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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 10022/2018 & CM 39032/2018 (stay)**

SONKA PUBLICATION (INDIA) PVT LTD. ..... Petitioner

Through: Mr Vineet Bhatia, Advocate.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr Amit Bansal and Mr Aman Rewaria, Advocates for R-3.
Mr Satyakam, Addl. Standing Counsel, GNCTD.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE REKHA PALLI

O R D E R

% 07.05.2019

Dr. S. Muralidhar, J.:

1. A very short but interesting question that arises for consideration in the present petition is whether the books '*Sulekh Sarita* Parts I to V' are 'Printed Books' classifiable under 'HSN 4901' or 'Exercise Books' under 'HSN 4820' of the Central Goods and Service Tax Act (CGST Act)? If the books are classified under HSN 4901, as contended by the Petitioner, then they would be completely exempt from tax in terms of the CGST Act as well as Delhi GST Act. If they are to be considered as 'Exercise Books' classified under HSN 4820, as contended by the Respondents, then they are subject to 6% tax.

2. A similar question arose in the context of the Central Excise Tariff Act

before this Court in W.P. (C) No.7198/2016 (***The Central Press Private Limited v. Union of India***). There the publisher contended that their 'work books' were used in the Sarva Shiksha Abhiyan as a basic tool for education. By an order dated 31st August 2016, this Court directed the Central Board of Excise and Customs ('CBEC') to consider all aspects of the matter and pass an appropriate order.

3. In examining the said issue pursuant to the order passed by this Court, the CBEC issued a Circular No.1057/6/2017 – CX dated 7th July, 2017 where, *inter alia*, it was observed as under:

> "(ii) The issue has been examined. Exercise Books have been explained in HSN under explanatory note (2} to Heading 48.20 as, "These may simply contain sheets of lined paper but may also include printed examples of handwriting for copying in manuscript". Such exercise Books are specifically classified under heading 4820 of the erstwhile CETA, 1985. These are nothing but stationary items having blank pages with lines for writing and may also include printed texts for copying manually. In common parlance they are more akin to handwriting "note books" for practising rather than "work books" containing printed exercise. This definition of Exercise Books is in harmony with other items specified under Chapter Heading 4820 of erstwhile CETA, 1985 such as registers, note books, diaries, letter pads etc. where printing is incidental to their primary use i.e. writing. The fact that printing is incidental to their primary use is the guiding principle for classification of Exercise Books under heading 4820 of erstwhile CETA, 1985.
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> (iii) Printed work books on the other hand are books where printing is not merely incidental to the primary use. HSN Explanatory notes (A) to the heading 49.01 reads as, "Books and booklets consisting essentially of textual matter of any kind, and printed in any language or characters include

textbooks (including educational workbooks sometimes called writing books), with or without narrative texts, which contains questions or exercises (usually with spaces for completion in manuscript). Thus, printed work books containing questions followed by spaces for writing or other exercises would fall within the scope of Chapter 49. The said goods are different from Exercise Books falling under Chapter 48 which are stationary items with blank pages with lines for writing and some time may also include printed texts for copying manually, as explained in the preceding para. Further, since printing in case of printed workbooks is not merely incidental to the primary use of the of the goods, such goods are classifiable under Chapter 49, in terms of Chapter note 12 to Chapter 48 of erstwhile CETA, 1985.

(iv) Similarly, HSN Chapter note (6) to Chapter 49 read with HSN explanatory note under heading 49.03 covers children's workbooks consisting essentially of pictures with complementary texts, for writing or other exercises, and children's drawing or colouring books, provided the pictures form the principal interest and are not subsidiary to the text. Thus, children's drawing books which are in harmony with said HSN Chapter note (6) and HSN Explanatory note to heading 4903 would fall under Chapter 49."

4. As far as the present case is concerned, the Petitioner filed an application for advancing ruling on 9th January 2018, seeking a clarification whether the books published by the Petitioner, viz., *Sulekh Sarita* Parts I to V are printed books classifiable under HSN 4901 to 10 or as 'Exercise Books' under HSN 4820. Another issue raised by the Petitioner was whether a person exclusively supplying goods that are wholly exempted under tax is required to be registered under the GST Act.

5. The Authority for Advancing Ruling (AAR) passed an order dated 6th

April, 2018 holding that the aforementioned books *Sulekh Sarita* Parts I to V, printed and sold by the Petitioner, are classifiable as 'Exercise Books' under HSN 4820. The AAR also held the Petitioner has to get itself registered if it had GST liability under Reverse Charge Mechanism ('RCM') i.e. under Section 24 (iii) of the CGST Act notwithstanding that under Section 23 (i) (a), it may not be liable to pay any tax.

6. It is significant that in the present petition, which challenges the aforementioned order of the AAR, all the grounds raised by the Petitioner pertain to the first issue regarding classification of the books printed and sold by the Petitioner and not the second issue concerning registration under the CGST Act. Learned counsel for the Petitioner states that notwithstanding the ruling of the AAR against it on the second issue, the Petitioner has got itself registered under the CGST Act. Accordingly, this Court is not examining the second issue.

7. The reasoning of the AAR for holding that the Petitioner's books are classifiable under HSN 4820 proceeds as under:

(i) Heading 49.01 generally covers "textual reading material/books including text-books, catalogues, prayer books etc. It specifically covers 'educational workbooks or writing books'. Heading 49.03 generally covers 'children's picture, drawing or colouring books wherein pictures form the principal interest in the books'. Heading 48.20 generally covers 'stationery books'. Exercise books that contain 'simple sheets with printed lines or may even have printed examples of handwriting for copying by the students' also covered Heading 48.20.

(ii) The main feature which differentiates 'work books' of Heading 49.01 from 'exercise books' of Heading 48.20 is that 'the work books of Heading 49.01 contained questions or exercise within the space given for writing the answers whereas, the exercise books under Heading 48.20 contained printed text with space for copying manually.'

(iii) An examination of the books printed and sold by the Petitioner revealed that "only in very few pages, any printed exercise or questions is given. Hence, in these books, the primary use is writing and printing is incidental'. Further since none of the books contained any pages with 'children's picture', drawing or colouring matter', classification of any of them under heading 49.03 is not possible. Therefore, the goods were to be correctly classified under HSN 4820.

8. This Court has heard the submissions of Mr Vineet Bhatia, learned counsel for the Petitioner, Mr Amit Bansal learned counsel for the Principal Commissioner, GST and Mr Satyakam, Addl. Standing Counsel, GNCTD. This Court has also examined the books printed by the Petitioner, viz., *Sulekh Sarita* Parts I to V. Illustratively, the Court would like to refer to *Sulekh Sarita* Part V.

9. To begin with, the name of the author of the book is prominently printed on the first page as is the ISBN number. It has a contents page which

explains the broad features of the book. The first part contains practice exercises where the student is expected to copy the printed text in the lines given immediately below. But, that would be a very limited way of looking at the book as a whole. In fact, there are many portions of the book subsequently where a student is expected to answer questions. The student is expected to write down the meaning of Hindi words. The student is expected to write a short essay on a given aspect.

10. It appears from reading the book *Sulekh Sarita* Part V (and this holds good for the other Parts I to IV) as a whole that while in the initial phases, the teacher is expected to guide the student and the book is used as a tool in that endeavour, there are substantial portions of the book where after completing that phase, the student is asked to write words of his or her own. For instance in page 16, the student is expected to listen to at least 40 difficult words that the teacher might speak out in the class and write down those words in the space provided in the book. In other words, the student is not merely copying from a printed text. Here the listening and retentive abilities of the student are being tested.

11. Then there are at least three pages (50 to 52) where the Hindi word is given in the left hand column and the student is expected to give the meaning of the word, in Hindi, after locating it in the dictionary. This again is not a mechanical exercise of simply copying from a written text that is already provided in the book. In page 53 of the book, the student is expected to join two Hindi words to make another Hindi word. An example already given in that page is the word '*swatantra*'. There are many words possible to

be made by combining two of the many Hindi words in that page. This tests the student's comprehension. It requires application of mind.

12. Then at page 54, the teacher is asked to dictate 40 difficult words or a paragraph and the student after listening to it is expected to write it down in the space provided. In the last two pages i.e. 61 and 62, the student is expected to write a short piece on the topic already suggested like '*ped lagane ke labh*', '*maccharo se bacho – kyon awshyak – kaise bache'* and so on. Here again, the student is not expected to copy words from a printed text but think of his or her own topics and write a few sentences on the topic.

13. This Court, therefore, is not persuaded to concur with the assessment made by the AAR of the above book that "only in very few pages, any printed exercise or questions is given." An educational text is like a handholding exercise for a child. While in the first few pages, it may appear that the child is asked to mechanically reproduce from the printed text, as the course progresses, the child is encouraged to think on his or her own. This is what precisely this 'work book', or as the Court would like to rephrase it, this 'practice book' does. At the end of the course, by using these books, the attempt is to enhance the educational value addition as far as the child is concerned. The attempt is to help the child think on his own and to enable the teacher to evaluate the child's output. By no means can it be said that these books are for enabling a child to merely copy words from a printed text in order to improve his or her own handwriting.

14. The Court is conscious that in the note appended to the HSN, it has been

stated that Heading 49.01 excludes 'children's workbook consisting essential pictures with complementary text, for writing another exercises'. But then none of the books which form the subject matter of the present petition can be viewed as a mere text 'for writing or other exercises'. These books are meant to help the child think, apply his or her mind and come up with some creative answers. It also tests the listening, comprehension and retention skills of the child; of what is spoken in the classroom and for testing the understanding of the child of that which has been taught.

15. While no two cases are identical, it may be useful to refer to a few decisions only to understand the approach the Court is expected to adopt in matters of classification. In ***C.C. (General), New Delhi v. Gujarat Perstorp Electronics Ltd. 2005 (186) ELT 532 (SC)***, the Supreme Court was seized of the issue "whether the goods and materials imported by the Company in the form of FEEP comprising of equipments, drawings, designs and plans are classifiable under Chapter Heading 49.01 or 49.06 of Schedule 1 of the Customs Tariff Act, 1975 and the Company is entitled to the benefit under Notification Nos. 107/93-Cus and 38/94-Cus. or they are classifiable under Chapter Heading 4911.99 as contended by the department?" In the process of answering the said question in favour of the Assessee, the Supreme Court observed as under:

> "In popular sense, "book" means a collection of a number of leaves or sheets of paper or of other substance, blank, written or printed, of any size, shape and value, held together along one of the edges so as to form a material whole and protected on the front and back with a cover of more or less durable material. The Court also referred to dictionary meaning. It was observed that one must refer not only to the physical, but also functional

> characteristic of "book". It must be functionally useful for the purpose of assessee's business or profession. To put it differently, it must be a tool of his trade   an article which must be part of the apparatus with which his business or profession was carried on. It must have utility value enabling its owner to pursue his business or profession with greater advantage. It must, thus, satisfy a dual test. It must bear both physical and functional characteristics of a book. It must be a collection of a number of sheets of paper or of other substance, having suitable size, shape and value, bound together at one edge so as to form a material whole and protected on the front and back with covers of some kind and functionally useful to the assessee for carrying on his business or profession."

16. Therefore, the emphasis was on a 'functional characteristics' of a book. In other words, the Court must ask what purpose will the book serve? In this case, a question to be asked is whether the books in question merely help the child in improving the child's handwriting by providing space in a book by copying from a written text or does it pose questions to the child to answer and whether the teacher then can evaluate, on the basis of such answers, the child's ability and understanding? In the present case, the 'work books' or 'practice books' printed and sold by the Petitioner certainly fall in the latter category i.e. they test the child's knowledge, ask questions which the child has to answer, and facilitate evaluating the child's understanding.

17. These books are not 'exercise books' as understood by the trade. It must be mentioned at this stage that the learned counsel for the Petitioner has produced before the Court samples of such 'exercise books/ exercise note books' as understood in trade parlance. These are simply bound volumes of blank pages which may contain lines to facilitate writing. They do nothing

more than providing space for writing.

18. Consequently, this Court is satisfied that in the present case, the books published and sold by the Petitioner are classifiable under HSN 49.01 and not HSN 48.02. In terms of Notification No.2/2017-Central Tax (Trade) dated 28th June, 2017 i.e. Entry No.119 thereunder, such goods classifiable under HSN 49.01 i.e. 'printed books, including Braille books' are wholly exempted from tax.

19. Since, this is the only question that has been raised before the Court, the impugned order dated 9th April 2018 to that extent is hereby set aside.

20. The writ petition is accordingly allowed, but in the circumstances, with no orders as to costs. The pending application is also disposed of.

S. MURALIDHAR, J.

REKHA PALLI, J.

MAY 7, 2019
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