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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-12-2001

Reported in : (2001)(136)ELT1420Tri(Mum.)bai

Appellant : Tata Press Ltd.

Respondent : Commissioner of Customs, Mumbai

Judgement :

1. The question for consideration in this appeal is the classification for assessment to custom duty of the publications, which are commonly referred to as "Yellow Pages" imported by the appellant. The appellant imported these copies from their printer at Singapore for commercial distribution in this county. In the bill of entry filed for their clearance, the appellant classified the goods under heading 4901.10 of the tariff and claimed the exemption from duty contained in Entry 10 of the Table to notification 25/95.

2. The Custom House took the view that the "Yellow Pages" was not a book classifiable under heading 4901 but a list of paid advertisements classifiable under heading 4911.010, and that therefore the benefit would not be available. It appears that the department took the view that clause (d) of section 111 of the Act would also apply, although whether this was communicated to the importer is debatable, apparently having waived issue of written notice, was heard by the Commissioner.

In his order impugned in this appeal, the Commissioner has ordered classification of the goods under Heading 4911.10, denying the benefit of the notification, ordered their confiscation with an option to redeem them, and imposed a penalty on the appellant.

3. The contents of the "Yellow Pages" are not in dispute. It is a list alphabetically arranged of various persons and companies who have paid for inclusion in the publication. It contains, in that order, the name, sometimes in bold letters, of the person; his profession or the service that he provides, (for example "patent and Trade marks Attorneys" or "conveyancing, commercial, bank"), his address and telephone number.

4. The Supreme Court had occasion to consider whether the "yellow Pages" published by the appellant was a telephone directory or a buyer's guide or a trade directory. A few years after the Tata Press Limited commenced publication of its "Yellow Pages", Mahanagar Telephone Nigam Limited (MTNL for short) instituted a suit against it, seeking restraint on the publication of the "yellow Pages" on the ground that it was a telephone directory, and that, under the Indian Telegraph Act, 1885 and the Rules framed thereunder, it alone had the right to publish such a directory. The proceedings wound their way through the judicial hierarchy reaching the Supreme Court by way of an appeal against the High Court's order filed by Tata Press Limited. One of the contentions that Tata Press Limited took before the Supreme Court was that the "Yellow Pages" was not a telephone directory but a "compilation of advertisements, given by businessmen, traders and professionals and it is a buyers guide/trade directory, and its character and function is different from the telephone directory." The Court accepted this contention. It noticed that paid advertising was not in the nature of service rendered by the MTNL, and the Yellow Pages of the telephone directory published by the MTNL could not be the part of its public telephone service. It concluded "We, therefore, hold that the Nigam/Union of India cannot restrain the appellant from publishing "Tata Press Yellow Pages" comprising paid advertisements from businessmen, traders and professionals." 5. It is on these considerations the Commissioner has come to his conclusion. He finds that Note 5 to Chapter 49 of the tariff excluded, subject to Note 3, classification under heading 49.01 of publications which are essentially devoted to advertising, directing their classification under heading 49.11. He said that Note 3 to the chapter would not apply to Yellow Pages as they were not a

newspaper, journal or periodical to which that note refers, providing that such publications would be classifiable under heading 49.01 whether or not containing advertising material. He excludes the applicability of the notification.

6. The first contention of the counsel for the appellant is that, in the light of the decision of the larger bench of the Tribunal in Parasrampuria Synthetics Ltd vs CCE 2000 (119) ELT 211, the publication has to be classifiable under heading 49.01. The question before the larger bench was whether the drawings, designs, plans etc imported by Parasrampuria Synthetics Ltd bound in the form of books were classifiable under heading 4911.99 of the tariff or under heading 49.01. Heading 4911.99 is for "other printed matter, including printed books and photographs." Heading 49.01 is for printed books, brochures, leaflets and similar printed matter, whether or not in single sheets.

The Tribunal noted the two views taken by the subsisting decisions of the Tribunal, and found that, by applying the general interpretative rules to the tariff, Heading 49.01 provided the more specific description of the goods, and was applicable.

7. Now it will be clear, that the Tribunal in that case was not concerned with the application of Note 5 to Chapter 49. The publication that it was concerned with satisfied what would normally be expected of a book, that it contains text or graphic material bound to cover in the front and back side and pages serially numbered. We daresay that, but for the presence of Note 5, the goods imported by the appellant before us would be entitled to classification under Heading 49.01. It cannot be disputed by the appellant that it is nothing other than a collection of paid advertising. This is in fact the main stand urged before the Supreme Court and one, which the Court accepted. It is not disputed in the appeals before us that is not the case. That being so, it is a book purely devoted to advertisement. Nor it is claimed to be a newspaper, journal or a periodical. Therefore, the provisions of Note 5 will apply. In accordance with the provisions of that note, it will have to be classified under Heading 4901.11.

8 It is next contended that the goods are in the nature of commercial catalogue and classifiable under Heading 99.09 of the tariff. The decision of this Tribunal in Blue Star Ltd vs CC 1999 (1999 (108) ELT 245) is cited in support.

9. Sub-heading 1 of heading 99 is for "commercial catalogues in book form." In the decision the Tribunal was considering the eligibility to classification under this heading of a catalogue of the products manufactured by Amersham International plc of the United Kingdom. It had noted that the publication was a commercial catalogue, since it listed information relating to products manufactured by Amersham International plc of the United Kingdom. For the ratio of that decision to apply, we would first have to hold that the publication in question is a catalogue. The counsel for the appellant cites the meaning of the term "catalogue" in the various dictionaries: "A complete list of articles, e.g. library books, pictures, museum exhibits, or goods for sale, unusually in alphabetical order, or under special headings, and often with the description of the articles." "A complete list of items arranged in alphabetical or other systematic order. A publication containing details of items for sale." 10. The Yellow pages that we are concerned with can not, by any stretch of imagination, be described as a list of items. It contains an alphabetical list of person, either individual, or association of individuals, such as companies partnership firms, etc. It would be absurd to describe these as items. It is a directory of persons or the advertising the goods or services offered by them. The claim that such a publication is a catalogue, which is a list of enumerated objects is clearly unacceptable.

11. It is next contended that notwithstanding the classification of the commodity, the benefit of the notification would be available. The relevant entry to the notification exempts from duty, inter alia printed books classifiable under Chapter 49. A number of decisions of this Tribunal have been cited in support of this proposition, that in considering the scope of exemption under the Customs Act, the Notes to chapters or sections of the tariff and the rules of interpretation should not be applied. However, this issue has been settled by the Supreme Court in its judgement in Steel Authority of India Limited vs CCE 1997 91 ELT 529. The Court said that in construing the exemption granted to "tar", the meaning of the term has to be govern from the tariff description contained in Section 11 of the Central Excise Act.

12. The exemption that we have concerned herewith is books classifiable under Chapter 39 of the tariff. That is what the entry in the notification says. We have

already held that, for the purpose of classification in the publication under consideration is not a printed book that is to say, it is not classifiable under heading 49.01. This is, however, very different from saying that it is not a book. It is, undoubtedly, what a layman would understand a book. It is a collection of printed pages securely fastened and bound with covers on either end.

We have already noted that but for the provisions of note 5 to Chapter 49 the publication would merit classification as a book. Books of various kinds are classifiable under different heading of Chapter 49, even if they are not classifiable under su-heading 1 of that Chapter.

Children's picture, drawing or colour books are classifiable under heading 49.03. A book containing sheets of music is classified under heading 49.04. An atlas which is a collection of printed maps in book form classifiable under heading 49.05. The notification exempts, not just books under heading 49.01 but books classifiable under Chapter 49.

It would therefore be available to any kind of printed matter recognisable as a book wherever it falls for classification in Chapter 49. It would be a different mater if the notification restricted the exemption to books classifiable under heading 49.01. In that case articles which are usually understood to be books but would not be classifiable (by virtue of votes to that chapter) under heading 49.01 would not be entitled to its benefit. The specification in the exemption notification of books classifiable under Chapter 49, and not in heading 49.01 shows clearly that it applies to books (as commonly understood) which fall for classification anywhere in the chapter. It would therefore be available to the goods imported by the appellant.

Since the benefit of the notification that the appellant claimed has to be extended to the goods, there is no attempt in evasion of duty by it.

In these circumstances the fact that it wrongly classified the goods should not, in our view, justify confiscation of the goods or imposition of penalty on the appellant.