



प्रधान आयुक्त का कार्यालय, केन्द्रीय जी.एस.टी, अहमदाबाद - दक्षिण  
७वीं मंजिल, जी.एस.टी भवन, पोलिटेक्निक के पास, अंबावाडी, अहमदाबाद - १५  
**OFFICE OF THE PRINCIPAL COMMISSIONER OF CENTRAL GST,  
AHMEDABAD-SOUTH  
7<sup>th</sup> FLOOR, GST BHAVAN, NR. POLYTECHNIC, AMBAVADI,  
AHMEDABAD-380015**

निबन्धित पावती डाक द्वारा / By REGISTERED POST A.D.

फा. सं./ F.No. V.48/15-12/OA/Commr./2016-17

आदेश की तारीख/Date of Order : 11.12.2018

जारी करने की तारीख/Date of Issue : 11.12.2018

द्वारा पारित/Passed by:- सुरेश नंदनवार, आयुक्त

**SURESH NANDANWAR, COMMISSIONER**

मूल आदेश संख्या / Order-In-Original No. : AHM-EXCUS-001-COM-017-18-19 Dated 11.12.2018

1. जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।  
This copy is granted free of charge for private use of the person(s) to whom it is sent.
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, O-20, मेघानीनगर, न्यु मेन्टल हॉस्पिटल कम्पाउन्ड, अहमदाबाद-380 016 को सम्बोधित होनी चाहिए।  
Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, O-20, Meghani Nagar, Mental Hospital Compound, Ahmedabad-380 016.
3. उक्त अपील प्रारूप सं. इ.ए.3 में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अग्रेषित किए जाने चाहिए।  
The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.
4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।  
The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।  
The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. अधिनियम की धारा 35 बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहाँ के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।  
The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शीर्ष जुर्माना के बारेमें विवाद है उसका भुक्तान करके अपील की जा सकती है।  
An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute”.
  8. न्यायालय शुल्क अधिनियम, 1970 की अनुमूची-1, मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00 रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।  
The copy of this order attached therein should bear a court fee stamp of Rs. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.
  9. अपील पर भी रु. 4.00 का न्यायालय शुल्क टिकट लगा होना चाहिए।  
Appeal should also bear a court fee stamp of Rs. 4.00.
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विषय: -

**Sub :** Show Cause Notice F.No. F.No. DGCEI/AZU/36-35/2017-18 Dated 28.04.2017 issued to

1. M/s Matchwell,  
Saijpur-Gopalpur,  
Outside Shahwadi Octri Naka,  
Near Ashok Industries, Piplaj,  
Ahmedabad.
2. Shri Manoj Kumar Agrawal, Partner,  
Saijpur-Gopalpur,  
Outside Shahwadi Octri Naka,  
Near Ashok Industries, Piplaj,  
Ahmedabad.

**Brief facts of the case:**

1. M/s.Matchwell,Saijpur-Gopalpur, Outside Shahwadi Octroi Naka, Near Ashok Industries, Piplej, Ahmedabad[herein after referred to as “M/s MATCHWELL/Noticee” for the sake of brevity] engaged in manufacture of Printed Decorative Paper in rolls falling under Central Excise Tariff Sub Heading (herein after referred to as “CETSH” for the sake of brevity) No.48119099 of the schedule to the Central Excise Tariff Act (hereinafter referred to as “CETA” for the sake of brevity),1985.
2. Intelligence gathered by officers of the DGCEI, Zonal Unit, Ahmedabad indicated that M/s MATCHWELL engaged in manufacturing of Printed Decorative Paper classifiable under CETSH No. 48119099 of the CETA, 1985 attracting Central Excise Duty at tariff rate. They were manufacturing aforesaid product on job work basis for various manufacturers availing exemption of Job-work Notification No. 214/86-C.E. dated 25-03-1986, as amended. They were also doing job work for the manufactures/traders, who were not using the said goods in the manufacture of excisable final product, and therefore it appeared that M/s MATCHWELL was not entitled for exemption under aforesaid notification and liable to pay Central Excise duty as determined under the provision of Rule 8 or 9 of the Central Excise (Valuation) Rules, 2000. They have neither taken Central Excise Registration nor paid any amount of Central Excise duty payable on their manufactured product.
- 3.1 Based on the intelligence, the officers of DGCEI simultaneously conducted searches on 09-09-2016at factory premises of (i) M/s MATCHWELL, Saijpur-Gopalpur, Outside Shahwadi Octroi Naka, Near Ashok Industries, Piplej, Ahmedabad and (ii) office at 11, 1<sup>st</sup>& 2<sup>nd</sup> Floor New Cloth Market, Outside Raipur Gate, Sarangpur, Ahmedabad. During the course of the searches, it appeared that they were engaged in manufacture of Printed Decorative Paper in rolls classifiable under CETSH No. 48119099 of the CETA, 1985. They were also manufacturing aforesaid Printed Decorative Paper in rolls on job work basis for various manufacturers/ traders. Some of the manufacturers/traders used said Printed Decorative paper in the manufacture of exempted goods and cleared the same without payment of Central Excise duty. The said manufactures had neither given undertaking to the Assistant/Deputy Commissioner of Central Excise having jurisdiction of M/s MATCHWELL nor fulfilled the conditions of the said exemption notification. It appeared that M/s MATCHWELL is, therefore, not entitled for the benefit of said exemption notification and liable to pay Central Excise duty on the excisable goods, viz. Printed Decorative Papers in Rolls, cleared to said manufacturers. M/s MATCHWELL neither obtained Central Excise Registration nor paid Central Excise duty on the aforesaid product manufactured. During the searches various documents viz.- purchase invoices, job-work challans, sales invoices, ledger accounts etc. were resumed.

4. Statement of Shri Anandkumar Agarwal, Authorised Signatory of M/s MATCHWELL and M/s Aman Fashion Pvt. Ltd and Partner of M/s Kewal Corporation was recorded under Section 14 of the Central Excise Act, 1944 on 09-09-2016, wherein he, *inter alia*, stated that their company M/s MATCHWELL was engaged in manufacturing of the excisable goods, i.e. printed decorative paper falling under CETSH No. 48119099 on job work basis for various manufacturers/traders, which was to be used in manufacturing of laminate sheets by them; that they had not taken Central Excise Registration of the said manufacturing unit; that except above M/s MATCHWELL were also running three trading companies/firms viz- (i) M/s Aman Fashion Pvt. Ltd., Ahmedabad (A private limited company with Directors, Shri Shyamsundar Ramprasad Agarwal, Shri Dineshkumar Shankarlal Agarwal, Shri Shreenarayan Shreekishan Agarwal and himself), (ii) M/s Kewal Corporation, Ahmedabad (A Partnership firm with partners, Shri Aman Dineshkumar Agarwal, Nikhil Dineshkumar Agarwal, Nikunj Manojkumar Agarwal and himself) and (iii) M/s Keval Corporation, Ahmedabad (A proprietorship firm with Proprietor, Shreekishan Agarwal, HUF), which were owned by his family members, engaged in trading of printed decorative paper; that M/s MATCHWELL had received plain base papers from the parties, printed the desired colour/design on the same on job work basis and returned the same to the client on payment of mutually agreed amount; that major parties to whom they dealt with were M/s Natural Décor and M/s Aman Fashion Pvt. Ltd. along with other firm/companies; that M/s Natural Décor and M/s Aman Fashion Pvt. Ltd. were neither engaged in any kind of manufacturing activities, nor have any manufacturing facilities; that they were basically traders of décor papers; that they purchased the plain base papers and after got it decorative printed from M/s MATCHWELL on job work basis, sold the same to different manufactures; that M/s Natural Décor and M/s Aman Fashion Pvt. Ltd. were purely engaged in trading activities and no manufacturing activities had been carried out by them and, hence, they were not liable to pay Central Excise Duty; that M/s MATCHWELL was neither registered with Central Excise Department nor paid any Central Excise duty, as M/s MATCHWELL did only job work and did not carry out any manufacturing activities other than that; that the manufacturing of printed decorative papers on job work basis was exempted from Central Excise Duty and, hence, they were not paying Central Excise duty; that M/s Natural Décor and M/s Aman Fashion Pvt. Ltd. were engaged in purely trading activities and had not fulfilled the conditions of job-work exemption Notification no.214/86-C.E. dated 25-03-1986 therefore, they were not entitled for any exemption for job work done for their above two trading firms; that their other clients were complying with the conditions of said notifications, he agreed that M/s MATCHWELL was liable to pay Central Excise Duty on the goods manufactured on job work basis for their aforesaid two trading firms, which were also their related parties; that M/s Kewal Corporation had started business in the year 2015-16 and they got manufactured decorative printed papers on job work basis only from M/s

MATCHWELL; that consignment wise details of goods got manufactured on job work basis by their said 2 trading firms were not readily available with them and they would work out the same and submit within 4-5 days alongwith assessable value thereof and Central Excise Duty payable thereof.

**5.1** Further statement of Shri Anandkumar Agarwal, Director of M/s MATCHWELL, was recorded on 13-12-2016, wherein he, *inter alia*, stated that M/s MATCHWELL was engaged in printing of Decorative Paper in Rolls form on job work basis for various manufacturers/traders; that for printing of the Decorative Paper, they received 'Uncoated Printing Paper' i.e. 'Base Paper in Rolls' from their various clients and as per requirement of the clients, they manufactured "Printed Decorative Paper in Rolls Form" of various types of designs and colour combination as per order of the clients and send back the excisable goods i.e. "Printed Decorative Paper in Rolls" to the respective clients; they charged job charges from said principal manufacturers ranging Rs.1/-per meter to 6/- per meter or Rs.22/- per kg to Rs. 70/- per kg; that "Printed Decorative Paper" was used in manufacturing of High pressure Laminated Sheets, Particle Boards, MDF Boards as decorative surface of the product; that decorative printing carried out by their unit M/s MATCHWELL, was a particular form of rotogravure printing; that Rotogravure printing was a continuous printing process, in which base paper in roll form was used and after printing finished goods decorative printed paper was also remains in roll form; that M/s MATCHWELL engaged in manufacturing of decorative printing on base paper on job-work basis, which was essential to further use the product i.e. printed decorative paper in manufacturing of Decorative Laminate Sheets/ Particle Boards/ MDF Board and without printing base paper could not be used; that they were of the opinion that the product manufactured by their unit M/s MATCHWELL, was a product of printing industry and falls under CETSH No. 49119990 attracting NIL rate of Central Excise Duty, therefore they had neither obtained any Central Excise Registration nor paid any Central Excise Duty on the same before initiation of the present enquiry by DGCEI (i.e. 09-19-2016); that he has gone through the Chapter Heading 4811 of the Central Excise Tariff, Act 1985, which was as under-

Tariff	Item Description of goods	Unit	Rate of duty
4811	-PAPER, PAPERBOARD, CELLULOSE WADDING AND WEBS OF CELLULOSE FIBRES, COATED, IMPREGNATED, COVERED, SURFACE-COLOURED, SURFACE-DECORATED OR PRINTED, IN ROLLS OR RECTANGULAR (INCLUDING SQUARE) SHEETS, OF ANY SIZE, OTHER THAN GOODS OF THE KIND DESCRIBED IN HEADING 4803, 4809 OR 4810		
4811 90	--- Other paper, paperboard, cellulose wadding and webs of cellulose fibres : --- Handmade paper and paperboard, rules, lined or squared but not otherwise printed; chromo and art paper, coated, building board of paper or pulp, impregnated; chromo board; raw base		

	paper for sensitising, coated; surface marbled paper; leather board and imitation leather board; and matrix board :		
48119099	---- Other	Kg.	12.5%

5.2 He agreed that the printed Decorative Paper manufactured by their Unit was Surface- Coloured, Surface Decorated or Printed in rolls and correctly classifiable under CETSH No.48119099 of the schedule to the CETA and attracts Central Excise Duty @ 12.5% Adv. He further, deposed that they had not paid any amount of Central Excise Duty on printed Decorative Paper manufactures on job-work basis for various clients, since they were of the opinion that the product manufactured by M/s MATCHWELL, was a product of printing industry and falls under CETSH No.49119990 attracting NIL rate of Central Excise Duty; that they had done only job-work for various clients which were registered with Central Excise department and used aforesaid printed Decorative Paper as raw material in the manufacturing of dutiable final product viz- Decorative Laminated Sheets (CETH 4811), Laminated Block Board (CETH 4823), Laminated Particle Board (CETH 4410) etc., hence as per Job-Work exemption Notification No. 214/86-CE dated 25-03-1986, as amended they were exempted to pay duty on the printed Decorative Paper manufactured on job-work basis for various clients; that they had collected details from their clients i.e. principal manufactures and produced a list of their clients as detailed in Annexure-I, who had got Printed Decorative Paper manufactured on job work basis from M/s MATCHWELL and not used the same for manufacturing of dutiable final product; that in addition to the above,they had also constituted two trading firms viz. - (1) M/s. Aman Fashion P. Ltd and (2) M/s. Kewal Corporation who purchased raw material i.e. Base Paper and after manufacturing printed Decorative Paper from M/s MATCHWELL on job-work basis, sold the product to different buyers; that except the clients shown in Annexure-I and their two trading firms - (1) M/s. Aman Fashion P. Ltd and (2) M/s. Kewal Corporation, all other clients had used printed decorative paper for manufacturing of dutiable final products viz- High pressure Laminated Sheets, Particle Boards, MDF Boards; that they had received Base Paper either under Job-Work Challan or directly from supplier of Base Paper with invoice and challan and after job-work sent the printed Decorative Paper to the client and they had charged only job-charged form the clients; that the job work done by M/s MATCHWELL for the clients, except shown in Annexure-I and for their two trading firms - (1) M/s. Aman Fashion P. Ltd and (2)M/s. Kewal Corporation, was eligible for exemption under the aforesaid Notification No.214/86-CE dated 25-03-1986, as condition i.e. goods received after job work had been used in manufacturing of dutiable final product by the clients/principal manufactures. He admitted that they had not fulfilled conditions of Notification No.214/86-CE dated 25-03-1986 for the clients shown in Annexure-I and their two trading firms (1) M/s. Aman Fashion P. Ltd and (2) M/s.Kewal Corporation and liable to pay applicable Central Excise duty on the printed decorative paper

manufactured on job work basis for the clients shown in aforesaid Annexure-I and for two trading firms (1) M/s. Aman Fashion P. Ltd and (2) M/s. Kewal Corporation; that they would pay appropriate duty and submit proof of payment within 15 days; that during statement dated 09-09-2016, Shri Anandkumar, Authorised Signatory had submitted tentative value of the goods manufactured by their unit for aforesaid two trading unit viz. (1) M/s. Aman Fashion P. Ltd. and (2) M/s. Kewal Corporation, which also include the value of the traded goods, correct details of job work done by M/s MATCHWELL for these two trading units were as per the Job Work Register submitted by him; that M/s MATCHWELL had not manufactured printed Decorative Paper on job-work basis for their trading firm M/s Natural Decor; that he would submit the details of sales of printed decorative paper made by aforesaid (1) M/s. Aman Fashion P. Ltd. and (2) M/s. Kewal Corporation, which was manufactured on job work basis from M/s MATCHWELL during 2012-13 to 2016-17.

6. Further statement of Shri Manoj Kumar Agarwal, Partner of M/s MATCHWELL, was recorded on 29-03-2017, wherein he, *inter alia*, submitted Annexure-II showing year-wise summary of the job-work done, value of the base paper and job-work charges billed/received from the clients shown in the Annexure-I for the period from F.Y. 2012-13 to 2016-17 (up to 09-09-2016) which was prepared on the basis of job-work register maintained by them; that the details shown in the Annexure-II were true and correct; that details shown in the job-work register submitted by him during the statement dated 08-12-2016 was prepared on the basis of the Bills/Challans of Base Paper received from the clients and job-work invoices issued by M/s MATCHWELL which were true and correct; that he also submitted Annexure-III, showing details of the sale of Decorative Printed Paper by their two trading firms (1) M/s. Aman Fashion P. Ltd., and (2) M/s Kewal Corporation which was got manufactured in M/s MATCHWELL from F.Y. 2012-13 to till date; that he has perused Section 4 of the Central Excise Act, 1944 and the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, that accordingly, M/s MATCHWELL is liable to pay Central Excise Duty on the value determined as per aforesaid Rule 8 on the printed Decorative Paper manufactured and cleared on job-work basis for the clients as detailed in the aforesaid Annexure-I; that M/s MATCHWELL was also liable to pay Central Excise Duty on the value determined as per aforesaid Rule 9 on the printed Decorative Paper manufactured and sold through their two trading firms (1) M/s. Aman Fashion P. Ltd. and (2) M/s. Kewal Corporation, as both the trading firms were related entities of M/s MATCHWELL as per the provision of Section 4 of Central Excise Act, 1944 and they would pay Central Excise Duty after consulting the management, if payable by their unit M/s MATCHWELL.

7.1 On examination of the documents/records resumed/recovered during the course of investigation and from the oral statements, it was revealed that M/s. MATCHWELL had manufactured and cleared different types of printed Decorative Paper in rolls by classifying

the same as a product of printing industry under Central Excise Tariff Sub-heading (CETSH NO.)-49119990 attracting NIL rate of Central Excise duty. Therefore they had neither obtained any Central Excise Registration nor paid any Central Excise Duty on the aforesaid product.

7.2. M/s MATCHWELL was engaged in printing of Decorative Paper in Rolls form for which they used 'Uncoated Printing Paper' i.e. 'Base Paper in Rolls' and as per requirement of the clients, they manufactured "Printed Decorative Paper in Rolls Form" of various types of designs and colour combination as per order of the clients. The decorative printing carried out by M/s MATCHWELL, was a particular form of rotogravure printing. Rotogravure printing was a continuous printing process, in which base paper in roll form was used and after printing finished goods decorative printed paper also remained in roll form. The product so manufactured i.e. printed decorative paper is used for manufacturing of Decorative Laminated Sheets, Particle Boards, MDF Boards as decorative surface of the product. After decorative printing of Base Paper there is emergence of a new Commercial product different from the one with the process started i.e. printed Decorative Paper is a different Commercial product from the base paper having different name, characteristics and use, which it does not bear earlier. It is to appreciate that it is the printed Decorative Paper and not the base paper which is used for manufacturing of particular and specific product i.e. Decorative Laminated Sheets, Particle Boards, MDF Boards. The end use changed as a result of decorative printing process undertaken by M/s MATCHWELL. The process of aforesaid particular kind of printing has resulted in to a new commercial product, different from the one with which the process started. Thus, the resultant finished goods are an article with different name, character and use, which it did not bear earlier.

8.1 The Central Excise Tariff Sub-heading (CETSH NO.)-49119990 under which M/s MATCHWELL had classified the printed Decorative Paper is as under-

Tariff	Item Description of goods	Unit	Rate of duty
4911	Other printed matter, including pictures and photographs		
4911 10	-Trade advertising material, commercial catalogues and like:		
4911 99	-- Other		
4911 99 10	--- Hardcopy (printed) of computer software	kg.	Nil
4911 99 20	--- Plan and drawings for architectural engineering, industrial, commercial, topographical or similar purposes reproduced with the aid of computer or any other devices	kg.	Nil
4911 99 90	--- Other	kg.	Nil

The General Note of Chapter 49 of HSN is as under-

*With the few exceptions referred to below, this Chapter 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 representations.*

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*For the purpose of this Chapter, the term "printed" includes not only reproduction by the several methods of ordinary hand printing (e.g., print from engravings or woodcuts, other*



than originals) or mechanical printing (letterpress, offset printing, lithography, photogravure, etc.), but also reproduction by duplicating machine, embossing, photography, photocopying, thermocopying or typewriting see Note 2 to this Chapter) irrespective of the form of characters in which the printing is executed (e.g., letters of any alphabet, figures, shorthand signs, Morse or other code symbols, Braille characters, musical notations, pictures, diagrams). The term does not, however, include coloration, decorative or repetitive-design printing.

8.2 As per the above General Chapter Note of the HSN, the decorative printing does not fall under the Chapter 49 of the Central Excise Tariff Act, 1985. Therefore, it appeared that M/s MATCHWELL had wrongly classified the printed Decorative Paper CETSH No.-49119990.

The Chapter Heading 4811 of the Central Excise Tariff, Act 1985, is as under-

Tariff	Item Description of goods	Unit	Rate of duty
4811	-PAPER, PAPERBOARD, CELLULOSE WADDING AND WEBS OF CELLULOSE FIBRES, COATED, IMPREGNATED, COVERED, SURFACE-COLOURED, SURFACE-DECORATED OR PRINTED, IN ROLLS OR RECTANGULAR (INCLUDING SQUARE) SHEETS, OF ANY SIZE, OTHER THAN GOODS OF THE KIND DESCRIBED IN HEADING 4803, 4809 OR 4810		
4811 90	--- Other paper, paperboard, cellulose wadding and webs of cellulose fibres : --- Handmade paper and paperboard, rules, lined or squared but not otherwise printed; chromo and art paper, coated, building board of paper or pulp, impregnated; chromo board; raw base paper for sensitising, coated; surface marbled paper; leather board and imitation leather board; and matrix board :		
48119099	---- Other	Kg.	12.5%

8.3 The Chapter Heading 4811 of the Central Excise Tariff Act, 1985 covers PAPER SURFACE-COLOURED, SURFACE-DECORATED OR PRINTED, IN ROLLS. The product manufactured by M/s MATCHWELL i.e. printed Decorative Paper in rolls is rightly classifiable under CETSH No.-48119099 of CETA, 1985 and attracts Central Excise Duty.

8.4 In view of the above, it is clear that the process of decorative printing on base paper amounts to manufacture and as per General Chapter Note of the HSN, the decorative printing does not fall under the Chapter 49 of the Central Excise Tariff Act, 1985. Hence, M/s MATCHWELL had wrongly classified the printed Decorative Paper under CETSH No. 49119990. The Chapter Heading 4811 of the Central Excise Tariff Act, 1985, covers PAPER SURFACE-COLOURED, SURFACE-DECORATED OR PRINTED, IN ROLLS. Therefore, the product manufactured by M/s MATCHWELL i.e. printed Decorative Paper in rolls is rightly classifiable under CETSH No. 48119099 of CETA and attracts Central Excise Duty.

8.5 M/s MATCHWELL had manufactured aforesaid printed Decorative Paper in rolls classifiable under CETSH No. 48119099 of CETA, 1985 on job work basis for the manufacturers registered with Central Excise Department. They are sending raw materials i.e. Base Paper in Rolls for manufacturing of the excisable goods i.e. Printed Decorative Papers in

rolls on job work basis under job work challans to M/s MATCHWELL, who after manufacturing said goods cleared without payment of Central Excise duty leviable thereon, availing the benefit of job-work Exemption Notification No. 214/86-C.E. dated 25-03-1986, as amended. The said manufacturers had used said goods in the manufacture of the dutiable finished excisable goods.

8.6 Further, M/s MATCHWELL was also manufacturing said excisable goods (Printed Decorative Papers in rolls) on job work basis for other manufacturers as detailed in TABLE-I below. They are sending raw materials i.e. Base Paper in Rolls for manufacturing of the excisable goods i.e. Printed Decorative Papers in rolls on job work basis to M/s MATCHWELL, who after manufacturing cleared the same without payment of Central Excise duty leviable thereon. The said manufacturers were engaged in the manufacture of exempted finished goods and used the said Printed Decorative Papers in Rolls, received from M/s MATCHWELL in the manufacture of exempted goods. The said manufactures had neither given undertaking to the Assistant/Deputy Commissioner of Central Excise having Jurisdiction of M/s MATCHWELL nor fulfilled the conditions of the Job-work Exemption Notification No. 214/86-C.E. dated 25-03-1986, as amended. Shri Manoj Kumar Agrawal, Partner of M/s MATCHWELL admitted these facts in his statement dated 08-12-2016. It appeared that M/s MATCHWELL is, therefore, not entitled for the benefit of said exemption notification and liable to pay Central Excise Duty at appropriate rate on the printed Decorative Paper manufactured on job work basis and cleared to the manufactures as detailed in the TABLE-I below:-

**TABLE-I**

List of clients who had got Printed Decorative Paper manufactured on job work basis from M/s Matchwell, Piplej, Ahmedabad and used the same in manufacturing of exempted final product and did not fulfill the conditions of the job-work Notification No.214/86-CE dated 25-03-1986.		
Sr.No.	Name	Address
1	KRIFOR INDUSTRIES PVT.LTD.	Block No: 35, National Highway No.228 Walner Patia, Village Alwa Taluka-Hansot, Dist-Bharuch
2	SIDDHI DECOR (P) LTD.	Survey No:240 ,B/H Bhagyodaya Hotel Changodar Dist A'Bad
3	VIRGO INDUSTRIES(A'BAD)	Plot No:7 New Timber Market Near Baherampura Municipal School Bhulabhai Park Ahmedabad
4	ADITYA ENTERPRISE	Raowali ,P.O Nurpur Pathankot Road Jalandhar ,Punjab
5	ECO BOARD IND LTD	At Belapur ,Nr.Akluj, TAMalsiras, Dist:Solapur, Belapur(Maharashtra)
6	G.N.LAMINATES	Vill.Kalujhanda Dist:Solun, Kalujhanda(h.P) Himachal Pradesh
7	GIRIVAR DECOR	Khasra No:77 Rampur Jattan B/H Ruchira Paper Mill Off Trilokpur Road Kala Amb (H.P) 17303 H.P
8	MADAN TIMBER SUPPLY CO.	Vill-Mukarabpur Chhacharvali Road. Jagadhari Yamunanagr Haryana
9	MAHAVIR PLYWOOD INDUS.	Plot No-660-661-680-681 B/H Urla Poloce Station Raipur(Chattisgarh)
10	MILLENIUM BOARD PVT LTD.	Plot No: B-16 Temburni MIDC Area Taluka:Mahad Dist :Solapur Maharashtra
11	RANGOLI PARTICAL	At Post-Rangoli, Tal-Hatkangle Dist:Kohlapur Maharashtra-

	BOARD (P) LTD.	411611
12	SAMRAT PLYWOOD LTD.	Birplassi,The:NalaGarhDist:Salon Himachal Pradesh Birplassi (H.P)
13	SHUBHAM BOARD	171, Tanang-Malgaon Road, At Post- Tannang, Tal- Miraj, Dist- Sangli (Maharastra)
14	WOODSTOCK LAMINATES PVT.LTD.	14 Km,MileStone,Nahan Road Vill-Moginand,KalaAmb,Dist-Sirmour Kala Amb(H.p)
15	SKD IMPEX LIMITED	2937/3, First Floor, Chuna Mandi, PaharGunj, New Delhi

8.7 Further, M/s MATCHWELL had also constituted two trading firms viz.-(1) M/s. Aman Fashion P. Ltd and (2)M/s. Kewal Corporation, own& operated by the family members. They were sending raw materials i.e. Base Paper in Rolls for manufacturing of the said goods on job work basis to M/s MATCHWELL, who after manufacturing cleared the same without payment of Central Excise duty leviable thereon. The said firms had sold the printed Decorative Paper in rolls to different buyers. In such cases also, M/s MATCHWELL is not entitled for aforesaid job-work exemption Notification and liable to pay Central Excise duty on said goods. Shri Manoj Kumar Agrawal, Partner of M/s MATCHWELL admitted in his statements dated 13-12-2016 and 29-03-2017 the said facts.

#### 8.8 PROVISION RELATED TO VALUATION FOR PAYMENT OF CENTRAL EXCISE

**Valuation-** For the purpose of discharging Central Excise duty valuation is to be done as per Section 4 of the Central Excise Act,1944, for the ease of understanding same is reproduce as under-

**Section 4. Valuation of excisable goods for purposes of charging of duty of excise. -(1)** Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -

- (a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sale consideration for the sale, be the transaction value;
- (b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

8.9 For the purpose of valuation as per Sub-Section-1(b) of Section 4 of the Central Excise Act,1944, the Central Excise Valuation (Determination of Price of Excisable Goods) Rules,2000 are applicable. The Rule 8 and Rule 9 of these rules are as under

Rule (8) Where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be one hundred and ten per cent of the cost of production or manufacture of such goods.

Rule (9) When the assessee so arranges that the excisable goods are not sold by an assessee except to or through a person who is related in the manner specified in either of sub-clauses (ii), (iii) or (iv) of clause (b) of sub-section (3) of section 4 of the Act, the value of the goods shall be the normal transaction value at which these are sold by the related person at the time of removal, to buyers (not being related person); or where such goods are not sold to such buyers, to buyers (being related person), who sells such goods in retail : Provided that in a case where the related person does not sell the goods but uses or consumes such

*goods in the production or manufacture of articles, the value shall be determined in the manner specified in rule 8.*

8.8.1 In view of above provisions, it appeared that the valuation of the goods manufactured on job work basis and cleared to the manufactures as detailed in above TABLE-I, who had not consumed printed Decorative Paper in manufacturing of dutiable final product and had captively consumed the same in the manufacture of exempted final product, is to be done as per the provision of Section 4 of Central Excise Act,1944 read with Rule 8 *ibid*.

8.8.2 Whereas, in the case of the goods manufactured on job work basis and sold through their two trading firms viz. (1) M/s. Aman Fashion P. Ltd. and (2) M/s. Kewal Corporation, which are related entities of M/s MATCHWELL, the valuation of said goods to be done as per the provision of Section 4 of Central Excise Act,1944 read with Rule 9 *ibid*.

9.1 Thus, ongoing through records maintained by M/s. MATCHWELL and other evidences available on record, it appeared that:-

- (i) M/s. MATCHWELL had manufactured and cleared different types of printed Decorative Paper in rolls.
- (ii) The decorative printing carried out by M/s MATCHWELL, was a particular form of rotogravure printing. Rotogravure printing was a continuous printing process, in which base paper in roll form was used and after printing, finished goods i.e. Printed Decorative Paper also remain in roll form. The Printed Decorative Paper manufactured by M/s MATCHWELL was used for manufacturing of High pressure decorative Laminated Sheets, Particle Boards, MDF Boards as decorative surface of the product.
- (iii) After, decorative printing end use is now confirmed to particular and specific use for manufacturing of High pressure decorative Laminated Sheets, Particle Boards, MDF Boards etc. The end use changed as a result of decorative printing process undertaken by M/s MATCHWELL. The process of aforesaid particular kind of printing has resulted in to a new commercial product, different from the one with which the process started. Thus, the resultant finished goods is an article with different name, character and use, which did not bear earlier.
- (iv) M/s MATCHWELL had wrongly classified the printed Decorative Paper under CETSH No.49119990 of the schedule to the CETA,1985. Whereas,as per the aforesaid General Chapter Note of the HSN, the decorative printing does not fall under the Chapter 49 of the Central Excise Tariff Act,1985.
- (v) The Chapter Heading 4811 of the Central Excise Tariff Act,1985 cover PAPER SURFACE-COLOURED, SURFACE-DECORATED OR PRINTED, IN ROLLS. The product manufactured by M/s MATCHWELL i.e. printed Decorative Paper in rolls is rightly

classifiable under CETSH No.48119099 of the schedule to the CETA,1985 and attracts Central Excise Duty.

- (vi) Further, the condition to avail exemption for job work under the Notification No.214/86-CE dated 25-03-1986, as amended is that the principal manufacture should use the goods got manufactured on job-work basis in the manufacturing of dutiable final product and fulfill the conditions of the said notification.
- (vii) M/s MATCHWELL had not paid Central Excise duty on said finished excisable goods manufactured on job work basis on behalf of the manufactures as mentioned TABLE-I at para No.9.6 as well as their aforesaid related two trading firms.
- (viii) In case of goods cleared to the manufactures mentioned in TABLE-I at para No.9.6 above, M/s MATCHWELL is not entitled for exemption under said notification as said parties had captively consumed said finished goods in manufacture of their exempted final product. The value of such goods is determined as per the provision of Section 4 of Central Excise Act,1944 read with Rule 8 *ibid*.
- (ix) In case of goods cleared to their own related trading firms viz-(1) M/s. Aman Fashion P. Ltd and (2) M/s. Natural Décor, M/s MATCHWELL is also not entitled for exemption under said notification as said trading firms had sold said finished goods as such in local market without payment of Central Excise duty thereon. The value of such goods is determined as per the provision of Section 4 of Central Excise Act,1944 read with Rule 9 *ibid*.
- (x) The above facts were categorically admitted by Shri Manoj Kumar Agarwal, Director of M/s MATCHWELL, in his above statements dated 13-12-2016 and 29-03-2017.

10.1 It further appeared that M/s MATCHWELL had knowingly misclassified the product i.e. Printed Decorative Paper in rolls under CETSH No.49119990 of the schedule to the CETA,1985 to evade the Central Excise Duty payable thereon. Shri Manoj Kumar Agarwal, Partner of M/s MATCHWELL in his statement agreed that the product manufactured by their unit was printed Decorative Paper rightly classifiable under CETSH No.48119099 of the schedule to the CETA,1985 and attracts Central Excise Duty. In spite of knowing that the aforesaid product was liable for payment of Central Excise Duty, they neither took Central Excise Registration nor paid any duty payable thereon. Admitting their offence after initiation of inquiry by DGCEI, they have obtained Central Excise Registration and started paying duty on the printed Decorative Paper in rolls manufacture and cleared by them by classifying the same under CETSH No.49119990 of the schedule to the CETA,1985. Further, before initiation of inquiry they had never informed the department regarding the product and their classification. They had knowingly misclassified the product i.e. Printed Decorative Paper with intention to evade

the Central Excise Duty payable thereon. (CTH referred above appears incorrect it should be 48119099)

11.1 That M/s. MATCHWELL has wrongly classified printed Decorative Paper under CETH 49119990 of the schedule to the CETA, 1985 and cleared the same at NIL rate of duty, whereas as discussed in the foregoing paras the aforesaid products, manufactured by M/s. MATCHWELL is incorrectly classifiable under CETH No. 48119099 of the schedule to the CETA, 1985 and attracts Central Excise duty. Accordingly, Central Excise duty payable by M/s MATCHWELL on the printed Decorative Paper manufactured and cleared during the F.Y 2012-13 to F.Y. 2016-17 (up to 09-09-2016) is summarized in Annexure "C" to the SCN. According to which, M/s MATCHWELL is liable to pay Central Excise Duty amounting to **Rs.2,90,76,437/-** (including Edu. Cess, S.H.E. Cess & S.B. Cess).

12.1 It appeared that M/s. MATCHWELL has contravened following provisions of Central Excise Act, 1944 and Rules framed there under:-

- (i) Section 3 of the Central Excise Act 1944 in as much as they cleared the excisable goods without payment of appropriate Central Excise Duty.
- (ii) Rule 4 of the Central Excise Rules, 2002 in as much as they had failed to discharge duty on the removal of their final product in the manner provided under the law. As discussed in foregoing paras, they had wrongly classified the product 'Printed Decorative Paper in rolls' and failed to discharge appropriate duty on removal of the same;
- (iii) Rule 6 of the Central Excise Rules, 2002 in as much as they failed to assess duty on their final product properly;
- (iv) Rule 8 of the Central Excise Rules, 2002 in as much as they failed to pay proper Central Excise duty on their final products by stipulated time;
- (v) Rule 10 of the Central Excise Rules, 2002 in as much as they failed to maintain proper records on a daily basis by showing wrong description of the goods, cleared by them, as discussed in foregoing paras;
- (vi) Provisions of job work exemption Notification No. 214/86-CE dated 25-03-1986, as amended

12.2 All these above said acts of omission and commission on the part of M/s. MATCHWELL appeared to have committed an offence by way of wilful mis-statement, inasmuch as they had mis-classified and cleared the printed Decorative Paper in rolls under CETH No. 49119990 of the schedule to the CETA, 1985 and wrongly availed benefit of job work exemption Notification No. 214/86-CE dated 25-03-1986, as amended and resulting in non payment of duty. They wilful defrauded the Govt. revenue by adopting the novel modus operandi, as discussed in details in foregoing paras. Hence, they have short paid the duty by reason of fraud, collusion, or wilful mis-statement or suppression of facts or contravention of provisions

of this Act or of the rules made there under with mala fide intention to evade payment of Central Excise duty. Shri Manoj Kumar, Partner of M/s MATCHWELL described the modus operandi, adopted by them, vide his statements dated 13-12-2016 and 29-03-2017. The Central Excise duty amounting to **Rs.2,90,76,437/-**(BED **Rs.2,88,51,678/-** + Edu Cess **Rs.1,49,840/-** + HSE Cess **Rs.74,920/-**), as detailed in **Annexure-C** to this SCN, is recoverable from **M/s. MATCHWELL** by invoking extended period in terms of proviso to Section 11A (4) of the Central Excise Act, 1944 along with interest for delayed payment of evaded Central Excise duty under Section 11AA of the Central Excise Act, 1944. Further, the aforesaid goods as detailed in Annexure-A & B, appears to be liable for confiscation under Rule 25 of Central Excise Rules, 2002, however same are not available for confiscation. For the acts of mis-statement and contravention of above provisions, they also appeared to be liable for penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002.

12.3 Shri Manoj Kumar Agarwal, Partner of M/s MATCHWELL is the key person, who is looking after all the operations relating to production, accounts and taxation matters. He is the master mind behind this modus operandi, which resulted into evasion of duty amounting to **Rs. 2,90,76,437/-**. Thus, it appears that Shri Manoj Kumar Agarwal, acquired possession of, or is in any way concerned in manufacturing, transporting, removing, depositing, keeping, or in any other manner deals with, any excisable goods which he had known or has reason to believe are liable to confiscation under the Act or these rules. All these acts of omission and commission on the part of Shri Manoj Kumar Agarwal has rendered himself liable for penalty under Rule 26 of the Central Excise Rules, 2002.

13.1 Therefore, M/s. Matchwell, Saijpur-Gopalpur, Outside Shahwadi Octroi Naka, Near Ashok Industries, Piplej, Ahmedabad, is hereby called upon to show cause to the Commissioner of Central Excise and Customs, Ahmedabad-I, having his office at Central Excise Bhawan, Ambawadi, Ahmedabad as to why:-

- (i) Excisable Goods viz. "Printed Decorative Paper in Rolls" manufacture and cleared by them should not be classified under CETH No. 48119099 of the schedule to the CETA, 1985.
- (ii) The Central Excise duty totally amounting to **Rs.2,90,76,437/-**(BED **Rs. 2,88,51,678/-** + Edu Cess **Rs. 1,49,840/-** + HSE Cess **Rs. 74,920/-**), not paid/short paid by them during F.Y. 2012-1 to F.Y. 2015-16 (up to 09-09-2016), as detailed in **Annexure-C**, attached with this Show Cause Notice, should not be demanded and recovered from them by invoking extended period of time in terms of proviso to Section 11A(4) of the Central Excise Act, 1944;

- (iii) Interest at the applicable rate on the amount mentioned at Sl. No (ii) above should not be recovered from them under Section 11AA of Central Excise Act, 1944;
- (iv) Penalty should not be imposed upon them under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002;

**Defense reply:**

14. M/s Matchwell vide letter dated 18.05.2017 submitted its defense reply inter-alia contending that there is no mis-classification of goods by them nor they have ever entertained any intention to evade payment of excise duty on the concerned goods produced by them on job work basis. They emphasize that we have entertained a bonafide belief, and still hold such belief, that the goods in question are products of printing industry appropriately meriting classification under Chapter 49 of the Tariff, and that they attract nil rate of duty under Chapter 49; that during the enquiry also, their Director has informed the officers on all occasions that they hold a view that the goods in question are not classifiable under Chapter 48 and therefore they did not obtain Central Excise registration nor paid any excise duty on such goods; that there is no evidence brought on record by the Revenue in this case indicating that they had "knowingly" mis-classified the product, and that "inspite of knowing" that the product was liable for payment of duty they had not taken Registration or paid duty thereon; that they emphasize that decorative printing on base paper imparts essential character to the goods in question as "surface paper" for the final products like decorative laminates, particle boards, MDF boards etc. and therefore decorative printing undertaken by them on base paper is not merely incidental to the primary use of the goods as "surface paper"; but without the designs, motifs and colours desired by the customers being printed on the base paper, the products cannot be used as "surface paper" for the above referred final goods, and accordingly the essential nature of the goods in question, namely, "surface paper" for decorative laminates, pre-laminates particle boards etc. is because they are printed, and a particular type of decorative printing is undertaken on base paper.

15. They have further submitted that the issue of classification raised in the show cause notice is an unauthorized action because the goods in question do not merit classification under Chapter 48 of the Tariff, and the invocation of the larger period of limitation is also an unauthorized action because there is no misclassification of the goods by them with intent to evade payment of excise duty. The goods merit classification under Chapter 49 of the Tariff as product of printing industry, and there have been circumstances and factors resulting in such an impression about the classification



of the goods under Chapter 49 of the Tariff on their part. The proposal leveled in the show cause notice are illegal and incorrect, and therefore request to withdraw this show cause notice in the interest of justice.

16. They have admitted that they have been undertaking decorative printing on uncoated printing paper, also known as base paper, by using rotogravure printing; that printing of designs, color combination etc. have always been in accordance with the orders of the clients, and thus the printing on base paper is always as per the requirements of the clients; that the printed decorative paper produced by them is used as decorative surface of the goods produced by the clients which are in the nature of decorative laminates, particle boards, MDF boards etc. The end use of printed decorative paper produced by them is always as a decorative surface of the above referred types of consumer goods' that the goods produced by them are known as "surface paper" because they are used as a decorative surface for the above referred consumer goods, and the end use of the decorative surface paper is always as the top layer on the surface of the final products like decorative laminates, particle boards, MDF boards etc; that they have undertaken decorative printing on base paper and produced surface paper on job work basis for the clients. However, those clients whose final products are chargeable to excise duty have followed the procedure of Notification No.214/86-CE whereas; the clients whose final products have been exempt from payment of Central Excise duty (like particle boards, MDF board etc.) have not followed such procedure for job work

17.1 They have submitted that Chapter 49 of the Tariff covers "Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans". The term "printed" is explained under note No.2 of Chapter 49 of the Tariff as also meaning reproduction by means of a duplicating machine, produced under the control of an automatic data processing machine, embossed, photographed, photocopied, thermo-copied or type written. Thus, for the purpose of Chapter 49 of the Tariff, printing not only means conventional printing by employing printing machines, but reproductions by the above means is also printing, and the resultant product is a "printed" product for the purpose of classification under this chapter.

17.2 Since printing is ordinarily undertaken on paper, and paper is a product falling under Chapter 48 of the Tariff, it is clarified under note No.12 of Chapter 48 of the Tariff that paper, paper board, 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.

17.3 Thus, products of printing industry, that is to say, even the products of paper or paper board on which printing is undertaken, which is not merely incidental to the primary use of the goods, falls in Chapter 49 of the Tariff. For the classification under Chapter 49 of the Tariff, the deciding factor is whether printing was only incidental to the primary use of the goods or such printing was essential for determining the use of the goods.

18. In Harmonious System of Nomenclature (HSN) also, it is laid down that all printed matter of which the essential nature and use was determined by the fact of its being printed with motifs, characters or pictorial representations were covered under Chapter 49; and this principle is, as aforesaid, embodied in Note No.12 to Chapter 48 of the Central Excise Tariff Act thereby providing that paper, paper board, 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. The scheme of Chapters 48 and 49 and also the concerned Notes for classification of goods under these two chapters make it clear that paper or articles thereof would not fall under Chapter 48 if they were printed and the printing was not merely incidental to the primary use of such goods, but printing was essential and the printing imparted essential nature and use to the goods.

19.1 M/s Matchwell has further submitted that the issue of classification of printed products obtained by printing on paper came up for consideration and decision in various cases. In all such cases, the above principle that if printing was only incidental to the primary use of paper, then the printed product would fall under Chapter 48; but if printing was important and essential for the use of the product of paper then the printed paper product would fall under Chapter 49 has been applied by the Appellate Tribunal.

19.2 They have submitted that Lottery Tickets, Bus tickets, Cheque books and such products are held as classifiable under Chapter 49 by the Appellate Tribunal in case of Sai Security Printers Ltd. 2006 (199) ELT 121 (Tr.); in case of Data Processing Forms Pvt. Ltd. V/s. Commissioner, Ahmedabad, decided by the Appellate Tribunal, Ahmedabad, reported at 2014 (311) ELT 161, it is held that various products which were in the nature of printed/pre-printed invoice forms, slip forms, monthly bill forms etc. merit classification under Chapter 49 of the Tariff; and in a case of Malati Arts Pvt. Ltd. 2000 (118) ELT 133 (In.) which is very similar to the case involved

herein, the Appellate Tribunal has considered a case where the assessee was undertaking printing on job work basis on paper and paper boards whereas the designs which were printed had been given and suggested by the buyers. Considering various other decisions, the Appellate Tribunal has held in this case of Malati Arts Pvt. Ltd. that such printing job work was correctly classifiable under Chapter 49 of the Tariff.

19.3 They further submitted that wrappers, labels etc. produced by printing customer's design, logos etc. are held to be classifiable under sub heading No.490190 of the Excise Tariff by the Appellate Tribunal in case of Rathika Pvt. Ltd. V/s. Commissioner 2001 (133) ELT 610. Even if labels were of cloth, aluminium foil or plastic film, they are held as products of printing industry in case of Johnson & Johnson Ltd. 2003 (156) ELT 166 (SC) by the Hon' ble Supreme Court. In this case, the Appellate Tribunal had classified paper labels under Chapter 48, cloth labels under chapter 59 and aluminium foil labels under chapter 76 of the Tariff; but this decision of the Appellate Tribunal is over-ruled by the Hon'ble Supreme Court while holding that printing imparted the character of labels to the products and hence they were products of printing industry. There are many other decisions also for products of paper, paper boards, plastic etc., wherein the classification is upheld under Chapter 49 because printing on paper or paper board or plastic and the like was found to be essential for the use of the printed product; and the design etc. that were printed had been supplied and ordered by the customers.

19.4 From the judgement of the Hon'ble Supreme Court, it is clear that printing of particulars as per the requirement of buyers would result in production of goods of printing industry, which fall under chapter 49 of the Tariff.

20. They further submitted that recently, CBEC has issued a Circular No.1052/01/2017-CX dated 23.2.2017 for classification of articles of paper and printing industry. Various products like Railway/Post/Other tickets and Passes, Mark-sheets/Certificates, OMR Sheets etc. which are produced by printing on paper are considered while issuing this circular, and it is clarified that such products were classifiable under Chapter 49 even though they were products obtained by printing on paper.

21.1 M/s Matchwell further referred to the case law of Servo-Med Industries Pvt. Ltd. 2015 (319) ELT 578 (SC), The Hon'ble Supreme Court has observed that a two-fold test had emerged for deciding whether the process is that of manufacture. The first test is that a different commercial commodity must come into existence by a process. The second test is that the commodity which was already in existence will

serve no purpose but for a certain process. While explaining this second test in true perspective, the Hon'ble Supreme Court has observed that only when a different and/or finished product comes into existence as a result of a process which makes the said product commercially usable, then the second test is satisfied. This test is referred as "test of no commercial user without further process" by the Hon'ble Supreme Court. This test of no commercial user without further process is applied by the Hon'ble Supreme in the subsequent case of Commissioner of Central Excise, Bombay-IV v/s. Fitrite Packers reported in 2015 (224) ELT 625 (SC) wherein the product involved was "printed GI paper".

21.2 The assessee purchased GI paper from the market and used it as a "base paper"; and carried out printing on the base paper according to the designs and specifications of the customers depending on their requirements. After printing as per the requirement of the customers, the same was delivered to the customers in jumbo rolls without slitting. The assessee had not challenged classification of the product by the Revenue under Heading 4811.90, but the assessee contended that the processes by him did not constitute manufacture because printing on duty paid GI paper would not amount to manufacture.

21.3 The Hon'ble Supreme Court has, after considering the decision of the Appellate Tribunal under challenge before it, has observed that GI paper was meant for wrapping and though blank paper could be used as wrapper for any kind of product, after the printing of logo and name of the specific product of Parle thereon, the end use was confined to only that particular and specific product of the said particular company/customer. It is further held by the Hon'ble Apex Court that printing was not merely a value addition but had now been transformed from general wrapping paper to special wrapping paper, and in that sense, end use had positively been changed as a result of printing process undertaken by the assessee.

21.4 The Hon'ble Supreme Court in this case has held that when printing process undertaken by the assessee transformed a general wrapping paper to special wrapping paper, the process of particular kind of printing has resulted into a different product, namely, paper with distinct character and use of its own which it did not possess earlier. The test of no commercial user without further process is applied by the Hon'ble Supreme Court for holding that further process, namely, printing was required for the commercial use of GI paper (i.e. base paper) for using the same as a special wrapping paper. Thus, the principle settled by the Hon'ble Supreme Court is that when printing of a particular kind resulted into a

paper with distinct character and use of its own which it did not bear earlier, it meant that the printing was not merely incidental to the use of the product, but it was essential for use and such use without particular kind of printing could not be made in respect of such product.

21.5 They submit that the said principle may be applied in the facts of the present case. It is stated in para 8.2 of the show cause notice that they were manufacturing printed decorative paper of various types of designs and color combination as per order of the clients, and such printed decorative paper was used for manufacturing of decorative laminates sheets, particle boards, MDF boards as decorative surface of the product. It is thus an admitted fact of this case that various types of designs and color combinations printed by them has transformed the base paper into a surface paper, which is used as decorative surface of the above referred consumer products. This would also mean that without printing undertaken by them on base paper, "surface paper" would not come into existence, and such products cannot be used as decorative surface of the consumer goods like decorative laminates, particle boards, MDF boards etc. The printing of designs etc. in accordance with the orders of the clients has thus imparted a distinct essential character and use to surface paper, which the base paper did not possess earlier.

21.6 They also submit that it is also stated in para 8.2 of the show cause notice that it is the printed decorative paper and not the base paper which is used for manufacturing of particular and specific product i.e. decorative laminates, particle boards, MDF boards etc. It is also recorded there that the end use changed as a result of decorative printing process undertaken by them. Now, the end use is admittedly as "surface paper" because such decorative surface is essential for the consumer goods like decorative laminated sheets, particle boards, MDF boards etc. Such decorative surface is the essential character of "surface paper", and this essential character and distinct use are only because of printing on base paper. The base paper without any decorative printing thereon cannot be used as "surface paper", and therefore printing undertaken by them is not merely incidental to the use of paper. The printing undertaken by them is rather essential and inevitable for the end use of the product as a decorative surface paper, and therefore such printing is the determining factor for the purpose of classification of the goods in question.

21.7 They therefore submit that the unprinted base paper cannot be used as "surface paper", and it is actually not used as "surface paper" either by the manufacturers of decorative laminates, particle boards etc. The designs and

decorations required by such clients are to be printed on the base paper so that the goods so produced by them can be used as "surface paper". The essential nature of the printed product as "surface paper" for decorative laminates, pre laminated particle boards, MDF boards etc. is therefore determined by the fact of they being printed with desired designs and decoration. The use of the product as "surface paper" is also determined by the fact of the product being printed with desired designs and decorations. They therefore, submit that printing undertaken by them is not merely incidental to the primary use of base paper, but such printing is essential and inevitable for the use of the base paper as "surface paper" because base paper could not be used as decorative surface paper for the above referred consumer goods without printing thereon.

21.8 They further, submit that the primary use of the goods in question as "surface paper" is possible only after printing of designs and decorations, and therefore the goods in question are in the nature of printed products manufactured by them as products of the printing industry. The goods would therefore merit classification under Heading 4911 of the Tariff.

22.1 M/s Matchwell has further submitted that for proposing classification of base paper as surface decorated or printed paper in rolls under Heading 48119099, the Revenue has referred to the general note of chapter 49 of HSN. But such reference is misplaced inasmuch as it is clarified under general note of chapter 49 of HSN that with the few exceptions referred under that note, the chapter 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 representations. In view of the admitted fact that the goods in question could be used as decorative "surface paper" for the final products like decorative laminates, particle boards, MDF boards etc. only because they are printed with designs and decorations ordered by the clients and thus the distinct character and use as "surface paper" are acquired by the goods in question only because they are printed with designs, motifs and characters, the goods are covered under chapter 49 by virtue of the above general explanatory notes of HSN.

22.2 They have submitted that general note for explaining the term "printed" is relied upon by the Revenue for suggesting that "printed" does not include coloration or decorative or repetitive-design printing. There is a fallacy in relying on one sentence occurring under the general note as regards the term "printed", because the test of classification under chapter 49 of the Tariff is that the printing could not be merely incidental or ancillary to the use of the product, but the essential nature and use of the product should be

determined by the fact of they being printed with motifs, characters or pictorial representations. The rotogravure printing of decorative designs, colours and motifs and characters by them on base paper is not in the nature of "coloration" or "decorative" or "repetitive-design printing". The printing undertaken by them admittedly provides a distinct character and use to the base paper, and such distinct character and use as "surface paper" was not possessed by base paper earlier. After rotogravure printing by them, the base paper gets transformed into a different product having different name, characteristics and use; which is an admitted fact of this case. Therefore, printing of decorative designs etc. in accordance with the orders of the clients is not mere coloration or decorative or repetitive-design printing. The printing of decorative designs on base paper by them is a process which brings into existence a totally new product with distinctive name to the product, distinctive use of the product and distinctive characteristic to the original base paper. When the Revenue has also stated in para 8.2 of the show cause notice that 'the end use change as a result of decorative printing process undertaking by M/s. MATCH WELL', there could be no dispute on the proposition that printing by them (i.e. M/s. Matchwell) is not merely incidental to the use of the product; that there is another fallacy on part of the Revenue in relying on the last sentence of one para in general Note of Chapter 49 of HSN. When the entire paragraph of the Note is considered, it becomes clear that the goods in question are "printed" products.

22.3 Firstly, there is no dispute about the fact that they have actually undertaken printing of various designs, decorations etc. on uncoated printing paper. Secondly, there is also no dispute about the fact that printing is undertaken by them by rotogravure printing machines and technology. While explaining the term "printed" in this particular para of the general note of Chapter 49 of HSN, mechanical printing is specifically referred to; and therefore there could be no doubt about the fact that the products obtained by letterpress, offset printing, lithography, photogravure, etc. are "printed" products. The purpose of the Note relied upon by the Revenue in this case is to explain that not only conventional mechanical printing was included in chapter 49, but various other methods of printing were also covered in the chapter. While referring to such other methods of printing like reproduction by duplicating machines, production under control of an automatic data processing machine, embossing, photography etc., It is clarified that the term "printed" does not include coloration or decorative or repetitive design printing. This exclusion is not for the conventional mechanical printing, but this exclusion is only as regards the other methods like

reproduction by duplicating machines, photography, embossing etc.

22.4 That in any case, there is no dispute on the fact that what they have undertaken on job work basis for the clients on base paper supplied by them is "printing", and therefore the resultant product is "printed" goods. There is a clear fallacy and misconception on part of the Revenue in relying on the last sentence of one whole paragraph of a general Note that explains the term "printed" because the purpose of the note is to include not only conventional mechanical printing but also other methods of printing which are normally not considered as "printing" in common parlance. Only because the processes undertaken by them are printing of decorative designs and decorations, such printing cannot be excluded from chapter 49 of the Tariff. Such an attempt by the Revenue is not agreed to or countenanced by the Appellate Tribunal and also the Hon'ble Apex Court as could be seen from the above referred case law, the most appropriate of them being the judgement of the Hon'ble Supreme Court in case of Commissioner V/s. Gopsons Papers Ltd. (supra).

**23.1** In addition to note No.12 of Chapter 48 of the Central Excise Tariff as well as HSN, the general note under Chapter 49 of HSN also refers to cases where the printing is merely incidental to the primary use of the goods. While giving examples of printed wrapping paper and printed stationery under general note under chapter 49 of HSN, it is clarified that printed textile articles such as scarves or handkerchief, in which the printing is mainly decorative or novelty purpose and does not affect the essential character of the goods and embroidery fabrics and prepared tapestry canvases bearing printed designs fall under Textiles Section. These examples also show as to how the test of printing merely being incidental to the primary use of the goods is to be applied.

23.2 A scarf is basically used for wrapping around the neck or shoulders, and a handkerchief is used for wiping face or body parts; and therefore the primary use of scarves and handkerchiefs would not undergo any change whatsoever even if the goods were printed or not printed. Tapestry is a product for covering chairs, sofas and such furniture items; and therefore also the primary use of the tapestry would not undergo any change even if they were printed or not printed. It is in this context that the term "printed" explained under Chapter 49 of HSN shall be construed.

23.3 When It is stated under general note of Chapter 49 of HSN that the term "printed" does not include coloration, decorative or repetitive design printing; what is meant is that if the primary use or purpose of the goods did not undergo any change even after coloration, decorative or repetitive design printing, then



such goods were not to be considered to be "printed" goods. An example of printed wrapping paper and printed stationery is also given under these general notes of HSN, signifying that product in the nature of wrapping paper is used for wrapping irrespective of the fact that it was printed or not; and the same way a scarf or a handkerchief or tapestry are used for the purpose of wrapping around the neck or shoulders, for wiping face and body parts and for furniture items respectively even though they were printed or otherwise. A singular sentence from detailed general notes under chapter 49 of HSN is highlighted by the Revenue in the present case because expressions like "coloration, decorative or repetitive design printing" are used; but coloration, decorative or repetitive design printing are not to be considered to be "printed" only when there was no change in the use and purpose of the goods after coloration, decorative or repetitive design printing. If the primary use of the goods was possible only after decorative printing or coloration and the like, then printing is not merely incidental to the primary use of the goods, and consequently such goods have to be considered to be "printed" as explained under HSN.

24. This basic difference between ordinary coloration, decorative or repetitive design printing on one hand and printing being essential to the primary use of the goods is not considered by the Revenue in the present case. They emphasise that decorative printing on base paper by employing rotogravure printing converts base paper into "surface Paper" for consumer products like decorative laminates, particle boards, MDF boards etc.; and therefore printing is not merely incidental to the primary use of uncoated printed paper in the present case. The printed goods therefore fall under chapter 49 of the Tariff.

25.1 By virtue of Note No.12 of Chapter 48 of the Tariff, the Parliament has laid down that paper printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods, fall in chapter 49. Under Explanatory Note No.12 of Chapter 48 of HSN also, the same test is provided for classifying the goods in Chapter 49 if the printing on the goods was not merely incidental to the primary use of such goods. Therefore, the real test to be applied in this case is whether decorative printing on base paper was merely incidental to primary use of the goods, or the primary goods of the goods, namely, surface paper depended on the fact of the goods being printed.

25.2 In this regard, it is noteworthy that base paper i.e. uncoated printing paper without any printing, is not usable for production of final goods like decorative laminates, particle boards, MDF boards etc. Base paper i.e. uncoated printing paper without any printing, is actually not used also by the

manufacturers of the above consumer goods like decorative laminates, particle boards, MDF boards etc. There are several technical difficulties for which base paper cannot be used for manufacture of the above referred final products.

25.3 If uncoated printing paper is used for manufacture of goods like decorative laminates, particle boards, MDF boards etc., then the surface of the final goods becomes patchy, and spots on the surface of the laminates, particle boards etc. would emerge. The surface of uncoated printing paper i.e. base paper, is smooth and therefore its use as a top layer of decorative laminates, particle boards, MDF boards etc. is not possible. Uncoated printing paper ordinarily possess profile basis weight as low as 40/45 gsm and such low weight as well as smooth surface finish of such base paper render it incapable of being used for production of laminates, particle boards, MDF boards etc. without traditional rotogravure printing or digital printing. This is because after such printing the graphic pattern of the paper is clear, and stereo sense also becomes strong; and such printed paper with high opacity and printed surface gives such paper a quality for which no patchy surface or spots on the surface of decorative laminates, particle board, MDF boards etc. emerge. In fact, the parameters, quality and use of uncoated printing paper and decorative printed surface paper are quite different, and this fact is confirmed and certified by various manufacturers of both types of papers. They have submitted a few letters from paper manufacturers of China and also the manufacturers of decorative laminates in India in this regard.

25.4 Thus, decorative printing on base paper is not merely incidental to the Primary use of base paper, but such printing changes the identity, quality and use of base paper altogether. An ordinary uncoated printed paper becomes "surface paper" for being used as a top layer of consumer products like laminates, particle boards, MDF boards. Printing is thus not merely incidental to the primary use of the goods in the present case, and therefore such printed decorative paper fall in chapter 49 by virtue of note No.12 of Chapter 48 of the Tariff and also similar clarification made under HSN.

26.1 Heading 4811 of the Tariff inter-alia covers "Paper surface decorated or printed,", but the product in question is not a surface decorated paper or printed paper for meriting classification under this heading. Surface decorated paper or printed paper would merit classification under Heading 4811 only if printing was merely incidental to the primary use of paper. It is explained under HSN that paper and paper board for the manufacture of Packaging of beverages and other food stuffs, printed with texts and

illustrations referring to the goods to be packaged therein are classified under heading 4811; and it is also clarified that paper, paper board etc. coloured on the surface with a single colour or with different colours, including surface marbled and design printed paper, and those printed with motifs, characters or pictorial representations merely incidental to their primary use and not constituting printed matter of chapter 49 were covered under heading 48.11. These explanations show that paper, paper board etc. which are used for a particular purpose if they were not decorated or printed, and even if their surface was decorated or printed, would be classified under heading 48.11 inasmuch as printing was, in such cases, merely incidental to their primary use. But when printing was not incidental to their primary use, but printing was the essential nature of the goods and the use of the goods was determined by the fact of they being printed, then such products were 'products of printing industry' classifiable under Chapter 49 of the Tariff.

26.2 M/s Matchwell therefore, submit that one sentence picked by the Revenue from elaborate general notes of chapter 49 of HSN is immaterial, and inapplicable for determining the classification of the goods in question. The inputs, namely, base paper are admittedly subjected to rotogravure printing by them, and the printing is that of designs and decorations ordered by the clients; and therefore the goods are in the nature of printed products, which is an admitted fact. Therefore, the suggestion that the goods were not "printed" is fallacious and without any justification. A singular sentence picked up by the Revenue from general note of chapter 49 of HSN would not determine the classification of the goods, which are printed and decorated surface paper used for a distinctive purpose, namely, "surface paper" for the top layer of decorative laminates, particle boards, MDF boards etc. The proposal to classify the goods produced by them under heading 48.11 of the Tariff therefore does not hold any water.

27.1 The details of persons/entities for whom job work was conducted by them are compiled at Annexures-A-1 and B-1 to the SCN. The duty demand for these parties have been made on the basis that they manufactured final products which were exempt from payment of Excise Duty and therefore job work exemption of notification No.214/86-Central Excise was not admissible. But base paper used by them for producing decorative surface paper on job work for these parties was undoubtedly duty paid. Therefore, if any Excise

duty is held as payable on surface paper produced by them on job work, then credit of duty paid on the base paper supplied by such parties shall be admissible to them. It is held by the Hon'ble Bombay High Court in case of Kirloskar Brothers Ltd. reported in 1988 (34) ELT 30 that credit of duty paid on materials used for manufacture of excisable goods cannot be denied only because the manufacturer had not taken such credit when the materials were actually used and the procedure for taking such credit was not followed by the manufacturer, and if it can be established with support of documentary evidence that duty paid materials were actually used for manufacture of final products then credit has to be allowed even though the procedure was not followed by the manufacturer. The Hon'ble Tribunal has also followed the same principle in various cases like Apex Steels (P) Ltd. 1995 (80) ELT 368, M/s. Roche Products Ltd. reported in 1995 (78) ELT 127, M/s. Fedders Lloyd Corporation Ltd. reported in 2001 (135) ELT 1331, M/s. Bakelite Hylan Ltd. reported in 1990 (48) ELT 90 etc., and the Hon'ble Supreme Court has also upheld this principle in cases like Formica India Ltd. reported in 1995 (77) ELT 511 (SC).

27.2 In the present case also, they have not availed Cenvat Credit of duties paid on base paper because they have been under a bonafide belief that surface paper produced by them on job work was not chargeable to Excise Duty since such goods fall in Chapter 49 of the Tariff. But if Excise duty is demanded for such surface paper and such duty is to be paid by them, then credit of duties paid on the inputs viz, base paper may be made available to them in the interest of justice.

27.3 The parties referred to in Annexures-A-1 and B1 to the show cause notice are principal manufactures who have procured duty paid base paper (Uncoated Printing Paper) and supplied to them for converting it into surface paper for using the same in relation to manufacture of final products like laminated board, chargeable board etc, and therefore, the documents evidencing payment of duties on such inputs i.e. uncoated printing paper are in the name and address of such principal manufacturers. Such duty paid inputs are used by them in relation to production of surface paper, and therefore a statement showing the link and correlation between the documents (like Central Excise invoice or Bill of Entry) for the inputs and use of such inputs in production of surface paper with corresponding challan number etc is annexed as Annexure-III. If necessary, the said details can be certified by a qualified chartered accountant also. But the duty paid inputs

having been used in relation to production of surface paper, the duties shown in the statement are admissible as credit to them if excise duty is payable on surface paper by them. They therefore, request to allow and adjust such Cenvat credit if any duty demand is confirmed against them. Moreover, they have also procured on payment of duties various inputs like colors, chemicals, ink, extender etc. which are used in relation to production of surface paper. A statement of such inputs/consumables and duties paid thereon is enclosed and marked as **Annexure-"III"**, and it is clear there from that a total sum of Rs.69,90,794/- is also admissible as Cenvat credit to them because such amount was paid as duties on the inputs, consumables etc. procured by them on their own for being utilized in relation to production of surface paper.

**28.1** The show cause notice is issued on 28/04/2017 and the period covered thereon is from F.Y. 2012-2013 to F.Y. 2015-2016. For invoking larger period of limitation, it is alleged at Para 11.1 of the SCN that they had knowingly misclassified the product, and in spite of the knowing that the product was liable for payment of Central Excise duty, they had not taken Central Excise registration nor paid any duty payable thereon. It is also alleged that before initiation of inquiry, they had never informed the Department regarding the product and their classification. But there is no evidence on record showing that they had "knowingly" misclassified the product. There is no evidence on record suggesting that in-spite of knowing that the aforesaid product was liable for payment of duty, they did not pay duty thereon.

**28.2** Statements of the Partner and authorised signatory have been recorded by investigation officer, but it is no where stated in any of the statements that they knew or that had knowledge that the products viz. printed decorative surface paper were classifiable under heading No. 48119099, and in-spite of such knowledge they classified the product under heading No. 49119990 of the Tariff. On the contrary, their Director has informed the officer during the inquiry and recording of statements that we held an impression and view that the goods produced by us on job work were products of Printing Industry, and were chargeable to nil rate of duty. They submit that there is no basis nor any justification in alleging in the show cause notice that they "knowingly" mis-classified the product, or "in-spite of knowing that the product was liable for payment of Central duty" they did not pay duty thereon. In fact, there is no "mis-classification" also in this case, because they have been carrying a genuine and bonafide impression that the goods in question viz, decorative surface paper are products of Printing Industry, and therefore they have not applied for Central Excise Registration in past since

products of Printing Industry are chargeable to nil rate of duty.

28.3 In this view of the matter, they submit that there is no mis- classification by them, and there is no deliberate wrong declaration about the nature of the products in question. If there was any wrong declaration about the classification of the goods on their part, it was flowing from a genuine and bonafide impression about the goods being products of Printing Industry. The reasons for which larger period of limitation is invoked are invalid and unjustified, and therefore the action of invoking larger period of limitation is illegal and authorized.

29.1 That the Revenue's case is that the product in question merit classification under chapter 48, whereas their case is that they fall under chapter 49 of the Tariff. A dispute about classification of the goods is a dispute of interpretation, and therefore no malafide can be attributed to a manufacturer only because he claimed, a particular classification which was beneficial to him. Claiming a wrong classification is not a case where larger period of limitation can be invoked because, as aforesaid, classification is a question of interpretation. In a case of Shahnaz Aurdics- 2004(173)ELT 337, the Hon'ble Allahabad High Court has held that extended period of limitation for payment of duty cannot be invoked in a case of classification of a product. The Hon'ble Supreme Court has also held in case of Commissioner Versus Ishaan Research Lab Ltd 2008 (179) ELT 211 that Revenue cannot demand duty for extended period in a case involving dispute of classification. In various cases like Haryana Roadways Engineering Pvt. Ltd.- 2001(131) ELT 662 and Wipro Ltd.- 2005(179) ELT 211, the Appellant Tribunal has also set aside duty demand for larger period of limitation when the case involved a dispute of classification of the goods. The same principle will apply in their case also, and the extended period for demand invoked against them therefore, deserves to be withdrawn.

29.2 They emphasize that there is no malafide, on their part in not paying Central Excise Duty on goods in question; that they have not paid duty thereon because they genuinely carry an impression that surface paper produced by them was a product of Printing Industry, chargeable to nil rate of duty; that they have carried this impression in view of cases and decisions of the Appellant Tribunal and the Courts of Law in regard to the various articles of paper on which printing was undertaken, and it is held in such cases which are referred hereinabove; that they were products of Printing Industry. Even if the impression held by assessee was found to be in correct in investigation or adjudication proceedings, the fact of a wrong impression carried by the assessee is not in itself a justifiable reason for invoking large period of limitation against them. Therefore, the demand of Excise Duty from FY.2012-2013 is barred by limitation

in the circumstances of this case.

30.1 The law about invocation of extended period of limitation is well settled. Only in a case where the assessee knew that certain information was required to be disclosed and yet the assessee deliberately did not disclose such information, the case would be that of suppression of facts. When the Excise Officers called for certain information and the assessee did not disclose the same or deliberately disclosed wrong information that would be a case of willful misstatement. Even in cases where certain information was not disclosed as the assessee was under a bonafide impression that it was not duty bound to disclose such information, it would not be a case of suppression of facts as held by the Hon'ble Supreme Court in the landmark cases of Padmini Products and Chemphar Drugs & Liniments reported in 1989 (43) ELT 195 (SC) and 1989 (40) ELT 276 (SC) respectively.

30.2 What is "suppression" is once again considered by the Hon'ble Supreme Court in the case of Continental Foundation Jt. Venture V/s CCE, Chandigarh reported in 2007 (216) ELT 177 (SC), and it is held by the Hon'ble Supreme Court with regard to the proviso to Section 11A of the Central Excise Act, 1944, that mere omission to give correct information was not suppression of facts unless it was deliberate and to stop the payment of duty. In the previous case like Messrs Jaiprakash Industries Ltd. reported in 2002 (146) ELT 481 (SC) also, the Hon'ble Supreme Court has held that a bonafide doubt as to non-dutiability of goods was sufficient for the assessee to challenge the demand on the point of limitation. Thus, it is a totally settled legal position that extended period of limitation by invoking proviso to the main Section for demanding duty or tax beyond the normal period of limitation would be justified only when the assessee knew about the duty/tax liability and still however, he did not pay the duty/tax and deliberately avoided such payment, and it was only in such a situation where suppression of facts on part of the assessee could be justifiably alleged by the Revenue. However, mere failure in giving correct information would not be a case where the Revenue can invoke extended period of limitation.

30.3 In fact, the present one is a case where all the facts discussed in the show cause notice issued to them were within the knowledge of the Department right from day one. Under these circumstances, the show cause notice issued to us was barred by limitation and there was no justification in the action of invoking extended period of limitation against us in these facts of the case. There being no contravention by way of suppression of facts with intent to evade payment duty on our part, the invocation of extended period of limitation against us is illegal

and unjustified in the facts of this case.

**31.1** M/s Matchwell has pleaded that the SCN proposes penalty on the Company as well as on the Partner Shri Manojkumar Agarwal. Section 11AC of the Central Act read with 25 of Rules is Invoked again the Company, whereas rule 26 of the Rules is Invoked against the Partner. It is suggested in the show cause notice, that they defrauded the Revenue, and short paid the duty by reason of fraud, collusion or willful mis- statement or suppression of facts or contravention of the provisions of the Act or Rules made there under with malafide intention to evade payment of Central Excise duty. For such alleged mis-statement and contravention of provisions, penalty under Section 11AC of the Act read with rule 25 of the Rules is proposed against the Company. But fraud, collusion, willful mis-statement, suppression of facts and contravention of provisions of the Rules made under the Act, and malafide intention to evade payment of Central Excise duty are and different situation and it is not clearly spelt out in the show cause notice as to which of the above ill intentions the Company was guilty of Penalty cannot be imposed on a mere assumption or presumption about the guilty mind of an assessee, nor any hear-say evidence. In the present case, it is not shown which of the situation the Company was guilty of and therefore, no penalty would be justified on the Company in this case.

**31.2** No duty of Excise was paid by the Company because of a genuine impression carried by us that the goods produced on job work were products of Printing Industry, which did not attract Excise Duty. Therefore, merely because duty was not paid by the Company, penalty cannot be imposed in law, nor in facts.

**31.3** The proposal for imposing penalty on the Company under Section 11AC of the Act and Rule 25 (1) of the Central Excise Rules, 2002 is even otherwise illegal and unjustified. The matter of penalty is governed by the principles as laid down by the Hon'ble Supreme Court in the land mark case of MessrsHindustan Steel Limited, reported in 1978 ELT (J159)wherein the Hon'ble Supreme Court has held that penalty should not be imposed merely because it was lawful to do so. The Apex Court has further held that only in cases where it was proved that the assessee was guilty of conduct contumacious or dishonest and the error committed by the assessee was not bonafide but was with a knowledge that the assessee was required to act otherwise, penalty might be imposed. It is held by the Hon'ble Supreme Court that in other cases where there were only irregularities or



contravention flowing from a bonafide belief, even a token penalty would not be justified. In view of the facts of this case, they we submit that the proposal to impose penalty on the Company is unjustified and therefore, such proposal may be withdrawn in the interest of justice.

32.1 As regards the proposal to impose personal penalty on Shri Manojkumar Agarwal, Partner of the firm under Rule 26(1) of Central Excise Rules, 2002, they submit that the same is also proposed to be imposed without any authority of law; that the proposal to impose penalty on the Partner of their firm under Rule 26 of the said Rules is not sustainable in facts as well as in law; that they deny the allegations levelled against him in the show cause notice and submit that the whole basis of the proceedings against the firm itself is illegal and therefore, proposal to impose penalty on the Partner would also not survive.

32.2 Rule 26 of the said Rules is not applicable in the instant case. This Rule provides for penalty on any person who is in any way concerned with any excisable goods which he has knowledge or reason to believe were liable to confiscation. It is not even alleged in the notice that Shri Manojkumar Agarwal had any reason to believe or any knowledge that any goods were liable to confiscation and yet he was concerned in dealing with such goods. In absence of any such allegation made by the Department by adducing reliable and cogent evidence, Rule 26 of the Rules is not applicable.

32.3 The proposal to impose penalty on Shri Manojkumar Agarwal, the Partner of their firm, is without jurisdiction because a personal penalty on the partner cannot be imposed when penalty was proposed on the partnership firm. It is held by the Hon'ble Gujarat High Court in cases like Jaiprakash Motwani 2010 (258) ELT 204 (Guj.), and also those reported in 2010 (259) ELT 179 (Guj) and 2010 (260) ELT 51 (Guj) and also a judgement of the Hon'ble Bombay High Court in case of Jupiter Exports - 2007 (213) ELT 641 (Born.) that personal Penalty on a Partner was not permissible under the Central Excise law and therefore, the proposal to impose penalty on Shri Manojkumar Agarwal under Rule 26 of the Rules deserves to be vacated in the interest of justice.

32.4 The decision of the CEGAT in the case of M/s. Standard Pencil reported in 1996 (86) ELT 245 may also be referred to and relied upon at this stage wherein the CEGAT has in terms held that Rule 209A which was pari-materianow existing Rule

26 was attracted only in specific cases where the Revenue had established that any person was concerned with such excisable goods with knowledge or reason to believe that they were liable to confiscation. It is also held by the CEGAT in this case that if there was no evidence to suggest that the concerned person had knowledge or reason to believe that goods were liable to confiscation, this Rule would not apply. The scope of Rule 209A of the erstwhile Rules is similar to Rule 26 of Central Excise Rules, 2002, and therefore the above principle laid down by the Appellate Tribunal is applicable in the present case also. In this view of the matter, the proposal to impose penalty under Rule 26 is not maintainable against Shri Manojkumar Agarwal.

32.5 In this view of the matter, Rule 26 of the Rules is invoked without jurisdiction in the present proceedings. Hence, the proposal of imposing personal penalty on Shri Agarwal under this Rule deserves to be vacated in the interest of justice.

33. The proposal to charge interest under Section 11 AA of the Central Excise Act 1944 is also without any authority in law inasmuch as the provision of 11 AA is not attracted in the instant case. Section 11 AA provides for interest in addition to duty where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded with an intent to evade payment duty. In the instant case, there is no short levy or short payment or non-levy or non-payment of any excise duty. Therefore, the proposal to charge interest under Section 11 AA of the Act is also not maintainable in the present case. In the submissions, they request to withdraw all the proposals leveled in the show cause notice by dropping the proceedings.

34. Personal hearing in the case was fixed for 24.07.2018 but none appeared. Personal hearing was re-fixed for 26.09.2018. Shri Paresh M. Dave, Advocate of M/s Matchwell requested for another date on the ground that he has to appear before the High Court of Gujarat. Personal hearing was re-fixed for 19.11.2018 when Shri Paresh M. Dave, Advocate appeared on behalf of M/s Matchwell and re-iterated the return submissions

#### **Discussions & Findings:**

35. I have carefully gone through the facts of the case on record, submissions made by M/s Matchwell in their defense reply and during the course of personal hearing and I find that the issues to be decided in the case on hand are:

- i. whether the product Printed Base Paper/Printed Decorative Paper in Rolls, manufactured by M/s Matchwell is classifiable under CTH 48119099 or under 49119990 of CETA, 1985.
- ii. whether M/s Matchwell is eligible for exemption of Notification No. 214/86-CE dated 25.03.1986, for clearance of Printed Base Paper/Printed Decorative Paper in Rolls which were used by the Principal manufacturers (as listed in Annexure-I, Para-9.3 of SCN) in the manufacture of exempted products.
- iii. whether duty is leviable on the clearance made by the said unit to its related trading firms viz. M/a Aman Fashion Pvt. Ltd and M/s Kewal Corporation.
- iv. Whether extended period of limitation is applicable or not.
- v. Whether the noticee is eligible for Cenvat credit of the duty paid on the base paper used in the manufacture of printed base paper printed decorative paper.
- vi. Whether penalty is leviable on Shri Manoj Kumar Agarwal, partner in M/s Matchwell.

36. I intend to take up all the above issues one by one and present my finding accordingly:

**Issue 1: Whether the subject goods would merit classification under CTH 48119099 or under 49119990 of CETA, 1985:.**

- (i) I am of the view that it would be prudent to first peruse both the Chapter Tariff Headings and relevant chapter notes for coming to any conclusion. Accordingly, the competing entries of Chapter Heading 48.11 and 49.11 of Central Excise Tariff are reproduced as below:

Tariff	Item Description of goods	Unit	Rate of duty
4811	-Paper, Paperboard, Cellulose Wadding and Webs of Cellulose Fibres, coated, impregnated, covered, surface-coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in Heading 4803, 4809 or 4810		
4811 90	--- Other paper, paperboard, cellulose wadding and webs of cellulose fibres : --- Handmade paper and paperboard, rules, lined or squared but not otherwise printed; chromo and art paper, coated, building board of paper or pulp, impregnated; chromo board; raw base paper for sensitising, coated; surface marbled paper; leather board and imitation leather board; and matrix board :		
481190 99	---- Other	Kg.	12.5%

Tariff	Item Description of goods	Unit	Rate of duty
4911	Other printed matter including printed pictures and photographs		
491110	- Trade advertising material, commercial catalogues and the like		
49111010	--- Posters, printed	Kg.	Nil

49111020	--- Commercial Catalogues	Kg.	Nil
49111030	--- Printed inlay cards	Kg.	Nil
49111090	--- Other	Kg.	Nil
	- Other		
49119100	-- Pictures, designs and photographs	Kg.	Nil
491199	-- Other		
49119910	--- Hard copy (printed) of computer software	Kg.	Nil
49119920	--- Plan and drawings for architectural engineering, industrial, commercial, topographical or similar purposes reproduced with the aid of computer or any other devices	Kg.	Nil
49119990	--- Others	Kg.	Nil

- (ii) From the perusal of the CTH entry 4811 reproduced above, it is clear that the CTH 4811 covers all the Paper, Paperboard, Cellulose Wadding and Webs of Cellulose Fibres which are coated or impregnated or covered or surface-coloured or surface-decorated or printed, and are available in rolls or rectangular (including square) sheets, of any size. But this CTH does not cover the goods which are described in Heading 4803 or 4809 or 4810. Thus from the above it is clear that even if the paper is surface coloured or surface decorated or printed it will be liable to be classified under CTH 4811. Further, it is clear that all the products listed in CTH 4811 are capable of being subjected to any further manufacturing process such as being capable of being subjected to further manufacturing process to make laminated sheets or several other products.
- (iii) Now coming to the CTH entry 4911 reproduced above, it is clear that the CTH 4911 covers Other printed matter including printed pictures and photographs and further subheadings cover Trade advertising material, commercial catalogues and the like printed Posters, commercial catalogues, pictures, photographs, hard copy of computer software, Plan and drawings for architectural engineering, industrial, commercial, topographical or similar purposes reproduced with the aid of computer or any other devices and others. It is pertinent to note that all the goods mentioned in this CTH are complete products which do not undergo any other manufacturing process. And accordingly, even the products falling under the category "others" as available under CTH 49119990 would cover all such other printed matters which are not capable of being subjected to any further manufacturing process. For example, once the posters are printed or commercial catalogues are printed no further manufacturing process could be carried out on such printed posters or commercial catalogues. And it would be the case for all such products mentioned in the entire CTH entry 4911.
- (iv) In the present case there is no dispute that the subject goods are printed decorative paper in rolls. It is also not in dispute that the subject goods were capable of being subjected to further process of manufacturing. This is evident from the defense reply of the noticee itself wherein at para 1(ii) of their reply, dated 'Nil' received in this office on 23.08.2017, to the show cause notice they have very categorically stated that " *We also emphasise that decorative printing on base paper imparts essential character to the goods in question as*

"surface paper" for the final products like decorative laminates, particle boards, MDF boards etc". This very clearly indicated that the subject goods are capable of being subjected to further manufacturing process for manufacture of Decorative Laminates, Particle Boards, MDF Boards etc. Further, in the said reply to the Show cause notice the Para 3 gives the details of the facts that are admitted to the noticee. At sub para (iii) of the said para 3 it is very clearly submitted that "the printed decorative paper produced by us is used as decorative surface of surface of the goods produced by the clients which are in nature of decorative laminates, particle boards, MDF boards etc..." All the above facts very clearly prove that the subject goods are capable of being subjected to further manufacturing process to produce other goods.

(v) I further find that there exists a chapter note 12 to the chapter 48 of the CETA, 1985 which reads as:

"Except for the goods of Heading 4814 or 4821, 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 under Chapter 49".

From the above chapter note it is clear that any product which would otherwise fall within the ambit of Chapter 48, except for the products falling under Chapter Heading 4814 or 4821, will fall under Chapter 49 if the same are printed with motifs, characters or pictorial representations which are not incidental to the primary use of the goods. I find that the noticee has claimed that since the printing done by them on the subject goods is not merely incidental to the primary use of the subject goods the subject goods would merit classification under Chapter 49119990. I find that the main and only defense of the noticee is that the process of printing carried out by them on the goods is not 'merely incidental'.

(vi) I find that the chapter note very categorical on two aspects – i. the paper should be printed with motifs, characters or pictorial representations and ii. This printing of motifs, characters or pictorial representations should not be merely incidental to the primary use of the goods.

(vii) Thus the moot question in the present case would be whether, the print on the basepaper is 'motif', 'characters' or 'pictorial representations' and whether the said printing is merely incidental to the primary use of subject goods or otherwise. In the present case, I find that the same are used for further manufacture of decorative laminates sheets, MDF boards etc. Thus the primary use of the goods is to be further used in manufacture of decorative laminates sheets or MDF boards etc. I find that the noticee claims that the prints made on the on the subject goods were as per the requirements of their clients and hence the printing was not 'merely incidental'. However, I am not convinced a bit by this line of argument put forward by the notice. Because, say for the sake of argument, if the client has given

specific requirement to print the grain pattern of maple tree wood and the noticee prints the grain pattern of Birch tree wood, it would not mean that the subject goods cannot be used for manufacture of decorative laminates. Further, even if the said paper been not printed it would not have rendered the same unusable for manufacture of decorative laminated sheets or MDF board etc. I am of the view that for the printing to not be 'merely incidental' would mean that the essential character of the goods should be imparted by printing. For example: printing on paper for production of magazine/books. Thus I am of considered view that in the present case the 'printing' is merely incidental to the primary use of the said paper.

- (viii) I further find that the Chapter note 2 of the Chapter 49 of CETA, 1985 is merely enhances the scope of term printed and would have no impact on the case whatsoever once it is held that the printing carried out is merely incidental to the primary use of the paper.
- (ix) I further find that the printing, in the present case, fails to convey any message e.g. details of the contractual terms, information of messages received or sent, details of the supplier/manufacturer, advertisement of his products, and so the printing in the present case is merely incidental to the primary use of the subject product.
- (x) The Hon,ble Apex Court in the case of CCE, Shillong vs M/s Woodcraft Products Ltd – 1995 (77) ELT 23(SC) has at para 12 held as under :-

"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....."

Thus it can be safely inferred that for deciding the classification of a product referring HSN and understanding the CTH heading under HSN light would important and prudent.

- (xi) In the HSN General - Explanatory Note to Chapter 48, under the Heading **Scope of the Chapter** it is specified that :-

"This Chapter covers :

l) Paper, paperboard, cellulose wadding and webs of cellulose fibres, of all kinds, in rolls or sheets :

(A) .....

(B) Headings 48.06 to 48.11 relate to certain special papers or paperboards, (for example, parchment, greaseproof, composite) or paper, paperboard or cellulose wadding and webs of cellulose fibres which have been subjected to various treatments, such as coating, design printing, ruling, impregnating, corrugation, creping, embossing, and perforation."

- (xii) Further, the General - Explanatory Note to Chapter 49 of the HSN specifies that :-

"With the few **exceptions** referred to below, this Chapter 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 representations.

For the purposes of this Chapter, the term "printed" includes not only reproduction by the several methods of ordinary hand printing (e.g., prints from engravings or woodcuts, other than originals) or mechanical printing (letterpress, offset printing, lithography, photogravure, etc.), but also reproduction by duplicating machines, production under the control of an automatic data processing machine, embossing, photography, photocopying thermocopying or typewriting (see Note 2 to this Chapter), irrespective of the form of the characters in which the printing is executed (e.g., letters of any alphabet, figures, shorthand signs, Morse or other code symbols, Braille characters, musical notations, pictures, diagrams). The term does not, however, include coloration or decorative or repetitive-design printing."

- (xiii) Thus from the above note under the head scope of Chapter 48 to the HSN, it emerges that Chapter 48 includes all kinds of Paper, paperboard, cellulose wadding and webs of cellulose fibres, which have been subjected to design printing. Likewise, from the Explanatory Note to Chapter 49 of the HSN, it emerges that the term "Printed" appearing in Chapter 49 does not include coloration or decorative or repetitive design printing. Since the printing of designs on the uncoated paper (in roll form) carried out by M/s Matchwell is in the nature of coloration, decorative and repetitive design printing the same in view of HSN note referred above is clearly excluded from the scope of Chapter 49. Therefore, the items which are specifically excluded from the scope of Chapter 49, cannot be classified under the said chapter.
- (xiv) Thus, from the combined reading of the Heading 4811 along with above referred explanatory Notes of HSN to Chapter 48 and 49 referred hereinabove, it is apparent that CHT 49119990 does not cover Printed paper which is surface coloured, surface decorative or repetitive design printed, therefore, the same appropriately merits classification under CTH 48119099.
- (xv) Therefore, after the printing of designs/decorations carried out by M/s Matchwell, the printed paper in rolls which is used in the manufacture of High Pressure Decorative Laminated Sheets, Particle Boards, MDF Boards as decorative surface paper falls under the CTH 48119099 and I accordingly hold that the same is classifiable under CTH 48119099 and classify the same under CTH 48119099.
- (xvi) It is a fact that both the Central Excise Tariff and the Customs Tariff are aligned in accordance with the Harmonised System of Nomenclature of Goods adopted by the World Customs Organisation. Hence the Central Excise Tariff and Customs Tariff are more or less similar. I find that the identical goods are being imported at various port of India and even in case of such imports the subject goods are being classified and assessed to Basic Customs Duty and erstwhile CVD, by the entire trade, under chapter 48 of the Customs Tariff Act. This fact lends support to the view that the subject goods would merit classification under CTH 4811 90 99.

(For Internal Use Only)  
 Indian Customs EDI System - Imports V1.5001  
 ICD SARANATHI KALISAM SARANATHI AHMEDABAD 3824  
 BILL OF ENTRY FOR HOME CONSUMPTION

[Customs No: 195816] CHA : AEB0641100001 [SUNDER BALAN]  
 BE No/Dt./cc/Typ: 8854833/18/11/2018/N/M DOC No./Dt./Officer: 233073558/12-11-2018: 13022342  
 Importer Details : 0848830371 PAN : AAACD06521FT001 AD Code : 4510007  
 DECO-NICA LTD  
 1 : 1195, RAJOUR  
 TAL : KAOI  
 PENSANA 187248 Payment Method Transaction

Location No : 1049705/12/11/2018 12/11/2018 Port Of Loading : Shanghai  
 Gateway IDP No: 2299563 Date: 09/11/2018 Port of Reporting: IMMUMI  
 Entry Of Origin: CHINA Entry Of Consign: .....  
 BI No : SHAAPO0011805 H/BI No : .....  
 Date : 19/10/2018 Date : .....  
 No. Of Pkgs. : 14 RLS Gross Wt. : 1590.066 KGS  
 Marks CONTAINER NOS .....  
 & Nos 276 SEAL NOS ..... 235220

Inv No & Dt. : WML-4211 29/09/2018 M/S. ZHEJIANG DILONG NEW MATERIAL C  
 Inv Val : 11570.15 USD FOB+FCB O., LTD. ACC. NO. 1958, HUAN RAN RO  
 Freight : 100.30 USD AD, LINGLONG INDUSTRIAL LTD AN CI  
 Insurance : 950.20 INR TY, ZHEJIANG, CHINA  
 SVB Load(Aest): Cust. House CHINA  
 SVB Load(Dest): M/S Lead Rate: 0.00 Amount: 0.00  
 Misc. Charges: 0.00 E 00  
 EDC : 0.00 Discount Rate: 0.00 Discount Amount: 0.00  
 Third Party: 0.00 M/F Duty 5% Int. 0.00

Buyer/Seller Field : 92  
 Item Details  
 Exchange rate: 1.00 USD = 14.7000 INR

Slp	RITC	Description	QTY	Unit	Unit Price	CFR	C Note	C NSHC	HSF	Exm Dty Rt	LOST	PROV
Unit		Ass Val	CEFR	E Note	E NSHC				Exc Dty Rt	BCD	ent(Rs)	ent(Rs)
1	48119099	BANK PAPER UNCOATED PRINTED BANK PAPER FOR MAKING (CONTAINING & IMPERFORATED) 2541-3, 50GSM 1250 WIDTH(MM)	3.250000		48119099					0.00 %	0.00	
SAPTA No:		050/2018	ASIS	5.00								
Exit Motn		(DEEC)	010/2015	1	BCD:0							
KGS		258641.89	NO EXCISE							0.00 %	0.00	
Educational. Less on DVDs :										0.00 %	0.00	
Sec & Higher Edu. Less on DVD :										0.00 %	0.00	
Customs Educational Less :										0.00 %	0.00	
Customs Sec & Higher Edu. Less :										0.00 %	0.00	
Social Welfare Surcharge:										10.00 %	0.00	
IGST						001/2017	111148			18.00 %	51420.60	
GST Less						001/2017	56			0.00 %	0.00	
Rs.		258641.89										
Page Total												51420.60

Declaration  
 1. I/We Certify that the above entries are correct  
 2. I/We further declare that wherever the RSP is applicable same has been truthfully declared  
 CHA : SUNDER BALAN Importer : DECO-NICA LTD  
 Signature : Signature

(xvii) Further, it is settled principle that the exemption notifications and the exemption statutes are to be construed strictly and in case any doubt the benefit would accrue to the Revenue. In this case also the statute regarding classification of goods has to be strictly followed. In this case I rely upon the decision of Hon'ble Supreme Court of India as reported at 2015(323)ELT644 (SC).

(xviii) In view of the above findings I am of a considered view that the subject goods would merit classification under Chapter Subheading 4811 90 99 and not under Chapter Subheading no. 4911 99 90.

(xix) I find that the noticee has relied upon the following decisions in support of their contention so far as classification of subject goods is concerned. I now proceed to record my findings, with regards to applicability of said decisions to the case on hand, as under:

a. Decision of Tribunal in case of M/s Sai Security Printers Ltd. As reported at 2006(199)ELT121(Tri):

In this case the Tribunal was considering the classification of Lottery tickets, bus tickets, cheque books, demand draft and MTNL-VCC Trump Card etc. printed on



thermal paper rolls and cut/slot to size. I find that all the above products were completely different from the product involved in the case on hand and hence the reliance placed on said decision is entirely misplaced. Furthermore in case of printing of a lottery ticket it would be very specific to a particular lottery ticket and any different print would render the resultant product meaningless and a complete waste. But as in the present case even if the print is different its resultant product could be very well used for manufacture of printed decorative laminates and other such goods.

- b. Decision of Tribunal in case of M/s Data Processing Forms Pvt Ltd. as reported at 2014(311)ELT161(Tri):

In this case the products under consideration before the Tribunal were Pre-printed forms such as Excise invoice forms, commercial invoice forms, letterhead forms, PF slip forms, monthly bill forms, bank payment voucher forms, Restaurant Bill forms, stock transfer forms, Meter testing forms, complaint receipt forms, etc., were as in the case on hand the product is entirely different. So even this decision fails to come to the rescue of the noticee due to reasons given in the above relied upon case. **As a matter of fact this decision lends irrefutable support to my reasoning as given in sub-para (x) above, as the Tribunal in its decision has very categorically, at para 19 of their decision, has held that:**

*"Hence, in our considered view, if the printing that is carried out on the product, itself conveys a message e.g. details of the contractual terms, information of messages received or sent, details of the supplier/manufacturer, advertisement of his products, then in all such cases, the printing cannot be merely incidental to the primary use."*

- c. Decision of Tribunal in case of M/s Malati Arts Pvt. Ltd as reported at 2000(118)ELT139(Tri) will also be of no use to the noticee because in that case the sheets and rolls were printed specific mention of trade names and trade mark of the appellants clients and hence the printing was, rightly held, to be not 'merely incidental' in that case, which is not so the case in the case on hand.
- d. Similarly I find that in remaining citations as well the products under consideration before various judicial forums were entirely different from the product under consideration in the present case and accordingly are not applicable to the present case.

xx. In the instant case I find that the method of valuation of the goods and the value arrived at by the department as mentioned in the show cause notice is not challenged by the noticee either in their reply to the SCN or during the course of the personal hearing. Accordingly, I conclude that the value of the goods as worked out in the show cause notice is acceptable to the noticee and needs no merits no further decision on my part.

With these facts in hindsight, I conclude that the value of the subject goods so arrived at by the department at Rs. 23,33,10,752/- is correct.

xxi. In view of the above findings I conclude that total duty of Rs. 2,90,76,437/- on the subject goods valued at Rs. 23,33,10,752/- is recoverable from the noticee as the subject goods are classifiable under CTH 4811 90 99 of the Central Excise Tariff Act, 1985, if the extended period of limitation is held invocable and benefit of notification no. 214/86-CE dated 25.03.1986 is found to be not available to the noticee.

**36.2. Issue 2 : Whether M/s Matchwell is eligible for exemption of Notification No. 214/86-CE dated 25.03.1986, for clearance of Printed Base Paper/Printed Decorative Paper in Rolls which were used by the Principal manufacturers (as listed in Annexure-I, Para-9.3 of SCN) in the manufacture of exempted products.**

- i. First and foremost, it would be prudent if I reproduce the Notification no. 214/86-CE dated 25.03.1986 for the sake of clarity on the issue and accordingly, said Notification is reproduced below:

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), (herein after referred to as Special Importance Act), and sub-section (3) of section 136 of the Finance Act, 2001 (14 of 2001), the Central Government, being satisfied that it is necessary in the public interest so to do hereby exempts goods specified in column (1) of the Table hereto annexed (herein after referred to as the "said goods") manufactured in a factory as a job work and:-

(a) used in relation to the manufacture of final products, specified in column (2) of the said Table,

(i) on which duty of excise is leviable in whole or in part; or

(ii) for removal to a unit in a free trade zone or to a hundred per cent. export-oriented undertaking or to a unit in an Electronic Hardware Technology Park or Software Technology Parks or for supply to the United Nations or an international organisation for their official use or for supply to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 108/95-Central Excises, dated the 28th August, 1995, or

(iii) for removal under bond for export, or

(iv) by a manufacturer of dutiable and exempted final products, after discharging his obligation in respect of said goods under rule 6 of the CENVAT Credit Rules, 2002; or

(b) cleared as such from the factory of the supplier of raw materials or semi-finished goods -

(i) on payment of duty for home consumption (on which duty of excise is leviable whether in whole or in part); or

(ii) without payment of duty under bond for export; or

(iia) by a manufacturer of dutiable and exempted final products, after discharging his obligation in respect of said goods under rule 6 of the CENVAT Credit Rules, 2002;

(i) on payment of duty for home consumption (on which duty of excise is leviable whether in whole or in part); or  
(ii) without payment of duty under bond for export; or

(iia) by a manufacturer of dutiable and exempted final products, after discharging his obligation in respect of said goods under rule 6 of the CENVAT Credit Rules, 2002;

(iii) without payment of duty to a unit in a Special Economic Zone or to a hundred per cent. export-oriented undertaking or to a unit in an Electronic Hardware Technology Park or Software Technology Parks or supplied to the United Nations or an international organisation for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) Ntf. No. 108/95-C.E., dated the 28th August, 1995, from whole of the duty of excise leviable thereon, which is specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), the additional duty of excise leviable thereon, which is specified in the Schedule to the said Special Importance Act and National Calamity Contingent duty leviable under sub-section (1) of section 136 of the Finance Act, 2001 (14 of 2001).

(2) The exemption contained in this notification shall be applicable only to the said goods in respect of which, -

(i) the supplier of the raw materials or semi-finished goods gives an undertaking to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise having jurisdiction over the factory of the job worker that the said goods shall be:

(a) used in or in relation to the manufacture of the final products in his factory; or

(b) removed from his factory without payment of duty -

(i) under bond for export; or

(ii) to a unit in a Special Economic Zone [OLD - free trade zone ] or to a hundred per cent. export-oriented undertaking or to a unit in an Electronic Hardware Technology Park or Software Technology Parks or supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) dated the 28th August, 1995; or

(iii) by a manufacturer of dutiable and exempted final products, after discharging his obligation in respect of said goods under rule 6 of the CENVAT Credit Rules, 2002; or

(c) removed on payment of duty for home consumption from his factory; or

(d) used in the manufacture of goods of the description specified in column (1) of the Table hereto annexed by another job worker for further use in any of the manner provided in clause (a), (b) and (c) as above.

(ii) the said supplier produces evidence that the said goods have been used or removed in the manner prescribed above; and

(iii) the said supplier undertakes the responsibilities of discharging the liabilities in respect of Central Excise duty leviable on the final products.

**Explanation I.** - For the purpose's of this notification, the expression "job work" means processing or working upon of raw materials or semi-finished goods supplied to the job worker/ so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid process.

Description of inputs (1)	Description of final products (2)
All goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than polyester filament yarn falling under heading 5402 and tariff item 54060010	All goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).

From the above Notification it is clear that this notification is a conditional notification ie. the exemption is available subject to fulfillment of the conditions specified therein. And in case the conditions specified therein are not satisfied the exemption is not available.

- ii. The show cause notice states that the noticee has availed the benefit of notification no. 214/86-CE dated 25.03.1986, in case of following three types of their clients:
  - a. The manufacturers registered under the provisions of Central Excise who used the subject goods manufactured by the noticee in manufacture dutiable finished excisable goods – Para 9.2 of the SCN;
  - b. 16 such manufacturers who used the subject goods manufactured by the noticee, in manufacture of exempted finished good – Para 9.3 of the SCN.
  - c. 2 trading firms, which are in fact owned and operated by the family members of the partners of the noticee, who sold the subject goods manufactured by the noticee without payment of Central Excise duty – Para 9.4 of the SCN
- iii. In the present case, it is a fact that the principles of the noticee have not cleared the subject goods on payment of duty or have not cleared the final products manufactured using the subject goods on payment of duty. In such a case the benefit of Notification no. 214/86-CE dated 25.03.1986 is not available. And since the noticee has manufactured the subject goods, they are liable to pay the Central Excise duty leviable o the subject goods.
- iv. It is alleged in the SCN that out of the above three categories of transactions, benefit of exemption notification no. 214/86-CE is not available to the noticee in case of the transactions as mentioned in sub-sub-paras 'b' & 'c' above, as the

conditions of the said notification were not fulfilled/satisfied. The conditions alleged to have been not satisfied are (i) The principles have failed to submit the undertaking to the jurisdictional Central Excise authorities of the noticee and (ii) the principles have cleared the resultant final products without payment of duty.

- v. In this regard, I find that the above allegation that the conditions of the Notification no. 214/86-CE dated 25.03.1986 is not challenged at all by the noticee. I find that the noticee has neither challenged the said charge of non fulfillment of the conditions of Notification no. 214/86-CE dated 25.03.1986 in their reply to the show cause notice nor they have challenged the same at the during the course of personal hearing scheduled on 19.11.2018. **Infact at para 3(v) of their reply to the show cause notice the noticee have very categorically accepted that the clients whose final products were exempted have not followed the procedure for job work.**
- vi. In light of the above fact I find that the said charge of non-fulfillment of the conditions of Notification no. 214/86-CE dated 25.03.1986 are true and correct.
- vii. In light of the above, I am of the view that once it is proved that the conditions for availing the exemption under Notification no. 214/86-CE dated 25.03.1986 are not satisfied, no exemption can be allowed under said notification. It is a settled principle that in case of conditional exemption notification, the benefit of such notification is not available if the condition for availing such exemption, specified in the said notification is not satisfied/fulfilled. In case of *Desh Rolling Mills Vs Commissioner of Central Excise*, as reported at 2000(122)ELT481(Tri), the Tribunal has held that in case of non-fulfillment of conditions of Notification no. 214/86-CE dated 25.03.1986, the exemption specified therein is not available. This decision of the Tribunal was upheld by the Hon'ble Supreme Court in vide its decision as reported at 2006(197)ELT 151. Further, the Hon'ble Supreme Court in its various decisions has held that exemption notifications are to be construed strictly and even if there any doubt the same is to be given in favour of the Department. For example: the decision of Hon'ble Supreme Court of India in case of *M/s Commissioner of Central Excise, Pondicherry Vs M/s Honda Seil Power Products* as reported at 2015 (323) E.L.T. 644 (S.C.), wherein at para 3 of its decision the Hon'ble Supreme Court has held that:

***"3. It is trite that exemption notifications are to be construed strictly and even if there is any doubt same is to be given in favour of the Department."***

- viii. In view of the above I come to a considered view that the noticee is not eligible for the benefit of notification no. 214/86-CE dated 25.03.1986 as the conditions stipulated therein were not fulfilled/satisfied.

**36.3. Issue 3: whether duty is leviable on the clearance made by the said unit to its related trading firms viz. M/a Aman Fashion Pvt. Ltd and M/s Kewal Corporation.**

- i. In this case as well I find that the noticee cleared the subject goods by availing the benefit of notification no. 214/86-CE dated 25.03.1986. without satisfying/fulfilling the conditions stipulated therein.
- ii. Thus as concluded by me in the foregoing para 36.2 (vii) above, the noticee is liable to pay Central Excise duty on the subject goods cleared to their related firms namely M/s Aman Fashion Pvt Ltd and M/s Kewal Corporation.

**36.4. Issue 4: Whether extended period of limitation is applicable or not.**

- i. In the instant case the show cause notice seeks recovery of Central Excise duty by invoking extended period of limitation and the noticee has claimed that since they were under bonafide belief that the subject goods were classifiable under CTH 49 99 90, have neither taken registration nor paid any duty on production and clearance of the same, so extended period of limitation is not invocable. I further find that the assess has claimed that in case of classification dispute extended period of limitation is not invocable and they have relied upon several decisions of various judicial forums in support of their case.
- ii. I find that the noticee has not come with clean hands before me in this case. They have merely stated that they had bonafide belief that their product was classifiable under chapter heading 4911 99 90, but have failed to produce even a single document on the basis they formed such belief. It is fact that they have never approached any Central Excise authority for seeking any clarification on the classification of their products. It is also a fact that they have never filed any declaration with the concerned Central Excise Authorities in respect of the manufacture of the subject goods. It is settled principle that mere stating to have a bonafide belief is not enough, it has to be proved beyond doubt that the belief was based on some concrete documents or verifiable events.
- iii. In this regard they have relied upon the below mentioned case laws:
  - a. Decision of Allahabad High Court in the case of Sahanaz Aurvedics (2004(173) ELT 337;
  - b. Supreme Court's decision CCE vs. Ishan Research Lab Ltd – 2008(179)ELT 211.
  - c. Haryana Roadways Engineering Pvt. Ltd. 2001(131)ELT 662
  - d. Wipro Ltd – 2005 (179) ELT 211I find that in the case of M/s Haryana Roadways - 2001(131)ELT 662 the issued involved was classification of bodies built by independent manufacturers, on chassis

which was within the knowledge of the department. Similarly in the case of Sahana Aurvedics = 2004(173) ELT 337 the issue involved was that classification list was approved by the department and therefore it was held that unless willful evasion of duty or suppression is proved extended period cannot be applied. Likewise in the case of Wipro Ltd – 2005 (179) ELT 211 also classification list and price list were filed and approved by the department, hence it was held that when the facts were within the knowledge of the department extended period cannot be invoked and duty for normal period can only sustain. Whereas in the present case the noticee has never brought their activities to the notice of the department and infact had it not been the efforts of the department in initiating the investigation into the affairs of the noticee all the act of misclassification of their product and illegal availment of benefit of notification 214/86-CE would have remain obscured from the eyes of law and they would have continued evading the duty.

- iv. In view of the above I come to a conclusion that the intent to evade the payment of duty is very much evident from the conduct of the noticee. And once the intent to evade payment of duty is confirmed, the extended period of limitation is to be invoked.
- v. Thus I find that the present show cause notice is not time barred and Central Excise duty is recoverable from the noticee by invoking extended period of limitation.

**36.5. Issue 5: Whether the noticee is eligible for Cenvat credit of the duty paid on the base paper used in the manufacture of printed base paper printed decorative paper.**

- i. In the instant case the noticee has claimed that if the duty liability on the products manufactured by them is confirmed they should be allowed to avail the Cenvat credit of the duty paid by them on inouts and in support of their claim they relied upon several decisions of higher judicial forums.
- ii. However, I find that apart from giving one worksheet, they have not produced any documents to prove that they have infact paid the duty on the so called raw materials. It is pertinent to mention here that the said worksheet do not even mention the name of the raw material or the quantity and the value of the raw material or the invoice number and date under which the so called raw materials were received. It is universal accounting principle that any raw material whether purchased or received free of cost is to be accounted in the financial records such as ledgers and Balance sheet of the respective financial years. In the present case the noticee has even failed to produce the ledgers and the balance sheets which would reflect the purchase of so called raw materials, incidence of central excise duty there on and payment of such raw materials including the duty involved therein. In absence of all these documents it is not possible to extend the benefit of Cenvat

credit to the noticee. The only worksheet, in respect of their claim of cenvat credit, produced by the noticee with their reply to SCN is scanned and reproduced below for better appreciation of facts.

- iii. In view of the above I am not inclined to extend the benefit of Cenvat credit to the noticee in the present case

**36.6. Issue 6: Whether penalty is leviable on the noticee under the provisions of Section 11Ac of the Central Excise Act read with Rue 25 of the Central Excise Rules, 2002.**

In this case, as I have already concluded in the foregoing paras that the subject goods are liable to Central Excise duty as the same are classifiable under CTH 4811 90 99, the benefit of Notification no. 214/86-CE dated 25.03.1986 is not available and the element of intent to evade payment of duty on the subject goods on the part of the noticee stands proved beyond doubt, there remains no doubt that penalty on the noticee is imposable under the provisions of Section 11AC of the CEA, 1944 read with Rule 25 of the CER, 2002.

**36.7. Whether penalty under Rule 26 of the Central Excise Rules, 2002 is imposable on Shri Manoj Kumar Agarwal, partner in M/s Matchwell.**

- i. In this regard I find that the SCN proposes personal penalty on Shri Manoj Kumar Agarwal, Partner of M/s Matchwell under Rule 26 of the Central Excise Rules, 2002. In their defense reply has pleaded that as penalty on the firm is proposed, personal penalty on Shri Manoj Kumar Agarwal, Partner of the firm cannot be imposed under Rule 26 of the Central Excise Rules, 2002. In support of their plea they have relied upon the following case laws:

- a. Jaiprakash Motwani – 2010 (258) ELT 204 (Guj)
- b. 2010 (259) ELT 179 (Guj)
- c. 2010 (260) ELT 51 (Guj)



- d. Jupiter Exports – 2007 (213) ELT 641 (Bom).
- ii. I find that higher appellate authorities have been consistently holding that when penalty on partnership firm is imposed under Section 11AC, separate penalty on partner of the firm cannot be imposed as partner is not a separate legal entity. In the instant case as since I find that M/s Matchwell is liable to penalty under Section 11AC of the Central Excise Act, 1944, I find that penalty on Shri Manoj Kumar Agarwal under Rule 26 of the Central Excise Rules, 2002, is not imposable.

37. In the light of above discussions, I find that that:

- i. The excisable good manufactured and cleared by M/s Matchwell viz. printed decorative paper rolls, valued at Rs. 23,33,10,752 merit classification under CTH 4811 90 99 of CETA, 1985;
- ii. M/s Matchwell is not eligible for the benefit of Notification no. 214/86-CE dated 25.03.1986 as the conditions of said notification were not satisfied/fulfilled;
- iii. M/s Matchwell had removed excisable goods in contravention of the provisions of the Central Excise Act, 1944 inasmuch as they cleared the excisable goods without payment of appropriate duty thereby contravened the provisions of Section 3 of the Central Excise Act, 1944; Rules 4 and Rule 6 ibid inasmuch as they had failed to assess and pay the appropriate Central Excise duty on excisable goods cleared by them by mis-classifying the same; Rule 8 of the said Rules inasmuch as they failed to pay the appropriate Central Excise duty on the due date; Rule 10 of the Central Excise Rules, 2002 inasmuch as they failed to maintain proper records on daily basis showing description of the goods cleared by them; provisions of job work exemption notification No. 214/86-CE dated 25.03.1986. And These acts of contraventions on their part have been committed by reason of willful mis-statement, and suppression of facts and contravention of the provisions of the said Act and the Rules made there under with intent to evade payment of duty.
- iv. Central Excise duty amounting to Rs. 2,90,76,437/- is recoverable from M/s Matchwell under the proviso to Section 11A(4) of the Central Excise Act, 1944 by invoking extended period of limitation along with Interest, at applicable rate under Section 11AA of the Central Excise Act, 1944;
- v. M/s Matchwell have rendered themselves liable for penal action under the provision of section 11AC of the Central Excise Act, 1944.

38. In view of the above findings, I pass following order:-

**ORDER.**

- i. I classify the Printed Decorative Paper in Rolls manufactured and cleared by M/s Matchwell under CETH 48119099 of the schedule to the CETA, 1985.

- ii. I confirm and order for recovery of Central Excise duty amounting to Rs.2,90,76,437/-(BED Rs. 2,88,51,678/- + Edu Cess Rs. 1,49,840/- + HSE Cess Rs. 74,920/-)(Rs Two Crores Ninety Lakhs Seventy Six Thousands Four Hundred and Thirty Seven only) not paid by them during F.Y. 2012-13 to F.Y. 2015-16 (up to 09-09-2016), under the provisions of Section 11A(4) of the Central Excise Act, 1944.
- iii. I order to recover interest, at applicable rates, on the amount of Central Excise duty mentioned at Sr.No. (ii) above from M/s Matchwell under Section 11AA of the Central Excise Act, 1944.
- iv. I impose penalty of Rs.2,90,76,437/- on M/s Matchwell under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002. However, in view of Section 11AC(1)(e) of the Central Excise Act, 1944, if the amount of duty confirmed and interest thereon is paid within 30 days from the date of receipt of this order, the penalty shall be 25% of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the said period of 30 days.
- v. I refrain from imposing any penalty on Shri Manoj Kumar Agarwal, partner in M/s Matchwell, under Rule 26 of Central Excise Rules, 2002.

38. S.C.N. F.No. DGCEI/AZU/36-35/2017-18 dtd. 28.04.2017 stands disposed off, accordingly.



(Suresh Nandanwar)  
Commissioner,  
C. G. S. T., Ahmedabad South.

F. No.: V.48/15-12/OA/Commr/2016-17

Date: /12/2018

BY SPEED POST

To,

1. M/s. Matchwell, Saijpur-Gopalpur,  
Outside Shahwadi Octroi Naka, Near Ashok Industries, Piplej,  
Ahmedabad.
2. Shri Manoj Kumar Agarwal,  
Partner of M/s. Matchwell, Saijpur-Gopalpur,  
Outside Shahwadi Octroi Naka, Near Ashok Industries, Piplej,  
Ahmedabad.

Copy to:-

1. The Chief Commissioner, C.G.S.T., A'bad Zone, Ahmedabad.
2. The Additional Director, Directorate General of Central Excise Intelligence, AZU, 1<sup>st</sup> Floor, Preema Chambers, Nr. Mithakhali Six Roads, Navrangpura, Ahmedabad-380006.
3. Assistant Commissioner, Div-IV, C.G.S.T., Ahmedabad South
4. The Assistant Commissioner C.G.S.T.(T.A.R.), Hq., Ahmedabad South
- ✓ 5. The Supdt.(Systems), C.G.S.T., Ahmedabad South
6. The Supdt., A.R.- III ,Div-IV, C. G. S. T., Ahmedabad South.

✓ 7. Guard File