IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNA
HYDERABAD

REGIONAL BENCH – COURT NO. I

Excise Appeal No. 30885 of 2016

(Arising out of Order-in-Original No. HYD-EXCUS-002-COM-063-15-16 dated 31.03.2016 passed by the Commissioner of Customs, Central Excise and Service Tax, Hyderabad II Commissionerate, Basheerbagh, Hyderabad)

M/s. Uflex Limited, **: Appellant**
Survey No. 50/2, Prohibition and Excise Academy Compound,
BandlagudaJagir, Rajendra Nagar Mandal, Hyderabad

VERSUS

The Commissioner of Central Excise & Service Tax, **: Respondent**
Hyderabad-II Commissionerate,
L.B. Stadium Road, Basheerbagh, Hyderabad – 500 004

WITH

Excise Appeal No. 30387 of 2017

(Arising out of Order-in-Original No. HYD-EXCUS-002-COM-012-16-17 dated 31.08.2016 passed by the Commissioner of Customs, Central Excise and Service Tax, Hyderabad II Commissionerate, Basheerbagh, Hyderabad)

M/s. Uflex Limited, **: Appellant**
Survey No. 50/2, Prohibition and Excise Academy Compound,
BandlagudaJagir, Rajendra Nagar Mandal, Hyderabad

VERSUS

The Commissioner of Central Excise & Service Tax, **: Respondent**
Hyderabad-II Commissionerate,
L.B. Stadium Road, Basheerbagh, Hyderabad – 500 004

APPEARANCE:

Shri R. Parthasarathy, Advocate for the Appellant
Shri G. Prahlad, Advocate for the Appellant

Shri V.R. Pavan Kumar, Authorized Representative (A.R.) for the Respondent

CORAM:

HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NOs.31481-31482/ 2020

DATE OF HEARING:05.11.2020

DATE OF DECISION: 05.11.2020

Order: Per Hon'ble Mr. P. Dinesha,Member(Judicial)

The appellants herein are manufacturers of self-adhesive Holograms and are clearing the same without payment of Central Excise duty to their customer M/s. USC Holograms Pvt. Ltd., ('M/s. USC' for short) who in turn are supplying the self-adhesive Holograms to the Prohibition and Excise department. The issue involved in these appeals relate to the classification of the impugned "Holograms" which are cleared by the assessee-appellant, as to whether they fall under **4911 9990** of Central Excise Tariff Act, 1985 ('CETA' for short) and thus chargeable to NIL rate of duty or under **3919 9090** of CETA and thus chargeable to 12% rate of duty.

2. On 04.03.2015, the officers of Head Quarters Anti Evasion Unit, Hyderabad Commissionerate visited the appellant's premises to study the manufacturing process of self-adhesive hologram. It was alleged to have gathered that the appellant manufactured holograms and cleared the same without payment of duty to M/s. USC, who in turn was clearing the same to Prohibition and Excise Department, Telangana State. M/s. USC, a special purpose company formed by the Selected Bidding Consortium of M/s. Uflex Ltd., M/s. C-Tel InfosystemsPvt. Ltd. and M/s. Sristek Consulting Pvt. Ltd., was awarded the implementation and development of the "Hedonic Path Finder System" for manufacture and supply of High Security Holograms with Barcode based Track and Trace System involving/consisting of manufacturing, printing, marking, numbering and supply of High Security Holograms with 2D/1D Barcode along with design, develop, test, deploy, operate and maintain Track and

Trace System for Liquor Sales in Andhra Pradesh. This in turn assigned the manufacturing and printing of ''High Security Holograms" to the appellants herein. The land and building to carry out this process was allotted by the Govt. of Andhra Pradesh free of cost. A detailed study of the process of manufacture of the impugned product revealed that the principal raw material used is metalized polyester films. It was the case of the Department that the holograms are classifiable under Chapter 39 of the Central Excise Tariff Act, 1985. Contrary to this, the stand of the appellant is that the product is classifiable under Chapter 49 of the CETA, 1985. Show Cause Notices dated 05.08.2015 and 29.02.2016 were issued proposing to change the classification of the product manufactured and cleared under Chapter sub-heading **39199090** for the period from **July 2014 to February 2015, March 2015 to August 2015** and **September 2015 to February 2016**, and also proposing to demand duty, interest with imposition of various penalties. On adjudication, the adjudicating authority vide orders impugned herein confirmed the proposals made in the Show Cause Notices. Hence, these appeals.

2.1 Learned Advocate Shri R. Parthasarathy, appearing for the appellant, submitted that the Original Authority confirmed the demands proposed in the Show Cause Notices with the following observations:

a. Test report is a proof enough that hologram is a product whose substrate are made up of metalized plastic film and the appellant cannot now submit that their raw material is not plastic since Poly Ethylene Terephthalate (PET) is a plastic resin and the most commonly used plastic material;

b. In the instant case, adhesive part is more important as it enables the hologram to be specifically affixed partly on the bottle cap and partly on the neck of the bottle;

c. Security hologram without having adhesive properties will not serve any purpose as it cannot be properly fixed on bottles and caps;

d. Matter printed on hologram is only secondary to the primary adhesive use of the hologram and the tracking system printed on the hologram does not give the hologram the identity but the adhesive property by affixing the hologram on the bottle cap and neck of the bottle gives the essential security required for the buyers;

e. Printing of the hologram is not for advertisement or publicity, but the adhesive part is so important that tampering of which will cast doubt on the quality of the liquor contained in the bottle; etc. Ld. Advocate also referred to some Board Circulars to contend that Circulars issued by the Board are binding on the department which should have been followed;

f. Cum-tax benefit cannot be granted as there is a provision for collecting additional taxes from Prohibition and Excise Department, Govt. of India; etc.

2.2 He would thus contend that the Original Authority has passed this order without proper appreciation of the factual position. Hologram is correctly classifiable under Chapter Heading 4911 and hence no duty is payable by the appellant. He would draw our attention to the relevant Tariff headings which are extracted for the sake of convenience:

“4911 - Other printed matter, including printed pictures and photographs”

“3919 - Self Adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls.”

2.3 He also contended that the issue of classification of Security Holograms is no longer *res integra* and settled in favour of the appellant. Further, he submitted that if duty is held payable, then the appellants are entitled to CENVAT Credit of the duty paid on inputs and the price charged by the appellant is to be treated as inclusive of excise duty. He also submitted that money value equivalent to rental value of land and building shall not be included for payment of excise duty. Thus for the very same reasons, he would implore that no interest is chargeable and penalty is also not imposable under Section 11 AC and Rule 25 of the Central Excise Rules. Accordingly, he prayed that the impugned orders may be set aside since there is no violation of Central Excise Rules, 2002 and the Central Excise Act, 1944 by the appellants. In support of his arguments he relied on the following case laws:-

(i) *M/s. Holographic Security Marketing Systems Pvt. Ltd. v. C.C.E., Mumbai [2003 (151)E.L.T. 470 (Tri-Mumbai)];*
(ii) *M/s. Holostick India Ltd. v. C.C.E., Noida [2015 (318) E.L.T. 529 (S.C.)];*
(iii) *M/s. Holostik India Ltd.&ors.v. C.C.E., Chennai-II[2015 (325) E.L.T. 408 (Tri.-Chennai)];*
(iv) *M/s. Track Pack (I) Ltd. v. C.C.E., Noida [2009 (241) E.L.T. 274 (Tri.-Del.)]*

and submitted that in all the above decisions, it has been held that security hologram manufactured using stamping foil will get classified under 4901 of CETA.

3.1 *Per contra*, Shri V.R. Pavan Kumar Learned Departmental Representative appeared for the Revenue reiterated the findings of the Original Authority. He submitted that based on the report given by the Central Institute of Plastics Engineering & Technology, Ministry of Chemicals and Fertilizers, Govt. of India, that the hologram is made of metalized polyester (PET) film and this is printed on the metalized surface and coated with acrylic based adhesive, the Commissioner passed the order impugned and confirmed that the substrate is a plastic material and falls under CETH 3919. The test report is not disputed and thus in the instant case the raw material being PET film is appropriately classifiable under CETH 3919.

3.2 He submitted that except for the goods of heading 3918 or 3919, plastics, rubber 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. It is evident that the impugned goods would fall under the chapter heading of 3919 even if the printed matter is not merely incidental to the primary use of the goods. In the instant case, high Security Holograms is not merely incidental to the primary use of the goods and in such circumstances the subject goods would be classified under Chapter Heading 3919 and not under Chapter 49.

3.3 He further submitted that the security of Hologram is ensured by the nature of its adhesiveness to the surface pasted wherein when attempts were made to tamper the hologram it leaves an imprint on the surface indicating that the security of the product is compromised. It is evident that the hologram security is ensured by the tamper proof adhesiveness of the High

Security Hologram. In the instant case the high security hologram purpose is to ensure high security to the products by using special adhesive and accordingly classifiable under CETH 3919 and not under CETH 4911 as claimed by the appellants.

3.4 He relied on the following case laws:-

1. CCE, Vapi Vs. The Paper Products
   2015 (323) ELT 664 (S.C.)

2. MetagrahsPvt. Ltd., Vs. Collector of CEx, Bombay - 1996 (88) ELT 630 (S.C.)

in support of his arguments and submitted that the Apex Court in these cases held that "each case has to be considered as its own facts and test determinative, whether a particular product falls within one class or the other depends upon the nature of the product with reference to the facts of each case and to cull out what is the true determining purpose for which the product is used and is treated by the trades as well as consumers of the said product." In view of the above, it is evident that each case has to be evaluated based on the facts and circumstances of the particular case and also the true determining purpose for which the product is used. In the instant case the high security hologram purpose is to ensure high security to the products by using special adhesive and this special adhesive ensures tamper evident therefore, the High Security Hologram is accordingly classifiable under CETH 3919 and not under CETH 4911. He prayed that the impugned orders may be upheld.

4. Heard both sides, have gone through the impugned Orders-in-Original and we have also carefully gone through the decisions relied upon during the course of arguments.

5. A perusal of one of the crucial documentary evidences, referred to by both the Appellant and the Revenue, namely the Test Report No. 46721 dated 14.05.2015 of Central Institute of Plastics Engineering and Technology, Chennai which is placed at page 234 of the Appeal Memo, the analysis of the said authority reveals that sample 2 "..... is considered as stamping foil which is made by coating with release agent on polyethylene terephthalate(PET – Polyester), lacquer coating vaccum metallization. This foil is considered as stamping foil which is used as raw material for manufacturing of the finished products of hologram…".

6. There is no disputes that tariff heading 3212 specifically covers stamping foils; it is worthwhile to refer to Explanatory Note for the CH 3212, which reads as under:-

> ***"…… (B) STAMPING FOILS***
>
> *These products (also known as blocking foils) consist of thin sheets of either:*
>
> *(1) Metallic powder (including powder of precious metal), or pigment, agglomerated with glue, gelatin or other binder, or*
> *(2) Metal (including precious metal) or pigment, deposited by vaporisation, cathodic sputtering, etc., on a supporting sheet of any material (e.g., paper, plastics).*
>
> *They are used, with the application of pressure (and generally of heat), for printing book covers, hat bands, etc., by hand or machine.*
>
> *Metallic foils produced by rolling or hammering are classified according to the constituent material (e.g., gold foil in heading 71.08, copper foil in heading 74.10, aluminium foil in heading 76.07)."*

From the above, it could be seen that even where the supporting sheets of plastic are there, still they could be classified under CTH 3212. It cannot thus be said that all stamping foils with supporting plastic sheets are to be classified under CTH 3919, which will renderCTH 3212*Otiose.*

7. We find the findings of the co-ordinate Bench of CESTAT in the case of *M/s. Holostik India Ltd. v. C.C.E.(supra)*very useful, wherein it has observed, under similar circumstances, as under :

> ***"7.*** *In this regard, the Tribunal Co-ordinate Bench of Mumbai in the case of Holographic Security Marking Systems Pvt. Ltd. v. CCE, Mumbai - 2003 (151) E.L.T. 470 (Tri.-Mumbai) on an identical issue of hologram produced from stamping foils as base material has allowed the appeal of the appellant and classified the holograms under Chapter 4901. The relevant para 8 of the Tribunal's order is reproduced as under :-*
>
>> *"8. The material upon which the appellant began its work is stamping foil, with a supporting sheet of plastic. Unless the process to which the appellant subjects the material alters it to such extent that it is no longer classifiable in Heading 32.12, it will not lead to Heading 39.19. The only possible way that a stamping foil can become plastic, that we can conceive of is, to remove the metal of pigment which is deposited on the stamping foil. The fact that the stamping foil become self-adhesive will not by itself result in its ceasing to be stamping foil and becoming classifiable in Heading 39.19. The property of being self-adhesive is not the primary criterion for classifying the goods in that heading. For that they have to be of plastic and that this stamping foil is not. The contention of the departmental representative that the plastic predominates over other material made perhaps to be true. If that is the criterion for the classification of plastic, all stamping foils with the supporting sheet would fall in Chapter 39. That is however not such finding in the tariff to dictate such view. Therefore, until the product became transformed because of the printing of the material on it, it continued to be stamping foil and at no stage became converted into plastic of Heading 39.19. The Commissioner himself accepts that stamping foil was the starting point of the manufacture, and there is not slightest evidence to show use of other material. The test report that the Commissioner relies upon cannot be considered*

> *to have effect of saying that it was not used. The words of the test report, that the hologram is made of polyester plastic on one side, the other side having a pattern, are not inconsistent with the goods having been manufactured out of stamping foil with a base of plastic. Hence, the explanation contained in Note 2 to Section VII will not apply. The goods are therefore, rightly classifiable in Heading 49.01 that the appellant claimed. Penalty therefore, was not imposable on the appellant and its director."*

It is relevant to see that the above order has been upheld by the Hon'ble Supreme Court and the Revenue's appeal was dismissed in the case of CCE v. Holographic S.M.S. Pvt. Ltd. (supra). The ratio of the Apex Court decision squarely applies to the facts of the case as the base material used for making hologram is "stamping foil" which is classifiable under 3212. Further, we find that the adjudicating authority had relied the Tribunal Bench (Delhi) order passed in appellant's own case pertaining to Noida unit. On appeal by the appellant, the Hon'ble Supreme Court set aside the above Tribunal's order and also set aside the Board's Circular dated 21-6-1996 relied by the Tribunal and also relied by adjudicating authority. The relevant paragraph of Apex Court order is reproduced as under :......."

It is pertinent to note that this order has subsequently been tested before the Hon'ble Apex court and the Hon'ble Supreme court in *M/s. Holostick India Ltd. v. Commissioner of Central Excise, Noida* – reported in *2015 (318) E.L.T. 529,* has observed as under :

"23. *It is clear that the aforesaid reasoning is flawed in more than one respect. After setting out the Explanatory Notes to HSN and the conclusion of such Note that products such as "comic stickers" would not fall within Entry 39, the CESTAT arrives at the exactly opposite result without telling us why. Secondly, we are again left guessing as to how the self-adhesive aspect of the product is more important than the security aspect of the said product. Equally, there is no reasoning so far as this aspect is concerned. We, therefore, find that the CESTAT is not correct in the finding reached above and the judgment dated 19-12-2003 of the CESTAT is, therefore, set aside.*

24. *Only one further thing remains. Various arguments were made by both sides on the Rules of Interpretation*

> *of the First Schedule to the Central Excise Tariff Act, 1985. ShriRadhakrishnan referred to and relied upon Rule 1 and ShriLakshmikumaran referred to and relied upon Rule 3. We do not think it necessary to go into any of these Rules for the purposes of this judgment inasmuch as we have found as a fact, in accordance with Note 2 to Entry 49, that the security hologram part of the product in question is primary and the self-adhesive part only incidental insofar as the user of the said goods is concerned. With the above observations, the appeals are allowed. There will be no orders as to costs. We are informed, that the appellant has paid the duty during the pendency of these appeals. He will be entitled to a refund of the same in accordance with law."*

8. In the light of the above, we find merit in the contentions of the appellant and hence, do not approve the re-classification as made by the adjudicating authority as the classification of holograms adopted by the appellant was correct. Accordingly, the appellant has to succeed. The impugned orders are set aside and the Appeals are allowed with consequential reliefs, if any.

(Operative part of the order pronounced in open court)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(P. DINESHA)
MEMBER (JUDICICAL)

BB/Sdd