CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

APPEAL No. E/899/2008

*(Arising out of **Order-in-Appeal** No. 49/2008(H-I)CE, dated 23.09.2008 passed by CCE&ST (Appeals-I), Hyderabad)*

BLUE SEAS PAPERS PVT. LTD. .. APPELLANT

Vs.

CCE, C&ST, HYDERABAD-I .. RESPONDENT

Appearance

Shri Y. Sreenivasa Reddy, Advocate for the Appellant.

Smt. B.V. Siva Naga Kumari, Commissioner /AR for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 24.10.2018

Date of Decision: 14.11.2018

FINAL ORDER No. A/31427/2018

[Order per: Mr. P.V. Subba Rao]

1. This appeal is filed against Order-in-Appeal No. 49/2008(H-I)CE, dated 23.09.2008. The appellant herein is the manufacturer of coated paper of three varieties i.e. Coated Front, Coated Back and Coated front and back sides and the dispute is whether the paper manufactured by

appellant is classifiable under Central Excise Tariff Head 4809 2000 as self-copying paper or under Central Excise Tariff Head 4810 as paper coated with kaolin or other organic substances. Initially, the appellant classified the goods under CETH 4809 and has been clearing the goods under this heading. Thereafter, they adopted a different classification CETH 4810 for the same goods on the ground that it is a more specific heading. Revenue did not agree with this classification and demanded the differential duty. The appellant preferred an appeal to the first appellate authority against the confirmation of demand of duty with interest under section 11 AB and imposition of penalty, under Rule 25 read with Section 11 AC. The first appellate authority rejected the appeal and upheld the Order-in-Original passed by lower authority. Hence this appeal.

2. Ld. Counsel for the appellant takes us through the manufacturing process of their product and explains that they manufacture three varieties of paper (a) coated front paper, b) coated back paper and c) coated front and back paper. He explains that coated front paper is made with a mixture prepared in water medium by mixing Kaolin (China clay), binders, resin and dispersing agent while the coated back paper is quoted with a mixture prepared in water medium by mixing micro-capsule, binders, resin and dispersing agent. Both mixtures are used for coated front and back paper. They supply these papers as per the requirement of the customers, who in turn, print their necessary formats and make bill books, receipt books, invoice books etc. for use by ultimate users. The coated front paper is

placed against coated back paper when making sets of papers. By pressure of pencil or pen, chemical action takes inside the paper because of which an imprint is formed on the lower paper. He further explains that if their paper is used along with an ordinary uncoated paper, no imprint will be formed. He further explains that there are, in the market, papers which also make an imprint when plain paper is put on top of it and written upon. He argues that there was no estoppel against they changing their classification when they find a more appropriate tariff heading. The description of CETH for 4809 and 4810 are as follows:

<u>CETH 4809</u>

4809	*Carbon paper, self-copy paper and other copying or transfer papers (including coated or impregnated paper for duplicator stencils or offset plates), whether or not printed, in rolls or sheets.*

<u>CETH 4810</u>

4810	*Paper and Paperboard coated on one or both sides with kaolin (china clay) or other inorganic substance, with or without a binder, and with no other coating, whether or not surface-coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size.*

3. He would assert that the classification adopted by Revenue is wrong for the reason that individual papers whether coated front or coated back or

coated front & back do not by themselves carry any impression and therefore they do not become self copying paper and only when appropriate sets of the front coated back coated and front and back coated papers are made, they serve the function of making copies. Therefore, Revenue is wrong in classifying their product as self copy paper. On the other hand, their product needs meets all the requirements of CETH 4810 inasmuch as their paper is coated with kaolin and other organic chemicals along with binders. He also argues that CETH 4809 covers the paper of the kind use for writing, print or other purposes which is not the requirement under head 4810. The paper manufactured by them is further used for manufacture of printed bill books, invoice books etc. and therefore their paper cannot be called self copying paper under 4809. He also objected to the use of the reference of the first appellate authority to the General Explanatory Notes to HSN. He further argued that kaolin coated paper is more specific entry as far as their product is concerned and should prevail upon the general entry of self copying paper. He further argues that the classification of their product should not depend on how the customer uses the product but how the goods are cleared from the factory and at that stage they are not a self copying paper. He also argued that this is a classification of dispute and even if it is held against them, penalty under Rule 25 read with Section 11 AC needs to be set aside.

4. Ld. Commissioner/AR takes us through the Order-in-Appeal and the products in question and explains that what is manufactured is the paper

coated with kaolin as well as other materials, either on front or on back or on both sides depending upon the requirement of the customer. These papers are made into sets as per the requirement and necessary form of the bill, invoice etc. are printed by the customers of the assessee, who, in turn, sell these invoice books to the ultimate users. Therefore, the product in question is nothing but self copying paper. CETH 4809 does not require the self copy paper to produce an impression when used along with a plain paper, as asserted by Ld. Counsel for the appellant. The paper manufactured by the appellant is complete as a self copy paper but for making appropriate sets and printing of the formats. Even if the paper manufactured by them is not considered a complete set of self copying paper, it still deserves to be classified as self copying paper because any incomplete article which has the essential characteristics of a complete article is also classifiable under the same heading. She would take us to the CETH 4810 and explain that there is nothing in this chapter heading to suggest that it covers the paper or paper board meant to be used for making multiple copies. It covers, on the other hand, paper such as art paper, chrome paper, imitation art paper, kraft paper etc. Merely because the appellant is using kaolin as one of the ingredients for coating paper it does not cease to be self copying paper nor does it fall under CETH 4810. Therefore, the more specific description for the product manufactured by the appellant is a self copying paper and not coated paper. The product deserves to be classified under this head. The appellant themselves were aware of this classification and hence thereafter adopted a wrong classification with an intent to evade payment of duty. The appeal, therefore, needs to be rejected.

5. We have considered the arguments on both sides and perused the records. The short point to be decided is whether the paper manufactured by the appellant is to be classified as self copy paper under CETH 4809 or as a coated paper under CETH 4810. Initially, the appellant themselves classified the product under 4809 but had subsequently revised the classification under CETH 4810. The first appellate authority has discussed the issue in depth at paras 4 & 5 as follows:

> *"What is crucial is the classification of the product under the specific heading which covers the product. IT is the contention of the appellants that the product manufactured by them is coated with Kaolin and therefore becomes a coated paper classifiable under heading 4810 99 00. The heading 4810 reads as "paper & paper board, coated on one or both sides with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating whether or not surface-coloured, surface – decorated or printed, in rolls or rectangular (including square) sheets, any size." Whereas the heading 4809 as proposed by the department reads as "Carbon paper, self copy paper and other copying or transfer papers (including coated or impregnated paper for duplicator stencils or offset plates), whether or not printed in rolls or sheets". Under this heading the sub heading 4809 20 00 covers self copy paper. I first take up the heading 4810 adopted by the appellants to see whether the product self-copy paper can be considered as a coated paper falling under that heading. The Chapter Notes under Chapter 48 of the Central Excise Tariff do not throw any light with regard to the scope of the heading 4810. A reading of the general Explanatory Note of Chapter 48 and the Explanatory Note under the heading 4810 of the HSN gives an insight into the nature of the product, coated paper. The explanatory notes under Heading 4810 of HSN reads as under…."*

"the inorganic substances, other than Kaolin (China clay), commonly used for coating include barium sulfate, magnesium silicate, Calcium carbonate, calcium sulfate, zinc oxide and powdered metal. The inorganic coating materials referred to in the heading may contain small amounts of organic substances for example, to enhance the surface characteristics of the paper".

Further, the General Explanatory note under Chapter 48 of the HSN reads as follows….

"Paper and Paper Board with Kaolin (China clay) or other organic substances with or without a binder, in rolls or sheets, fall under heading 48.10. Products are coated with kaolin etc. to attain a glossy, dull or matte finish. Subject to the exceptions mentioned in the heading, paper and paper board with a coating of Tar, Bitumen, asthalt, plastic or other organic material such as wax, stearin, textile dust, saw dust, granulated cork, shellac in rolls of sheets, fall in heading 48.11".

The general explanatory notes also make it clear that carbon paper, self copy and other copying of transfer papers in rolls or sheets of particular dimensions fall under heading 48.09.

It is thus seen from the above explanatory notes of HSN, that all coated papers do not get classified under heading 4809 of the Central Excise Tariff. The appellants themselves had furnished a write up with regard to manufacturing process. It is seen that , besides the use of kaolin, other coating chemicals viz, CV Chemicals (consisting of Micro Capsule, binders such as dispersing agent) are used I the process of coating. As per the write up, the self-copy paper is used for getting the impression by chemical reaction on the said goods by mechanical pressure without insertion of carbon or any kind of paper. As per the Explanatory Notes under heading 4816 of HSN (which heading incidentally also covers, interalia, self copy paper conforming to certain dimensions), "self copy papers also known as carbon less copy papers may be put up in fan fold forms. Pressure applied by means of an office machine or a stylus on the original sheet produces a reaction between two different ingredients normally separated from each other either in the same sheet and into adjacent sheet, reproducing the *impression of the original". Thus, there is a clear distinction between a paper which is coated with certain inorganic chemicals for the purpose of imparting surface characteristics and the process involved in bringing into existence of a self-copying paper. Further, the original adjudicating authority has also given the reasoning for arriving at his decision based on the popular perception of the goods in the particular trade. Therefore, the contention of the appellants that the product manufactured by them is classifiable under heading 4810 99 00 of the Central Excise Tariff is without any merits. The self-copy paper is classifiable under the heading 4809 20 00 of the Central Excise Tariff, as held by the adjudicating authority. In view of my findings, I do not intend to interfere with the impugned order. Therefore appeal filed by appellants is rejected.*

6. The appellant argues that the first appellate authority should not have placed reliance on the General Explanatory Notes to the HSN. We find force in this objection and proceed to decide the classification merely based on the CETH 4809 & 4810. CETH 4809 deals with the self copying paper. It does not indicate anywhere as to how the paper should be prepared or that the paper has to produce any impression when it is accompanied by a plain paper etc. A plain reading of CETH 4809 only indicates that it should be capable of making copies and it can be either in the form of rolls or sheets and it can be printed or otherwise. In this case, the paper in question is not printed and it is sold in rolls or sheets. The only point on which Ld. Counsel argues that it is not a self copying paper as it does not produce impression unless we make sets of the front, back and front & back coated papers in appropriate sets. He further argues that the customers get these sets and print the formats as bill books and thereafter they can be used to make multiple copies as required. We find that the

essential characteristics of the self copy paper are present in the paper in the form it is removed from the factory gate; simply because it is not printed or the papers are not made into appropriate sets, self copying paper does not cease to be so. On the other hand, CETH 4810 deals with the paper coated with kaolin which is also one of the materials used for coating in this product but the description of this CETH would indicate that it covers other forms of paper such as art paper, chrome paper, imitation art paper, insulating paper, kraft paper etc. There is no entry corresponding to paper which makes copies or imprints in this heading. In conclusion, we find that CETH 4809 is a more specific entry for the product in question and therefore the appellant's product has been correctly classified by Revenue under CETH 4809 and the same has been correctly upheld by the first appellate authority. Ld. Commissioner(AR) would also draw our attention to the judgment of Hon'ble Apex Court in the case of CCE vs. Sundstrand Forms Pvt. Ltd. in Civil Appeal No. 4077 of 2003. The dispute therein was whether intermediary products which are not necessarily of the particular size could be classified as self copying paper and the Hon'ble Apex Court held so.

7. On the question of penalty, we find that there is a reasonable ground for the appellant to have felt that the product may be classifiable under CETH 4810 and to have contested accordingly. Since a classification dispute is involved, we do not find sufficient grounds to allege malafide and

to impose penalty upon the appellant. We, therefore, set aside the penalty imposed in the impugned order. In conclusion, the impugned order is upheld insofar as classification demand of duty and interest are concerned and the penalty under Rule 25 read with Section 11 AC is set aside.

8. The appeal is disposed of as herein above.

(Pronounced in open Court on 14.11.2018)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

vrg