



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,

7th Floor, GST Building,

Near Polytechnic,

सातवीं मंजिल, पोलिटेकनिक के पास,

Ambavadi, Ahmedabad-380015

आम्बावाडी, अहमदाबाद-380015

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(49)11&12/Ahd-South/2018-19
Stay Appl.No. /2017-18

359370
3598

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-008 to 009-2018-19
दिनांक Date : 24-05-2018 जारी करने की तारीख Date of Issue 12/6/18

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. 06/AC/Div-I/KN/2017-18 दिनांक: 28.03.2018 issued by
Assistant Commissionr, Div-I, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Sahitya Mudranalaya Pvt. Ltd
Shreyas Vishnuprasad Pandya
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person a aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनोंक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER IN APPEAL

The below mentioned two appeals have been filed against OIO No. 6/AC/Div-I/KN/2017-18 dated 28.3.2018, passed by the Assistant Commissioner, CGST, Division I, Ahmedabad South Commissionerate, [for short "adjudicating authority"], viz

Sr. No.	Name of the appellants	Appeal No.
1	M/s. Sahitya Mudranalaya Private Limited, 55/15, City Mill Compound, Kankaria Road, Ahmedabad- 380 022.	11/Ahd-South/2018-19
2	Shri Shreyas Vishnuprasad Pandya 55/15, City Mill Compound, Kankaria Road, Ahmedabad- 380 022.	12/Ahd-South/2018-19

2. Briefly, consequent to an investigation by officers of DGCEI, a show cause notice dated 19.6.2017, was issued to the aforementioned two appellants, *inter alia* alleging that M/s. Sahitya Mudranalaya Private Limited [for short appellant] had manufactured and cleared *answer books, nodh books, folders, invitation cards, letter heads/pads, envelopes, waste papers*, etc. by wrongly classifying them under chapter 49 instead of chapter 48 and had thus cleared the said goods under nil rate of Central Excise duty. The show cause notice therefore, proposed re-classification of the impugned goods, demanded central excise duty of Rs. 49,37,500/- for the period from 1.6.2012 to 2015-16 along with interest and further proposed penalty on the appellant under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002 and under Rule 27 Central Excise Rules, 2002. The notice also proposed confiscation of the goods under Rule 25 of the Central Excise Rules, 2002. Penalty was also proposed on the appellant mentioned at Sr. No. 2 under Rule 26 of the Central Excise Rules, 2002.

3. This notice was adjudicated vide the aforementioned OIO wherein the adjudicating authority reclassified the goods, confirmed the duty along with interest, imposed penalty on both the appellants. Since, the impugned goods were not available for confiscation the adjudicating authority refrained from actually confiscating the goods.

4. Feeling aggrieved the appellant(s) have filed this appeal, raising the following contentions:

M/s. Sahitya Mudranalaya Private Limited [appellant]

- that the impugned OIO has been passed without appreciating the fact and summations made;
- that the adjudicating authority overlooked the basic summation that the appellant is from the printing industry and produces the products which cannot be sold as general stationery in stationery stores but are meant for specific purposes;
- that they wish to rely on the case of *Lovely Offset Printers [2018]91 taxmann.com 280 (Chennai)*, *Tata Consultancy Services [1991(53)ELT 454]*;;
- that para 4(d) of circular no. 1052/01/2017-Cx dated 23.2.2017, clearly covers the stand of the appellant;
- that all the products are very specific in nature and cannot be sold outright in open market in stationery shops and hence duly qualify to be part of the printing process only & is wrongly interpreted to be classifiable under chapter 48 instead of chapter 49;
- that products of the appellant is classifiable under chapter 49;
- that the impugned order is a non speaking order and has not rendered any finding on the aspect of applicability of extended period of limitation;

- that they wish to rely on the case of Thermax Instrumentation [2016(42) STR 19];
- that there was no deliberate intention on the part of the SMPL to either not disclose the correct information or to evade payment of duty;
- that there was no positive act on the part of SMPL to evade duty nor was there any proof adduced by the revenue and a mere confusion on the part of the classification in department does not constitute suppression of facts;
- that penalty could not be imposed in the facts of the case; that they wish to rely on the case of HMM Limited [1995(76) ELT 497(SC)];

Shreyas Vishnuprasad Pandya [appellant No.2]

- that there is no violation under rule 26 of the Central Excise Rules, 2002, on the grounds mentioned supra and same grounds as mentioned herein there is no scope of levy of personal penalty on the said appellant.

5. Personal hearing in respect of both the appeals was held on 17.5.2018. Shri Pravin Dhandharia, Chartered Accountant, appeared on behalf of the both the appellants. He reiterated the grounds of appeal and also submitted two answer book samples.

6. I have gone through the facts of the case, the grounds of appeal and the oral submissions made during the course of personal hearing. The question to be decided is whether the confirmation of demand along with interest and imposition of penalty, consequent to the re-classification of the seven products is correct or otherwise. The second question to be decided is whether the adjudicating authority was correct in imposing penalty on the appellant mentioned at Sr. No. 2 of the table *supra*.

7. The products manufactured and cleared by SMPL, which have been reclassified vide the impugned OIO by the adjudicating authority, are as follows:

Sr. No.	Product description	Classified by SMPL under CETSH	Re-classified by the adjudicating authority under CETSH
1	Answer books	49011020	48202000
2a	Avlokan Arjiyo ni Nodh book with writing space	49019900	48201010
2b	Gun chakas ni Arjiyo ni Nodh Book with writing space	49019900	48201010
2c	Gunchakas ni Arjiyo ni Nodh Book with writing space	49019900	48201010
2d	Nondh book Gunchakas ni Arjiyo with writing space	49019900	48201010
2e	Receipt and payment book with writing space	49019900	48201010
3	Folder for inserting certificates	49011020	48203000
4	Letter head/pads	49011020	48201020
5	Waste paper	49019900	48239090
6	Invitation card	49011020	49090010
7	Envelope	49111090	48171000

8. *The relevant extract of Heading 4820 and 4901 of the First Schedule to Central Excise Tariff Act is reproduced as hereunder: -*

4820 REGISTERS, ACCOUNT BOOKS, NOTE BOOKS, ORDER BOOKS, RECEIPT BOOKS, LETTER PADS, MEMORANDUM PADS, DIARIES AND SIMILAR ARTICLES, EXERCISE BOOKS, BLOTTING PADS, BINDERS (LOOSE-LEAF OR OTHER), FOLDERS, FILE

	<i>COVERS, MANIFOLD BUSINESS FORMS, INTERLEAVED CARBON SETS AND OTHER ARTICLES OF STATIONERY, OF PAPER OR PAPERBOARD; ALBUMS FOR SAMPLES OR FOR COLLECTIONS AND BOOK COVERS, OF PAPER OR PAPERBOARD</i>
4820 10	<i>Registers, account books, note books, order books, receipt books, letter pads, memorandum pads, diaries and similar articles;</i>
4820 10 10	<i>Registers, account books:</i>
4820 10 20	<i>Letter pads</i>
4820 10 90	<i>Other</i>
4820 20 00	<i>Exercise book</i>
4820 30 00	<i>Binciers (other than book covers), folders and file covers</i>
4820 40 00	<i>Manifold business forms and interleaved carbon sets</i>
4820 50 00	<i>Albums for samples or for collections</i>
4820 90	<i>Other:</i>
4820 90 10	<i>Blotting papers cut to size</i>
4820 90 90	<i>Other</i>
4901	<i>PRINTED BOOKS, BROCHURES, LEAFLETS AND SIMILAR PRINTED MATTER, WHETHER OR NOT IN SINGLE SHEETS</i>
4901 10	<i>In single sheets, whether or not folded</i>
4901 10 10	<i>Printed books</i>
49011020	<i>Pamphlets, booklets, brochures, leaflets and similar printed matter -Other</i>
4901 91 00	<i>Dictionaries and encyclopaedias, and serial instalments thereof</i>
4901 99 00	<i>Other</i>

General Note' to Chapter 49:

With the few exceptions referred to below, this chapter covers all printed matter of which the essential nature and use is determined by the fact of its being printed with motifs, characters or pictorial representations. On the other hand, besides the goods of heading 48.14 or 48.21, paper, paper board or cellulose wadding, or articles thereof, in which the printing is merely incidental to their primary use (e.g. printed wrapping paper and printed stationery) fall in Chapter 48...

9. Before deciding the aforementioned questions, I would like to reproduce certain important chapter notes, relevant extracts of circular, etc.

Chapter 48 of the Central Excise Tariff Act, 1985

Chapter notes

10. *Heading 4820 does not cover loose sheets or cards, cut to size, whether or not printed, embossed or perforated.*

12. *Except for the goods of heading 4814 or 4821, paper, paperboard, cellulose, wadding and articles thereof, printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of goods, fall in chapter 49.*

14. *Notwithstanding anything contained in Note 12, if 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 the respective headings as long as such products are intended to be used for further printing or writing.*

[chapter note 14 inserted on 28.5.2012]

Circular No. 1052/1/2017-CX, dated 23-2-2017

(d) Answer books with or without OMR, answer booklets and passbooks - These are not loose sheets, cut to size and therefore these are not out of the purview of heading 4820. Printing on these goods is merely incidental and such goods are intended to be used for further printing or writing. Answer books with or without OMR and answer booklets are intended for completion in manuscript while passbooks are

intended for completion in manuscript or typescript. Provisions of Chapter note 12 and 14 of Chapter 48 and provisions of Rule 4 of General Interpretative Rules are applicable in the matter and therefore these are classifiable under heading 4820.

10. Against the classification as decided *supra* by the adjudicating authority, the appellant has contended that the adjudicating authority overlooked the basic summation that the appellant is from the printing industry and produces the products, which cannot be sold as general stationery, in stationery stores but are meant for specific purposes; that para 4(d) of circular no: 1052/01/2017-Cx dated 23.2.2017, clearly covers the stand of the appellant; that all the products are very specific in nature and cannot be sold outright in open market in stationery shops and hence duly qualify to be part of the printing process only & is wrongly interpreted to be classifiable under chapter 48 instead of chapter 49. The adjudicating authority's reasoning for re-classifying, is as under viz.

(i) *Answer books:*

The answer books of M/s. SMPL are printed with security features which are specific, based on requirement of clients; that primary use of the answer book is for writing and that printing for security is only incidental; that without writing space the answer book has no value; that in terms of para 4(d) of circular dated 23.2.2017, supra, the answer books of the appellant correctly fall under 4820.

(ii) *Avlokan Arjiyo ni Nodh book with writing space, Gun chakas ni Arjiyo ni Nodh Book with writing space, Gunchakas ni Arjiyo ni Nodh Book with writing space, Nondh book Gunchakas ni Arjiyo with writing space, Receipt and payment book with writing space:*

These goods are basically used for keeping accounts, entry books, receipt and payments; that they are manufactured in different shapes and sizes; that specific classification of these goods already exist under CETSH 48201010.

(ii) *Folder for inserting certificates.*

These goods merit classification under CETSH 48203000 being specific entry as binders.

(iii) *Letter head/pads.*

These merit correct classification under CETSH 48201020 being specific entry as letter pads.

(iv) *Waste paper.*

The waste merit classification under CETSH 48239090 as waste is generated while printing on books/other items, which is thereafter sold as waste.

(v) *Invitation card.*

These goods merit classification under CETSH 49090010 as this is a specific entry for greeting or wedding cards.

(vi) *Envelope.*


These goods merit classification under CETSH 48171000 which is a specific entry for envelop.

11. Now as far as goods mentioned at Sr.No.1 is concerned i.e Answer Books, the appellant have furnished sample copy of the said goods manufactured and supplied by them to their concerned customers. They have also supplied the contract copy and the requirement to be printed on the copy. I find that there are 34 security features mentioned in the contract to be published on the Answer Book. In order to appreciate the factual position, I reproduce image of the front page of Answer Book.

1.1 1.3 1.2

Answer Book - જવાબવહી

1.7

કેન્દ્ર નંબર		પાના નં. 2 પરની પરીક્ષાથી માટે અગત્યની સૂચનાઓ વાંચ્યા પછી બારકોડ સ્ટિકર અહીં ચોટાડવું. Affix the Barcode Sticker here after reading the Instructions for candidate on page-2.	
પરીક્ષાર્થીની સહી			
બેઠક નંબર Seat No.		સુખ્ય જવાબવહી	પુસ્તકવહી
બેઠક નંબર (શબ્દોમાં)		1	+
ખંડ-નિરીક્ષકની સહી નામ સાથે			=
		ફક્ત બોર્ડના ઉપયોગ માટે	

1.5 24-M-17

1.9

વિષય અને કોડ નંબર		પરીક્ષાથી માટે અગત્યની સૂચના	મુખ્ય મૂલ્યાંકન કેન્દ્રના ઉપયોગ માટે
પરીક્ષાની તારીખ		પરીક્ષાર્થીએ જવાબ લખવાનું શરૂ કરતાં પહેલાં પાના નં. 2 પરની સૂચનાઓ અવશ્ય વાંચવી.	
જવાબની ભાષા			

1.8

1.6

1.10

વેરીફાયરની સહી	સમીક્ષકની સહી	કો-ઓર્ડિ.નો. સહી
વેરીફાયરનો નિમણૂક નંબર	સમીક્ષકનો નિમણૂક નંબર	કો-ઓર્ડિ.નો નિમણૂક નંબર

૫૩


9.1 9.3 9.2

Answer Book - જવાબવહી

9.7

કેન્દ્ર નંબર _____
પરીક્ષાર્થીની સહી _____

પાના નં. 2 પરની પરીક્ષાર્થી માટે અગત્યની સૂચનાઓ વાંચ્યા પછી બારકોડ સ્ટિકર અહીં ચોટાડવું.
Affix the Barcode Sticker here after reading the Instructions for candidate on page-2.



9.4

બેઠક નંબર Seat No.									
બેઠક નંબર (શબ્દોમાં)								
પંડ-નિરીક્ષકની સહી નામ સાથે								

મુખ્ય જવાબવહી	પુરવણી	કુલ
1	+	=

ફક્ત બોર્ડના ઉપયોગ માટે

9.5

H S C વિજ્ઞાન પવાઈ 24-M-17

9.9

વિષય અને કોડ નંબર	જીવવિજ્ઞાન	056
પરીક્ષાની તારીખ	
જવાબની ભાષા	

પરીક્ષાર્થી માટે અગત્યની સૂચનાઓ મુખ્ય મૂલ્યાંકન કેન્દ્રના ઉપયોગ માટે
પરીક્ષાર્થીએ જવાબ લખવાનું શરૂ કરતાં પહેલાં પાના નં. 2 પરની સૂચનાઓ અવશ્ય વાંચવી.

9.8

વિભાગ	પરીક્ષક આપેલ સુધી	પરીક્ષક આપેલ સુધી	સમીક્ષક આપેલ સુધી	કો-ઓર્ડિનેટર આપેલ સુધી	બોર્ડના કેન્દ્રના ઉપયોગ માટે
A					
B					
C					
D					
E					
F					
સર્વેક્ષક આપેલ સુધી					
સર્વેક્ષક આપેલ સુધી					

9.6

O R I G I N A L

9.10

પરીક્ષાર્થીની સહી	સમીક્ષકની સહી	કો-ઓર્ડિનેટરની સહી
.....
પરીક્ષાર્થીનો નિમણૂક નંબર	સમીક્ષકનો નિમણૂક નંબર	કો-ઓર્ડિનેટરનો નિમણૂક નંબર
.....

12. From the above, I observe that the Answer Books manufactured by the appellant are as per the specific requirements of the customers i.e., educational institutions and it have lots of security features, according to the specific requirements of the customer's, like use of specific type of paper with special size, hidden watermark or logo of the educational institution on each page, ruled and printed in Specific color, tamper proof stickers, etc. to avoid duplication. As per the agreement, certain important specifications prescribed by their customers are as under:

1. Paper : 60 GSM Recycled Water Marked Paper as per Tender specifications.
2. Size : "21.0 cms x 39.7 cms" finally trimmed size without any variation
3. Printing : All Answer Books should be printed in black ink except in case of the Title of Answer Books for Science Stream shall be printed in a different colour ink as may be specified by the Chairman. No extra charge shall be payable for this printing in a different colour.
4. Secret code : On some pages or all pages of each Answer Book a secret code as may be prescribed by the Chairman shall be printed in the same colour of printing lines.

Further, as per contract, some security features incorporated in the Answer Books are as under:

1. Security Features of main Answer Book-24 pages (Code 24-M-17) on title page.

[i] Use of Guilloche Pattern border around the print area of title; [ii] use of Micro border with code-1 outside Guilloche Pattern border; [iii] use of Guilloche pattern outside the boxes of Seat No. & Centre No. block; [iv] Use of Guilloche Pattern inside the box of No. of Answer Book + Supplementary Answer Books and in the box of important note for candidate; [v] Use of Micro letters border with code-1 around the box of Answer Book code i.e 24-M-17; [vi] Use of Micro letters border with code-2 around the box of marks; [vii] Use of Line pattern in the box where the Barcode stickers are affixed; [viii] Use of Background area by line instead of halftone screens i.e the gray area on title page is printed by vertical lines instead of using half tone screens; [ix] Intentional errors in a code on Title page and centre page (left side) of Answer Book; [x] Word Original is printed on title by differential line patterns.

2. Security Features of Inside pages for main Answer Book-24 pages (Code 24-M-17)

[i] On inside pages No.2 & 3 code-1 printed with Micro letters in the design pattern ; [ii] On all pages code-2 printed in Micro letters between the two lines of the top margin in horizontal lines; [iii] On all pages code-1 printed in Micro letters between the two lines of the side margin in vertical lines; [iv] All right side pages will have code -2 printed in Micro letters at the number of line which the page number is indicating i.e in case of page-3 the code

is printed in the third line and similarly up to page 23 it will be at twenty third line; [vi] Page numbers are printed with circle using Guilloche Pattern design and outside the circle code-1 in Half tone screen; [vii] use of Guilloche Pattern around the Box of question No. from page No.3 to 24.

3. Security Features of Answer Book-16 pages (code 16-M-17) on Title page

[i] Use of Guilloche Pattern border around the print area of title; [ii] Use of Micro letters border with code-1 outside Guilloche Pattern border; [iii] Use of Guilloche Pattern outside the boxes of Seat No. & Centre No. block; [iii] Use of Guilloche Pattern outside the boxes of Seat No. & Centre No. block; [iv] Use of Guilloche Pattern inside the box of No. of Answer Book + Supplementary and in the box of important note for candidate; [v] Use of Micro letters border with code-1 around the box of answer book code i.1 16-M-17; [vi] Use of Micro letters border with code-2 around the box of markers; [vii] Use of Line Pattern in the box where the Barcode stickers are affixed; [viii] Use of background area by line pattern instead of halftone screens i.e the gray area on the title page is printed by horizontal and/or vertical lines instead of using half tone screen; [ix] Intentional errors in a code on Title page and centre page (left side) of Answer Book; [x] Word Original is printed on title by differential Line patterns.

4. Security Features of Inside Pages of Answer Book-16 pages (Code 16-M-17)

[i] On side pages no.2 & 3 code-1 printed in Micro letters in the design pattern; [ii] On inside pages no.2 & 3 code-1 printed in Micro letters in the design pattern; [iii] On all pages code-1 printed in micro letters between the two lines of the side margin in vertical lines; [iv] All right side pages will be having code-2 printed in Micro letters at the number of line which the page number is indicating i.e in case of page-3 the code is printed in the third line and similarly upto page-15 it will be at fifteen line; [v] All left side pages will be having Answer Book code 16-M-17 printed at the number of line which the page number is indicating i.e in case of page -4 the code is printed in the fourth line and similarly upto page-16 it will be at sixteen line; [vi] Page numbers are printed within circle using Guilloche Pattern design and outside the circle code-1 is used in Half tone screen; [vii] Use of Guilloche Pattern around the Box of Question NO. from page 3 to 16.

13. It can be seen from the above that the details depicted on the Answer Books indicate that the said book arise from a specific organization for a specific purpose. The department's contention, based on the chapter notes to chapter 48 and Board's Circular dated 23.02.2017, is that printing on the goods in question is merely incidental does not appear to be correct. Therefore, the critical test to be applied for classification of the impugned products under Chapter 48 is if "the printing is incidental to their primary 'use'".

14. As per English Oxford Dictionary, the word 'incidental' means, 'Happening as a minor accompaniment to something else'. As per free English Dictionary, 'incidental' means - occurring or likely to occur as an unpredictable or minor consequence'. In other words, the dictionary meaning shows that "incidental" means - happens as a result of an activity or happening or likely to be happened in a unplanned or subordinate conjunction with something else. In the instant case, looking into the agreement and work contract, it is very much clear that the printing of Answer Books carried out by the appellant is intentionally for a specific purpose. If any of the features prescribed by the customer is missing while printing the answer books, the same will be rejected as non-usable. Therefore, the argument of the department that printing on the goods in question is merely incidental has no merit.

15. The chapter note under Chapter 48 clearly holds that only when printing is incidental and not essential for the primary use, such printed products would fall under Chapter 48 and when the printing is considered essential, it would fall under Chapter 49. It is very much clear from the above discussion that the Answer Books are printed on specific demand with various security features (micro printing and security thread stitching) which make each Answer Sheet unique to a University/Board and student that two for a very specified and controlled purpose. Without these critical and substantial printed features the Answer Sheets would simply not be used as such. The Answer Books generally will have one OMR front cover page (for recording candidate information and examination details by the examinees writing examination), inner ruled pages, and instruction to the students, etc. Thus, it must be held that unlike common items of stationery, the Answer books contain printed material and features that by no stretch of imagination can be considered merely incidental to their use. On the contrary it is only the printing that gives each of these products its essential character. It is also a fact that because of the special printing on them, these products, have fiduciary value far in excess of their intrinsic value, which confirms that they are not to be treated as common items of stationery. Note 12 to Chapter 48 explicitly states that when the printing on paper, paperboard cellulose wadding and articles thereof is not merely incidental to the primary use of the goods, the products would fall in Chapter 49. As already seen above, Chapter 49 covers all printed matter of which the essential nature and use is determined by the fact of its being printed with motifs, characters or pictorial representation (excluding certain items like wallpaper and wall coverings); Thus, having held that the said products contain printing that gives them their essential character then, the goods in question must fall under Chapter 49. In the circumstances, the adjudicating authority classifying the said product under chapter 48, by taking shelter of para (d) of Circular No. 1052/1/2017-CX, dated 23-2-2017 is not correct as the said circular contents that printing on these goods is merely incidental. In the circumstances, it is clear that the said goods are perceived as being needed in a particular set of circumstances for giving an exam. Also, the said goods are not readily available across the counter in a stationery shop. Thus, it is clear that these are commonly and commercially treated distinctly from stationery items and as products of the printing industry. Thus, the said good is properly classifiable under chapter 49.

16. In support of my above view, I rely on decisions of M/s Data Processing Forms Pvt Ltd [2014 (311) E.L.T. 161 (Tri. - Ahmd.)], wherein it has been held that:



A plain reading would mean that even if a product falls under the general description of Tariff Heading 48.20, it would not get classified thereunder if the printed motifs, characters or pictorial representations are not merely incidental to the primary use of goods. The products with motifs, characters or pictorial representation may get covered under Chapter Heading 48.20, however by virtue of Chapter Note 12, if the printing is incidental to its primary use, it will fall under Chapter 49. Hence, in our considered view, if the printing that 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."

17. The appellant has submitted an agreement made between the Gujarat Secondary and Higher Secondary Education Board for supply of Answer Books as per the specifications, rates, terms and conditions prescribed. In the contract, 34 security features have been mentioned. As per the agreement and contract, the Answer Books should have specific quality, size, printing pattern, security code and numbering of page etc. In such situation, it is very clear that these are customized printing and are not merely incidental to the primary use of the goods; that such manifold printed forms is customer specific and cannot be sold in open market. Therefore, I observe that that the products manufactured by the appellant are not printed matter requiring filling up of details and which can be used commonly or available in any shop but the product is printed as per requirement of customer.

18. Further, I observe that the Principal Bench of the Hon'ble Tribunals in case of [i] M/s syndicate labels [2017 (7) G.S.T.L. 81 (Tri. - Del.)]; Hon'ble Tribunal's decision in case of M/s Srikumar Agencies [2016 (344) E.L.T. 507 (Tri. - Bang.)]. The Principal Bench in case of M/s Syndicate Labels held that:

"7. We have perused the samples of the product in dispute. It is reported that such wrist bands are used in places like music festivals, amusement parks, etc. Even though the items are made out of non-woven fabric, the essential use and character of the items is based on the matter printed on such wrist band. In the samples produced at the time of hearing, we find that the name of the resort where the wrist bands are meant to be used along with the running serial number are printed on the items. After perusing the samples we are convinced that without the printing as required by the customers, the unprinted roll will be of no use for the purpose. Hence printing is not merely incidental to but is for the primarily use of the product. Accordingly the goods are rightly classifiable under 4911 99 90 and will be eligible for clearance at 'Nil' rate of duty."

In case of M/s Srikumar Agencies supra, the Hon'ble Tribunal has categorically discussed the issue regarding the products which emerge after printing on paper, polyethylene coated paper and on PVC films. The Hon'ble Tribunal categorically held as under:

"17.1 The printing was claimed by the assesseees to be incidental to the primary use of wrapping the product. Printed paper could fall either under Chapter 48 or Chapter 49. When the printing is incidental to the primary use, the end product continues to fall

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under Chapter 48. When the printing is essential and serve a definite purpose then the printed product falls under Chapter 49. Therefore, it becomes necessary to determine the nature and effect of printing undertaken in these cases."

18. Thus in these cases, the printing undertaken on paper/paper board, cannot be considered as incidental to the purpose of packing and the printing is essential and serve a definite purpose. The distinct identity and the end-use is definitely imparted by the sophisticated printing of materials in different colours and material indicating information sought to be conveyed to the customers for the purpose of promoting the product and also to meet the statutory requirement. Therefore, the resultant products are to be treated as products of printing industry.

19.1 Coming to the printing activities undertaken on paper for the purpose of packing of agarbathis, it is noticed that the details printed indicated brand of agarbathis, name of the manufacturer and the MRP. The printing was in four different languages viz. Tamil, Kannada, Hindi and English. Similar printing activities were undertaken on PVC films. The resultant products are "labels" much different from "paper"/"PVC films" and serve a purpose different from the paper/PVC films.

19.2 In other words, the activities of printing undertaken are essential and not incidental and serve definite purpose as claimed by the Department and, therefore, results in emergence of products with new characteristics, new names and end-uses and, therefore, amount to manufacture.

19.3 The printed PVC films, as already noted, have definite end use different from mere use as packing material. In this regard, Note 2 to Section VII of the Central Excise Tariff Act, which is relevant, reads as follows :-

"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 not merely incidental to the primary use of the goods, fall in Chapter 49."

Therefore, they fall outside the Chapter of 39. However, as these activities which gave the essential characteristics and new end-use are sophisticated printing activities" undertaken in the printing industry, the resultant products deserve to be classified as products of printing industry under sub-heading 4901.90.

19. In view of above discussion, I do not find any merit in the classification of Answer Books under chapter 48.

20. As regards goods mentioned at Sr. No. (ii), I observe that the adjudicating authority has held that these goods are basically used for keeping accounts, entry books, receipt and payments; that they are manufactured in different shapes and sizes; that specific classification of these goods already exist under CETSH 48201010. The appellant contended that all the products are very specific in nature and cannot be sold outright in open market. The classification of the goods sought by the adjudicating authority under 48201010 stipulates a specific description of "Registers and accounts book". As stated above, the goods cannot be retained under chapter 48 when the material printed is of a specified nature and a definite purpose of identifying the product. In the circumstances, in view of above discussion and following ratio of the above decision, the product manufactured by the appellant defers



from specified description of "Register and accounts Books" mentioned under chapter 48 and accordingly the said good is also classifiable under chapter 49 as contended by the appellant.

21. In respect to sr. no. (iii), CETSH 48203000, specifically covers binders (other than book covers), folders and file covers and Sr. no. (iv), CETSH 48201020, covers letter pads; sr. no. (v), CETSH 48239090 covers 'others'; sr. no. (vi), CETSH 49090010, covers greetings or wedding cards which is akin to invitation cards; sr. no. (vii), CETSH 48171000, specifically covers envelopes. I observe that all these goods have specific entry in the tariff heading. In the circumstances, I uphold the order of adjudicating authority. Therefore, I find that the re-classification done by the adjudicating authority in respect of goods mentioned at Sr No. (iii) to (vii) is correct. The classification of goods mentioned at Sr.No. (i) and (ii) above are classified under chapter heading 49011020 and 49019900 respectively, as contended by the appellant.

22. In view of above discussion, I classify the products in question as under:

Sr. No.	Product description	Classified under CETSH
1	Answer books	49011020
2a	Avlokan Arjiyo ni Nodh book with writing space	49019900
2b	Gun chakas ni Arjiyo ni Nodh Book with writing space	49019900
2c	Gunchakas ni Arjiyo ni Nodh Book with writing space	49019900
2d	Nondh book Gunchakas ni Arjiyo with writing space	49019900
2e	Receipt and payment book with writing space	49019900
3	Folder for inserting certificates	48203000
4	Letter head/pads	48201020
5	Waste paper	48239090
6	Invitation card	49090010
7	Envelope	48171000

23. In view of above, I hold that the demand raised by the adjudicating authority is not sustainable in respect of goods mentioned at 1, 2a to 2e of above table. The rest of the demand in respect of other products confirmed by the adjudicating authority is proper and correct. Therefore, I modify the demand accordingly. As regards penalty imposed on the appellant, since the appellant has never brought into the notice of concerned authority regarding difficulties faced with regard to classification of said goods mentioned at 3 to 7 of above table, equal penalty to duty confirmed is imposable. Therefore, I modify the same to the quantum of duty upheld in respect of said goods mentioned.

24. Now coming to the penalty imposed on the appellant mentioned in Sr. No. 2 of para 1 above, I find that the matter involves interpretation of law and provisions and major portion of demand is not sustainable, I do not find any merit with regard to imposition of penalty on the appellant No.2. Therefore, I set aside the same.

25. In view of the foregoing, the appeal filed by the appellant is partially allowed and the appeal of appellant No.2 is allowed.



26. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
26. The appeal filed by both the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Date : .5.2018

Attested

Suby 2/6/18
(*MAHESH V. V.*)
Superintendent (Appeal),
Central Tax,
Ahmedabad.

By RPAD.

To,

M/s. Sahitya Mudranalaya Private Limited, 55/15, City Mill Compound, Kankaria Road, Ahmedabad- 380 022.	Shri Shreyas Vishnuprasad Pandya 55/15, City Mill Compound, Kankaria Road, Ahmedabad- 380 022.
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Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad South.
3. The Deputy/Assistant Commissioner, Central Tax Division-I, Ahmedabad South.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad South.
5. Guard File.