A M/S. METAGRAPHS PVT. LTD.

v.

COLLECTOR OF CENTRAL EXCISE, BOMBAY

NOVEMBER 20, 1996

B [S.P. BHARUCHA AND K. VENKATASWAMI, JJ.]

Central Excises and Salt Act, 1944 :

First Schedule—Item 68—'Exemption Notification No.55/75-CE dated 1.3.1975—Printed Aluminum Labels—Held, are products of printing C *industry within the meaning of the Exemption Notification.*

The appellant-assessee manufactured 'Printed Aluminum Labels' which were printed on flatbed off-set printing press, and the printing was done on a deep off-set printing machine. The labels were to be D **fixed to refrigerators, radios, air conditioners, telephone sets etc. The appellant claimed the said labels to be 'Products of printing industry' within the meaning of Exemption Notification No. 55/75-CE dated 1.3.1975, and accordingly was allowed exemption from levy of duty by the Assistant Collector. But the Collector of Central Excise revoked the exemption and directed assessment of the goods under Item No.68** E **of the First Schedule to the Central Excises and Salt Act, 1944. The appeals filed by the assessee were dismissed by the Central Excise and Gold (control) Appellate Tribunal, holding that the printing on the aluminum label being incidental to its use as a label or a wrapper, the label inherently was not a piece of reading matter. Aggrieved, the assessee filed the appeals before this Court.**

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Allowing the appeals, this Court

HELD: 1.1. The Tribunal was not right in concluding that the printed aluminum labels in question are not products of printing G **industry. But for the printing, the aluminium label would serve no purpose and it is the printing on the aluminium sheet, which communicates the message to the buyer that makes the sheet as a label, unlike a carton printed or plain which always remained a carton. [876-D, 877-G]**

H **1.2. The label announces to the customer that the product is or**

is not of his choice and his purchase of the commodity would be decided by the printed matter on the label. The printing of the label is not incidental to its use but primary in the sense that it communicates to the customer about the product and this serves a definite purpose. [877-H, 878-A] A

1.3. The product in the instant case, is the aluminium printed label, which the printing industry has brought into existence. That being the position and further the test of trade having understood this label as the product of printing industry, there is no difficulty in holding that the labels in question are the products of printing industry. [878-B] B

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Rollatainers Ltd. and Anr. **v.** *Union of India and Ors.,* **[1994] Supp. 3 SCC 293, referred to.**

2. It is true that all products on which some printing is done, are not the products of printing industry. It depends upon the nature of products and other circumstances. Therefore, the issue has to be decided with reference to facts of each case. A general test is neither advisable nor practicable. [878-C] D

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3011-14 of 1986. E

From the Judgment and Order dated 13.6.86 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in O.B. No. 353, 357-59 of 1986-B-I.

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V. Lakshmikumaran, V. Sridharan and V. Balachandran for the Appellant.

R. Mohan and Ms. Sushma Suri for the Respondent.

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The Judgment of the Court was delivered by

VENKATASWAMI, J. The only question that arises for our consideration in all these Appeals is whether 'Printed Aluminium Labels' (hereinafter referred to as "labels") manufactured by the appellant are 'products of the printing industry' within the meaning of Notification 55/ H

A 75-CE dated 1.3.1975 (hereinafter called "the Notification) issued under Rule 8(1) of the Central Excise Rules, 1944.

It is not in dispute that but for the exemption under the Notification, the labels in question, would fall under item No. 68 of the First Schedule to the Central Excise and Salt Act, 1944 (hereinafter called the "Act").
B The relevant portion of the said Notification is extracted below:-

> "In exercise of the powers conferred by Rule 8(1) of the Central Excise Rules. 1944, the Central Government hereby exempts goods of the description specified in the Schedule annexed hereto, and falling under Item No. 68 of the First
C Schedule to the Central Excise and Salt Act, 1944, (I of 1944) from the whole of the duty of excise leviable thereon.
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> 13. All products of the printing industry including newspapers and printed periodicals."

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It appears that the appellants claimed and got the labels in question exempted from the levy of duty on the ground that they come within the category of products of the printing industry, under the orders of Assistant Collector dated 24.12.1979. Later on the Collector of Central Excise. Bombay, invoking his powers under Section 35A of the Act issued a notice
E for revising the said order of the Assistant Collector dated 24.12.1979 and for bringing the goods under item 68 for the purpose of levy of excise duty. After hearing the objections of the appellants, the Collector revoked the exemption granted by the Assistant Collector and directed assessment of the goods under item 68.

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Aggrieved by the order of the Collector the appellant preferred four appeals to the Customs, Excise and Gold (Control) Appellate Tribunal. New Delhi for different assessment periods. The Tribunal by its order dated 13.6.1986 held that the printing on the aluminium label being
G incidential to its use as a label or a wrapper and that being inherently not a piece of reading matter, will not fall under the above-said exemption Notification. On that view, the Tribunal dismissed the appeals. Hence the present appeals by special leave.

Mr. V. Laxmikumaran, learned counsel for the appellants has submitted
H that the Tribunal went wrong in coming to a conclusion that the printing

on the aluminium label was incidental to its use. According to the learned counsel, the printing was the primary purpose and without it, the metal on which the matter was printed, is of no use to the appellant's customer. It is the contention of the learned counsel that it is the printing that gives the aluminium labels their use without which they would not be called labels and would serve no purpose. In other words, the printed words on the product inform the customer that he is buying the product of his choice or his brand. He also submitted that in the trade as well as in common parlance, these aluminium labels are treated as products of printing industry. According to the learned counsel, this was specifically pleaded before the Tribunal, but the Tribunal unfortunately not accepting this test has stated that this will not be a correct test. He also distinguished on facts the judgment of this Court in *Rollatainers Ltd. and Another.* v. *Union of India and Others.* reported in [1994] Supp. 3 SCC 293. According to the learned counsel, the test laid down in that judgment, if applied to the facts of this case, even then the appellant is entitled to succeed.

Mr. R. Mohan, learned Senior, Counsel appearing for the Revenue, contending contrary submitted that the labels in question are not products of printing industry and the ratio laid down in the judgment referred to by the learned Counsel for the appellant would directly apply to the facts of this case and the distinction sought to be made on facts was without substance. It is his contention that the Tribunal has considered elaborately the facts placed before it and the reasoning and ultimate conclusion of the Tribunal that the printing is only incidential to the use of the labels and, therefore, they cannot be treated as products of printing are unassailable.

We have considered the rival submissions. The labels in question are printed on flatbed off-set printing press and the printing is done on a deep off-set printing machine. These labels are meant to be fixed to refrigerators, radios, air-conditioners, telephone sets etc. It is seen from the order of the Tribunal that a certificate of an award was printed on aluminium sheet of an association. The Tribunal in the course of its order has observed as follows:-

> "According to the appellants, all these aluminium sheets are meant to serve a purpose connected only with the printing on them. This can be very briefly described as a communication to the reader that the commodity, product, device, machine etc., etc., to which the printed aluminium plate is attached is such and such product made by so and so.

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> It is not an advertisement plate or a decorative plate but serves a communication need that the reader or a potential customer feels the need of when he looks at a product be it a refrigerator or a clock, or an airconditioner or a motor car or a fan. It tells him what he want to know in precise and certain word and enables him to make his choice to pick and to chose from, perhaps, a variety of brands of the same kind of product or machine.... In other words, the printed word on the product informs the customer that he is buying the product of his choice or of his brand. These aluminium printed plates serve the purpose of written word that conveys to the buyer what he needs to know about the product he is contemplating to purchase and to pay money for."

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Having said so, the Tribunal at the end comes to a conclusion that the printing on the labels was only incidental to its use and therefore, they cannot be treated as products of printing industry. The Tribunal in its earlier part of the order observed that the answer to the question depends upon the conclusion whether the printing on the metal plates manufactures by the assessee was or was not incidental to the primary use of the goods.

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In *Rollatainers Ltd. case* (suprà), this Court was considering whether printed cartons manufactured by the appellants in that case were products of the printing industry. This Court held as follows:-

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> "We are of the view that to a common man in the trade and in common parlance a carton remains a carton whether it is a plain carton or a printed carton. The extreme contention that all products on which some printing is done, are the product of printing industry, cannot be accepted."

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This Court accepted the reasoning of the Division Bench of the Karnataka High Court to hold that the printed cartons are not the products of the printing industry. The following reasoning of the Division Bench reads as follows:-

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> "The classification of manufactured goods cannot be dependent merely upon their place of production. *The product wherever produced must be classified having regard to what it means and how it is understood in common parlance.* The guiding factor is not where it is produced, but what is

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produced (See Collector of Central Excise v. Calcutta Steel Industry, [1989] Suppl. 2 SCC 139). There appears to be no principle on which a distinction can be drawn between an ordinary carton and a printed carton, and to hold that an ordinary carton is a product of a packaging industry, while a printed carton is a product of the printing industry, if it emerges in its final shape from a printing press. At best it can be said that with technological advancement. It has become possible to have composite industries which can provide a variety of services, not necessarily confined to a single industry as conventionally understood, and which may produce a variety of manufactured items. *In such cases the products have to be classified having regard to their purpose and as they are understood in ordinary parlance.* So viewed, a paper carton, whether printed or not must be classified as a product of the packaging industry, and not a product of the paper industry or printing industry. A carton is used for packing goods whether it is made or printed paper or not, and therefore, the printing of cartons does not add to its essential function as a container. Mere printing does not make a carton. An ordinary man in the trade has no use for a printed paper, unless it can be given shape as a container in which he can pack his products. What makes it a carton is its capacity to contain which is its essential characteristic and not the printing work on it, which is merely incidental. In our view, the fact that sometimes more money may be spent on printing than other things, will make no difference."

(Emphasis supplied)

It was argued that the trade also understood likewise. But this argument was repelled by the Tribunal by observing that classification of goods can never be based on what the industry regards the goods to be. This approach seems contrary to the view expressed by this court in *Rollatainers* case. There this Court approved the test based on understanding of trade parlance/ common parlance of a particular product. In the case on hand, but for the printing, the aluminium label would serve no purpose and as seen above, it is the printing on the aluminium sheet, which communicates the message to the buyer that makes the sheet as a label, unlike a carton printed or plain which always remained a carton.

The label announces to the customer that the product is or is not of

A his choice and his purchase of the commodity would be decided by the printed matter on the label. The printing of the label is not incidential to its use but primary in the sense that it communicates to the customer about the product and this serves a definite purpose. This Court in Rollatainers case held that "what is exempt under the notification is the product of the printing industry. The 'product' in this case is the carton. The printing B industry by itself cannot bring the carton into existence". Let us apply this above formula to the facts of this case. The product in this case is the aluminium printed label. The printing industry has brought the label into existence. That being the position and further the test of trade having understood this label as the product of printing industry, there is no difficulty in holding that the labels in question are the products of printing industry. C It is true that all products on which some printing is done, are not the products of printing industry. It depends upon the nature of products and other circumstances. Therefore the issue has to be decided with reference to facts of each case. A general test is neither advisable nor practicable. We are, therefore, of the opinion that the Tribunal was not right in concluding that the printed aluminium labels in question are not products D of printing industry.

Accordingly, the appeals are allowed and the impugned orders of the Collector, Central Excise are set aside and the appellants are entitled to claim exemption on the labels in question under the above-mentioned Notification. There will be no order as to costs.
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R.P. Appeals allowed.