


<b>GUJARAT AUTHORITY FOR ADVANCE RULING,</b> GOODS AND SERVICES TAX, A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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**ADVANCE RULING NO. GUJ/GAAR/R/2022/11**

(In Application No. Advance Ruling/SGST&CGST/2021/AR/30)

**Dated: 07.03.2022**

Name and address of the applicant	:	M/s Texel Industries Ltd., Block No. 2106,Santej-Khatraj Road, Village :Santej, Ta: Kalol (N.G.), Dist : Gandhinagar, Gujarat-382721
GSTIN of the applicant	:	24AAACT7085R1ZN
Date of application	:	17/08/2021
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a)
Date of Personal Hearing	:	18/02/2022
Present for the applicant	:	Shri Pratik Trivedi, CA and Shri Anuj Sharedalal, CA

**Brief Facts**

M/s Texel Industries Ltd, hereinafter referred to as Texel for the sake of brevity, submitted that it engaged in the business of manufacture and sale of textile products and articles like Geomembranes and Tarpaulins. Texelis licensed by the Bureau of Indian Standards (BIS) for manufacture of the above referred goods in accordance with IS 15351:2015. This Indian Standard i.e. IS 15351:2015 is for ‘Agro-textiles – Limited HDPE woven Geomembranes for water proof lining’.

2. Texel submit that the present application is in respect of two products, and therefore their details are as follows:

**3.Geomembrane**

3.1 The BIS has published IS 15351:2015 for the products, namely, Laminated HDPE woven Geomembrane for waterproof lining. These goods are also known and referred to in the trade by various other nomenclatures like Agro-textiles, Geo-grid Fabrics, and the like. However, the products are basically in the nature of fabrics, and they are used for water proofing in ponds, and for agricultural applications.

**3.2 Manufacturing process**

(a) The basic raw materials for manufacturing Geomembrane is High Density Polythene Granules (HDPE Granules) and Master Batch containing carbon black. These raw materials are melted in Extruder by applying heat and friction, and they are extruded in form of thin sheet, in molten form. Such thin sheet in molten stage is passed through a

quenching tank containing water, to form a solid thin sheet, which is then slit into tapes/strips. Such slit tapes/strips are passed through hot plate for orientation process so as to impart strength. The width of such tapes/strips is below 5 mm, and they are wound on metal pipes for producing bobbins.

(b) These tapes/strips are then loaded on circular looms or flat looms for weaving purpose. By employing weft and warp method of weaving, woven fabrics are produced by using the tapes/strips of width below 5 mm. These are uncoated woven fabrics of plastic; and such fabrics in rolls are further processed for producing coated/laminated fabrics on extrusion lamination machine within M/s. Texel's factory.

(c) Rolls of uncoated fabrics loaded on extrusion lamination machine are drawn for feeding into the laminating unit. Mix of Low Density Polythene (LDPE), LLDPE and colour/black master batch is fed into the extruder through a Hopper, and melted by applying heat and friction, for forming a thin film in a molten state. Uncoated fabric is thus coated/laminated on one side by this molten mix, and passed over a chill roll containing chilled water. Edges of coated/laminated fabrics are trimmed and then wound on steel pipes on a winder.

(d) Same way, the other side of the fabric is also coated/laminated to form a waterproof fabric. For increasing thickness of such fabric, one side coated/laminated fabrics are sandwiched laminated with a film and then laminated again with one more layer of fabric to form a coated/laminated fabric of higher thickness. Trimming of edges is undertaken, and such coated/laminated fabric in rolls is subjected to inspection, where defects, if any, are removed, and the ends of the fabrics are rejoined by heat sealing. After inspection of such coated/laminated fabric rolls, they are sent for overlap sealing to increase the width of the coated/laminated fabric, and then they are cut in required length to obtain the required size of Geomembranes. These final products i.e. products or articles of textile fabrics are packed, and are ready for sale and supply.

### 3.3 The use of the product

#### HDPE Reinforced Geomembrane in Biofloc Ponds:

- i) HDPE Reinforced Geomembrane lined aquaculture ponds teamed with Biofloc technology is a highly beneficial bacterial colony based culture which keeps diseases at bay making it an ecologically sustainable symbiotic system.
- ii) Biofloc technology ensures minimal water exchange and keeps the pH levels steady by feeding on the nitrogen produced by the fish & shrimps. In conventional farming where Biofloc technology is not used nitrogen is flushed out through water exchange every 25-30 days to keep the aquatic animals disease free. The Biofloc uses up the nitrogen and converts it into proteins for the animals.
- iii) For Biofloc technology to be used, Geomembrane lined ponds are a must. Ponds lined with Texel Reinforced Geomembranes insulate the animals from diseases.

- iv) Biofloc cuts down fish meal giving cost advantages to the farmers. Production per unit area is high in biofloc system.
- v) The stocking density of animals in Geomembrane lined biofloc pond is twice the density of an ordinary unlined pond.
- vi) Aquaculture ponds using Biofloc technology can bring big benefits to aquaculture farmers.

#### 4. Tarpaulin

M/s. Texel has submitted manufacturing process of coated/laminated HDPE Poly-woven Tarpaulin.

##### 4.1 Manufacturing process

(a) The basic raw materials are HDPE granules and master batch; and for manufacturing Tarpaulin also, tapes/strips having width less than 5 mm are produced and then fabric is woven on circular looms or flat looms utilising these strips by employing weft and warp method of weaving, and uncoated fabrics products on such looms are subjected to coating/lamination of both the sides, one after another, like in the case of Geomembrane. After such coating/lamination on both the sides and sealing as well as overlap sealing to increase width of the fabrics and cutting in length to get the required size, the finishing process for Tarpaulin involves hemming of size and ends with rope to give required strength to the product and for preventing tearing from the edges. Such hemmed fabric is punched with aluminium or brass or plastic eyelets to produce the final products like Tarpaulin. Eyelets are required so that the user could tie tarpaulin easily without tearing. Such fully finished tarpaulin is packed for sale and supply.

4.2 M/s. Texel submit that in Mc-Graw-Hill Dictionary of Scientific and Technical Terms, Tarpaulin is described as a sheet of waterproof canvas or other material; used to cover and protect construction materials and equipment, athletic fields, vehicles or other exposed objects. Tarpaulins produced are specially reinforced High Density Polythene Scrim fabric, which account for their rugged, tear resistant strength. Since they are waterproof, UV stabilized, fungus, chemical and crack resistant and light weight, they are used for protecting various things and materials and also for covering motor vehicles and the like.

5. Texel has further submitted that Heading 5911 of the Tariff is the most appropriate classification for both the products viz. Geomembrane and Tarpaulins, because both are textile products for technical uses, and both are goods in the nature of textile fabrics coated or laminated with plastic processed further, and used for technical purposes. Further submitted that none of the exclusions provided under any of the Notes to the relevant Chapters of the Tariff is attracted for classification of the goods in question, and

therefore the goods in question are not excluded from Chapter 59 of the Tariff for classification.

6. Texel submitted the scope of Heading 5911 as follows:

i. Textile products and articles, for technical uses, specified in Note-7 to Chapter- 59 are covered under Heading 5911 by virtue of the broad description of the goods for this heading. Textile fabrics coated, covered or laminated with rubber, leather or other material used for technical purposes are specified against Sub Heading 59111000. It is explained under note (1) of part (A) of Heading 59.11 of HSN that ‘other material’ includes plastics. Sub Heading 591190 covers other textile products and articles, for technical uses, specified in Note-7 to Chapter 59.

ii A plain reading of the broad description of the goods against Heading 5911 shows that Textiles products and articles are covered under this classification. The same way, a plain reading of description of the goods against Sub Heading 59111000 shows that it covers Textile fabrics coated, covered or laminated with rubber, leather or other material (e.g. plastics) used for technical purposes.

iii Thus, Textile products and Textile fabrics for technical uses are covered under the above classification, subject to Note-7 of this Chapter. M/s. Texel therefore submits that Geomembrane and Tarpaulin would fall for classification under this Heading/Sub Heading if they were textile products and textile fabrics, subject to other requirements like use for technical purposes. But the terms Textile and Fabric are not defined under the Tariff, though the expression textile fabrics is clarified under Note-1 of Chapter 59 as the expression applicable only to the woven fabrics of Chapters 50 to 55 and Headings 5803 and 5806 etc. A perusal of Chapters 50 to 53 and Headings 5803, 5806, 6002 to 6006 referred to in Note No.1 of Chapter 59 also shows that the terms Fabrics or Textile are not defined or clarified thereunder.

iv Since Heading 5911, Sub Heading 59111000, is for Textile products and articles, and Textile fabrics coated, covered or laminated and used for technical purposes, it would be relevant to find out what is “Textile products and articles” and “Textile fabrics”.

7. M/s Texel submits as follows:

i. The Hon’ble Supreme Court in case of Porritts & Spencer (Asia) Ltd. 1983 (13) ELT 1607 (SC) has held that the word “textiles” was derived from the Latin “texere” which meant “to weave”, and it meant any woven fabrics. It is further held that when yarn of any material and description was woven into fabrics, what came out into being was a “textile” and it was known as such. Phenomenal advancement in science and technology

resulting in a large variety of fabrics manufactured from materials till then unknown or un-thought of and new techniques invented for making fabric out of yarn have also been taken into consideration by the Hon'ble Supreme Court while laying down the law that any woven fabrics were "textiles" irrespective of the materials used, technique of weaving adopted and the end-use of the product.

ii Further, Hon'ble Supreme Court has held that, Plastic is a wellknown textile material and various varieties of yarns and fabrics are produced out of plastic materials, namely, terelene, polyester, nylon, acrylic, texturized yarns, silicon yarns, etc.

iii Texel submits that as held by the Hon'ble Apex Court, phenomenal advancement in science and technology would result in different and new variety of fabrics manufactured from materials unknown or un-thought of till a particular time; but fabrics produced out of any such materials by weaving were textile fabrics i.e. textile products.

8. Texel submits that Geomembranes as well as Tarpaulin are manufactured by weaving of fabrics on circular looms as well as flat looms. Both the products are in the nature of fabrics which are processed further for imparting strength, water proofing quality and such attributes; but the basic nature of both the products is that of fabric. They are produced out of plastic material, but fabrics produced out of plastic material are textile fabrics i.e. textile products.

9. Texel submits that Fairchild's Dictionary of Textiles is considered to be the most reliable book on textile terms and their meaning. The term textile is explained therein as a word derived from the Latin term "textilis", based on the verb "texere", to weave. It is further explained that textile was a broad classification of any material that can be worked out into fabric, such as fabrics and yarns, including woven, knitted, bonded, felted, needle punched fabrics; lace and crocheted goods. The expression fabric is explained in Fairchild's Dictionary as a cloth that was woven, knitted, braided, netted, felted or pleated with any textile fibre, or was a bonded web.

9.1. Further, submits that the expression Weave is explained in this dictionary as "the method or process of interlacing two yarns or similar materials so that they cross each other at right angles to produce woven fabric. The warp threads or ends run lengthwise in the fabric, and filling threads (weft or picks) run from side to side".

10. Texel submits that Hon'ble Gujarat High Court has rendered a judgement in case of M/s. CTM Technical Textiles Ltd. V/s. Union of India – Special Civil Application No.8332/2020, after considering the judgement of the Hon'ble Supreme Court in case of Porritts& Spence (Asia) Ltd. and the dictionary meaning of the terms Textile, Fabrics etc. In the judgement rendered on 24.12.2020, the Hon'ble Gujarat High Court has considered a dispute of classification of two products, namely, Geo-grid and Agro Shed Net. The

Revenue's stand that these goods were articles of plastic because they were made of HDPE tapes and also the Revenue's reliance on judgement of the Hon'ble Madhya Pradesh High Court in case of Raj Packwell Ltd. 1990 (50) ELT 201 (M.P) have not been accepted by the Hon'ble Gujarat High Court; and it is also held that Raj Packwell Ltd. was not a case where classification of fabric of plastic was considered; M/s Texel submits that the jurisdictional High Court, has in terms held that the judgement of the Hon'ble Supreme Court was an answer to what was the Revenue argued about what was textile, and whether woven fabric of plastic material was a textile product or not (para 55 of the judgement); that plastic was used for producing textile fabrics, and raw material for various fabrics was plastic (para 53 of the judgement); that the judgement in Raj Packwell Ltd. had nothing to do with HDPE fabric; and that woven fabric would be textile irrespective of the method of weaving through any technique and the materials used for weaving may also be anything like cotton, silk, rayon, nylon or any other description or made out of any other material. But when any such material was woven into fabric, what came into existence was a textile.

11. Further, Texel submits that textiles means any woven fabrics, and weaving adopted may be simple warp and weft pattern or it could be any other process or technique. It is also clear that fabrics produced by weaving technique were textiles, and they were to be treated as textile fabrics even for the purpose of taxing statute. Even in common parlance, fabrics are considered to be those goods which are produced as a result of any weaving methods because all woven fabrics are considered to be textile goods or textile fabrics among the people producing such goods, people dealing in such goods, people using such goods and people connected with textile trade.

12. Texel submits that Geomembrane and Tarpaulin both are woven fabrics, and hence textile goods. Both the products are textile fabrics, which are coated or laminated with plastic; and both the products are used for technical purposes. Therefore, both the products merit classification under Heading 5911, Sub Heading No.59111000 of the Tariff.

13. Texel submits that the broad description of the goods against Heading 5911 provides that textile products and articles for technical uses should be as "specified in Note-7 to this Chapter". Note-7 of Chapter 59 clarifies that "Heading 5911 applies to the following goods, not falling in any other Heading of Section-XI". Clause (b) of Note-7 provides for inclusion of textile articles of a kind used for technical purposes under Heading 5911.

14. Texel further submits that products in question are textile goods i.e. textile articles in view of the law laid down by the Hon'ble Supreme Court and also by the Hon'ble Gujarat High Court, and also considering the meaning of textile in textile technology as

well as in common parlance. Textile articles include textile fabrics, because textile fabrics are specified at Sub Heading 59111000 of the Tariff. By virtue of Note-7(b) of Chapter 59, Geomembrane and Tarpaulin both are covered under Heading 5911. Texel has emphasized that both the products are admittedly textile fabrics, and both are coated or laminated with plastic; and both the products are used for technical purposes like water proofing of Ponds and lining of fields for agricultural applications in case of Geomembrane, and for packing and protecting the goods in transportation etc. in case of Tarpaulin. Waterproofing application is undoubtedly a technical purpose or a technical use. Packing is also a technical purpose or a technical use, and packing is also referred to at Note-7(a)(vi) of Chapter 59. It is submitted that considering this position, the Authority for Advance Ruling under GST for Daman, Diu and D&NH has decided in cases of Emmbi Industries Ltd. 2019 (29) GSTL 105 (AAR-GST) that Geomembrane for waterproof lining and used as pond liner laminated textiles were classifiable under Heading 5911.

15. Texel submits that any contrary decision based on judgement in case of Raj Packwell Ltd. (supra) and without considering the law of the land laid down by the Hon'ble Supreme Court in case of Porritts & Spencer (Asia) Ltd., and also the judgement of the jurisdictional High Court in case of CTM Technical Textiles Ltd. is in the nature of per incuriam; and hence not requiring any consideration being contrary to the binding judgements of the Hon'ble Supreme Court and the Hon'ble High Court.

#### Textile products and articles

16. Texel submits that woven fabrics come into existence at intermediate stage, and such woven fabrics are processed further to manufacture textile fabrics coated or laminated with plastic for using in respect of technical purposes. The intermediate product, namely, woven fabrics fall under Heading 5407 of the Tariff. Such textile fabrics are processed further as aforesaid. Further submits that Note-1 of Chapter 59 clarifies that the expression "textile fabrics" applies to woven fabrics of Chapters 50 to 55 and a few other products specified in the Note. Woven fabrics of Heading 5407 are thus textile fabrics in view of this Note also. When such textile fabrics are processed further and textile products/articles in the nature of textile fabrics coated or laminated with plastic meant for being used for technical purposes are manufactured, such textile products/articles merit classification under Heading 5911 of the Tariff.

#### Products and Articles

17. Texel submits that the broad description of goods under Chapter 59 of the Tariff clarifies that the goods covered thereunder are Impregnated, Coated, Covered or

Laminated textile fabrics; Textile articles of a kind suitable for industrial use. A perusal of Tariff Items 5901 to 5903 shows that these three Tariff Items cover Textile fabrics. A perusal of the other Headings i.e. T.I. 5904 to 5910 shows that they cover Textile fabrics which have been processed further, i.e. textile fabrics subjected to further processing and operations. Reference of goods like Floor coverings with jute base in Heading 5904, Insulating tape and electrical of cotton in Heading 5906, Fabrics covered partially or fully with textile flocks in Heading 5907, Wicks and gas mantle fabrics in Heading 5908, Textile hose piping and similar textile tubing in Heading 5909, and Transmission or conveyor belts or belting of textile material in Heading 5910 shows that the goods classified thereunder are not mere textile fabrics, that is to say, fabrics brought into existence only by weaving method/s. This Heading Nos. 5904 to 5910 are for classifying products which were not textile fabrics, but they were textile fabrics processed further, and subjected to other operations. It is thus clear that there is a distinction between textile fabrics (which may be impregnated, coated or covered) on one hand, and goods obtained by subjecting textile fabrics to further operations and processes on the other hand.

17.1 Further submits that Heading 5911 specifically refers to Textile products and articles, for technical uses, specified in Note-7 to this Chapter. The broad description of the goods therein makes it clear that the goods classified under Heading 5911 of the Tariff are not textile fabrics, that is to say, products brought into existence by mere weaving; but the goods classified thereunder are textile products and articles, which are produced upon subjecting textile fabrics to further operations or processes. Such textile products and articles cease to be textile fabrics for the purpose of classification under Chapter 59 of the Tariff.

18. Texel submits that the terms products and articles are not defined under the Tariff. Dictionary meaning of the term Product is an article or substance that is manufactured or refined for sale. The term article in Dictionary is explained as a particular item or object, typically one of a specified type. In Collector C.Excise V/s. Protein Products of India 1988 (38) ELT 749 (SC), the Hon'ble Supreme Court has observed that the word product was defined in Webster's Comprehensive Dictionary as anything produced or obtained as a result of some operation or work.

19. Texel submits that the Appellate Tribunal, Delhi in case of M/s. Bharat Rubber Regenerating Co.Ltd. V/s. Collector of Central Excise, 1984 (18) ELT 85, has observed that reclaimed rubber sheets having come out of a definite process of manufacturing or production, they were a product in their own right. It is also observed by the Appellate Tribunal that milk was a product but when we talk of "milk products", we do not include therein milk itself but only the products made out of milk. On that basis, the Appellate



Tribunal held that rubber was also a product, but the expression rubber products would include products made out of rubber and not rubber as such.

20. Texel submits that there are several other decisions and judgements on the meaning of these two terms, namely, product and article, but the common thread running through such case law is that a product was an article produced or obtained as a result of some operation or work.

21. Texel submits that in the context of Heading 5911 of the Tariff, textile products and articles are classified thereunder; and not textile fabrics as such. When textile fabrics are subjected to any other operation/s and/or process/es, what emerges is a textile product and textile article. The textile fabrics i.e. a product obtained by weaving ceases to be a textile fabrics when it is subjected to further operation/s and/or process/es because what emerges is a textile product and textile article.

22. Texel further submits that both the products in question, namely, Geomembrane and Tarpaulin are produced by subjecting textile fabrics to further operations and processes, and therefore they are in the nature of textile products and articles meriting classification under Heading 5911 of the Tariff.

#### Products and Articles for technical uses

23. Texel submits that Textile products and articles for technical uses are classified under Heading 5911. The term technical uses is not defined under the Tariff, nor anywhere else like Dictionaries of English language, Dictionary for Scientific and Technical Words or the Law Lexicon. Note-7 of Chapter 59 is referred to under Heading 5911; and therefore a general idea could be gathered from Note-7 about what type of textile products and articles were for technical uses. But in Note-7 also, a few products and article are specifically referred to under Clause (a), whereas Textile articles of a kind used for technical purposes are separately referred to under Clause (b), while giving a few examples of such textile articles. Texel submits that various types of goods like Bolting cloth, Straining cloth of a kind used in oil presses etc. are referred to under Clause (a) of Note-7, signifying that such fabrics or cloth cease to be textile fabrics for the purpose of classification under Heading 5911 of the Tariff, and such products are considered to be textile products because they are meant for technical uses. Under Clause (b) of this Note also, products like textile fabrics and felts are referred to, again signifying that a product ceases to be textile fabrics for the purpose of classification under Heading 5911 when it is obtained by subjecting textile fabrics to further operation/s and process/es. It is submitted by Texel that under Heading 5911 of Harmonious System of Nomenclature, it is explained that the expression Textile articles of a kind used for technical purposes are any of the fabrics which have been made up and also textile

fabrics and felts of a kind used in paper making or similar machines. It is also explained under HSN that the textile articles of this Heading may incorporate accessories in other material provided the articles remained essentially the articles of textile.

24. Texel submits that the operations like overlap sealing, stitching, cutting and sealing edges, affixing eyelets, etc. are the operations/processes undertaken by M/s. Texel on textile fabrics for producing Geomembrane and Tarpaulin. Such operations and processes are undertaken within the factory of production where textile fabrics are produced first, and then they are processed further by subjecting them to various operations as shown in the product brochures. The uses of these products are not ordinary uses of textile fabrics, but both the products are used for technical purposes. Heading 5911 of the Tariff is therefore most appropriate for Geomembrane and Tarpaulin; because they are textile products and articles for technical uses.

25. Texel submits that Woven fabrics emerging at intermediate stage in their factory are admittedly produced from strip of plastic having less than 5 mm width. As observed by the Hon'ble Gujarat High Court in the above referred case of M/s. CTM Technical Textiles Ltd., nylon fabrics, terelene fabrics, polyester fabrics etc. are well known varieties of fabrics, and the raw material for all such fabrics is plastic. The Hon'ble Supreme Court has also taken note of phenomenal advance in science and technology and also wondrous variety of fabrics manufactured from materials hitherto unknown or unthought-of. Woven fabrics of strip and the like of HDPE is also woven fabrics under Heading 5407 of the Tariff, because they are woven out of materials of Heading 5404. Such fabrics are textile fabrics by virtue of Note-1 of Chapter 59, and also in view of the law laid down by the Hon'ble Supreme Court as well as the Hon'ble Gujarat High Court in the above referred cases. The operations like overlap sealing, stitching, cutting and sealing edges, affixing eyelets, etc. are the operations/processes undertaken by M/s. Texel on textile fabrics for producing Geomembrane and Tarpaulin. Uses of these products are not ordinary uses of textile fabrics, but both the products are used for technical purposes, and therefore they are products most appropriately falling under Heading 5911, Sub Heading 59111000, because such textile products and articles are used for technical purposes.

26. Texel vide letter Nil dated received on 1-10-21 submitted as follows:

i. Ministry of Textile vide Not. No. 12015/03/2020-IT dated 24-9-21 implemented a production linked incentives scheme for textiles in order to provide incentives to the textiles manufacturer. In Annexure-III to the Notification, at Sr. No. 1, Geo Textiles including Geomembranes are listed under the category of technical textile products.

- ii. The Ministry of Textiles has classified Geomembranes under HSN 54071099 in as much as these are technical textiles products of Chapter 54.
- iii The product manufactured by M/s. Texel is a coated form of Geomembranes and hence such coated technical textiles are classifiable under Heading 5911.
- iv In view of the decision of the Hon'ble Supreme Court of India reported at 1983 (13) ELT 1607, the decision of Hon'ble Gujarat High Court in the case of M/s. CTM Technical Textiles Ltd. and the Notification issued by the Ministry of Textiles classifying these goods under technical textiles, proves it beyond doubt that Geomembranes and woven tarpaulin manufactured by M/s. Texel are products of the textile industry and hence classifiable under Heading 5911.
- v No reliance can be placed upon the decision of M/s. RajPackwell Ltd. (supra) in as much as such case is not for similar products.

27. Texelvide letter dated 23-10-21 submitted the following:

- i. CLF test report {Format No. QC.F .01M Rev. No./ Date 00/01.05.2018} dated 4-8-21, 5-9-21 and 11-10-21 of 'uncoated fabric' where in the 'T. Width' is mentioned as 2.3x3.5mm.
- ii. TEST Report No. 25498 (B) dated 30.12.2020, As per IS : 15351-2015, CIPET/BBS/TEST/2020-20 , Nature of Sample : Agro Textiles- Laminated HDPE woven Geo-Membrane for water proof lining issued by Central Institute of Plastics Engineering & Technology [CIPET], Department of Chemicals & Petrochemicals, Ministry of Chemicals & Fertilizers, Govt. of India, Bhubaneswar-751024 wherein mentioned at Sr. No. 1 'HDPE Tapes' 'Unit mm' 'Result Obtained: 2.34, 3.53'.
- iii TEST Report No. 25498 (B) dated 18.01.2021, As per IS : 15351-2015, CIPET/BBS/TEST/2020-20 , Nature of Sample : Agro Textiles- Laminated HDPE woven Geo-Membrane for water proof lining issued by Central Institute of Plastics Engineering & Technology [CIPET], Department of Chemicals & Petrochemicals, Ministry of Chemicals & Fertilizers, Govt. of India, Bhubaneswar-751024 wherein mentioned at Sr. No. 1 'Sandwich Lamination' 'IS 15351:2015' 'Result Obtained: Confirm '.

### **Revenue's Submission**

28. The Revenue submitted that the issue involved is classification of two products namely Geomembranes and Woven Tarpaulin. As per submission given by Texel heading 5911 of the tariff is the most appropriate classification for both the products like Geomembranes and woven tarpaulin and the application to be admitted for Advance Ruling.

29. **Question on which Advance Ruling sought**

1. Whether the product, namely, Geomembranes merits classification under Heading 5911, Sub Heading 59111000 or Sub Heading 59119090, as Textile products, coated, covered or laminated with plastic, used for technical purposes?
2. Whether woven Tarpaulin manufactured by M/s. Texel merit classification under Heading 5911, Sub Heading 59111000 or Sub Heading 59119090, as Textile products, coated, covered or laminated with plastic, used for technical purposes?

**Personal Hearing**

30. Personal hearing granted on 18-2-22 was attended by Shri Pratik Trivedi, CA and Shri Anuj Sharedalal, CA and they reiterated the submission. Shri Pratik Trivedi reiterated the case laws submitted in the written submission of H'ble Gujarat High Court case law of M/s. CTM Textiles and decision of H'ble Apex Court in Porritts and Spencer. It was further submitted that the decision of Raj Packwell is not applicable to the present case.

**Findings**

31. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

32. We have carefully considered all the submissions made by M/s Texel and the Revenue.

33. M/s Texel is before us for Classification of Geomembrane and Tarpaulin. M/s Texel opines HSN 59111000/59119090 for said goods. Further M/s Texel cites a Notification dated 24-9-21 issued by Ministry of textiles, wherein Geomembrane described as woven fabrics obtained from high tenacity yarn of nylon or other polyamides or of polyesters: other: other [found mentioned in Annexure-III] indicative HS Code as per Textile Ministry is 54071099 and that final product list with 8 digit HS code level will be notified.

34. We hold that the burden of Classification is on Revenue. However, Revenue without submitting any analysis/evidence before us, made its submission that 5911 Tariff is the most appropriate classification.

35. Prior to proceeding with our discussion on the Classification of Geomembrane and Tarpaulin, we find it prudent to place on record the position of law and thereby our thought process in subject matter:

- i. We hold that Classification of goods under GST is based on Tariff aligned with the HSN. The general Interpretative Rules for GST Tariff Classification are to be sequentially followed as the way to classify the goods. We are to classify within the confines of law and procedure as laid down in GST scheme of law and procedure.
- ii. The Customs Tariff is based on HSN. The Section Notes and Chapter Notes of Custom Tariff Act (based on HSN) are part and parcel of the Custom Tariff Act, 1975 which is to say, part and parcel of law enacted by the Parliament and therefore, we are obliged to follow the classification based on Section Notes and Chapter Notes as per law.
- iii. As per Rule 1 of the General Rules for the Interpretation, for legal purposes, classification shall be determined according to the terms of the headings and any Section or Chapter Notes. We shall follow the same in arriving at our pronouncement for Ruling in subject matter.
- iv. In the present case, we find that M/s Texel has cited classification of subject goods based on Notification issued by Ministry of Textiles.

36. Now, the Legislature has empowered competent authority vide Section 168 CGST Act, 2017 with the power to issue Instruction or directions as per the GST scheme of law. As per CGST Act and rules framed thereunder, we do not find Textile Ministry empowered under GST scheme of law to issue directions/ instructions for GST Classification.

37. We note that M/s Texel has cited Notification dated 24-9-21 issued by Ministry of Textiles to further their view to classify subject goods.

38. We note that the H'ble Delhi High Court in Greatship (India) Ltd. vs UOI-2016(338) ELT 545 (del) has held that in Interpretation of statutes, for Conflict of views between two Central Government Ministries -In such case, view taken by Ministry that is primarily responsible for policy in question, should prevail. By applying the same ratio, we find it in compliance to judicial discipline and in consonance to the laid ratio decidendi as cited, that in matters of GST Classification, we comply with the General Rules of Interpretation for GST Classification and GST Scheme of Law. Further reference to HSN explanatory Notes has persuasive value. What we intend to express is that GST Scheme of law shall be given precedence and compliance for Classification.

**39. Classification of Geomembrane:**

- i. In this regard, We note that the Strips made from HDPE granules, have width less than 5 mm and are then weaved. Thus Section note 1(g) to Section XI-Textile and Textile Articles has been complied with.
- ii. The phrase 'for technical use' is mentioned in the Chapter Notes to HSN 5911.

Description of Goods in Subheading 5911 reads as follows:

*“5911 - Textile products and articles, **for technical uses**, specified in Note 7 to this Chapter; such as Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or **other material of a kind** used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams);...*

Description of Goods in Tariff item 59111000 reads as follows:

*5911 10 00 - **Textile fabrics**, felt and feltlined woven fabrics, coated, **covered or laminated with** rubber, leather or **other material**, of a kind used for card clothing, and similar fabrics of a kind used for other **technical purposes**, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams)”.*

- iii. In this regard, as the phrase technical uses has been stipulated as a criteria for Tariff 5911, we thereby give weightage to the ‘functional use’ / ‘end use classification’ concept to determine the classification of ‘Geomembrane’.
- iv. End Use Classification/ Functional use concept for Geomembrane:

The technical uses of HDPE reinforced Geomembrane in Biofloc ponds has been submitted by M/s Texel and we hold that geomembrane has technical uses.

39.1. Further, we refer to Section Note XI (1)(h) which reads as follows:

*‘1. This Section( Textile Section) does not cover*

*(h) Woven, knitted or crocheted fabric, felt or non-wovens, impregnated, **coated, covered or laminated with plastic**, or articles thereof*

39.2 We refer to Chapter Note 7(a)(i) to Textile Chapter 59, which reads as follows:

*7. Heading 5911 applies to the following goods, which do not fall in any other heading of Section XI*

*(a) Textile products in the piece, cut to length or simply cut to rectangular (including square) shape (other than those having the character of the products of Heading 5908 to 5910), the following only :*

- (i) **Textile fabrics**, felt and felt line woven fabrics, **coated, covered or laminated** with rubber, leather or **other materials**, of a kind used for card clothing, and similar **fabrics of a kind used for other technical purposes**, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams);...*
- (iv) Flat Woven textile fabrics with multiple warp of weft whether or not felted, impregnated or coated, of a kind used in machinery or for other technical purposes.’*

39.2. Construing the wordings of Chapter Note 7(1)(a) to Chapter 59 that textile fabrics coated with ‘other materials’ used for technical purposes are included in this Chapter, we

hold that the goods Geomembrane, though coated with Plastic but used for technical purposes finds place in the Tariff 5911, for the dual reason that the phrase ‘other materials’ used in this Tariff is vast to include plastics also; coupled with the technical use of Geomembrane

39.3 Thus, in light of the following: technical uses of Geomembrane, Geomembrane passing the test of Section note XI(1)(g) to Section XI, Geomembrane satisfying the test of Chapter 59 Note 7(1)(a) and by applying the Doctrine of Harmonious Construction, cleared the bar raised in Section note XI(1)(h) to Section XI; We are of the view that ‘Geomembrane’ is a textile article. We find that our view that Geomembrane is a textile article is in compliance to the H’ble Apex Court view held in *Porritts & Spencer (Asia) Ltd.* 1983 (13) ELT 1607 (SC).

### **Classification of Tarpaulin**

40. M/s. Texel and Revenue opines Tarpaulin’s HSN at 5911.

41. On reading the HSN tariff, we find that there is mention of tarpaulin in two Tariff sub heading, namely:

- i. HSN 3926: Plastic Tarpaulin (reference to Sr No 111 to Notification 1/2017-CT (R) dated 28-6-2017)
- ii. HSN 6306: Tarpaulin ( textile article)

42. As per GST Tariff, we find no mention of Tarpaulin at 5911.

43. From the submission of Texel, it is forthcoming that:

- i. Tarpaulin is used for protecting various things and materials and also covering motor vehicles and the like; for packing and protecting the goods in transportation. Also in general, Tarpaulins are used to cover construction materials and equipment, athletic fields, vehicles or other exposed objects, etc.
- ii. We find the uses of Tarpaulin are general in nature and thereby find no merit to employ functional concept classification based on technicality in case of Tarpaulin.
- iii. We note that Tarpaulin is manufactured from plastic (HDPE) granules and is an article which is again coated with HDPE. Despite the submission of M/s Texel that Tarpaulins strips is less than 5mm in width , Tarpaulin is excluded from Textile articles vide Section Note XI(1)(h), which reads as follows:

***‘ 1. This Section( Textile Section) does not cover:***

***(h) Woven, knitted or crocheted fabric, felt or non-wovens, impregnated, coated, covered or laminated with plastic, or articles thereof ‘.***

iv It is forthcoming that Tarpaulin is a Plastic article coated/ laminated with Plastic. We hold that M/s Texel’s Tarpaulin is a Plastic article and not a Textile article, for reasons aforementioned. Further, We find Plastic Tarpaulin classified at 3926 Tariff (reference to SrNo 111 to Notification 1/2017-CT (R) dated 28-6-2017)

- v We note that there is also an entry of Tarpaulin at 6306. With our aforementioned findings, it is forthcoming that Tarpaulin is excluded from Textile articles as subject Tarpaulin is a plastic article, with general uses and further laminated with plastic.
- vi Therefore we dismiss 6306 Tariff for subject plastic tarpaulin coated with plastic. Also, the goods specified in 6306 are as follows:

Tariff: 6306

- a. We note that the partners surrounding Tarpaulin in Tariff 6306 are awnings and sunblinds.
- b. Applying the principle of Ejusdem Generis, we hold that Tarpaulin of Texel is not of the same kind as in the nature of awnings and sunblinds.
- c. Also, applying the principle of Nociter-a-sociis, we hold that Tarpaulin of Texel is not recognised by awnings and sunblinds.

44. Thereby, we dismiss M/s Texel's Tarpaulin's claim to Textile article.

45. M/s Texel cited CTM Textile case law. The goods in cited case law are Agro Shade net and Geo grid and matter referred to in said case law was remitted back by H'ble High Court to Revenue for fresh consideration. The goods in our case are Geomembrane and Tarpaulin, different from the goods referred to in said case law.

46. In conspectus of aforementioned facts, findings and discussion, we pass the Ruling:

**Ruling**

1. Geomembrane is classified at HSN 5911, tariff item 59111000.
2. Tarpaulin is classified at HSN 3926, tariff item 39269099.

**(ATUL MEHTA)**  
**MEMBER (S)**

**(ARUN RICHARD)**  
**MEMBER (C)**

Place: Ahmedabad  
Date: 07.03.2022