

Customs, Excise and Gold Tribunal - Delhi

Ajanta Print Arts vs Collector Of Central Excise on 19 December, 1997

Equivalent citations: 1998 (98) ELT 406 Tri Del

ORDER S.K. Bhatnagar, Vice President

1. This is an appeal against the order of Collector (A), Bombay dated 18-5-1990.
2. The appellants have sent a letter dated 18th Sept., 1996 incorporating their submissions, and enclosing a sample, and have requested that the matter may be heard in their absence. Accordingly we have perused the records and heard the ld. DR.
3. We find that this matter relates to the classification of a product called Hanging Cards. The appellants have submitted that prior to 28-2-1986, their products, "Hanging Cards" were approved as Product of Printing Industry and were allowed exemption under erstwhile Notification No. 234/82, dated 1-11-1982.
4. Hanging cards are posters with advertising material printed thereon along with sample of advertised article. They are displayed in the shops for advertising the articles attached to them.
5. As per the explanation appearing in para 3 of page 692 of HSN, read with explanation appearing on page 699 of HSN which is equivalent to Heading No. 49.01 of Central Excise Tariff. In this case printing of the advertised material is not merely incidental to their primary use. The product becomes recognisable as poster only when the same bears the printed material of the article exhibited on the cards. Therefore, by virtue of Note No. 11 of Chapter 48, these hanging cards would be out of the purview of Chapter 48. Even if they are considered as not classifiable under Chapter 49, they could not be classified under sub-heading No. 4823.90, since the said sub-heading excludes "Other articles of Board cut to size and shape." As this product is made after cutting into size and printing, it was erroneous to consider them as product other than the product cut to size and shape. (This is without prejudice to the appellants' contention that its proper classification is under Chapter 49). Taking all these material facts into consideration appellants pray that their appeal may be accepted on holding that the hanging cards are not classifiable under sub-heading No. 4823.90.
6. Ld. DR has drawn attention towards the order-in-original and order-in-appeal and reiterated the department's view. He has emphasised that hanging card is an article of paper used for displaying product and therefore it is correctly classifiable under Tariff Entry No. 4823.90. The printing is merely incidental to the primary use of the goods and therefore it cannot be classified under Chapter 49. And therefore the ld. Collector (A) was justified in upholding the order of the A.C.
7. We have considered the above submissions. We have also seen the sample of the product filed before us. We observe that it is a card displaying photograph of a lady and the printed reproduction of the coloured design for Topaz Stainless Steel Blades in the form of cut outs with flaps and incorporating designs apparently intended for advertisement of the material. It could be hanged like a calendar. However, it also appears that in the empty blank space covered by flaps the containers of the blade packet (with or without their contents) could also be possibly inserted and that is why a

question has arisen whether it is required to be considered as an article of paper or as a product of printing industry. In my opinion what strikes the eye most is the advertising aspect, therefore, there is a lot of substance in the submissions of the appellant to the effect that they are like posters with advertising material printed thereon along with sample of the advertised article. Since they are displayed in the shops for advertising the article attached to them the appellant's contention that Chapter 49 was more appropriate appears to be correct. In this respect our attention has been drawn towards the HSN Chapters 48 and 49. Chapter 48 covers articles of paper and paper board and the item is obviously an article of paper but that is by itself not sufficient to classify it under Heading 48.23 (which is a residuary entry for products falling under Chapter 48). Further Chapter 49 includes all products of printing industry. Obviously printing could be done on articles of paper or paper board or other material. Therefore what is required to be seen is which is the dominant characteristic or the main purpose for which the product is intended. In the present case the printing is not incidental or ancillary but has been done with the intention to advertise the product. It is similar to a calendar or a poster advertising a product and the mere fact that the samples of advertised product can also be attached to it does not make any substantial difference and its main purpose continues to be advertisement and display. Out of the two chapters therefore Chapter 49 is more appropriate.

8. It is not without significance that prior to the introduction of the Tariff also the product was classified under T.I. 68 (and not as an article of paper) and was allowed exemption under Notification No. 234/82 as a product of printing industry. The change in the tariff has not made any substantial difference to this position and the article, although a card made of paper or paper board is basically in the nature of advertising material in which printing for display plays the dominant role. We therefore, set aside the impugned order and accept the appeal with the direction that it should be re-classified in the above heading and reassessed thereafter taking into consideration applicability of exemption notification if any, in force during the relevant period.

9. The appeal is disposed of in the above terms.