

'REPORTABLE'

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.2729-2730 OF 2004

M/S. HOLOSTICK INDIA LTD. ... Appellant
VERSUS
COMMISSIONER OF CENTRAL EXCISE, NOIDA ... Respondent

J U D G M E N T

R. F. NARIMAN, J.

The present case concerns itself with a classification issue. The facts necessary to appreciate the controversy are as follows: -

The appellant manufactures security holograms. At the very beginning of the manufacturing process, they use coated metallised film which we are informed is classified under Tariff entry 39.20.36 after which the said film is embossed. Post embossing, there is adhesive coating and release coating which results in a hologram which ultimately is cut to size and utilised by customers of the appellant for security purposes. In the show cause notice

Signature Not Verified

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Meenakshi Kohli
Date: 2015.04.08
17:40:13 IST
Reason:

dated 04.02.2000, the Department sought to classify the

security hologram under Tariff entry 39.19 of the Central

Excise Tariff 1999-2000. In the reply dated 15.05.2000,

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the appellant disputed this and stated that, in fact, the holograms ought to be classified under Tariff entry 49.01.

The Commissioner, Central Excise, by an order dated 01.01.2002 agreed with the Department's classification and

classified the said goods under Tariff entry 39.19. An appeal to the Customs, Excise & Service Tax Appellate Tribunal (hereinafter referred to as 'CESTAT') by the appellant was dismissed. The Tribunal by the impugned judgment dated 19.12.2003, agreed with the learned Commissioner and added reasoning of its own to which we shall advert to later.

At this stage, it is important to set out the relevant tariff entries: -

"39.19
3919.00 Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls.

39.20 Other plates, sheets, film, foil and strip, of plastics, non-cellular, whether lacquered or metallised or laminated, supported or similarly combined with other materials or not.

- Of polymers of vinyl chloride:
3920.11 - - Rigid, plain
3920.12 - - Flexible, plain
3920.13 - - Rigid, lacquered
3920.14 - - Flexible, lacquered
3920.15 - - Rigid, metallised
3920.16 - - Flexible, metallised

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3920.17 - - Rigid, laminated
3920.18 - - Flexible, laminated
3920.19 - - Other

- Of regenerated cellulose:
3920.21 - - Film, plain
3920.22 - - Film, lacquered
3920.23 - - Film, metallised
3920.24 - - Film, laminated
3920.25 - - Sheet, plain
3920.26 - - Sheet, lacquered
3920.27 - - Sheet, metallised
3920.28 - - Sheet, laminated
3920.29 - - Other

- Of other plastics:
3920.31 - - Rigid, plain
3920.32 - - Flexible, plain
3920.33 - - Rigid, lacquered
3920.34 - - Flexible, lacquered
3920.35 - - Rigid, metallised
3920.36 - - Flexible, metallised
3920.37 - - Rigid, laminated
3920.38 - - Flexible, laminated
3920.39 - - Other

49.01 Printed books, newspapers, pictures and other

products of the printing industry; manuscripts,
typescripts and plans
4901.10 - Transfers (decalcomanias)
4901.20 - Maps and hydrographic or similar
charts of all kinds including atlases, wall maps,
topographical plans and globes, printed
4901.90 - Other"

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Shri V. Lakshmikumaran, learned counsel appearing for
the appellant, has raised a number of arguments before us.

According to him, a reference to the Rules fo
Interpretation of the First Schedule to Central Excise
Tariff Act, 1985, when properly read, would necessarily
yield the result that the said goods would fall only under
Entry 49.01. In the course of the argument, he also
referred to the Harmonised System of Nomenclature (called
'HSN') Explanatory Notes to which we shall advert a little
later.

He also cited before us a decision of the Tribunal in
'Holographic Security Marking Systems Pvt. Ltd. v. C.C.E.,
Mumbai [2003 (151) E.L.T. 470], an appeal from which was
dismissed by the Supreme Court

In addition, he cited a

judgment of this Court reported in 'Collector of Central
Excise, Shillong v. Wood Craft Products Ltd.' [1995 (77)
E.L.T. 23 (S.C.)] in support of the proposition that HSN
Explanatory Notes can be relied upon under certain
circumstances.

Shri K.Radhakrishnan, learned senior counsel
appearing on behalf of the Department, countered thes
submissions and sought to impress upon us that the Tribunal
judgment should be sustained. Apart from the reasoning of

the Tribunal, according to him, entry 49.01 would not at

all apply if the ejusdem generis Rule is applied to the

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various items contained therein.

Another argument was that

viewed at from any angle Tariff entry 39.19 is a specific

entry dealing with self-adhesive items of plastic, and printing on such items being merely incidental to such products would require us to maintain the classification post entry 39.20 under entry 39.19 and not under entry 49.01.

We have heard learned counsel for the parties. The first important thing to notice is that the original coated metallised film that has been used by the appellant has already been classified under sub-Heading 3920.36 as a flexible metallised film of plastic. The fact that it got laminated later would not take it out of this particular sub-Heading. The only question which arises is, after such classification, which is not disputed by the appellant, whether the relevant tariff entry would be 39.19 or 49.01.

On a cursory reading of entry 39.19, it becomes clear that it is part of a general scheme dealing with various items of plastics and must be read together with 39.20 as 39.20 begins with the expression "Other plates....". So read, it is clear that what is important is that various sheets, films, etc. of plastic should become "self adhesive" in order to attract 39.19. If, in addition, there is printed matter on such sheets, films etc., the question is whether the end product is properly classifiable under 49.01 which refers to other products of the printing industry or whether it falls within self adhesive sheets, films, etc.

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The first thing to be noticed about tariff entry 49.01 is that it refers to printed books, newspapers and pictures. Mr. K. Radhakrishnan sought to project before us that since printed books, newspapers and pictures are of general public utility in that they are all knowledge based items, the idea of this Tariff entry is to have knowledge based products of the printing industry which alone would

come under 49.01.

We are afraid we are not able to agree with the said submission. It is clear that printed books, newspapers and pictures, manuscripts, typescripts, maps and plans of all kinds, are included within this entry whether they further the public interest in knowledge being disseminated or not. In fact, it becomes clear from a reading of the Explanatory Notes to "HSN" that this Heading would include a large number of "obvious products" which are set out in this Explanatory Note as follows: -

"The heading includes the following in addition to the more obvious products:

(1) Advertising matter (including posters), year books and similar publications devoted essentially to advertising, trade catalogues of all kinds (including book or music publishers' lists, and catalogues of works of art) and tourist propaganda. Newspapers, periodicals and journals, whether or not containing

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advertising material, are however excluded (heading 49.01 or 49.02, as appropriate).

(2) Brochures containing the programme of a circus, sporting event, opera, play or similar presentation.

(3) Printed calendar backs with or without illustrations.

(4) Schematic maps.

(5) Anatomical, botanical, etc., instructional charts and diagrams.

(6) Cinema, theatre, concert, railway and other tickets.

(7) Microcopies on opaque bases of the articles of this Chapter.

(8) Screens made by printing a film of plastics with letters or symbols to be cut out for use in design work.

Such screens simply printed with dots, lines or squares are excluded (Chapter 39)

(9) Maximum cards and illustrated first-day covers not bearing postage stamps (see also Part (D) of the Explanatory Note to heading 97.04).

(10) Self-adhesive printed stickers designed to be used, for example, for publicity, advertising or mere

refers to self adhesive printed stickers. It is clear that if Shri Radhakrishnan were right, such stickers not being products of the printing industry as narrowly understood and not being "other products" if one were to apply the ejusdem generis rule, would obviously be outside this entry. The fact that Item No. 10 in the Explanatory Notes to HSN exists is also an important pointer to the construction of entry 49.01 which we have just given above.

The real question, therefore, in this appeal is the application of Note No. 2 to entry 49, which reads as follows: -

"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."

It is clear therefore, that the question resolves itself into whether printing is only incidental to the primary use of the goods or is something more than something merely incidental. We have already referred to the process hereinabove and the final product which emerges is a product which is used for security purposes. It is important to remember therefore, that the primary use of the product is security and not the quality of being adhesive. Here again, a simple example will suffice. Take an adhesive tape with a monogram printed upon it. The

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primary use of such tape is by virtue of its adhesiveness to bind and package containers in which goods are to be stored and transported. Obviously, in such an example, the printed monogram of such adhesive tape would be incidental to the primary use of the said goods - the adhesive tape. By way of contrast, in the present case, the factor of adhesiveness is incidental to the primary use to which the

goods are put, namely, that they are to be used for security purposes. Also, the HSN Explanatory Notes are relevant, which according to the judgment of this Court reported in 'Collector of Central Excise, Shillong v. Wood Craft Products Ltd.' [1995 (77) E.L.T. 23 (S.C.)] in para 12 are a safe guide in case of doubt: -

"12. It is significant, as expressly stated, in the Statement of Objects and Reasons, that the Central Excise Tariffs are based on the HSN and the internationally accepted nomenclature was taken into account to "reduce disputes on account of tariff classification". Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. This being the expressly acknowledged basis of the structure of Central Excise Tariff in the Act and the tariff classification made therein, in case of any doubt the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act. The ISI Glossary of Terms has a different purpose and, therefore, the specific purpose of tariff classification for which the internationally accepted nomenclature in HSN has been adopted, for enacting the Central Excise Tariff Act, 1985, must be preferred, in case of any difference between the meaning of the expression given in the HSN and the meaning of that term given in the Glossary of Terms of the ISI."

When one goes to the HSN Explanatory Notes to 'other
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printed matter', Item No. 10 which has already been referred to hereinabove states that 'self adhesive printed stickers designed to be used, for example, for publicity, advertising or mere decoration, e.g. "comic stickers" and "window stickers"' would be included.

It also goes on to say that goods of entry 39.19 (inter alia) because they are merely incidental to the primary use of the products, would not be so included. This test again provides a useful application of what is includable and what is left out by applying the "primary" and "incidental" test outlined in Note 2 above. Obviously, a comic sticker would have as its primary use the "comic part", the adhesive or sticker part being only incidental to its primary use. Similarly, in the facts of the present case, a security hologram sticker would have as its primary

part, the security hologram, the sticker part or adhesive part only being incidental to the primary use of the said goods.

One other submission of Shri Radhakrishnan needs to be dealt with. He placed before us two circulars of the Department one dated 14.08.1995 and the other dated 21.06.1996. These circulars reads as follows: -

Circular No. 142/53/95-CX, dated 14.08.1995

"I am directed to say that certain doubts have been expressed regarding the correct classification
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of Photo Identity Cards and Holograms - whether these should be classified under Chapter 39 as articles of plastics or under Chapter 49 as products of printing industry.

2. The production of photo-identity cards involves videography of the person, computerised capture of the videographed image, merging of the image with the date of the person already entered in the computer and the computerised printing out of the merged data and image through a laser printer. This print out is verified, validated and pasted with the Holograms of the State emblem and then cut, folded and laminated before issue to the person.

3. The Board has carefully considered the matter. It is felt that photo identity cards get their distinctive character and identity because of the date imprinted on them and not because of the material they are made of or because of their shape and size. Thus, photo-identity cards are a distinct product as compared to other identifiable articles of plastic.

4. Section Note(2) of Section VII of Central Excise Tariff also clearly excludes photo identity cards from the purview of Chapter 39 and places them squarely under Chapter 49.

5. On the other hand, Chapter Note (2) of Chapter 49 states that printing also means reproduced by means of a duplicating machine, produced under the control of a computer, embossed, photographed, photo-copied, thermocopied or typewritten. Further, as per general explanatory notes to HSN - page 691, with the few exceptions as referred to in these notes, 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 representations.

6. Keeping in view the distinctive character, process of manufacture, relevant tariff headings, Section notes, Chapter notes and HSN notes, the Board is of the view that photoidentity cards and holograms merit classification under sub-heading 4901.90 of the Schedule to the Central Excise & Tariff Act, 1985.

7. All pending disputes may be finalized in view of the above guidelines. Field formations and trade may be informed accordingly."

Circular No. 35/96-Cus., dated 21.06.1996

Subject : Classification of holograms under
First Schedule, CTA 1975 - Regarding.

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"Doubts have been raised regarding classification of "embossed holograms" under First Schedule to the Customs Tariff Act, 1975 (Customs Tariff), in the context of the Boards Circular No. 141/52/95-CX.4 dated 14.08.1995 stating the "photo identify cards and holograms" are classifiable under sub-heading 4901.90 of the Central Excise Tariff. Subsequently it has been clarified that the hologram, as such, would be classified keeping in view the manufacturing process and end use etc.

2. The issue has been examined. It is observed that "embossed holograms" presently are made by embossing plastic films with mechanical dies and are self adhesive, however in some cases, the possibility such holograms being other than self adhesive is also not ruled out.

3. Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastic are classifiable under Heading 39.19 of the Customs Tariff. As per Note 2 to Section VII, read with Explanatory Notes to Heading 39.19, this heading also includes articles printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods. In view of this, self-adhesive embossed holograms will fall under Heading 3919.90 of the Customs Tariff. However embossed plastic holograms, which are not self-adhesive, will fall under Heading 49.11, in view of Note 2 to Chapter 49."

It will be seen that under Para 3 of the second circular self adhesive embossed holograms will now fall under Heading 39.19, whereas embossed plastic holograms which are not self adhesive alone will fall under entry 49. This is said to be in view of Note 2 to Chapter 49. We are afraid that the second circular which has been quoted hereinabove does not set out the law correctly. It is clear that merely because a particular embossed hologram is self adhesive, therefore in all cases, it will attract entry 39

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is not correct. What is to be seen, as has been pointed out above, is whether the self adhesive part of the product is of primary use or the printed matter is of primary use. It cannot be that invariably in all cases, the moment a

hologram is self adhesive it will fall within entry 39 without more. To this extent, it is clear that the circular as has been noted above, does not lay down the correct law.

We will now come to the impugned judgment. The CESTAT in the impugned judgment states as under: -

"It is thus apparent that even if printing is of essential nature, the product of 39.19 would remain classifiable under Heading 39.19 and will not be regarded as "a product of printing industry". This view is further strengthened by the Explanatory Notes of HSN below Heading 39.19 which reads as under:

"It should be noted that this heading includes articles printed with motifs, character or pictorial representations which are not merely incidental to the primary use of the goods (See Note 2 to Section VII)".

General Explanatory Notes of HSN below Chapter 49 clearly mentions that "Goods of Heading 39.18, 39.19, 48.14 or 48.21 are also excluded from this Chapter, even if they are printed with motifs, characters or pictorial representations, which are merely incidental to the primary use of the goods." For this reason "self-adhesive printed stickers designed to be used, for example, for publicity, advertising or mere decoration, eg. "comic stickers" and "window stickers" mention in HSN Notes below Heading 49.11 would not cover the products of Heading 39.19. In view of this, the decisions relied upon by the learned Advocate are not applicable to the facts of the present matters. In Holographic Security Marking Systems case the product involved was "stamping foils" falling under

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Heading 32.12 of the Tariff which was classified under Heading 49.01 after the hologram was printed thereon. The Tribunal observed that "until the product became transformed because of the printing of the material on it, it continued to be stamping foil..". In the present case even after printing, because of Note 2 to Section VII, the product continues to remain classified under Heading 39.19 of the Tariff. We thus hold the classification of the impugned product under Heading 39.19 of the Tariff."

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.

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. Shri Radhakrishnan referred to and relied upon Rule 1 and Shri Lakshmikumaran 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 C.A. Nos. 2729-2730/2004 16 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.

....., J.
[A.K. SIKRI]

....., J.
[R. F. NARIMAN]

New Delhi;
March 30, 2015.
C.A. Nos. 2729-2730/2004

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ITEM NO.101

COURT NO.13

SECTION III

Civil Appeal No(s). 2729-2730/2004

M/S. HOLOSTICK INDIA LTD.

Appellant(s)

VERSUS

COMMNR. OF CENTRAL EXCISE, NOIDA

Respondent(s)

(with office report)

Date : 30/03/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s) Mr. V. Lakshmikumaran, Adv.
Mr. M. P. Devanath, Adv.
Mr. Vivek Sharma, Adv.
Ms. L. Charanaya, Adv.
Mr. Aditya Bhattacharya, Adv.
Mr. R. Ramachandran, Adv.
Mr. Hemant Bajaj, Adv.
Mr. Ambarish Pandey, Adv.
Mr. Anurag Kapur, Adv.
Mr. Anandh K., Adv.

For Respondent(s) Mr. K. Radhakrishnan, Sr. Adv.
Mr. Surender Kumar Gupta, Adv.
Mr. Arijit Prasad, Adv.
Ms. Disha Singh, Adv.
Mr. B. Krishna Prasad, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The appeals are allowed in terms of the signed reportable judgment.

(Nidhi Ahuja)
COURT MASTER

(Suman Jain)
COURT MASTER

[Signed reportable judgment is placed on the file.]