, box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like. |
| 4819 10 - | *Cartons, boxes and cases of corrugated paper or paperboard:* |
| 4819 10 10 --- | Boxes |
| 4819 10 90 --- | Other |
| 4819 20 - | *Folding cartons, boxes and cases, of non-corrugated paper and paperboard:* |
| 4819 20 10 -- | Cartons, boxes, cases, intended for the packing of match sticks |
| 4819 20 20 --- | Boxes |
| 4819 20 90 --- | Other |
| 4819 30 00 - | Sacks and bags, having a base of a width of 40 cm or more |
| 4819 40 00 - | Other sacks and bags, including cones |

| | | |
|---|---|---|
| 4819 50 | - | *Other packing containers, including record sleeves* |

---

| | | |
|---|---|---|
| 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. The nature of product produced and cleared by the appellant is in the form of envelope. We do not find any support to hold that an envelope should be necessarily used for correspondence or should contain paper stationery only. In the present case, the envelope is made of paper and is printed with details of the contents with certain designs. These are custom made for containing particular type of contents. To call these small size envelopes made of paper, as other packing containers, is not appealing. The very nature of the product in the form of envelope is more specific than categorizing it as a general packing container. These are generic terms and common understanding of such terms can be

inferred from standard dictionaries. Oxford dictionary of English defines envelope as "a flat paper container with a sealable flap, used to enclose a letter or document." It is clear that an envelope is a sub-species of a general category of containers. When there is a specific entry for paper envelopes, we find it is not tenable to classify it under the broad category of "cartons, boxes, cases, bags and other packing materials of paper, paperboard, etc.." We find that between these competing tariff entries, more appropriate will be under main heading 4817 which specifically covers envelops instead of a general heading of other packing containers. Accordingly, we hold that the classification, as claimed by the appellant, is more appropriate. The start-up kit contains outer envelope (as observed above), CIF/CAF form and leaflet containing details of telecom service. We hold that these are printed material. As the envelopes, they will be classified 4817 10 00 or when the leaflets and printed materials are cleared, the same will be classifiable under other printed matter under heading 4911 as products of printing industry etc.

6. **Forms:**

The appellants cleared to telecom companies and educational institutions, printed materials, like customer application form, customer identification form, admission form, etc. The lower authority classified these forms under CETH 4820 10 90. The said heading covers articles of stationery other than registers, accounts books, letter pads. The appellant claimed classification under CETH 4911 99 90 under the heading 'other printed matter'. We note that the issue of classification of application forms was discussed and clarified by the Board vide circular dated 23.02.2017. It is clarified that forms of telecom companies, educational institutions, etc. are loose sheets cut-to-size and are not covered under heading 4820. Printing on these forms is not merely incidental. In view of explanatory note to heading 4901 and 4911, these forms are classifiable under heading 4911. We find that the clarification issued by the Board correctly explains the legal position and accordingly, the impugned order classifying the forms under chapter 48 is not sustainable.

7. **Carry Bags**

The appellant cleared some products as "carry bags" to M/s Britannia Industry, M/s Nestle India Limited, etc. These packs were for carrying grocery items. The Revenue held that these are to be classified under heading 4819 40 00 as "other sacks and bags including cores." The appellant contended that these are to be classified under heading 4911 10 90 as other printed matter. We have perused the samples presented by the ld Counsel of the appellant. These are essentially carry-bags made of thick paper with printings on both sides with the brand logo of certain consumer companies like "Maggi" etc. On perusal of the tariff classifications and the sample material, we are of the considered view that the printing made on such carry-bags is merely incidental and accordingly they cannot be called as product of printing industry under chapter 49. We hold that more appropriate classification will be as bags made of paper under heading 4819. The original authority is correct in his classification.

8. **Score Cards**

The appellants cleared "Dabur amla score card" and paid duty under heading 4909. The Revenue held the classification under heading 4820. We have perused the sample. We find that the product under consideration carries extensive printing with information and design and such printing cannot be considered as merely incidental to the primary use of the goods. We hold the printing on the paper gives the essential character for product and accordingly is classified as a product of printing industry under chapter 49. The impugned order is not correct in this regard.

9. **Hangers – Mill board/plastic**

The appellants manufactured plastic hangers to display products for sale. These hangers were used for hanging small packs/satches of the displayed products for sales. The appellant claimed classification under heading 4911 10 90 as other printed matter. The Revenue classified the same either under 4823 70 30 or 3928 90 69. We note these hangers are custom made and cannot be used for any other purpose except for display and hanging of the products, the details of which were printed on them. The Tribunal in M/s Ajanta Print Arts-1998 (98) ELT 406 (Tribunal), examining similar set of facts, held that printing is not incidental or ancillary but has been done with an intention to advertise the product which were hung in the said hangers. Accordingly, it was held chapter 49 will be more appropriate for classification. Similar decision was followed in M/s New Jack Printing Works Pvt Ltd-1999 (195) ELT (440). Accordingly, we hold that the claim of the appellant for classification under chapter 49 is correct.

10. **Printed sheet/printed matter**

We note that no discussion or classification of the said product has been recorded in the impugned order while confirming the duty demand on such clearances. We note that these are the printed loose sheets which are not bound in the form of books. These are mainly misc. items in the nature of advertisement or messages panels or posters under rightly classifiable under chapter 49. As already noted, no discussion or finding was recorded in the impugned order.

11. **Scrap of paper**

The appellant generated waste and scrap of paper during the course of the producing various types of products as mentioned above. The original authority denied exemption under Notification No.2/2005 CE and 12/2012 CE on the ground that the claim that these scrap were generated in the course of printing educational text books was not supported by evidence. The appellant contended that they are engaged in business of printing. The waste arising in the process cannot be classified under 4797. Even otherwise, they are entitled for exemption under notifications mentioned above. They have submitted the certificate of a Charter Accountant to claim that waste and scrap of paper is attributable to printing of educational books. We note that in M/s Wimco Ltd-2008 TIOL (2769) Cestat-Delhi, the Tribunal held that the waste and scrap of paper/paper board arising during the course of manufacture of empty match boxes will not attract excise duty. The emergence of such waste and scrap from duty paid paper and paper board is not as a result of manufacturing activity and no excise duty leviable on such item. We note similar view has been held in M/s Panasonic Energy India Co. Ltd-2016 TIOL (3061) Cestat-Delhi.

12. We note that in the present case, the appellants are not engaged in the manufacture of paper or paper board. They are essentially engaged in producing various printed products. The products which they produced were variously

classified as discussed above. They do not manufacture any waste and scrap paper. We find no justification to demand central excise duty on the scrap paper arising during the process of production of various items as mentioned above.

13. In view of above analysis and discussion, we hold that the classification and duty demand made with reference to pads (not being contested) and carry-bags are sustainable. The classification and duty demand as decided by the impugned order in respect of other items are not sustainable. Considering the nature of dispute, as elaborately discussed above, we find no reason for imposition of penalties on the appellants. The penalties are set-aside. The duty demand on carry-bags shall be restricted to normal period only as the issue involved is one of interpretation of tariff entries for classification. With these observations, the appeals are disposed-of.

(Pronounced in Court on 01.01.2018)

| | |
|---|---|
| (Ashok Jindal)<br>Member (Judicial) | (B. Ravichandran)<br>Member(Technical) |

pcs