Cc Vs. Book Channel

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-16-1999

Reported in : (1999)(84)LC353Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Cc

Respondent : Book Channel

Judgement :

1. The issue for decision in this appeal is the classification both for the purpose of tariff as well as for the purpose of Import Trade Control (ITC for short), of goods imported by the respondent. It had declared the goods imported by it as books and claimed classification of the goods under heading 49.01. All goods classifiable under heading 4901 exempted by notification 36/96. Books are classifiable under heading 4909 and imported under the Open General Licence. The Custom House did not accept the contention that the goods were books. It noted that the printing on them indicated them to be used as greetings.

Notice was therefore issued proposing classification of these goods under heading 4909 for the purpose of ITC, proposing their confiscation in the absence of a licence and proposing imposition of penalty. In reply, the importer contended that the goods were books. The Assistant Commissioner did not accept this contention. He said that the importer had accepted that the goods were "greetings in nature". He ordered confiscation of the goods with option to redemption on payment of fine.

He also imposed a penalty on the importer.

2. The importer appealed from this order. He contended before the Commissioner (Appeals) that the product contain 28 or 32 pages; no greetings would contain such a large number of pages, containing photograph and literary and poetry description or relationship apparently between the person sending the greetings and the intended recipient; that the goods contained the International Standard Book Number (ISBN for short) which is a number given by the International Standard Books Agency to books. The Commissioner (Appeals) was persuaded by the argument. He said that the goods were greetings in book form. He said that what is essential for classification is a form.

A card is a thick stiff paper or thin cardboard used to send messages or greetings whereas a book is a set of printed sheets bound together in a cover. He therefore allowed the appeal and set aside the order of the Assistant Commissioner with regard to classification and the ITC.Hence this appeal by the Department.

3. The Departmental Representative says that it would be evident by looking to the goods in question that they are intended to be sent to a particular person on special occasion such as birthday, wedding anniversary etc. This distinguishes them from book which can be, and are bought for literary or artistic content and so giving satisfaction to the purchaser or to any one to whom he may give this. He says that the fact that they contained 28 or 30 pages cannot result in their not being considered as book. He relies upon the provisions of the Harmonised Commodity Description and Coding System, 1996 in support of this contention.

4. Advocate for the respondent says that the goods contain literary and artistic material which is for beyond what would be required in and accepted from the mere greetings card and giving them which can be given only by books. He relies upon Chapter Note IVA to chapter 49 of the tariff. He emphasises the presence of the ISBN number on the books and cites decision of the Tribunal in Wilco International v. CCE 1993 (63) ELT 391 : 1993 (48) ECR 202 (T) in support.

5. We have seen the two samples of the product in question. Each of these contains, in addition to the covers, six sheets folded into half and stapled. Size of

these goods is 3" x 7" approximately. On the cover, which made it slightly thicker' material paper or board than the other, one of them contain the words "Happy Birthday to a great HUSBAND" and the other "With Love to Special Friend". The first item consist of reproduction of paintings by Monet, a well known painter, with a box containing descriptions of the quality of husband or tribute paid to him by woman. The other consists of quotation from famous authors, or thin paper which decorated with floral motifs. Each of them has a ISBN mark. Each of them also has a specific page bearing the message of greetings to the husband and friend respectively with the spaces for the name or signatures of the senders and the recipient.

None of the pages have been numbered.

6. Heading 4909 is for printed or illustrated postcards, printed cards bearing personal greetings, messages or announcements, whether or not illustrated with or without envelopes or trimmings. The Explanatory notes divide them into these two categories. They say that these products comprise particularly (1) picture postcards and (2) Christmas, New Year, birthday or similar cards. They explain that picture postcards may be in sheets or in booklet form. They further say that Christmas card, New Year, birthday of similar cards may be in the form of picture postcards consisting of two or more folded leaves fastened together. It can thus be seen that a picture postcard may be in book form shows that cards to be classified under heading 4909. It is not essential that it should consist only of a card, unfolded or folded as was contended by the advocate for the respondent. The goods can be classifiable under this heading even if they comprise a booklet. From the description that we have attempted of these products, it is difficult to think of the goods as being books classifiable under heading 4901. If the question is posed as to whether a person will buy them for reading the material contained in them for his own satisfaction or whether he will only buy them in order to send them to someone else, the answer clearly would be the latter. A person would buy such a product in order to send them to a husband or a friend or the other intended recipient, depending upon the product. The products are so got up that they convey a message (of) love or affection to a husband or to a friend. The writings contained are limited only to these asked for them. There is no particular

nexus between what is contained in one page and what is contained in another. That there are no page numbers and no table of contents or supports the view that these are intended to be sold as such. The fact that the goods are stated to be "so much more than a card" also is not significant point to their intended use.

7. We do not see how chapter note 4(a) support the case of the importer. It only explains that a collection of printed reproductions of, for example, works of art or drawings, with a related text, put up with numbered pages in a form suitable for binding would fall under chapter 49.01. The goods here are completely bound and ready. The fact that ISBN number is present is not of any significance. No material has been produced to show that is only books and not cards which must have ISBN number.

8. In the decision cited by the advocate for the respondent, the question was whether book and the Jungle Book which contained trace-out models, which were to be taken out and assembled into a model by children should be classifiable as books for the purpose of Import Trade Control or as toys. The tribunal took into account the various grounds cited by the appellant in deciding that the f goods were books and not toys. Only one of the presence of the ISBN number. Apparently the decision shows that a letter was produced from the ISBN. We do not know what are the contents of that letter. The decision will have to be limited to the facts of that case.

9. It follows from the above that the goods in question are classifiable both with regard to tariff as well as the Import Policy which is aligned to the tariff under heading 49.09 as greetings card.

Hence the Commissioner (Appeals) order classifying them as books is set aside.

10. Since they require a licence for importation, the order of the Assistant Commissioner confiscating them and of his order classifying them for purpose of tariff under heading 49.09 is restored. However, we accept the argument of the advocate for the respondent that there was no case for imposition of penalty, since the importer had imported goods in the bonafide belief that they are books. That portion of the order imposing penalty is not restored.