Graphic Charts Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-18-2000

Reported in : (2001)(94)LC762Tri(Mum.)bai

Judge : S Bhatnagar, Vice-, J Balasundaram, J S Murthy

Appellant : Graphic Charts Ltd.

Respondent : Cce

Judgement :

1. The issue for determination in these two appeals which arise out of two separate orders is the correct classification of instrumentation charts manufactured by the appellants herein. The as-sessees seek classification of the item under Chapter Sub-heading 4901.90, while the Revenue has upheld classification under Sub-heading 4823.90 of the Schedule to the Central Excise Tariff Act, 1985. Appeal No. E/788/92-C arises out of the adjudication order passed by the Collector of Central Excises, Bombay by which he has confirmed the demand for differential duty for the period of six months--the period covered in the show cause notice is 1.7.1986 to 31.3.1991 while the demand has been restricted to a period of six months. Appeal No. E/988/92-C has been preferred against the order passed by the Collector of Central Excise (Appeals), Bombay who has upheld the order of the Assistant Collector classifying the item in dispute under Chapter Sub-heading 4823.90 read with Notification 135/89-CE dated 12.5.1989. The classification list in question was filed w.e.f. 19.3.1991 onwards.

2. We have heard Shri J.S. Agarwal, learned Advocate and Shri H.K.Jain, learned SDR. i) Cutting the jumbo rolls to the right size with the slitting machines, iii) Arranging the vertical line printing ruling, discs on the printing machine shaft.

iv) Fixing the range and the time stamping as per customer's specifications.

v) Setting the vertical perforation mechanism according to specifications.

viii) Rewinding the rolls in exact length as per customer's specifications.

10. The manufacturing process for circular charts/Rectangular charts is as follows: ii) Mounting the block and the centre punch (for Circular Charts only) on the printing machine.

v) Cutting the chart in Circular/Rectangular size according to specification.

According to the appellants the charts in question are products of printing industry, printing of characters is absolutely essential for the primary use of the charts and printing is not merely incidental to their primary use. On the other hand, Revenue contends that printing is merely incidental to the primary use of the goods which are used for the purpose of recording temperature, pressure, humidity, electric current, voltage, etc. in various industrial installations and, therefore, Chapter 49 is not attracted and the goods are correctly classifiable under Sub-heading 4823.90.

4. For a better understanding of the dispute the rival entries are reproduced below: 48.23 Other paper, paperboard, cellulose wadding and webs of cellulose fibres, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres; cut to size or shape; 4823.11 Gummed or adhesive paper in 10% plus Rs. 1600 per strips or rolls tonne 4823.12 Cards, not punched, for punch 10% plus Rs. 1680 per card Machines, whether or not in tonne strips 4823.13 Braille Paper Nil 4823.19 Other 10% plus Rs. 1680 per 4823.90 Other
35%____
Sub Description of Goods
Rate____
PRINTED BOOKS, NEWSPAPERS, PICTURES AND OTHER PRODUCTS OF

THE PRINTING 4901.20 Maps and hydrographic or similar charts of all kinds including atlases, wall The appellants rely upon Note 11 to Chapter 48 in order to support their contention that instrumentation charts fall under Central Excise Tariff Heading 49.01 as they are products of the printing industry.

Note 11 states that "except for the goods of Heading No. 48.14 or 48.21, paper, paperboard, cellulose wadding and articles thereof, printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods, fall in Chapter 49". In the context of the above Chapter Note, what has to be determined is whether the printing on the charts is primary or merely incidental to the primary use of the charts. The admitted position is that the charts are used for the purpose of recording temperature, pressure, humidity, electric current, voltage, etc. in various industrial installations. The charts are used in various plants, particularly in chemical industries, to record variables or parameters of temperature, pressure, etc. during various stages of the processes or during every batch operation. The recording on the charts helps to identify any variations in the quality of the product or in any operation of the equipment. Note 11 to Chapter 48 covers within its scope, products which are in the nature of advertising material, trade catalogue, etc., and not the printed material which is put to a different use, and where that use is predominant such as in the present case, wherein the use is that of recording parameters or variables of temperature, pressure, etc., by various instruments in various industries. At this stage, it is also pertinent to note that the appellants themselves have stated in their product literature that "although printing is involved in the manufacture of charts, it would be erroneous to assume that the chart is a printed product". Chapter Heading 4823.40 of the HSN which has a high persuasive value covers "rolls, sheets and charts, printed for self recording". This makes it clear that under the HSN, charts for recording have been treated as falling for classification under Heading 48.23 which covers 'other paper, paperboard, cellulose wadding', etc., which is identical to Heading 48.23 of the Schedule to the Central Excise Tariff. The fact that the Central Excise Tariff does not contain any Heading identical to Heading 4823.40 does not make any difference because, once it is held that the charts are classifiable under Heading 4823, if there is no entry corresponding to 4823.40 of the HSN in the Central Excise Tariff, the product will be classifiable under the residuary entry 4823.90.

5. The case law cited by the learned Counsel is distinguishable--in the case of Metagraphs P. Ltd. v. Collector of Central Excise, Bombay reported in 1997 (68) ELT (sic) 8 (SC) : 1997 (68) ECR 8 (SC) the Supreme Court held that printed aluminium labels are products of printing industry since that industry brings label into existence and that printing of labels is not incidental, but primary to its use. The Court also found that the test of trade understanding was satisfied as the label was understood in the trade as a product of the printing industry. However, in the present case, the printing on the paper is incidental to its use and not primary in the sense that it does not communicate to the customers about the product. The Apex Court has also held in the Metagraph's case (supra) that all products on which some printing is done are not products of printing industry and that this depends upon the nature of the product and other circumstances. At this stage, the assertion by the appellants in their product literature that the charts are not products of printing industry is to be kept in view as it would reflect trade understanding that the charts are not products of the printing industry.Garden Silk Mills Ltd. v. Collector of Customs, Bombay reported in 1997 (19) RLT 833 SC does not advance the case of the appellants--the Supreme Court held that the benefit of Notification 169/77-Cus. dated 6.8.1977 would not be available to rubber blankets imported by the appellants for printing fabrics, since the goods were for use in the textile industry and not for use in the printing industry, for which purpose alone, the benefit could be extended in terms of the Notification.Lakshmi Cements v.Collector of Customs, New Delhi reported in 1996 (14) RLT 36 also does not help the appellants. In that case the dispute was only regarding the sub-heading under Chapter 49 viz. sub-Heading 4901.9Q or 4911.91 and the Tribunal held that the goods in dispute viz. folders containing technical designs, drawings and specifications fell for classification under Customs Tariff Heading 4901.90 and not under 4911.91 as claimed by the Department. There was no dispute before the Tribunal as to whether the goods were products of the printing industry or paper industry and, therefore, the Tribunal had no occasion to go into this question.

5.3. The decision of the Supreme Court in the case of Moorco (India) Ltd. reported in 1994 (74) ELT 5 SC : 1994 (55) ECR 3 (SC) is also distinguishable--the case related to classification of composite goods with reference to Rule 3 of the General Rules for interpretation of the first Schedule (Import Tariff) to the Customs Tariff Act, 1975.

6. In view of the above, we hold that the instrumentation charts manufactured by the appellants herein fall for classification under sub-Heading 4823.90 of the Schedule to the Central Excise Tariff Act 1985, and accordingly uphold the impugned order and reject the appeal.

7. With due respect to the Hon'ble Member (J), my views and orders are as follows: 8. I observe that the Id. Counsel has explained in detail the process of manufacture of the product in question and the Department has not questioned the factual correctness thereof. The case revolves around, inter alia, the process involved, the commercial identity of the products, their uses and the interpretation of the rival entries of the HSN.9. The process of manufacture which has been described by the appellants has not been disputed, therefore, it is apparent that the appellants are producing blank printed computer stationery, and blank printed charts of various types and specifications including instrumentation charts.

9.1. Insofar as the computer stationery is concerned, it is already a settled issue by now. And as per Board's Circular read with concurring orders of the Tribunal, it is classifiable under heading 48.20.

9.2. Insofar as the various charts are concerned, it is apparent that they cannot be considered as paper simpliciter but as a product which is the result of printing on the paper. Ld. Counsel had displayed some samples of various charts made by them and those filed include various types including graph papers which, in my opinion, are only in the nature of stationery and like computer stationery would be classifiable under heading 48.20. In fact, the graph papers used by school and college students are commonly available in any good stationery shop and going by the trade parlance or common parlance, these are required to be considered as articles of stationery falling under heading 48.20.

10. As mentioned above, ordinary graphs and charts which are not made to any customer specification or for any particular specified instrument but are of general

use as graphs and charts--whether in schools, colleges, offices or labs., factory etc. etc.--will be classifiable under 48.20 and therefore, it will be required to be seen what was the relevant notification, if any, which prescribed the effective rate of duty in respect thereof.

11. Insofar as the charts are concerned that is those which are made in accordance with the customers' specifications for a particular type of instrument(s) according to the precise requirement of that instrument(s) and specific purposes for which they were meant it is required to be seen whether, if so designed, they could be considered as parts of those instruments and dealt with accordingly because parts and accessories suitable for and used solely or principally with a particular instrument, machine, equipment etc. made of paper, whether printed or not, will have to be classified alone with that item for which they were meant but this aspect has not received due attention.

12. That apart, the fact that the appellants are basically engaged only in printing paper for use as stationery or instrumentation charts is required to be kept in view. Because in view of this position, it is required to be seen whether any of their products could be considered as product of printing industry particularly in view of the fact that 4901.90 also covers "....hydrographic or similar charts of all kinds....". A question, however, arises if this was the position how it is that in the HSN heading 48.23 (of HSN) also covers certain types of charts. In this connection, what is noteworthy is that the words 'instrumentation charts' do not occur either under heading 48.23 of HSN or under sub-heading 4823.40 and the later only covers "Rolls, sheets and dials printed for self-recording, apparatus." Secondly, the words 'printed for self-recording' is important. On one hand, all charts are not meant for self-recording and on the other, charts which are used for self-recording are apparently required to be of such type, size, shape, design, quality and print etc. which will make them useful for self-recording. Again these may be of general use or meant for a particular purpose only and therefore, the general purpose self-recording charts are required to be distinguished from those customers oriented charts which are specifically designed to be used principally or wholly with a particular apparatus, instrument, equipment or machinery etc. I find that the samples produced before us include all the types mentioned above. Therefore, all

these types cannot be classified in the same heading irrespective of type or use.

This aspect however, does not appear to have engaged sufficient attention.

13.1 further notice that the appellants have contended that they were under the belief that their products were not liable to excise duty and were the products of the printing industry and exempted under Notification No. 55/75 and they had filed C/Lists accordingly. Ld.

Collector had also noted that they had produced copies of such C/List before him. In other words, it is apparent that it is not a case of suppression or misstatement of facts but on dispute regarding interpretation and change of opinion. In these circumstances, the demand beyond the normal period of six months was time-barred.

Therefore, the Collector was justified in restricting his order for the period of six months but even for this period, he was required to keep in view the aspects noted above before passing his order. In view of the above discussions, I set aside the impugned order and remand the matter to the Commissioner for reconsideration of the same in accordance with the law. He should keep, inter alia the above observations in view and allow the appellants an opportunity of being heard in person before passing the order.

14. In view of the difference of opinion between the Hon'ble Member (J) and the Vice-President, the matter is submitted to the Hon'ble President for reference to a third Member on the following points: Whether the appeals were required to be rejected in view of the findings of the Hon'ble Member 0) or were required to be remanded in view of the observations of the Vice-President.Sd/- Sd/-(Jyoti Balasundaram)Vice-President (S.K. Bhatnagar) Member (J) 15. This matter was listed before me on 23rd and 24th June, 1999 as a third member reference to answer the issue "whether the appeals were required to be rejected in view of the findings of the Hon'ble Member (J) or were required to be remanded in view of the observations of the Vice-President" arising out of Order No. Misc/201 to 202/98-C dated 16.10.1998.

16. The points in issue in these two matters are already dealt with in the above order in part 1, which do not require repetition. The matter was heard again. Shri J.S. Agarwal, learned advocate appearing for the appellants has contended that prior to 1986 the product graphic charts being the products of printing industry was coming under the Tariff TI68. The appellants claim that now it comes under chapter sub-heading 4901.90 and the department contends as coming under sub-heading 4823.90. The dispute only confines to the instrumentation chart, classification. This is not a paper industry and come under the category of "other products of printing industry as per the tariff entry". The instrumentation charts are tailor-made and the process of manufacture is considered in para 3 of the bench order. When it is manufactured as a special case it cannot be used elsewhere. The change of tariff does not call for the change of classification as per 1995 Supp (3) Supreme Court Cases page 1 in the case of B.P.L.

Pharmaceuticals Ltd. v. CCE, Vadodara. Printed plastic sheets are held to come under the chapter heading 49 in , and not under chapter 39. 4823.40 is a HSN entry and there is no corresponding tariff entry in the Central Excise Tariff Act. It covers rolls, sheets and charts, printed for self recording apparatus. That cannot put them in shelter and HSN note to be followed, as per the decision in and 1994 (3) RLT 983 (paras 28 and 29.1). How to determine the nature of the products is decided in .

The learned Member (Judicial) has relied on the HSN and come to the conclusion. The learned Vice President in para 8 to 13 has dealt with the matter beyond the show cause notices regarding the charts which cannot be extended as per 1987 (91) ELT 34 (SC). The matter requires to be remanded.

17. The learned JDR has submitted that the relief confines in the appeal is to set aside the classification of instrumentation chart and demand of duty. The dispute pertains only to items 1 and 2 of the classification list at page 66. The blank printed charts are considered by the learned Vice President as computer stationery which is a wrong approach. It is item No. 3 in the classification list for which there is no dispute. As per paras 4 and 10 of the order he has dealt with the charts not made to the customers' specification which is not at all the subject matter of the appeal.

Chapter heading 49.01 pertains to generally printing not for specific purpose and chart is defined. The issue No. 1 at page 46 is not all in contest (items 3 and 4 of the classification list). Only issue No. 2 is relevant. In para 12 the learned Vice President has gone beyond it. Prior to 1986 printing industry was given up and no it cannot be continued. Classification list can be altered due to revision of tariff as the old tariff entry 68 is split up in new tariff under different headings. Headings 4823.90 and 4901.90 cover residuary entry even now. 4901.20 covers maps, topographical plans and globes and not apply to these goods.

Instrumentation charts are also known as recording charts as per para 4 of the reply to show cause notice at page 182. Relief only confines to that. Computer stationery being a small item is rarely manufactured. In para 12 at page 10 of the CEGAT order blank sheets and different types of charts are considered. Instrumentation charts are roughly worded.

Papers produced only sheets, graphs of printing industry. The conclusion is not correct in para 13. In view of the changed law under new Tariff Act of 1985 different views can be taken. As per para 4 of the order 4823.12, 4823.13, 4823.19 and 4823.90 are considered out of which 4823.12 is an important one which covers specially designed charts. 49.01 refers to printing which is a primary function of the printing industry and nothing could be done to read it. 4901.20 is applicable to such as atlases, wall maps, globes. As per 1990 (43) ELT 431 in the case of Bombay Chemicals v. CCE it is held that HSN is not binding and it has only having a persuasive value with the international background. As per para 5 of the order the Hon'ble Member (Judicial)'s understanding goes against the appellants and in serial Nos. 2 and 3 printing has got a dominant role. Serial No. 9 as per para 26 calls for a change. New tariff is only a residuary entry. HSN notes correspond. As per para 37, product was already classified under medicine and it was changed to be cosmetics in the above rulings. No justifiable reasons are there to change the classification as it has only a persuasive value.

18. The learned Counsel for the appellants has replied that the only dispute is which chapter covers the instrumentation charts. There was no entry at all in the old tariff which is a residuary one which is found in chapter 49 now. In the

Supreme Court cases raw material and products were same. Page 29 of the order-in-original clearly makes out that there is no reason to appeal against the classification of computer stationery. Instrumentation charts are of high sophisticated value. Chapter heading 4823 came into tariff in 1997 budget only. In chapter heading 4823.40 no printing in latest chapter 1999-2000. 1995 (77) ELT 500 (SC) is relied upon in support of the contention that the Tribunal can decide afresh the classification matter and there is no res judicata and estoppel. The power of the Tribunal is dealt with in 1997 (89) ELT 16 : 1997 (68) ECR 2 (SC) in the case of Hindustan Ferodo Ltd. v. CCE that the Tribunal, being a final fact finding body, has to decide on facts and law. Duty has to be assessed correctly on the instrumentation charts, which is a sophisticated one.

19. Perused the appeal memorandum, and the documents enclosed in both the appeals, and the bench order. I have taken note of the contentions of both the sides. The tariff entries both under the Central Excise Act and HSN are also considered. Before considering the facts on hands the case laws cited by both the sides require consideration.B.P.L. Pharmaceuticals Ltd. v. CCE deals with the interpretation of statutes - Taxing statute - Value of earlier understanding and precedents - Tariff law - Effect on old classification on substitution by new tariff entry. It is held that there was no good reason to change the classification merely on ground of coming into force of the new Tariff Act. In para 30, it is held that merely because there is any difference in the tariff entry the product will not change its character. Something more is required for changing the classification especially when the product remains the same. In para 34 it is observed that when showing more that the product has changed its character there is no good reason to change the classification.Shreyans Paper Mills Ltd. v. CCE it is held in para 5 that in the case of classification of goods HSN Explanatory notes have a persuasive value though not legally binding. It is observed in para 5 that chapter 84 of the Central Excise Tariff Act is closely aligned to the HSN which represents expertise in classification of goods handled in international trade.

When there is an alignment the persuasive value comes into picture.M. Vadilal and Co. Pvt. Ltd. v. CCE confirmed by the Supreme Court in 1991 (55) ELT A65 (SC) held the goods coming under the products of printing industry are considered while dealing with printed sample folders whether readymade or otherwise are the products of the printing industry eligible for exemption under Notification 55/75-CE - Use of product for purposes of communication of knowledge no criterion - Item 68 of the Central Excise Tariff is considered. It is ultimately held that the goods in question would be product of printing industry eligible for exemption.Metagraphs Pvt. Ltd. v. CCE it is held in para 9 by the Supreme Court that the goods to be classified as understood in trade parlance and common parlance of a particular product. All products on which some printing is done are not the products of printing industry. If printing brings into existence a product the resultant product would be product of printing industry. The nature of the product and other circumstances are relevant for determining whether the product is a product of printing industry or not. Notification 55/75-CE tariff item 68 of the erstwhile Central Excise Tariff is considered. It is held that printed aluminium labels are products of printing industry since the printing of the label is not incidental to its use, but primary as it communicates to the customer about the product which serves a definite purpose. Printing of carton by itself does not bring the carton into existence hence not a product of printing industry though printing is undertaken, (vide paras 9 to 11).

e) In in the case of Ajanta Print Arts v. CCE it is held that hanging cards are posters with advertising printed thereon along with sample of advertised article, displayed in the shop for advertising the articles attached to them. Printing of an advertisement is not merely incidental to their primary use but plays a dominant role, hence, classifiable under chapter 49 and not under chapter 48 of the Central Excise Tariff Act.

f) 1994 (3) RLT 984 deals with HSN Explanatory Notes and in paras 28 and 29.1 it is held that they are useful guide only when headings are aligned with CETA - there being material difference between the two, not to be followed - no persuasive value.Elson Machines Pvt. Ltd. v. CCE it is held that Excise authorities are not estopped from taking a view different than in the approved classification list and there is no estoppel against the law. Rule 173B of the Central Excise Rules and Section 11A of the Central Excise and Salt Act are considered.Hindustan Ferodo Ltd. v. CCE under Section 35C of the Central Excise Act and Rule 173B of the

Central Excise Rules it is held in para 3 that regarding the classification of goods, the onus of establishing that goods are classifiable under a particular tariff entry lays upon the Revenue.

Onus not discharged by the department. Evidence adduced by assessee even if rejected still appeal of the assessee to be allowed.

Industries it is held that the plastic sheets, a printed one giving out details of commodity to enable the buyer to make a decision as to purchase or otherwise, which are not incidental but of primary purpose and hence such printed plastic sheets are classifiable under chapter 49 and not under chapter 39, as per para 6.

20. In the light of the general principles laid down in the above decisions the present case is considered below.

21. The appellant M/s. Graphic Charts Ltd. has produced the literature regarding their products, instrumentation charts as per the classification list filed by them. As per the list, it is printed recording charts disc or circular charts (including rectangular charts) of various types as per customers' specifications and printed recording charts roll type (including scanfold charts) of various sizes, types, as per customers' specifications and classified under tariff heading 4901.90. As per the appellant the charts are used for scientific instruments. They bear character and as per chapter note 11 of chapter 48 of the Central Excise Tariff Act it cannot be classified under the said chapter and latter heading will have to be preferred as per Rules 3A and 3C of the Rules of Interpretation and the product is a product of printing industry. Earlier the product is considered as such as in notification 53/75 dated 1.3.1975. The charts of the appellant do not contain any motifs, character or pictorial representation as they do not contain any data or figure and it comes within the scope of chapter 48 and will not be classifiable under chapter 4901. As per the HSN Explanatory Notes the charts of the appellant are classifiable under 4823.90 of the Central Excise Tariff Act, 1985. So the department issued the show cause notice that chapter 48 is applicable to their product that the charts manufactured by them were of certain characters not properly classifiable under chapter 49.01 of the CETA and relied upon the dictionary meaning of the said word and also of Words and Phrases of Central Excise and Customs, 1991

edition. Ultimately, after hearing the parties the Assistant Collector has classified the charts under 4823.90 holding that the character is a set of letters or figures or graphic or symbol which represents some data for processing and the charts of the appellant do not represent any figures or letters representing any data which is inscribed on these charts when the same are fit to an instrument and the definition applies to such graph which represents some data which are fed by a computer or a self-recording scientific apparatus. Roll and sheets and printed self-recording apparatus are classified under 4823.40 of HSN Explanatory Notes and the CETA, 1985 has been aligned on the basis of HSN Explanatory Notes. It remains the same, i.e. whatever is covered under 4823 of the HSN Explanatory Notes will also be covered under 48 of the CETA.22. Now the Collector (Appeals) has confirmed the finding of the Assistant Collector regarding classification of charts under 4823.90 after considering all the contentions of the appellant in detail.

According to him the rules of interpretation will come into play when the goods appear to be classifiable under more than one heading which contingency has not arisen in this case. The lines printed on the charts are not the characters as used in note 11 of chapter 48 and the definition given by the appellant does not support this view. He has analysed the definition even from the different dictionaries that the character or letter, symbol, distinctive mark or shorthand mark used as unit in writing and printing. A line by itself does not have a particular value and aligning the printed charts is not the character.

By looking into it the value or the unit, it represents, cannot be concluded. The motifs, pictorial representation under Rule 11 of chapter 48 does not apply to a line to be considered as a character. It means a letter or the alphabet or a punctuation mark. Heading 4901 of the Tariff refers to printing industry products in the first portion and the individual produces items in the second portion. As per the appellant their charts are the product of printing industry. To become their products of printing industry, they must acquire the characters which they are presented by means of printing and secondly their value of identity has been conferred upon them. This will be satisfied only in the case of books, newspapers and pictures specifically mentioned.

The product of the printing industry contains information in the form of words, pictures and characters by which the information is conveyed to the user. The charts under consideration are not complete by themselves and have been given their present shape or order to be used for further recording information. They do not by themselves convey any information to the users.

23. As against that the present appeal is preferred by the appellant.

The literature produced by the appellant in support of the case, as pointed out by the learned Judicial Member contains in page 3 and 4 as follows: Although printing is involved in the manufacture of charts, it would be erroneous to assume that chart is a printed product.

This material goes against the case of the appellant that the products charts are the product of printing industry. To assume it is erroneous according to these words. The charts are printed or industrial hydrographical and meteorological applications based on specific requirements. They are used on instruments to record physical measurements of temperature, pressure, humidity flow and liquid levels, electric current and voltage, magnetic and seismic information. It is used in the industries more particularly chemical industries to ensure the optimum efficiency of the plant as well as the quality of the product and it is necessary to measure and control a number of parameters. To ensure that they are maintained during the various stages of the process or during every batch operation and it is necessary to maintain a record of the same. To achieve this, the recordings charts are installed in the plant. Such records also help to identify any variation in the quality of the product or in the operation of the equipment. So from the above material it is clear that charts are industrial consumer products. In view of the above position, the discussion of the Hon'ble Judicial Member in the light of the Tariff Entries of 48 of chapters 48 and 49 which is relevant to the product involved in this case has to be agreed with, because note 11 to chapter 48 contended by the appellant is considered in detail, and also the applicability of chapter heading 49.01. The discussion about the coverage note 11 to chapter 48 that it applies to the products in the nature of advertising material, trade catalogue etc. and not to the printed material, and where that use is predominant as in the present case is proper and correct. The HSN chapter heading 4823.40 covers rolls, sheets and charts, printed self-recording. The product of the appellant comes within the chapter heading 48.23 and it is held that which is identical to the same heading under the Central Excise Tariff Act. When the product comes under the same chapter heading and in the absence of any corresponding entry the residuary entry will apply. This conclusion is supported by rulings referred in the above paragraphs.

Regarding the product there is an alienation between the HSN and the Central Excise Tariff Act regarding the chapter heading.

24. As against this, the discussion and finding of the learned Vice President in paragraphs 9.2, 10 and 12 the analysis of the products involved in this case are held to be in the nature of computer stationery and the graph papers used by school and college students which are commonly available in any stationery shop and going by the trade parlance or common parlance these are required to be considered as articles of stationery falling under heading 48.20. He has observed that it will be required to be seen what was the relevant notification, if any, which prescribed the effective rate of duty in respect thereof.

This is not the case of anybody because the charts are of general nature and not the subject matter. It is the definite case of the appellant that the product is customer specification charts for particular type of instrument according to the precise requirement of that instrument and specific purpose for which they were meant. The discussion that it required to be seen whether it is so designed would be considered as parts of the instruments and dealt with accordingly because parts and accessories suitable for use solely or principally with a particular instrument, machine, equipment etc. made of paper, whether printed or not, will have to be classified alone with that item for which they were meant. This is not the case of the department in the show cause notice. Meanwhile the appellant has not made any claim as such. So it is very difficult to agree with the views and submissions in paragraphs 10 and 11 of the order. The discussion in para 12 of the order that the appellant has basically engaged in printing paper for use as stationery or instrumental chart has to be kept in view and it has to be seen whether that products could be considered as a product of printing industry in view of the fact that heading 4901.90 also covers hydrographic or similar charts of all kinds. This observation is not borne out in the tariff heading according to which 4901.90 is described as other goods. 4901.20 covers maps and hydro-graphic or similar charts of all kinds including atlases, wall maps, topographical plans and globes printed. The product of the appellant apparently does not come within any of these descriptions. So under these circumstances the coverage of the HSN heading 4823.40 for certain types of charts is a question to be considered does not arise because in the next sentence it is observed that the instrument charts do not occur either under heading 48.23 of HSN or sub-heading 4823.40 which covers rolls, sheets and dials printed for self-recording apparatus. Regarding that aspect it is observed that it is for a general use and for particular purpose and general purpose self-recording charts are required to be distinguished from those customers specification charts because it is specifically designed to be used principally or solely with a particular apparatus, instrument or machinery. As already observed above it is not the case of the department that the product involved is one of general purpose, the self-recording charts, but it is specifically designed one to be used principally or solely with a particular apparatus, instrument, equipment or machinery as per the product literature. So the question of classifying all types of charts into one heading in respect of the types and use does not arise.

25. As I find from the orders of lower authorities, they have considered all the aspects in determining the classification of the products contended by both the sides in a correct perspective with analytical approach, and the conclusion arrived at by the learned Judicial Member in para 4 of the orders of the Tribunal requires to be agreed. With due respect to the learned Vice President, for the reason discussed above, it is very difficult to subscribe to the views of remanding the case back to the lower authorities to keep in view for reconsidering the matter in accordance with law with an opportunity to the appellant to be heard. In view of the specific case of the appellant, the product is a product of a special class which cannot be used otherwise except for a particular purpose and the applicability of the principles regarding the classification of the general charts do not arise. The observation in para 5 of the order about the assertion of the appellant in the

product literature that the charts are not products of printing industry is to be kept in view as could be reflected from the trade understanding supported by the literature of the appellant regarding the product. When it is specifically mentioned in the literature that their charts are not the products of printing industry, the applicability of chapter heading 4901 does not arise.

26. So under these circumstances I agree with the findings of the learned Judicial Member upholding the orders impugned therein, and I answer the point raised in the bench order that the appeals are required to be rejected.

27. The registry to send the files with the orders to the Hon'ble President, CEGAT, New Delhi for necessary action.

28. We hold that the instrument charts manufactured by the appellants herein fall for classification under CET-Sub-heading 4823.90 and accordingly uphold the impugned order and reject the appeals.