



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय
Office of the Commissioner (Appeals)
केंद्रीय जीएसटी अपील आयुक्तालय - अहमदाबाद
Central GST Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



☎ 26305065-079 :

☎ 26305136 - 079 :

DIN-20210264SW0000777B3F

स्पीड पोस्ट

- क फाइल संख्या : File No : V2(48) 2/EA-2/Ahd-South/2020-21
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-67/2020-21**
दिनांक Date : 29.12.2020 जारी करने की तारीख Date of Issue : 09.02.2021
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar, Commissioner (Appeals)**
- ग Arising out of Order-in-Original No. 07/DC/Div-I/MK/2019-20 dated 14.01.2020
passed by the Deputy Commissioner, Central GST, Division-I, Ahmedabad South.
- ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant
Appellant : The Deputy Commissioner, Central GST,
Division – I, Ahmedabad South.
Respondent : M/s Sahitya Mudranalaya Private Limited,
55/15, City Mill Compound, Kankaria Road,
Ahmedabad- 380 022.

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 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.



- (क) 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।
- (A) 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.
- (ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (B) 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।

- (c) 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 दिनांक 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 Rupee One Lac.

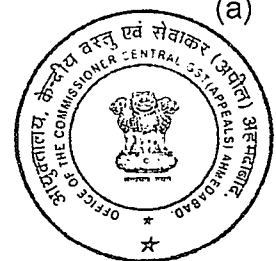
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-

Appeal to Custom, Excise, & Service Tax Appellate Tribunal:

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गत:-
- Under Section 35B/ 35E of Central Excise Act, 1944 or Under Section 86 of the Finance Act, 1994 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



(2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of 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 अनुसूचि-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 adjudicating authority shall bear 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 contained 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 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

This order arises out of an appeal filed by the Deputy Commissioner, Central GST, Division – I, Ahmedabad South (hereinafter referred as '*the appellant*') in terms of Review Order No. 02/2020-21 dated 23.06.2020 issued by the Principal Commissioner, Central GST, Ahmedabad South (hereinafter referred as the '*Reviewing Authority*') against the Order-in-Original No. 07/DC/Div-I/MK/2019-20 dated 14.01.2020 (hereinafter referred as the '*impugned order*') passed by the Deputy Commissioner, Central GST, Division – I, Ahmedabad South (hereinafter referred as '*the adjudicating authority*') in the case of M/s. Sahitya Mudranalaya Private Limited, 55/15, City Mill Compound, Kankaria Road, Ahmedabad-380 022 (hereinafter referred as '*the respondent*').

2. The facts of the case, in brief, are that the appellants are engaged in the manufacturing of excisable paper products viz. Question Papers, Cheque Books, Dividend Warrant, Printed Books, Printed Magazines, Answer Books, Mark Sheets, Loose Printed Sheets for Advertisement, OMR sheet, Envelopes, Folder, Letter Pads, Invitation Cards, Various types of Avlokan Arijioni Nodh Book, Waste of papers generated during manufacturing, etc. and these goods are falling under Chapter 48 or 49 of the First Schedule of the Central Excise Tariff Act, 1985 (hereinafter referred to as '*CETA*'). Consequent to an investigation by officers of DGCEI, Ahmedabad, a show cause notice dated 19.6.2017, was issued to the appellant, *inter alia*, alleging that they 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 of CETA instead of Chapter 48 of the Act *ibid* and had thus cleared the said goods under nil rate of Central Excise duty. It was contended by the department that since the said products are used for further printing or writing, they would fall under Chapter Heading No.4820 of CETA as per Chapter Note 14 to Chapter 48 which attract central excise duty @12.5%. Accordingly, the show cause notice issued proposed re-classification of the impugned goods and demand of central excise duty of Rs.49,37,500/- on the clearance of the said goods for the period from 01.06.2012 to 2015-16 along with interest and penalties under Section 11AC of the Central Excise Act, 1944 (hereinafter referred to as '*the Act*') read with Rule 25 of the Central Excise Rules, 2002 (hereinafter referred to as '*the Rules*') and under Rule 27 and Rule 26 of the Central Excise Rules, 2002 and confiscation of the goods under Rule 25 of the Central Excise Rules, 2002.

2.1 Since the appellant had continued with the same practice, a further Show Cause Notice dated 19.04.2018, covering the period from 2016-17 to 2017-18 (upto June, 2017) was issued in terms of Section 11A(7A) of the Central Excise Act, 1944, as per details obtained from them, demanding central excise duty amounting to Rs.12,39,809/- along with interest and for imposition of penalties under Section 11AC of the Act read with Rule 25 of the Rules and under Rule 27 of the Rules and for confiscation of the goods under



Rule 25 of the Rules. This notice dated 19.04.2018 was adjudicated vide the impugned order wherein the adjudicating authority, relying on Commissioner (Appeals), Ahmedabad Order-in-Appeal No.AHM-EXCUS-001-APP-008 to 009-2018-19 dated 24.05.2018 passed in respect of the principal SCN dated 19.06.2017, dropped the demand amounting to Rs.12,34,070/- on the goods, Answer Books, Gun Chasasni Arjioni Book and Receipt and Pmt Book with writing space by holding their classification under Chapter 49 of CETA and confirmed the duty along with interest on the remaining goods, Waster Paper, Invitation Card and Envelope by holding their as proposed in the Notice. Penalties were also imposed on the appellant under Section 11AC of the Act read with Rule 25 of the Rules and under Rule 27 of the Rules. Since the impugned goods were not available for confiscation, the adjudicating authority refrained from actual confiscation of the goods.

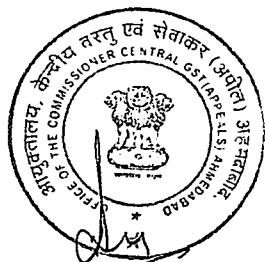
3. Being aggrieved with the dropping of demand amounting to Rs.12,34,070/- vide the impugned order, the appellant department has filed the present appeal on the following grounds:

- (a) The complete reliance on the Commissioner (Appeals), Central Tax, Ahmedabad OIA No.AHM-EXCUS-001-APP-08 to 09-18-19 dated 24.05.2018 by the adjudicating authority is not correct as the said OIA was accepted by the department on the monetary limits and not on merit;
- (b) Section 35R(2) of the Central Excise Act, 1944 provides for filing of the appeal in this periodic SCN case, i.e. similar to case decided by the OIA No.AHM-EXCUS-001-APP-08 to 09-18-19 dated 24.05.2018. Therefore, filing of the appeal in the present OIO is in line with the provisions of the Act;
- (c) A conjoint reading of Chapter Note 12 and 14 of Chapter 48 of CETA, 1985 would mean that in case of goods of chapter 48, except for those falling under 4814 or 4821, would be classifiable under Chapter 49 if printing is not incidental to primary use of the product and paper and paper product falling under Chapter heading 4811, 4816 or 4820 would continue to be classified under chapter heading 4811, 4816 or 4820 even if the same are printed with any character, name, logo, motif or format, as long as such products are intended to be used for further printing or writing;
- (d) In case of products falling under Chapter 4820 the same should be classified under CETH 4820 only even if any character, name, logo, motif or format is printed if the same are intended to be used for further writing or printing. It is a fact that subject goods are to be further used for writing and for the same writing space is also provided. The adjudicating authority has failed to appreciate the fact that the impugned products though were printed in accordance with specific requirements of the client of the respondent, the same were to be put to further use of writing and this fact is not denied even by the respondent. Thus, in terms of Chapter Note 14 of



the Chapter 48 of CETA, 1985, the subject products ought to have been classified under Chapter 48 and not under Chapter 49.

- (e) Further, there is no such condition that for classification of subject goods under Chapter 48, the same should be available for over the counter sale. It is pertinent to mention that though the presence of security features is overly emphasized, the same cannot wipe out the fact that even after printing the subject goods are to be used for further writing. Accordingly, the adjudicating authority relying on the Commissioner (Appeals) OIA has grossly erred in holding the subject goods classifiable under chapter 49 in total disregard to chapter note 14 of Chapter 48 of CETA, 1985;
- (f) It is a fact that answer sheet for each university or institute would be unique to their requirement and just because the answer sheets are unique to requirement of a particular client, it cannot be said that the same would merit classification under chapter 49 as the fact remains that the same would be used for further writing after all the printing is done. Had it been the intention of the Government, there would not have been any chapter note 14 to chapter 48 of CETA, 1985;
- (g) In this regard, the revenue place its reliance on the decision of Hon'ble Tribunal, Delhi in case of M/s Drishti Offset Vs. Commissioner of Central Excise & ST, Bhopal [2018 (10) GSTL 502 (Tri.-Del.)];
- (h) The Board vide its Circular No.1052/1/2017-CX dated 23.02.2017 has very categorically clarified that Answer Books with or without OMR, answer Booklets and passbooks would be classifiable under heading 4820 as printing on these goods is merely incidental;
- (i) The adjudicating authority on relying on the Commissioner (Appeals) OIA, has, summarily applied the reasoning he gave in respect of goods viz. Answer Sheets, to other products without considering the fact that so called "security features" so emphasized in case of "Answer Sheets" were not at all present in the remaining products. Even otherwise, in light of Chapter Note 14 of Chapter 48 of CETA, 1985, since the said products viz. "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" and "Receipt and payment book with writing space" were also intended to be further used for writing after the said process of printing, the same would merit classification under chapter subheading 4820 10 10 instead of Chapter subheading No.4901 99 00;
- (j) The reliance placed on the decision of Hon'ble Tribunal in case of M/s Data Processing Forms Pvt. Ltd. as reported at 2014 (31) ELT 161 (Tri.-Ahmd.) is misplaced in as much as the said case pertains to a period prior to insertion of Chapter Note 14 in Chapter 48 of CETA, 1985 with effect from 28.05.2012. Prior to insertion of this chapter note, the products were rightly classified under Chapter



49 but with insertion of this Chapter Note the products of chapter heading 4820 even though printed would continue to fall under chapter 4820 if the same is to be further used for writing or printing. Thus, with insertion of Chapter note 14, it would be immaterial if the printing is incidental or otherwise if the said products are otherwise falling under chapter 4820 and are to be further used for writing or printing;

- (k) Similarly, in case of M/s Srikumar Agencies, as reported at 2016 (344) ELT 507 (Tri.-Bang.), the Hon'ble Tribunal was dealing with an entirely different product i.e., printed PVC labels and so nuances of Chapter Note 14 of Chapter 48 of CETA, 1985 was not considered by the Tribunal. Whereas in the subject case, the products were articles of paper and paper board intended to be used for writing after the said process of printing was concluded at the respondent's premises, so would be effected by the Chapter Note 14 of Chapter 48 of CETA, 1985. Thus, the reliance was absolutely wrongly placed by the Commissioner (Appeals) on the subject decision of Hon'ble Tribunal while deciding the present case;
- (l) Further, the adjudicating authority's reliance placed on the CESTAT Principal Bench, New Delhi Final Order No.A/50227/2019-EX(DB) dated 28.01.2019 is not in line with the instant case as the subject goods are to be further used for writing and for the same writing space is also provide; and
- (m) Interest and penalty are also wrongly reduced on the basis of the above ground.

4. Personal hearing in the matter was held on 26.11.2020. Shri Pravin Dhandharia, Chartered Accountant, appeared on behalf of the respondent. He stated that the issue has been decided in their favour by the Commissioner (Appeals) for earlier period and that there was no new grounds in departmental appeal. He also stated that he would submit a written submission based on which case may be decided. No one attended the hearing from the appellant's side.

4.1 The respondent vide their letter dated 27.11.2020 submitted their reply to the appeal contending *inter alia* that:

- The entire case of department is based on pre-decided fact that printing is merely incidental in the present case, which is decided otherwise in their favour;
- The department forgets the basic rule of classification that chapter notes are not meant or empowers for reclassification of any product which are already classified elsewhere. Chapter Note 14 clearly states that the products which are already classified under Chapter 48 will remain classified therein under Chapter 48 and this doesn't empower anybody to borrow any product from any other chapter and to reclassify therein under Chapter 48. In the present case, the department is seeking



reclassification of the products which is earlier classified under Chapter 49 and well accepted by the department without any dispute;

- The appeal being matter of subsequent period and as earlier matter is already decided in their favour and present appeal is preferred by department without new grounds;
- The CBEC vide their Circular No.1052/1/2017-CX dated 23.02.2017 clarified that Answer Books with or without OMR, Answer booklets and passbooks were classifiable under Chapter heading 4820 if printing of these goods was merely incidental. In other words, if the printing was essential, the same would not be classifiable under Chapter Heading No.48.20;
- The CBEC has issued a clarification since there was dispute about classification of the products and divergent practice of assessment and this shows that there was no intention on their part to classify the product under Chapter heading 4901 being the product in question was classifiable under 4901 for a long time;
- That printing on the answer books and other nodh books is essential in the present case as the same have been secured by various securities as directed by the Gujarat Board. The answer books and nodh books are not general sheets that are available in the market. Without providing these securities, there is no value of answer books. Furthermore the security features will only distinguish the products in dispute in which printing is specific or merely incidental. Hence, the presence of security features are the most important point which Hon'ble Commissioner (Appeals) earlier have held in their favour;
- In case of Drishti Offset Vs. Commissioner of C.Ex. & S.T., Bhopal, Delhi Tribunal as reported at 2018(10) GSTL 502 have held on similar line that if printing is merely incidental, then the product would be classified under Chapter 48, which is not the present case;
- They have classified the products in dispute under Chapter heading No.4901 from inception. Merely inserting Chapter Note 14 to Chapter 48, the dispute arose whether the product would be classifiable under Chapter 48 or 49. There is no positive evidence to prove that there was an ill intention on the part of the respondent to classify the product under 49 even though it was classifiable under Chapter 48;
- The ratio of the decisions in the case of M/s Srikumar Agencies [2016 (344) ELT 507 – Tri.Bang.] and in case of Final Order No.A/50227/2019-Ex(DB) dated 28.01.2019 is directly applicable to the present case and department failed to distinguish the same on merit; and
- The judiciary has a consistent view that products from printing industry will be classified under Chapter 49 and the same is also confirmed by Hon'ble Delhi



Tribunal in case of Box Corrugators & Offset Printers [2019 (366) ELT 335] which is directly covering period of FY 2012-13 and FY 2013-14.

5. I have gone through the facts of the case, the grounds of appeal and the oral as well as written submissions made by the Respondent during the course of personal hearing. The issue to be decided in the case is as to whether the classification of the products viz. Answer Books, Gun Chakasani Arjiyoni Nodh Book and Receipt and Pmt Book with writing space manufactured and cleared by the appellant, as ordered by the adjudicating authority and the consequent dropping of demand on the same is legally correct or otherwise. It is the case of the department that with the insertion of Chapter Note 14 to Chapter 48 of CETA, 1985 with effect from 28.05.2012, the impugned products would get classified under Chapter heading 4820 irrespective of the fact of printing on them. The period involved in the case is Financial Years 2016-17 and 2017-18 (upto June, 2017).

6. At the outset, it is observed that the adjudicating authority has passed the impugned order by following the decision of the Commissioner (Appeals), Ahmedabad issued under Order-in-Appeal No.AHM-EXCUS-001-APP-008 to 009-2018-19 dated 24.05.2018 in the case of the respondent in respect of the principal SCN dated 19.06.2017, wherein he had classified the impugned products under Chapter 49 and dropped the demand on the said products under dispute in the present case, as decided in the Order in the case of principal SCN.

7. The said decision of the Commissioner (Appeals) in respect of the principal SCN dated 19.06.2017 was not accepted by the department and they have filed an appeal against the same before the Hon'ble Tribunal, Ahmedabad which was subsequently withdrawn on the ground of Government's Litigation Policy. The department has filed the present appeal on the same issue for the subsequent period as per provisions of Section 35R(2) of the Act which enables them to file appeal involving the same issue in cases where appeal was not filed against orders on the issue pertaining to previous period owing to monetary limits fixed for filing appeals.

8. Firstly, the department has contended that the complete reliance placed by the adjudicating authority on the Commissioner (Appeals) OIA No.AHM-EXCUS-001-APP-08 to 09-18-19 dated 24.05.2018 is not correct as the said OIA was accepted by the department on the monetary limits and not on merit. This contention of the department does not seem to be legally correct as the fact of acceptance of subject OIA on monetary grounds does not ipso facto give the adjudicating authority any option or authority or liberty, as adjudicating authority, to overlook the decision of the higher appellate authority on the issue. The principles of judicial discipline require that the orders of the higher



appellate authorities should be followed unreservedly by the subordinate authorities. Therefore, so long as the said OIA stands unchallenged, the same would have a binding effect on the lower authorities. For that settled view of the matter, I do not find any legal infirmity in the impugned order passed by the adjudicating authority by following the decision of the higher appellate authority on the same issue for the past period on the principles of judicial discipline, especially when there was no material change on the facts of the case for both the periods of dispute.

9. Now, coming to the issue of classification of the products under dispute, I find that the appellate authority in his decision vide OIA No.AHM-EXCUS-001-APP-08 to 09-18-19 dated 24.05.2018 in respect of the principal SCN, has classified the product "Answer Books" under Chapter heading No.4901 1020 holding that the activity of printing done by the appellant for the said product was essential in nature as it contained 34 security features as specified by the client and the printed material and features contained in the Answer Books by no stretch of imagination can be considered merely incidental to their use but on the contrary it is only the printing that gives the product its essential character and that 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). The appellate authority in his above decision had discussed at length the specific special features of the printing done by the appellant on the product Answer Books and observed 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 too for a very specified and controlled purpose and that without these critical and substantial printed features, the Answer Sheets would simply not be used as such and 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 and 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.

9.1 The department, on the other hand, in the appeal has contended that the product 'Answer Book' merits classification under Chapter heading No.4820 in terms of Chapter Note 14 of Chapter 48 of CETA. It is the contention of the department that in case of products falling under Chapter 4820, the same should be classified under CETH 4820 only even if any character, name, logo, motif or format is printed if the same are intended to be used for further writing or printing. In other words, if the goods falling under chapter heading No.4820 after printing in the above manner is used for further writing or printing, the same would remain classified under the same heading irrespective of the fact whether



the printing carried out on the said products is incidental to their use or otherwise. It is also contended that though the presence of security features is overly emphasized, the same cannot wipe out the fact that even after printing the subject goods are to be used for further writing and that this fact is not denied even by the respondent. Further it is argued that for classification of subject goods under Chapter 48, there is no such condition that the same should be available for over the counter sale.

9.2 It is observed that the department's case in the matter purely rests on Chapter Note 14 of Chapter 48 of CETA. The said Chapter Note which was inserted with effect from 28.05.2012 reads as under:

"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."

The department is contending that as per above chapter note, the product 'Answer Books', even after printing as per specific requirements of the client, would get classified under Chapter Heading No.4820 as they were intended to be used for further writing/printing and the nature of printing carried out on the product is not a relevant factor for deciding the classification of the product. In other words, the fact whether the printing carried out on the product is incidental to its primary use or otherwise would not be a defining factor for the classification of the product in the case. It is observed that the above view canvassed by the department does not seem to be in line with the clarification issued by the CBEC vide their Circular No.1052/1/2017-CX dated 23.02.2017 as per which the products 'Answer Books' and the like are held to be classifiable under Chapter Heading No.4820 on the ground that the printing on these goods is merely incidental and such goods are intended to be used for further printing or writing. The relevant portions of the Board's above referred Circular reads as under:

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

2 (e) As per Chapter Note 14 (inserted on 28.05.2012) paper and paper products of heading nos.4811, 4816 or 4820 intended to used for further printing or writing are classifiable in their respective headings even if printing is merely incidental to the primary use of goods.

4 (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.



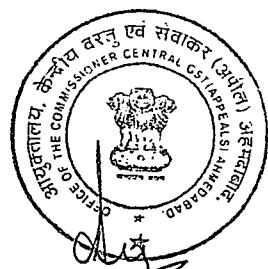
It is observed that the Principal Bench of the Hon'ble Tribunal in their decision in the case of M/s Drishti Offset Vs. Commissioner of C.Ex. & S.T., Bhopal [2018(10) GSTL 502 (Tri.-Del.)], which was relied upon by the Revenue in the case, has also observed that the printing on the products under dispute in the case under their consideration were merely incidental to the primary use of the goods.

Further, General Note to Chapter 49 given under HSN states that:

"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."

A conjoint reading of the above General Note to Chapter 49 and the Board's above mentioned clarification lead to the inference that the Chapter Note 14 of Chapter 48 does not intend to cover products of Chapter Heading 4811, 4816 or 4820 where essential nature and use of the such products/goods after printing is determined by the facts of its being printed in that manner. The mere fact that such goods are to be used for further writing or printing would not wipe out their essential character attained on account of such printing. In case of the product 'Answer Book' in the present case, the Appellate Authority in his OIA dated 24.05.2018 has categorically held that the said product contained 34 security features as specified by the client and it is only the printing that gives the product its essential character. Thus, it stand established that the essential nature and use of the said product is determined by the specialized specific security featured printing it has undergone. The specific security features of the product is not disputed by the department nor have they come up with any cogent reason/evidence to show that the specific printing done in the case was not essential in nature for the product and its further use. When it is held that the said products contain printing that gives them their essential character, then the goods in question must fall under Chapter 49. In view thereof, it is observed that the contention raised by the department for the classification of the product 'Answer Book' does not sustain before law and is therefore liable to be rejected being bereft of merits.

9.3 In respect of the remaining two products viz. Gun Chakasani Arjiyoni Book and Receipt and Pmt Book, it is observed that though these goods did not have any security features as emphasized in the case of the product 'Answer Books', they were manufactured as per specific requirement of the customers and they contain the name and logo of the client and so would get classified under Chapter 49 as per the decision of

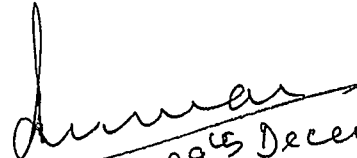


Principal Bench of the Hon'ble Tribunal, Delhi in the case of Box Corrugators & Offset Printers Vs. Commissioner of CGST, C.Excise & Cutsoms, Bhopal [2019 (366) ELT 335 (Tri.-Del.)]. Though I find force in the departmental contentions with regard to classification of these two products, the principles of judicial discipline demands me to follow the above decision of the Tribunal as it covers the dispute for the period after insertion of Chapter Note 14 also and being a decision pronounced subsequently to the decision in the case of M/s Drishti Offset Vs. Commissioner of C.Ex. & S.T., Bhopal supra, relied upon by the Revenue.

10. In view of the above discussions, it is to be held that the contentions raised by the appellant department on the merit of the issue are not sustainable in law and hence deserves to be rejected. Accordingly, I do not find any reason to interfere with the decision taken by the adjudicating authority in the matter. Therefore, the impugned order passed by the adjudicating authority is upheld and the appeal filed by the appellant is rejected being devoid of merits.

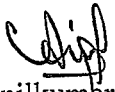
11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

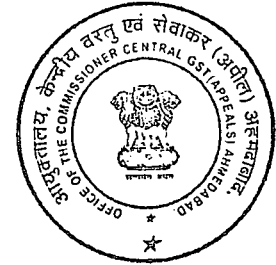
The appeal filed by the appellant stand disposed off in above terms.


(Akhilesh Kumar)
Commissioner (Appeals)
29th December, 2020.

Date : 29.12.2020

Attested:


(Anilkumar P.)
Superintendent(Appeals),
CGST, Ahmedabad.



By Speed Post/ RPAD.

To

The Deputy Commissioner,
Central GST, Division – I,
Ahmedabad South.

Appellant

M/s. Sahitya Mudranalaya Private Limited,
55/15, City Mill Compound,
Kankaria Road,
Ahmedabad- 380 022.

Respondent

Copy to:-

1. The Chief Commissioner, Central GST , Ahmedabad Zone..
2. The Principal Commissioner, CGST, Ahmedabad South.

3. The Deputy/Assistant Commissioner, Central GST & C.Ex., Division-I, Ahmedabad South.
4. The Assistant Commissioner (System), CGST HQ, Ahmedabad South. (for uploading the OIA)
5. Guard file.
6. P.A. File

