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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Nov-20-2002

**Reported in :** (2003)(151)ELT470Tri(Mum.)bai

**Judge :** S T Gowri, G Srinivasan

**Appellant :** Holographic Security Marking

**Respondent :** C.C.E.

**Judgement :**

1. At the hearing of the stay application, the parties were advised that the appeals would be taken up for disposal at the next hearing.

Having heard the parties on appeals, we proceed to dictate our order.

2. Holographic Security Marking Systems Pvt. Ltd. manufactures holograms. The starting point of manufacture of these goods is stamping foils which are imported by them in running length. The assessee embosses these foils with hologram image, by means of what is stated to be inkless duplication process, and appears to be some kind of thermal embossing process (although it is not by no means established). The embossed stamping foils roll is coated with adhesive and laminated with release paper. Thereafter the roll is so processed as to separate each individual hologram - while still fixed to the release paper so that it can be pulled off by the customer - cut into strips of 17.5 cm packed into rolls. The appellant manufactures three types of holograms. One has base paper pasted on

stamping foil; another does not have, in the process of manufacture of release paper base along with it; the third, with which we are concerned, is obtained by printing on stamping foils and base laminated with release paper.

3. The appellant had classified these products in Heading 4901.90 of the tariff. The notice issued to the appellant proposed to classify the paper based stamping foils in Heading 48.23 as other article of paper; the hologram without the release paper in Heading 39.20 as other foils of plastic, and the product under consideration by us in Heading 39.19.

In the order impugned in the appeal, the Commissioner has not found material to interfere with the classification claimed by the appellant for the other two products. He has however, confirmed that the product under consideration by us is liable to be classified in Heading 39.19.

4. The assessee relied upon the provisions of Note 2 to Section VII of the tariff which provides that except for goods of Headings 39.18 and 39.19, plastic, rubber and article thereof printed with motifs, characters of pictorial representation which are not merely incidental to the goods falling in Chapter 49. It contended that the holograms are used in order to ensure the authenticity of the product to the customer who buys it. The design on a hologram is very difficult to replicate and the presence of it on the product goes towards ensuring that the product is not counterfeit. The goods are therefore classifiable in Heading 49.

5. The Commissioner has accepted this logic with regard to the other products and held them to be correctly classifiable in Heading 49. He finds that the goods under consideration are appropriately classifiable in Heading 39.19, which covers self-adhesive strips of plastic and hence they are excluded from classification under 49 by Note 2 to Section VII. This is the point that the departmental representative makes before us, emphasising that the goods cannot be used without their being made self-adhesive. He points out that the test report of the goods showed the goods consists of polyester plastic film having adhesive coating on one side and the report suggests that "this may be considered as plastic based self-adhesive hologram." 6. The Commissioner does not dispute that the raw material for the manufacture of the product is stamping foil. He says however that "I find that the

hot stamping foil has undergone many processes like embossing of Hologram, lamination, application of adhesive on one side and fixing of release paper. So the basic raw material does not remain the same and has undergone various processes resulting in the production of an entirely new product. Hence, the raw material cannot be equated with the final product as the final product has acquired distinct characteristics, which differentiate it from the raw materials." He has also relied upon the test report which described the goods being made of polyester having adhesive coating on one side.

7. As we have noted, the Heading 32.12 of the tariff specifically includes stamping foils. The heading is based upon the Heading 32.12 of the Harmonised System of Nomenclature. The Explanatory Notes to this heading read as follows :- These products (also known as blocking foils) consist of thin sheets of either: (1) Metallic powder (including powder of precious metal), or pigment, agglomerated with glue, gelatine or other binder, or (2) Metal (including precious metal) or pigment, deposited by vaporisation, cathodic sputtering, etc., on a supporting sheet of any material (e.g., paper, plastics).

They are used, with the application of pressure (and generally of heat), for printing book covers, hat bands, etc., by hand or machine." 8. The material upon which the appellant began its work is stamping foil, with a supporting sheet of plastic. Unless the process to which the appellant subjects the material alters it to such extent that it is no longer classifiable in Heading 32.12, it will not lead to Heading 39.19. The only possible way that a stamping foil can become plastic, that we can conceive of is, to remove the metal or pigment which is deposited on the stamping foil. The fact that the stamping foil becomes self-adhesive will not by itself result in its ceasing to be stamping foil and becoming classifiable in Heading 39.19. The property of being self-adhesive is not the primary criterion for classifying the goods in that heading. For that they have to be of plastic and that this stamping foil is not. The contention of the departmental representative that the plastic predominates over other material made perhaps to be true. If that is the criterion for the classification of plastic, all stamping foils with the supporting sheet would fall in Chapter 39. That is however not such a finding in the tariff to dictate such a view.

Therefore until the product became transformed because of the printing of the material on it, it continued to be stamping foil and at no stage became converted into plastic of Heading 39.19. The Commissioner himself accepts that stamping foil was the starting point of the manufacture, and there is not slightest evidence to show use of other material. The test report that the Commissioner relies upon cannot be considered to have effect of saying that it was not used. The words of the test report, that the hologram is made of polyester plastic on one side, the other side having a pattern, are not inconsistent with the goods having been manufactured out of stamping foil with a base of plastic. Hence, the explanation contained in Note 2 to Section VII will not apply. The goods are therefore rightly classifiable in Heading 49.01 that the appellant claimed. Penalty therefore was not imposable on the appellant and its director.

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