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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-14-1990

Reported in : (1991)(31)ECC55

Appellant : Hari and Co.

Respondent : Collector of Customs

Judgement :

1. The issue arising for determination in these two appeals being the same, the appeals were heard together and are disposed of by this common order.

2. The issue concerns the classification under the First Schedule to the Customs Tariff Act, 1975 (the "Schedule", for short) - as it stood prior to 28-2-1986 - of two consignments of Off-set Litho Paper Plates imported by the appellants. The lower authorities had upheld the classification of the goods under Heading No. 48.01/21 (1), rejecting the appellants' claim for Heading No. 84.34, of the Schedule."48.01/21 Paper and paperboard, all sorts, whether in rolls, sheets or cut to size or shape (including cellulose wadding, composite paper or paperboard and impregnated, coated, corrugated, embossed, perforated, surface coloured or decorated, ruled or printed paper or paperboard); filter blocks, slabs and plates of paper pulp; stationery made of paper or paperboard; articles not elsewhere specified, of paper, paperboard, paper pulp or cellulose wadding; (2) Newsprint containing mechanical wood pulp amounting to not less than 70 per cent of the fibre content (excluding chrome, marble, flint, poster, stereo and art paper)."84.34 Machinery, apparatus and accessories for type-founding or type-setting;

machinery, other than the machine tools of Heading No. 84.45/48, for preparing or working printing blocks, plates or cylinders; printing type, impressed flongs and matrices, printing blocks, plates and cylinders; blocks, plates, cylinders and lithographic stones, prepared for printing purposes (for example planed, grained or polished)." 4. In the import relative to Appeal No. C/1481/86-C, the goods, on test, were reported to consist of coated rectangular cut sheet having holes on upper and lower sides and composed of chemical wood pulp 120.2 G.S.M. The Customs House Laboratory opined that the sample did not have the characteristics of stereoflong or matrix board and that it was not used in printing and that the process described in the pamphlet was seen to be one of reprography (copying). It was contended before the Assistant Collector that the imported goods Consisted of paper sheets subjected to special coating of chemicals on one side and that they were used for printing. The coating, in conjunction with chemical solutions, had the property of attracting ink in the image areas and repelling ink in the non-image areas. Such paper sheets were known as paper master plates. They could be prepared for use on offset printing machines by paper copier or typewriter or even with hand, without the aid of negative etc. for instant and economic use. The Assistant Collector, however, took the view that the goods were more in the nature of copying paper rather than plates prepared for printing purposes. Heading 84.34 covered plates prepared for printing purposes.

The imported goods had to be prepared by paper copier, typewriter or hand before they could be used for printing. The goods were a type of coated paper. The explanatory notes in the C.C.C.N. (Customs Co-operation Council Nomenclature) on which the Schedule is broadly based classified master paper plates under the head copying papers in Heading 48.13. In view of this, the Assistant Collector held that the goods fell under the corresponding Heading No. 48.01/21 of the Schedule. In appeal, the Collector (Appeals) approved the Assistant Collector's order inter alia also observing that offset printing plates were made of zinc, pr aluminium, and similar flexible metal sheets on which the design was reproduced in the flat.

5. In the Assistant Collector's order relative to Appeal No.C/3410/88-C. the Assistant Collector's order is cryptic and does not spell out any reason for dismissing the appellants' claim. The Order-in-Appeal is, however, somewhat

detailed. Dismissing similar contentions of the appellants, the Collector observed that the goods were used in lithographic printing not directly but after further coating with photo sensitive chemicals. As coated paper, they fell under Heading No. 48.01/21 of the Schedule correspond-inginteralia to the C.C.C.N. Heading 48.13 and Heading 48.16 of the Harmonised System of Nomenclature (HSN) on which the Schedule in force from 28-2-1986 was based.

6. The manufacturer's test report dated 22-2-1985 on "LACOMA PAPER MASTER LITHO PLATES" reads as follows :- "Our LACOMA PAPER MASTER LITHO PLATES consist of Paper base coated with special chemicals e.g. Casein, Polyvinyl Alcohol, Acrylic Resins, Carboy Methyl, Cellulose & Starch etc.

Paper works as a carrier and the special chemical coating in conjunction with special solutions achieves the remarkable phenomenon of attracting ink in image areas and repelling ink in non-image areas, though unlike block both areas fall in the same plane.

Our PAPER LITHO PLATES are non-sensitised and are suitable for all types of reproduction including Printing with Offset Machines." The literature on the other brand involved in the present dispute - "COLITHO" - gives the following information :- Any document can be copied up to 2,000 times without the excessive expense of repetitive photo-copying simply by using a plain paper copier in conjunction with an offset machine. The normal copy paper is replaced by Colitho D. 1 materials - either sheets or rolls. The machine is operated in the normal way to produce an instant offset master. The Colitho D. 1 coating allows unwanted marks to be easily removed before the plate is run on the offset press.

Even short run Colitho D. 1 plates can produce up to several hundred copies when imaged in most plain paper copiers.

The instant Litho Plate ! Up to 2,000 copies of a typewritten original can be produced from the appropriate grade of Colitho D. I plate.

By fitting a Colitho litho-inked ribbon, any make or model of typewriter can be used to make a perfect offset litho plate. The Colitho coating is designed to resist accidental ink deposits and fingerprints.Typing errors can be easily corrected with the Colitho eraser. Alterations are smudge-free both on the original and subsequent litho copies.

An easy-to-read, non-reproducing typing guide, pre-printed on the plate, can be supplied if required.

Freehand drawings or precisely drafted illustrations can be made directly on Colitho D.I. plates. Colitho plates withstand the handling necessary in office or studio work.

The Colitho repro and non-repro pencils and the repro pen provide the perfect media for planning and executing work directly on the plate. Guidelines and preliminary layout marks will not reproduce if the non-repro pencil is used. The Colitho eraser provides smudge-free corrections.

The goods are described as "Offset Litho Plates - Paper base" in the LACOMA invoice. The invoice for the COLITHO brand has not been produced before us but it is seen from the impugned order that the goods were described as "Direct image offset paper plates".

7. The Learned Consultant, at the outset, submitted that the appellants never claimed that the goods were sensitized. Their claim was that the paper base was coated with a chemical preparation which had the property of attracting/repelling printing ink. He stated that the Collector (Appeals) had not disclosed the basis of his observation that such plates were normally not directly used as printing plates and that they were coated further with photo sensitive chemicals before they were used for printing. It may be stated even at this stage that this statement was not commented on by the Learned D.R. in his reply. There does not seem to be on record any material to support the. Collector's statement. In fact, the literature on record shows that the subject paper litho plates are non-sensitized. The chemical coating thereon, in conjunction with special solutions, attracts ink in the image areas and repels ink in the non-image areas. This does not suggest that the goods have to be further coated with photo-sensitive chemicals before use in off-set printing.

8. Shri Sogani's next submission was that the words "prepared for printing purposes" in Heading 84.34 of the Schedule qualified only "blocks, plates, cylinders and lithographic stones" and not the group "printing type, impressed flongs and matrices, printing blocks, plates and cylinders" immediately preceding the aforesaid group. Again, the Learned D.R. did not make any submissions on this point. The text of the heading has been reproduced earlier. Having regard to the semi-colon which separates the former group from the latter group, the submission of Shri Sogani, in our view, is correct. The lower authorities were not correct in applying the qualifying words "prepared for printing purposes" to the latter group.

9. Shri Sogani next submitted that the subject paper was not a copying paper. It was made ready for use in printing on an off-set printing machine by imparting onto it the required text or drawing or other material by means of a photo copier, typewriter or hand. The resultant master plate was used in an off-set printing machine for making a number of copies. Thus, it was not a copying paper. In reply, Shri Jayaraman, the Learned D.R., relied on the Chemical Examiner's opinion that "The processes described in the pamphlet seem to be one of reprography (copying)". On going through the literature available on record, we do not find that the above opinion is supportable. On the other hand, Shri Sogani's submission appears to be correct.

10. Next, Shri Sogani submitted that the goods would go out of the scope of Heading 84.34 of the C.C.C.N. only because of the explanatory notes but these notes had no legal force, only persuasive value, as laid down in several decisions of this Tribunal. That the explanatory notes have no legal force but only persuasive value was not disputed by the Learned D.R. but he drew our attention to the fact in the revised tariff in force from 28-2-1986, offset plates of paper were specified in Heading 48.16. This accorded with the position as could be gathered from the C.C.C.N. explanatory notes under Heading 48.13 of that nomenclature. The said notes state :- "Masters for office type offset machines have a special coating on one side rendering them impervious to lithographic ink; they are used on office-type offset machines for the reproduction on ordinary paper of texts or designs applied to them by hand, with a machine or by any other marking process." These

notes appear under a head appropriate to copying paper.

Therefore, according to the D.R., the subject goods appropriately fell under Heading 48.01/21(1) of the Schedule which covers paper, all sorts, including coated paper. The contention of Shri Sogani, however, was that apart from the settled position that reliance on the C.C.C.N.explanatory notes had no legal backing, the goods being offset printing plates were appropriately covered by Heading 84.34 of the Schedule which specifically covered printing plates. In this context, he also drew our attention to Heading 48.07 of the C.C.C.N. which covered inter alia coated paper - also covered by Heading 48.01/21 of the Schedule.

The explanatory notes relied on by the Revenue figured under Heading 48.13 ["Carbon and other copying papers (including duplicate stencils) and Transfer papers cut to size, whether or not put up in bases"] a description that did not appear in Heading 48.01/21 of the Schedule.

Therefore, according to Shri Sogani, the said explanatory notes were of no avail to the Department.

11. Shri Sogani relied on the Tribunal's orders Nos. 261 to 278/86-C, dated 14-5-1986 in Kasturi & Sons v. Collector of Customs, Madras on the classification of "Toyobo" Printing Plates (exclusively used for printing purposes), under Heading 84.34 of the Schedule. These plates were photo-sensitive nylon printing plates. The assessee's contention was that they were used in printing and the photographic principle employed did not detract from their essential nature and characteristic of printing plates. The Revenue, however, sought to rely on the explanatory notes under Heading 37 of the C.C.C.N. ("Photographic plates and film in the flat, sensitised, unexposed, of any material other than paper, paperboard or cloth") and Heading 84.34 thereof, classifying such goods under the former heading and excluding them from the latter, in support of classification under Heading 37.01/08 of the Schedule. The Tribunal noted the admitted position that the plates were exclusively used for printing and for no other purposes. It took the view that such plates were only printing plates under Heading 84.34 and not photographic plates Under Heading 37.01/08 of the Schedule though the

photographic principle was involved in their use and technically they might be photographic plates. The learned D.R., however, contended that the above decision was not applicable to, the present case since the goods were different.

12. We are of the view that the decision in the Kasturi & Sons case is apposite though the goods may have been different. The principle emerging from the decision is that printing plates must be considered to be such though they may work on the photographic principle (in that case). There is no dispute here that the goods herein are master printing plates though made of coated paper. The fact that they are coated paper would not, applying the above principle, detract from their nature and characteristics as printing plates.State of Uttar Pradesh and Anr. v. Kores India Ltd. -1977 (Vol. 39) STC 8 laying down that a word which is not defined in an enactment has to be understood in its popular and commercial sense with reference to the context in which it occurs. It is to be noted that the Revenue, on whom the onus lies, has not shown that the subject goods are known as "coated paper" in the popular and commercial sense of the term. The goods are undoubtedly a coated paper. But it has to be shown that it is known as a sort of coated paper rather than as a printing plate. The good have been invoiced as offset printing plates and the literature shows their use in printing as master plates from which copies are made. In the circumstances, the term "printing plates" simpliciter or "plates prepared for printing purposes" is more specific and is more appropriate since the term does not restrict itself to any specified material or materials.

14. The learned D.R. Shri Jayaraman has relied on the Supreme Court's judgment in Krishna Carbon Paper Co. v. Collector of Central Excise, Kanpur-1988 (37) ELT 480 holding that carbon paper, a sort of coated paper, was covered by the Central Excise Tariff entry for paper, all kinds, including coated and impregnated paper. In our view, this decision is of no help to the Revenue. The Central Excise Tariff at the relevant time did not have a specific entry for printing plates. In the present case, we have to choose between printing plates and coated paper. We think the former is more specific.

15. The fact that the tariff in force from 28-2-1986 has a specific heading for offset printing plates of paper is also not relevant to the dispute in the present case which relates to a period prior to 28-2-1986.

16. In the result, we hold that the paper offset printing plates imported by the appellants were classifiable under Heading 84.34 and not under Heading 48.01/21. We set aside the impugned orders and allow the appeals with consequential relief to the appellants.