

to attract 39.19. If, in addition, there is printed matter on such sheets, films etc., the question is whether the end product is properly classifiable under 49.01 which refers to other products of the printing industry or whether it falls within self adhesive sheets, films, etc. [Paras 7, 8] [595-B-E]

2. The first thing to be noticed about tariff entry 49.01 is that it refers to printed books, newspapers and pictures. The printed books, newspapers and pictures, manuscripts, typescripts, maps and plans of all kinds, are included within this entry whether they further the public interest in knowledge being disseminated or not. In fact, it becomes clear from a reading of the Explanatory Notes to "HSN" that this Heading would include a large number of "obvious products" which are set out in this Explanatory Note. On a reading of the various products outlined in the Explanatory Note, it is obvious that they include a large number of products which have absolutely nothing to do with disseminating knowledge. [Paras 9, 10, 11] [583-F, H] [584-A, B] [585-C]

Holographic Security Marking Systems Pvt. Ltd. v. C.C.E., Mumbai 2003 (151) E.L.T. 470; Collector of Central Excise, Shillong v. Wood Craft Products Ltd. 1995 (77) E.L.T. 23 (S.C.) – referred to.

3. There is no genus in the expressions "printed books, newspapers, pictures". Indeed, it is clear that the expressions "manuscripts, typescripts and plans" which are also part of the Heading also do not reveal that there is any one genus to which all these items can be attributed. All these expressions speak of printed matter. Newspapers, which are included within entry 49.01 are obviously products of the newspaper industry and not of the printing industry. The printing industry would therefore, refer to products of various industries

- A other than the printing industry *stricto sensu*, which has printed material on them. Thus, construed, it is clear, that Tariff entry 49.01 would also be attracted on the facts of this case. Note No. 2 to Entry 49 states that except “Except for the goods of Heading No. 39.18 or
- B 39.19, plastics, rubber and articles thereof, printed with motifs, characters of pictorial representations, which are not merely incidental to the primary use of the goods, fall in Chapter 49.” It is clear therefore, that the question resolves itself into whether printing is only incidental to
- C the primary use of the goods or is something more than something merely incidental. The primary use of the product is security and not the quality of being adhesive. The factor of adhesiveness is incidental to the primary use to which the goods are put, namely, that
- D they are to be used for security purposes. [Paras 13 to 16] [585-E-H] [586-A, B, D-G]

Collector of Central Excise, Shillong v. Wood Craft Products Ltd. 1995 (77) E.L.T. 23 (S.C.) – relied on.

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Case Law Reference

- | | | |
|---|----------------------------|---------------------|
| | 2003 (151) E.L.T. 470 | referred to. Para 5 |
| F | 1995 (77) E.L.T. 23 (S.C.) | referred to. Para 5 |
| | 1995 (77) E.L.T. 23 (S.C.) | relied on. Para 16 |

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2729-2730 of 2004.

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From the Judgment and Order dated 19.12.2003 of the Customs Excise & Service Tax Appellate Tribunal, New Delhi in Appeal Nos. E/896-897/2002-NB(B).

H

V. Lakshmikumaran, M. P. Devanath, Vivek Sharma, L.

Charanaya, Aditya Bhattacharya, R. Ramachandran, Hemant A
Bajaj, Ambarish Pandey, Anurag Kapur, Anandh K for the
Appellant.

K. Radhakrishnan, Surender Kumar Gupta, Arijit Prasad,
Disha Singh, B. Krishna Prasad for the Respondent. B

The Judgment of the Court was delivered by

R. F. NARIMAN, J. 1. The present case concerns itself
with a classification issue. The facts necessary to appreciate
the controversy are as follows: - C

2. The appellant manufactures security holograms. At
the very beginning of the manufacturing process, they use
coated metallised film which we are informed is classified
under Tariff entry 39.20.36 after which the said film is D
embossed. Post embossing, there is adhesive coating and

release coating which results in a hologram which
ultimately is cut to size and utilised by customers of the
appellant for security purposes. In the show cause notice E
dated 04.02.2000, the Department sought to classify the
security hologram under Tariff entry 39.19 of the Central
Excise Tariff 1999-2000. In the reply dated 15.05.2000, the
appellant disputed this and stated that, in fact, the holograms
ought to be classified under Tariff entry 49.01. F

The Commissioner, Central Excise, by an order dated
01.01.2002 agreed with the Department's classification and
classified the said goods under Tariff entry 39.19. An appeal
to the Customs, Excise & Service Tax Appellate Tribunal G
(hereinafter referred to as 'CESTAT') by the appellant was
dismissed. The Tribunal by the impugned judgment dated
19.12.2003, agreed with the learned Commissioner and
added reasoning of its own to which we shall advert to H

A later.

At this stage, it is important to set out the relevant tariff entries: -

B “39.19

3919.00 Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls.

C 39.20 Other plates, sheets, film, foil and strip, of plastics, non-cellular, whether lacquered or metallised or laminated, supported or similarly combined with other materials or not.

D - - Of polymers of vinyl chloride:

3920.11 - - Rigid, plain

3920.12 - - Flexible, plain

E 3920.13 - - Rigid, lacquered

3920.14 - - Flexible, lacquered

3920.15 - - Rigid, metallised

F 3920.16 - - Flexible, metallised

3920.17 - - Rigid, laminated

3920.18 - - Flexible, laminated

G 3920.19 - - Other

- - Of regenerated cellulose:

3920.21 - - Film, plain

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M/S. HOLOSTICK INDIA LTD. v. COMM. OF CENTRAL 581
EXCISE, NOIDA [R. F. NARIMAN, J.]

3920.22	--	Film, lacquered	A
3920.23	--	Film, metallised	
3920.24	--	Film, laminated	
3920.25	--	Sheet, plain	B
3920.26	--	Sheet, lacquered	
3920.27	--	Sheet, metallised	
3920.28	--	Sheet, laminated	C
3920.29	--	Other	
		- Of other plastics:	
3920.31	--	Rigid, plain	D
3920.32	--	Flexible, plain	
3920.33	--	Rigid, lacquered	
3920.34	--	Flexible, lacquered	E
3920.35	--	Rigid, metallised	
3920.36	--	Flexible, metallised	
3920.37	--	Rigid, laminated	F
3920.38	--	Flexible, laminated	
3920.39	--	Other	
49.01		Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans	G
4901.10	-	Transfers (decalcomanias)	H

A 4901.20 - Maps and hydrographic or similar charts
 of all kinds including atlases, wall maps, topographical plans
 and globes, printed

 4901.90 - Other"

B Shri V. Lakshmikumaran, learned counsel appearing
 for the appellant, has raised a number of arguments before
 us. According to him, a reference to the Rules for
C Interpretation of the First Schedule to Central Excise Tariff
 Act, 1985, when properly read, would necessarily yield the
 result that the said goods would fall only under Entry 49.01.
 In the course of the argument, he also referred to the
 Harmonised System of Nomenclature (called 'HSN')
 Explanatory Notes to which we shall advert a little later.

D He also cited before us a decision of the Tribunal
 in 'Holographic Security Marking Systems Pvt. Ltd. v.
 C.C.E., Mumbai [2003 (151) E.L.T. 470], an appeal from
 which was dismissed by the Supreme Court. In addition, he
E cited a judgment of this Court reported in 'Collector of
 Central Excise, Shillong v. Wood Craft Products Ltd.' [1995
 (77) E.L.T. 23 (S.C.)] in support of the proposition that HSN
 Explanatory Notes can be relied upon under certain
 circumstances.

F Shri K.Radhakrishnan, learned senior counsel
 appearing on behalf of the Department, countered these
 submissions and sought to impress upon us that the Tribunal
 judgment should be sustained. Apart from the reasoning
G of the Tribunal, according to him, entry 49.01 would not at
 all apply if the ejusdem generis Rule is applied to the various
 items contained therein. Another argument was that viewed
 at from any angle Tariff entry 39.19 is a specific entry
 dealing with self-adhesive items of plastic, and printing on
H such items being merely incidental to such products would

require us to maintain the classification post entry 39.20 A
under entry 39.19 and not under entry 49.01.

We have heard learned counsel for the parties.
The first important thing to notice is that the original coated
metallised film that has been used by the appellant has B
already been classified under sub-Heading 3920.36 as a
flexible metallised film of plastic. The fact that it got laminated
later would not take it out of this particular sub-Heading.
The only question which arises is, after such classification, C
which is not disputed by the appellant, whether the relevant
tariff entry would be 39.19 or 49.01.

On a cursory reading of entry 39.19, it becomes clear
that it is part of a general scheme dealing with various items
of plastics and must be read together with 39.20 as 39.20 D
begins with the expression "Other plates....". So read, it is
clear that what is important is that various sheets, films, etc.
of plastic should become "self adhesive" in order to attract
39.19. If, in addition, there is printed matter on such sheets,
films etc., the question is whether the end product is E
properly classifiable under 49.01 which refers to other
products of the printing industry or whether it falls within self
adhesive sheets, films, etc.

The first thing to be noticed about tariff entry 49.01 is F
that it refers to printed books, newspapers and pictures. Mr.
K. Radhakrishnan sought to project before us that since
printed books, newspapers and pictures are of general
public utility in that they are all knowledge based items, the
idea of this Tariff entry is to have knowledge based products G
of the printing industry which alone would come under 49.01.

We are afraid we are not able to agree with
the said submission. It is clear that printed books,
newspapers and pictures, manuscripts, typescripts, maps H

- A and plans of all kinds, are included within this entry whether they further the public interest in knowledge being disseminated or not. In fact, it becomes clear from a reading of the Explanatory Notes to “HSN” that this Heading would include a large number of “obvious products” which
- B are set out in this Explanatory Note as follows: -

“The heading includes the following in addition to the more obvious products:

- C (1) Advertising matter (including posters), year books and similar publications devoted essentially to advertising, trade catalogues of all kinds (including book or music publishers’ lists, and catalogues of works of art) and tourist propaganda. Newspapers,
- D periodicals and journals, whether or not containing advertising material, are however excluded (heading 49.01 or 49.02, as appropriate).
- E (2) Brochures containing the programme of a circus, sporting event, opera, play or similar presentation.
- (3) Printed calendar backs with or without illustrations.
- (4) Schematic maps.
- F (5) Anatomical, botanical, etc., instructional charts and diagrams.
- (6) Cinema, theatre, concert, railway and other tickets.
- G (7) Microcopies on opaque bases of the articles of this Chapter.
- (8) Screens made by printing a film of plastics with letters or symbols to be cut out for use in design work.
- H Such screens simply printed with dots, lines or

squares are excluded (Chapter 39)

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(9) Maximum cards and illustrated first-day covers not bearing postage stamps (see also Part (D) of the Explanatory Note to heading 97.04).

(10) Self-adhesive printed stickers designed to be used, for example, for publicity, advertising or mere decoration, e.g., "comic stickers" and "window stickers".

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On a reading of the various products outlined herein, it is obvious that they include a large number of products which have absolutely nothing to do with disseminating knowledge.

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The other argument of Shri Radhakrishnan is that the expression "other products of the printing industry" should be read ejusdem generis with the three expressions preceding these words, namely, "printed books, newspapers, pictures".

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We do not find any genus in any of these expressions. Indeed, it is clear that the expressions "manuscripts, typescripts and plans" which are also part of the Heading also do not reveal that there is any one genus to which all these items can be attributed. All these expressions speak of printed matter.

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The other argument, namely, that the expression "printing industry" that is referred to hereinabove, which would refer to an industry which includes printing presses and nothing beyond, is also in our opinion not correct. A simple example will suffice. Newspapers, which are included within entry 49.01 are obviously products of the newspaper industry and not of the printing industry as is contended by Shri Radhakrishnan in the narrow sense noted above. The printing industry would therefore, refer to

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A products of various industries other than the printing industry
stricto sensu, which has printed material on them. Thus,
construed, it is clear, that Tariff entry 49.01 would also be
attracted on the facts of this case. One other interesting thing
needs to be noted. In the Explanatory Notes of HSN which
B have already been referred to, Item 10 refers to self
adhesive printed stickers. It is clear that if Shri
Radhakrishnan were right, such stickers not being products
of the printing industry as narrowly understood and not being
"other products" if one were to apply the ejusdem generis
C rule, would obviously be outside this entry. The fact that Item
No. 10 in the Explanatory Notes to HSN exists is also an
important pointer to the construction of entry 49.01 which we
have just given above.

D The real question, therefore, in this appeal is the
application of Note No. 2 to entry 49, which reads as follows:
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E "Except for the goods of Heading No. 39.18 or 39.19,
plastics, rubber and articles thereof, printed with motifs,
characters of pictorial representations, which are not
merely incidental to the primary use of the goods, fall
in Chapter 49."

F It is clear therefore, that the question resolves itself into
whether printing is only incidental to the primary use of the
goods or is something more than something merely
incidental. We have already referred to the process
hereinabove and the final product which emerges is a product
G which is used for security purposes. It is important to
remember therefore, that the primary use of the product is
security and not the quality of being adhesive. Here again,
a simple example will suffice. Take an adhesive tape with
a monogram printed upon it. The primary use of such tape
H is by virtue of its adhesiveness to bind and package

containers in which goods are to be stored and transported. Obviously, in such an example, the printed monogram of such adhesive tape would be incidental to the primary use of the said goods - the adhesive tape. By way of contrast, in the present case, the factor of adhesiveness is incidental to the primary use to which the goods are put, namely, that they are to be used for security purposes. Also, the HSN Explanatory Notes are relevant, which according to the judgment of this Court reported in 'Collector of Central Excise, Shillong v. Wood Craft Products Ltd.' [1995 (77) E.L.T. 23 (S.C.)] in para 12 are a safe guide in case of doubt: -

"12. It is significant, as expressly stated, in the Statement of Objects and Reasons, that the Central Excise Tariffs are based on the HSN and the internationally accepted nomenclature was taken into account to "reduce disputes on account of tariff classification". Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. This being the expressly acknowledged basis of the structure of Central Excise Tariff in the Act and the tariff classification made therein, in case of any doubt the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act. The ISI Glossary of Terms has a different purpose and, therefore, the specific purpose of tariff classification for which the internationally accepted nomenclature in HSN has been adopted, for enacting the Central Excise Tariff Act, 1985, must be preferred, in case of any difference between the meaning of the expression given in the HSN and the meaning of that term given in the Glossary of Terms of the ISI."

- A When one goes to the HSN Explanatory Notes to 'other printed matter', Item No. 10 which has already been referred to hereinabove states that 'self adhesive printed stickers designed to be used, for example, for publicity, advertising or mere decoration, e.g. "comic stickers" and "window stickers"' would be included.
- B

- It also goes on to say that goods of entry 39.19 (inter alia) because they are merely incidental to the primary use of the products, would not be so included. This test again
- C provides a useful application of what is includable and what is left out by applying the "primary" and "incidental" test outlined in Note 2 above. Obviously, a comic sticker would have as its primary use the "comic part", the adhesive or sticker part being only incidental to its primary use. Similarly,
- D in the facts of the present case, a security hologram sticker would have as its primary part, the security hologram, the sticker part or adhesive part only being incidental to the primary use of the said goods.

- E One other submission of Shri Radhakrishnan needs to be dealt with. He placed before us two circulars of the Department one dated 14.08.1995 and the other dated 21.06.1996. These circulars reads as follows: -

- F Circular No. 142/53/95-CX, dated 14.08.1995

- "I am directed to say that certain doubts have been expressed regarding the correct classification of Photo Identity Cards and Holograms - whether these should
- G be classified under Chapter 39 as articles of plastics or under Chapter 49 as products of printing industry.

2. The production of photo-identity cards involves videography of the person, computerised capture of
- H

the videographed image, merging of the image with A
the date of the person already entered in the computer
and the computerised printing out of the merged data
and image through a laser printer. This print out is
verified, validated and pasted with the Holograms of
the State emblem and then cut, folded and laminated B
before issue to the person.

3. The Board has carefully considered the matter. It
is felt that photo identity cards get their distinctive
character and identity because of the date imprinted C
on them and not because of the material they are made
of or because of their shape and size. Thus, photo-
identity cards are a distinct product as compared to
other identifiable articles of plastic.

4. Section Note(2) of Section VII of Central Excise
Tariff also clearly excludes photo identity cards from
the purview of Chapter 39 and places them squarely
under Chapter 49. D

5. On the other hand, Chapter Note (2) of Chapter
49 states that printing also means reproduced by
means of a duplicating machine, produced under the
control of a computer, embossed, photographed,
photo-copied, thermocopied or typewritten. Further, as E
per general explanatory notes to HSN - page 691, with
the few exceptions as referred to in these notes,
Chapter 49 covers all printed matter of which the
essential nature and use is determined by the fact of
its being printed with motifs, characters or pictorial F
representations. G

6. Keeping in view the distinctive character, process
of manufacture, relevant tariff headings, Section notes,
Chapter notes and HSN notes, the Board is of the H

A view that photoidentity cards and holograms merit classification under sub-heading 4901.90 of the Schedule to the Central Excise & Tariff Act, 1985.

B 7. All pending disputes may be finalized in view of the above guidelines. Field formations and trade may be informed accordingly."

Circular No. 35/96-Cus., dated 21.06.1996

C Subject : Classification of holograms under First Schedule, CTA 1975 - Regarding.

D "Doubts have been raised regarding classification of "embossed holograms" under First Schedule to the Customs Tariff Act, 1975 (Customs Tariff), in the context of the Boards Circular No. 141/52/95-CX.4 dated 14.08.1995 stating the "photo identify cards and holograms" are classifiable under sub-heading 4901.90 of the Central Excise Tariff. Subsequently it has been clarified that the hologram, as such, would be classified keeping in view the manufacturing process and end use etc.

E 2. The issue has been examined. It is observed that "embossed holograms" presently are made by embossing plastic films with mechanical dies and are self adhesive, however in some cases, the possibility such holograms being other than self adhesive is also not ruled out.

F 3. Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastic are classifiable under Heading 39.19 of the Customs Tariff. As per Note 2 to Section VII, read with Explanatory Notes to Heading 39.19, this heading also includes articles printed with motifs, characters or pictorial

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representations, which are not merely incidental to the primary use of the goods. In view of this, self-adhesive embossed holograms will fall under Heading 3919.90 of the Customs Tariff. However embossed plastic holograms, which are not self-adhesive, will fall under Heading 49.11, in view of Note 2 to Chapter 49." A B

It will be seen that under Para 3 of the second circular self adhesive embossed holograms will now fall under Heading 39.19, whereas embossed plastic holograms which are not self adhesive alone will fall under entry 49. This is said to be in view of Note 2 to Chapter 49. We are afraid that the second circular which has been quoted hereinabove does not set out the law correctly. It is clear that merely because a particular embossed hologram is self adhesive, therefore in all cases, it will attract entry 39 is not correct. What is to be seen, as has been pointed out above, is whether the self adhesive part of the product is of primary use or the printed matter is of primary use. It cannot be that invariably in all cases, the moment a hologram is self adhesive it will fall within entry 39 without more. To this extent, it is clear that the circular as has been noted above, does not lay down the correct law. C D E

We will now come to the impugned judgment. The CESTAT in the impugned judgment states as under: - F

"It is thus apparent that even if printing is of essential nature, the product of 39.19 would remain classifiable under Heading 39.19 and will not be regarded as "a product of printing industry". This view is further strengthened by the Explanatory Notes of HSN below Heading 39.19 which reads as under: G

"It should be noted that this heading includes articles printed with motifs, character or pictorial H

A representations which are not merely incidental to the primary use of the goods (See Note 2 to Section VII)".

B General Explanatory Notes of HSN below Chapter 49 clearly mentions that "Goods of Heading 39.18, 39.19, 48.14 or 48.21 are also excluded from this Chapter, even if they are printed with motifs, characters or pictorial representations, which are merely incidental to the primary use of the goods." For this reason "self-adhesive printed stickers designed to be used, for example, for publicity, advertising or mere decoration, eg. "comic stickers" and "window stickers" mention in HSN Notes below Heading 49.11 would not cover the products of Heading 39.19. In view of this, the decisions relied upon by the learned Advocate are not applicable to the facts of the present matters. In Holographic Security Marking Systems case the product involved was "stamping foils" falling under Heading 32.12 of the Tariff which was classified under Heading 49.01 after the hologram was printed thereon. The Tribunal observed that "until the product became transformed because of the printing of the material on it, it continued to be stamping foil..". In the present case even after printing, because of Note 2 to Section VII, the product continues to remain classified under Heading 39.19 of the Tariff. We thus hold the classification of the impugned product under Heading 39.19 of the Tariff."

G It is clear that the aforesaid reasoning is flawed in more than one respect. After setting out the Explanatory Notes to HSN and the conclusion of such Note that products such as "comic stickers" would not fall within entry 39, the CESTAT arrives at the exactly opposite result without telling

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us why. Secondly, we are again left guessing as to how the self adhesive aspect of the product is more important than the security aspect of the said product. Equally, there is no reasoning so far as this aspect is concerned. We therefore find that the CESTAT is not correct in the finding reached above and the judgment dated 19.12.2003 of the CESTAT is, therefore, set aside.

Only one further thing remains. Various arguments were made by both sides on the Rules of Interpretation of the First Schedule to the Central Excise Tariff Act, 1985. Shri Radhakrishnan referred to and relied upon Rule 1 and Shri Lakshmikumaran referred to and relied upon Rule 3. We do not think it necessary to go into any of these Rules for the purposes of this judgment inasmuch as we have found as a fact, in accordance with Note 2 to entry 49, that the security hologram part of the product in question is primary and the self adhesive part only incidental insofar as the user of the said goods is concerned. With the above observations, the appeals are allowed. There will be no orders as to costs. We are informed, that the appellant has paid the duty during the pendency of these appeals. He will be entitled to a refund of the same in accordance with law.

Devika Gujral

Appeal allowed.