

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH
Goods and Service Tax()
O/o THE COMMISSIONER, COMMERCIAL TAX,
MOTI BUNGALOW,
MAHATMA GANDHI MARG, INDORE (M.P.) - 452007
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PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017

Members Present

1. Rajiv Agrawal
Additional Commissioner ,
Office of the Commissioner,CGST and Central Excise, Indore
2. Manoj Kumar Choubey
Joint Commissioner ,
Office of the Joint Commissioner of Commercial Tax, Indore Division-1

GSTIN Number. If any/User-id	23AACCN2683D2ZR
Name and address of the applicant	NAGRANI WAREHOUSEING PRIVATE LIMITED 6/2 NAYTA MUNDLA , NEMAWAR ROAD INDORE,452001
Date of Application	17.09.18
Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	a) classification of any goods or services or both; b) applicability of a notification issued under the provision of this Act; i.e. Notification FA3-33-2017-1-V (42) dated 29.06.17 issued under MPGST ACT /Rule e) determination of the liability to pay tax on any goods or services or both;
Date of Personal hearing	27.11.18
Present on behalf of applicant	Alok Barthwal, Counsel for the Applicant
Case Number	22/2018
Order dated	14/12/2018
Order No.	21/2018

PROCEEDINGS

(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh
Goods and Services Tax Act, 2017)



1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and MP Goods & Services Tax Act, 2017 (hereinafter also referred to CGST Act and MPSGT Act respectively) by M/S NAGRANI WAREHOUSEING PRIVATE LIMITED (hereinafter also referred to as applicant), registered under the Goods & Services Tax.
2. The provisions of the CGST Act and MP GST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MP GST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. QUESTIONS RAISED BEFORE THE AUTHORITY –

In the application the applicant raised following question that

“Determination of classification of sacks and bags made from man made textile materials under GST tariff No. 6305 which falls under Serial No. 224 of Schedule-I of Notification No. FA3-33-2017-1-V (42) dated 29.06.17 issued vide Madhya Pradesh Gazette”.

However at the time of personal hearing the applicant himself admitted that the question raised was not very clear so amended the question as follow –

“Determining the classification of P.P. Bags which are made from strips having width of less than 5mm. It is to be decided by the Hon'ble Advance ruling authority as to whether the aforesaid PP bags would classify under chapter heading 63 or chapter 39 of the GST Tariff and what shall be the rate of GST on the same”.

4. DEPARTMENT'S VIEW POINT:

4.1. The Deputy Commissioner (Tech), CGST & Central Excise Headquarters, Indore vide his letter C.No.I(Gen)30-08/18-19/GST/T dtd.14.12.2018 forwarded the opinion of CGST & Central Excise department on the issue at hand. The opinion of the department is reproduced below:

In this context the ratio of judgment passed by the Hon'ble Tribunal in the case of M/s Gujrat Raffia Industries Ltd., V/s Commissioner of Central Excise on 14.1.2003 [Reported in 2003 (153) ELT 336 (Tri-Dell)] and by the Hon'ble High Court of M. P. in the case of M/s Raj Packwell Ltd., V/s Union of (UOI) on 19.09.1989 [Reported in 1993 (41) ECC 285, 1993 351 MP, 1990 (50) ELT 201 (MP)] are squarely applicable in the instant case, wherein the issue of classification of Sacks and Bags made out of Woven fabric already been decided.

5. The Hon'ble Tribunal in the case of Gujrat Raffia Industries Ltd., V/s Commissioner of Central Excise has relied upon the decision of Hon'ble Supreme Court in case of Commissioner of Central Excise Sup Shillong V/ s Woodcraft Ltd., 1995 (77) ELT 23 (SC) and has held that:

"any dispute relating to Tariff Classification must, as far as possible, be resolved with reference to nomenclature indicated by the HSN unless there be an expressed difference intentions indicated by the Central Excise Tariff Act, 1985



itself" A reference to Explanatory Notes of HSN below Heading 63.06 covers a range of Textile articles usually made from strong industrially woven canvas. It, further mentions that tarpaulin are generally made of coated or uncoated manmade fibre, fabrics, or heavy to fairly heavy canvas (of hemp, jute, flax or corron). It is thus apparent that Heading 63.06 covers tarpaulins which are made of manmade fibre fabric of heavy canvas of hemp, jute, flax or corron as HDPE / Platic strip yarn is not manmade fabric, tarpaulin made of the said material would not fall wider Heading 63.06. Further Heading 39.06 applies to articles of plastics and articles of other materials of Heading No.39.01 to 39.14. No doubt Heading No.39.06 is residuary Heading but it is residuary to Chapter 39 as all articles of plastics, which are not covered by earlier Headings, would fall under 39.26. As far as any article is made of plastic it will fall either in any one of the specific headings in Chapter 39 and failing which under Heading 39.26. As the impugned products are made of plastic and arc not mentioned specifically in any of the Headings of Chapter 39, they are appropriately classifiable under Heading 39.26. This is also evident from the Explanatory Notes of HSN below Heading 39.26 wherein it is mentioned that "this Heading covers articles, not elsewhere specified or included, of plastic (as defined in Note I to the Chapter) or other materials of Heading 39.01 to 39.14." It is also observed by the hon'ble CESATE that awnings which are specifically mentioned in Heading No. 63.06, if made of plastic, are classifiable under Heading 39.26 as Explanatory Notes of HSN."

6. Similarly, the Hon'ble High Court of M. P. in the case of M/s Raj Packwell Ltd., V/s Union of India has held that:

"In the Textiles Committee Act, 1963 (Act 41 of 63) the word fibre has been defined in Section 2 (a) as under: -

"fibre" means man made fibre including regenerated cellulose rayon, roan, nylon and the like." y

"Textiles" has been defined in Section 2 (g) as under: - 'Textiles' means any fabric or cloth, or yarn or gannent or any other articles made wholly or in part of -

(i) Cotton; or

(ii) Wool; or

(iii) Silk; or

(iv) Artificial silk or other fibre, and includes fibre".

Therefore, according to the above definition, any fabric or cloth or yarn or garment if made wholly or in part of cotton, wool, silk, artificial silk or other fibre shall be called textiles. The definition of 'fibre' includes the regenerated cellulose, rayon, nylon and the like. Nowhere in the aforesaid definition of 'fibre' or 'textiles'



plastic has been mentioned as a commodity to be included in the definition of 'fibre' or 'textiles'. Now in the Shree Radhe Industries case (supra) and the Shellya Industries case (supra) irrespective of the entries in the tariff as prevailing then, it has been held that the HDPE sacks are articles made of plastic; they are made of high density polyethylene which is a plastic raw material and it has further been held that they are not manmade filament yarn but are articles of plastic. The circular of the Central Board of Direct Taxes dated 20.1.1985 also clearly says that the Board has decided that so long as the finished articles of plastic is made out of plastic material falling under Tariff NO.15A (i), even if at the intermediate stage articles classifiable under Item No.15A (ii) if any tariff item emerges, the said product would be considered to have been produced out of plastic material falling under Tariff Item No.15A (i) and, therefore, the HDPE woven sacks should be considered as articles of plastic,"

7. In view of the above the Hon'ble Court has concluded that HDPE strips or tapes fall under the Heading 39.20, sub heading 3920.32 of the Central Excise Tariff Act and not under Heading 54.06, sub heading 5406.90. Similarly the HDPE sacks fall under Heading 39.23, subheading 3923.90.

8. Hence following the above referred judicial pronouncement, the HDPE/LDPE/LLDPE Sacks & Bags, which is made out of plastics are classifiable under chapter 3923 and similarly, Sacks & Bags, which is made out of manmade textiles materials are classifiable under chapter sub heading 6305.

5. **RECORD OF PERSONAL HEARING:**

5.1 The matter was posted for hearing on 27.11.2018 and Alok Barthwal, Counsel for the Applicant appeared on behalf of the Applicant. Reiterating the submissions already made in the application, he submitted that the Applicant has filed the Advance Ruling application for determining the classification of P.P. Bags which are made from strips having width of less than 5mm. It is to be decided by the Hon'ble Advance ruling authority as to whether the aforesaid PP bags would classify under chapter heading 63 or chapter 39 of the GST Tariff and what shall be the rate of GST on the same.

5.2 The Applicant in this context submitted that they have been manufacturing PP Strips of width less than 5mm which is used for manufacture of Woven fabrics on Knitting Machine. The said woven fabric is used for manufacture of PP bags/ Sacks. The goods are also registered as textile articles with the Textile ministry. Further in this context the following section notes, chapter notes and HSN Explanatory Notes are relevant :

As per Notes given at Notification No. F-A3-33-2017-IV (42) dt. 29.06.2017 -

Explanation IV – The rules for the interpretation of the first Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the section and chapter Notes and the general



Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

In view of above Explanation it is thus absolutely clear that for the purpose of classification the Customs Tariff Act, 1975 has to be resorted too as the none of the tariff under IGST, CGST OR SGST has any Chapter Notes or Tariff notes for determining the classification of goods.

5.3 Section XI of Customs Tariff Act, 1975 i.e. Textiles and Textile Articles of the Customs Tariff Act, 1975 under Sr. No. 1 states as under :

This Section does not cover:

(a)

(b)

(c)

(d)

(e)

(f)

(g) monofilament of which any cross-sectional dimension exceeds 1 mm or strip or the like (for example, artificial straw) of an apparent width exceeding 5 mm, of plastics (Chapter 39), or plaits or fabrics or other basketware or wickerwork of such monofilament or strip (Chapter 46);

5.4 Further chapter Note 2 (p) of Chapter 39 of the Customs Tariff Act states as under :
Sr. No. 2 – This chapter does not cover:

(p) *goods of section XI (textiles and textile articles);*

In the present case since the strips used for manufacture of Sacks and bags are of width less than 5mm hence the strips are articles of textile and appropriately classifiable under chapter 54. The aforesaid strips are covered under chapter sub heading 5404 which describes the goods as :

5404 - Synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm; strip and the like (for example, artificial straw) of synthetic textile materials of an apparent width not exceeding 5 mm.

5.5 Further explanation to Note 1 (b) to Chapter 54 under Customs Tariff also states that
– *The terms “man-made”, “synthetic” and “artificial” shall have the same meaning when used in relation to textile materials.”*

5.6 The heading 54.04 of HSN also states that the heading covers :

Strip and the like, of synthetic textile materials. - The Strip of this heading are flat, of a width not exceeding 5 mm. either produced as such by extrusion or cut from wider strips or from sheets.



5.7 The fabric manufactured from the above strips has also been classified under chapter sub heading 5407 as *Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404.*

From the above it is thus absolutely clear that the strips of width less than 5mm and the woven fabrics manufactured therefrom are classifiable as textile material under chapter 54.

5.8 Also serial No. 217 of Notification No. F-A3-33-2017-1-V (42) dt. 29.06.2017 issued vide Madhya Pradesh Gazzette covers under chapter 5405 and 5408 as *Woven fabrics of manmade textile materials* - .

5.9. As regard classification of PP bags, the Chapter 63 of HSN Explanatory Notes provides as under :

63.05 – Sacks and Bags of a kind used for the packing of goods.

6305.10 -

6305.20 – of cotton

- Of man-made textile materials:

6305.32 -- Flexible intermediate bulk containers

**6305.33 -- Other, of polyethylene or polypropylene strip or the
Like**

6305.39 -- Other

6305.90 -- Of other textile material

This heading covers textile sacks and bags of a kind normally used for the packing of goods for transport, storage or sale.

5.10 As per Chapter 63 of the Customs Tariff Act, 1975:-

6305 Sacks and bags, of kind used for the packing of goods

6305 10 -

6305 20 00 - Of cotton

- Of man-made textile materials:

6305 32 00 -- Flexible intermediate bulk containers

**6305 33 00 -- Other, of polyethylene or polypropylene strip or the
Like**

6305 39 00 -- Other

6305 90 00 -- Of other textile materials

Also serial No. 224 of Notification No. F-A3-33-2017-1-V (42) dt. 29.06.2017 issued vide Madhya Pradesh Gazzette covers under chapter 63 the other made up textile articles and describes goods as under :

Sr. No. 224 - Chapter Heading 63 Other made up textile articles, sets worn clothing and worn textile articles and rags, of sale value not exceeding Rs. 1000 per piece.

5.11 On the contrary 3923 of the Customs tariff covers the following goods :

Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics.



5.12 The Applicant submits that they are manufacturing strips having width of less than 5 mm which undoubtedly falls under chapter 5404. Also the woven fabric made from such strip falls under chapter 5407 which in turn is used for the manufacture of sacks and bags. As per the above chapter notes since the strips and fabrics are textile material hence the final products i.e Woven bag made from such fabric also merits classification under chapter 63 thereby liable to 5% GST i.e 2.5% CGST and 2.5% SGST.

5.13. The Applicant's contention is also based upon the ruling given by the Advance Ruling Authority of West Bengal as reported in MEGA FLEX PLASTIC LTD. 2018 (15) GSTL 90 (AAR – GST). The relevant portion of the ruling which was in reference to LENO bags is as under :

Para 14: *Therefore to classify the product PP Leno Bags both the Explanatory Notes, as well as the clarifications in the Tariff, and the specifications as per IS 16187:2014 should be taken into consideration.*

Para 16: *The above-mentioned Tariff head is not applicable if the sacks made from PP woven fabric are impregnated, coated, covered or laminated with plastics or articles of plastics covered under Chapter 39 [Note 1(h) to Section XI].*

5.14 It is pertinent to mention that the erstwhile Central Excise Tariff is absolutely same to Customs Tariff. In the case of Sunpak 2016 (343) ELT 201 (Tri-Chennai), the tribunal while deciding classification of goods under erstwhile Central Excise Tariff in respect of same goods held as under :

Para 8. *Heard both sides and perused the records. The issue involved in the present appeals is regarding classification of DHPE warp knitted fabrics, HDPE ropes, strips, rachal knitted fabrics for agro products and wastes made out of plastic strip less than 5 mm in width. There were different practices for classification of plastic woven bags within the country. The Madhya Pradesh High Court in the case of M/s. Raj Packwell Ltd. held that such bags are classifiable as other articles of plastics under Chapter 39. This decision of Madhya Pradesh High Court relates to a period prior to 1990. Based on this, C.B.E. & C. issued a classification circular dated 24-9-1992 directing classification of HDPE Tapes Strips and HDPE Sacks as classifiable under Chapter 39. Section XI Note 1 (g) states that strips of an apparent width exceeding 5 mm of plastics fall under Chapter 39. Heading 54.04 specifically includes in the heading description "synthetic textile material of apparent width not exceeding 5 mm." Note 2(p) to Chapter 39 excludes textile and textiles article from Chapter 39. HSN Explanatory Notes 54.04 explains Synthetic Textile materials of apparent width not exceeding width 5 mm as under :-*

"Strips and the like, of synthetic textile materials. The strips of this heading are flat, of a width not exceeding 5 mm, either produced as such by extrusion or cut from wider strips or from sheets".

Chapter Note 1A to Chapter 54 was inserted with effect from 29-6-2010 with retrospective effect. The products under question in the present appeals are not plastic woven bags. These are knitted fabrics used as agro net. Hence distinct from the plastic bags considered in the earlier cases. By taking into account the changes in the scope of the tariff heading and the item under consideration recently the Ahmedabad Bench of the Hon'ble Tribunal in the case of Flora Agrotech v. CCE, Vapi (supra) has held that such



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knitted fabrics are classifiable under 6005 90 00. In this decision, the previous decisions of Madhya Pradesh High Court and the Board Circular have been distinguished. The appellants have also obtained the following certificates for classification of their products :

1. Certificate from Central Institute of Plastics Engineering and Technology, dated 19-1-2015.
2. Certificate from Textiles Committee, Mumbai, dated 5-3-2013.
3. Certificate from Sasmira, dated 1-3-2013.

These certificates confirm that the fabrics manufactured by the appellants are warp knitted fabrics made out of synthetic yarn of width less than 5 mm be classified under 6005. Further, the ISI standard notified by Bureau of Indian Standards for agro textiles - shade nets for agriculture and horticulture and as per this standard the above textile fabrics are made from tapes of 1.7 mm width. And in the present case the width of the tape is of 1.5 mm and the goods manufactured by the appellants are classifiable as textile fabrics and articles of fabrics rightly classifiable under chapter heading 6005 90 00 and the strips (HDPE) not exceeding 5 mm is classifiable under 5404 90 20. Accordingly, we set aside the impugned order to that extent and

- (i) all the three assessee's appeals are allowed with consequential benefit.
- (ii) correspondingly, the Revenue appeal is rejected.

5.15 Further in case of Flora Agrotech 2015 (319) ELT 333 (TRI – AHD) it was held as under :

However, before discussing the technical opinion given by certain agencies it is relevant whether the CETA, 1985, as existing now after its total alignment with the HSN, convey the meaning of Synthetic Textile Material. For this purpose, a reading of Chapter Note 1 of Chapter 54 of CETA, 1985 is very relevant and is reproduced below :-

“Notes :

1. Throughout this Schedule, the term ‘man-made fibres’ means staple fibres and filaments of organic polymers produced by manufacturing process, either :

(a) by polymerization of organic monomers to produce polymers such as polyamides, polyesters, polyolefins or polyurethanes, or by chemical modification of polymers produced by this process [for example, poly(vinyl alcohol) prepared by the hydrolysis of poly (vinyl acetate)]; or

(b) by dissolution or chemical treatment of natural organic polymers (for example, cellulose) to produce polymers such as cuprammonium rayon (cupro) or viscose rayon, or by chemical modification of natural organic polymers (for example, cellulose, casein and other proteins, or alginic acid), to produce polymers such as cellulose acetate or alginates. -



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The terms "synthetic" and "artificial", used in relation to fibres, mean : synthetic : fibres as defined at (a), artificial : fibres as defined at (b). Strip and the like of heading 5404 or 5405 are not considered to be man-made fibres.

The terms "man-made", "synthetic : and 'artificial" shall have the same meaning when used in relation to "textile materials".

1A. Notwithstanding anything contained in Note 1, man-made fibre such as polyester staple fibre and polyester filament yarn manufactured from plastic and plastic waste including waste polyethylene terephthalate bottles shall be classified as textile material under Chapter 54 or Chapter 55, as the case may be."

2. As per above Chapter Note 1(a) of Chapter 54 the fibres/filaments yarns made out of products of polymerization are synthetic fibres/filaments. All polymerized products made by polymerization of organic monomers are called synthetic plastic materials of Chapter 39. Chapter Note 1A added to Chapter 54 of CETA, 1985 was introduced w.e.f. 29-6-2010 and was made retrospective in operation. As per this chapter note filament yarn made from plastic or plastic waste have been considered to be textile materials. This amendment was not available in the statute books when judgment was delivered by M.P. High Court in the case of Raj Packwell Ltd. v. UOI (supra) which was followed by Rajasthan High Court and CESTAT Benches. It is an undisputed fact that the plastic strips used in making the 'Knitted Fabrics Shed Net' is less than 5 mm width. As per Section Note 1(p) of Chapter 39 strip of plastic less than 5 mm in width is not classifiable under Chapter 39 of the CETA, 1985. As per Section Note 1(g) of Section XI of the CETA, 1985 strips or the like of plastic 5 mm less are classifiable in Section XI (Textile & Textile Articles). By virtue of tariff description under Tariff Heading 54.04 of CETA, 1985 plastic strip or the like up to 5 mm are required to be classified as man-made filaments; strip and the like of man-made textile materials. When there is a classification of man-made textile materials of specified description given in the Central Excise Tariff Act, 1985 itself then there is no need to look into any other statute for deciding the classification of the 'Knitted Fabric Shed Net' which is thus made out of materials of CETH 54.04.

3 A specific entry in the CETA, 1985 has to be the proper classification than a general entry in Chapter 39 of the CETA, 1985, as per the Rules of interpretation to the CETA, 1985. The Synthetic & Art Silk Mills Research Association (SASMIRA), Mumbai SASMIRA is linked to the Ministry of Textiles, Govt. of India, SASMIRA and after giving the definitions of Synthetic Textiles, warp knitted fabric etc., opined in their letter, dated 18-4-2012 & 15-3-2013 that the product manufactured by the appellant is 'Warp Knitted Fabrics Technical Textile made up of man-made synthetic yarn of width less than 5 mm. As per F. No. 1(11)/2011/TTC/Vol.XX, dated 7-2-2012 written to the appellant by Assistant Director, Govt. of India, Ministry of Textiles, Office of the Textile Commissioner, Mumbai appellant's unit has been registered as a technical textile unit in the records of the office of Textile Commissioner and has been allotted registration No. 05152007. As per the Technical Textile literature issued by office of Textile Commissioner, Ministry of Textile, Govt. of India "Agrotex" includes technical textile



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products used in Agriculture, horticulture (incl. floriculture), fisheries and forestry. Example of Agrotex technical textile include Shed nets, mulch mats, crop covers, anti-hail nets, bird protection nets, fisheries nets, etc." Further office of Joint DGFT Surat while issuing Authorisation No. 5230009764, dated 15-11-2011 has held their product Warp Knitted Fabrics to be classifiable under ITCHS Code 60059000. As per Indian Standard ICS 59.080.70; 65.020.20 Agro Textiles-Shed Nets, for Agriculture & Horticulture purposes are fabrics made from plastic materials.

4 The opinions of the above special agencies/departments of Govt. of India given in favour of the appellant cannot be ignored in deciding the products manufactured by the appellant. The nature of facts and circumstances in the present proceedings were not the same in the relied upon case laws. Further, the products plastic bags involved in the relied upon case laws were different than the product 'Knitted Fabrics Shed Nets' involved in the case of the present appellant. Therefore, the case laws relied upon by the Revenue are not applicable to the facts & circumstances of the present case.

5 In view of Chapter Note 1(p) of Chapter 39, Section Note 1(g) of Section XI, Chapter Notes 1 & 1A of Chapter 54 of the Central Excise Tariff Act, 1985; read with relevant HSN Explanatory Notes; the 'Knitted Fabrics Shed Nets' manufactured by appellant will be appropriately classifiable under Chapter 60 of the Central Excise Tariff Act, 1985.

The Applicant submits that in view of above interpretation of tariff and the order given by the authorities, the Applicant prays the Hon'ble Advance Ruling Authority to give its ruling on classification of PP Bags/ Sacks and the applicable rate of GST.

6. DISCUSSIONS AND FINDINGS:

6.1 We have carefully considered the submissions made by the applicant in the application as well as in the additional submissions. We have also taken into account the submissions made before us by representative of the applicant at the time of personal hearing. We are also seized of the departmental view submitted by the CGST & Central Excise, Commissionerate, Indore. On the basis of records placed before us and the rival submissions, we proceed to decide the Application.

6.2 At the outset, we find that the question raised by the applicant falls under the provisions of Section 97(2)(a) of the CGST Act, 2017/ MPGST Act, 2017 as it relates to question regarding classification of goods. Thus we find the application fit to be heard and the same is thus admitted.

6.3 The moot question before us for decision is regarding classification of P.P. Bags which are made from strips having width of less than 5mm. It is to be decided as to whether the aforesaid PP bags would classify under chapter heading 63 or chapter 39 of the GST Tariff and what shall be the rate of GST on the same.

6.4 The applicant has vehemently put forward that as per Notes given at Notification No. F-A3-33-2017-IV (42) dt. 29.06.2017 -

Explanation IV – The rules for the interpretation of the first Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the section and chapter Notes and the general



Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

We agree with the argument of the applicant being a matter of fact. In case of any dispute in classification of goods, the Rules of interpretation of first schedule to Customs Tariff Act 1975 will have to be resorted to. However, we also observe that the applicant has been classifying the impugned product under Chapter 39 since long, and no cogent reason, whatsoever, has been adduced by the Applicant which prompted them to suddenly contemplate a change in established classification. Be that as it may, once we have admitted the application, we would venture into the subject keeping in view the technicalities and also the available judicial pronouncements.

6.5 We note that the applicant has very strongly built its case on the basis of Advance Ruling order passed by the learned Authority for Advance Ruling West Bengal in case of M/s.Mega Flex Plastics Ltd. Vide order no. 09/WBAAR/2018-19 dtd.06.07.2018 [2018 (15) GSTL 90 (AAR – GST)], where under the learned WBAAR has ruled that similar goods viz. Leno Bags would be classifiable under Chapter 63. The relevant portion of the ruling which was in reference to LENO bags is as under :

Para 14: *Therefore to classify the product PP Leno Bags both the Explanatory Notes, as well as the clarifications in the Tariff, and the specifications as per IS 16187:2014 should be taken into consideration.*

Para 16: *The above-mentioned Tariff head is not applicable if the sacks made from PP woven fabric are impregnated, coated, covered or laminated with plastics or articles of plastics covered under Chapter 39 [Note 1(h) to Section XI].*

6.6 Before we proceed to discuss further, it is necessary to place on record that the above mentioned order of the learned WBAAR has been struck down in appeal by the learned West Bengal Appellate Authority for Advance Ruling vide order dtd.25.10.2018 passed in Appeal Case No. 06/WBAAAR/Appeal/2018. The learned Appellate Authority has ordered that the item Polypropylene Leno Bags (PP Leno Bags) shall be classifiable under Tariff Heading 3923 29 90. So to the extent the Applicant have heavily relied upon the order of Learned WBAAR, we do not find any reason to discuss the same as it has been already set aside and reversed by the learned WB Appellate Authority for Advance Ruling. To say in other words, the very edifice of the arguments made in application has lost its existence.

6.7 Coming to the issue raised by applicant, we find that the issue of classification of PP/HDPE Bags or sacks, made of HDPE tapes and fabrics, has been dealt with at length by the Hon'ble High Court of Madhya Pradesh in case of M/s.Raj Packwell Ltd. Vs. UOI [1990(50)ELT201MP]. While deciding the identical issue, the Hon'ble High Court has observed

"In the Textiles Committee Act, 1963 (Act 41 of 63) the word fibre has been defined in Section 2 (a) as under: -

"fibre" means man made fibre including regenerated cellulose rayon, raon, nylon and the like." y



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"Textiles" has been defined in Section 2 (g) as under: - "Textiles" means any fabric or cloth, or yarn or garment or any other articles made wholly or in part of -

(i) Cotton; or

(ii) Wool; or

(iii) Silk; or

(iv) Artificial silk or other fibre, and includes fibre".

Therefore, according to the above definition, any fabric or cloth or yarn or garment if made wholly or in part of cotton, wool, silk, artificial silk or other fibre shall be called textiles. The definition of 'fibre' includes the regenerated cellulose, rayon, nylon and the like. Nowhere in the aforesaid definition of 'fibre' or 'textiles' plastic has been mentioned as a commodity to be included in the definition of 'fibre' or 'textiles'. Now in Shree Radhe Industries case (supra) and the Shellya Industries case (supra) irrespective of the entries in the tariff as prevailing then, it has been held that the HDPE sacks are articles made of plastic; they are made of high density polyethylene which is a plastic raw material and it has further been held that they are not manmade. filament yarn but are articles of plastic. The circular of the Central Board of Direct Taxes dated 20.1.1985 also clearly says that the Board has decided that so long as the finished articles of plastic is made out of plastic material falling under Tariff NO.15A (i), even if at the intermediate stage articles classifiable under Item No.15A (ii) if any tariff item emerges, the said product would be considered to have been produced out of plastic material falling under Tariff Item No.15A (i) and, therefore, the HDPE woven sacks should be considered as articles of plastic,"

Having so discussed the and defined the word 'Man Made Fibre' and 'Textile' for the purpose of arriving at the appropriate classification of HDPE Woven Bags/Sacks, the Hon'ble High Court has opined; '.....the process of manufacture of HDPE tapes, teh earlier judgments of the CEGAT approved by the Supreme Court and accepted by the department clearly go to show that HDPE bags are the bags woven by plastic strips and they, therefore, are goods of plastic and the material used for weaving those bags being the strips of plastic made from plastic granules, the strips of plastic used for weaving aforesaid HDPE woven sacks has to be classified as an item under entry 3920 of Chapter 39 and not under entry 5406 of Chapter 54. Accordingly, entries of finished goods have also to be made under proper Chapter of the Tariff Act treating them as the finished goods made of plastic strips.

In the result we hold that HDPE strips or tapes fall under the Heading 3920, Sub-heading 3920.32 of the Central Excise Tariff Act and not under heading 5406, sub-heading 5406.90. Similarly HDPE Sacks fall into heading 3923, Sub-heading 3923.90....'

6.8 The above crystal clear decision of the Hon'ble High Court of Madhya Pradesh leaves no doubt at all about classification of impugned goods i.e. HDPE woven bags/sacks. The above cited case is squarely applicable to the issue at hand. We also



wish to emphatically mention here that the above said judgment having been passed by the High Court of Madhya Pradesh, is binding upon us as a matter of judicial discipline and we neither have any reason nor *locus standi* to disagree with the same.

6.9 To fortify our finding we also draw support from the judgment of the Hon'ble Tribunal in the case of M/s Gujrat Raffia Industries Ltd., V/s Commissioner of Central Excise on 14.1.2003 [Reported in 2003 .(153). ELT 336 (Tri-Dell)]. The Hon'ble Tribunal in this matter has also held classification of similar goods under chapter 39 instead of chapter 63.

6.10 Following the ratio of the judgment of Hon'ble High Court of Madhya Pradesh in case of M/s.Raj Packwell Ltd. (Supra) as well as order dtd.25.10.2018 of the learned West Bengal Appellate of Advance Ruling in case of M/s.Mega Flex Plastics Ltd., both being squarely applicable to the instant matter, we hold that the impugned goods viz. PP Woven Bags/Sacks shall be classifiable under chapter 39 of the GST Tariff and not under Chapter 63.

7. RULING

(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)

7.1 The goods in question shall be classifiable under Chapter 39 of the GST tariff as articles of Plastic and would attract appropriate rate prevailing at the date and time of supply.

7.2 This ruling is valid subject to the provisions under section 103(2) until and unless declared void under section 104(1) of GST Act.


RAJIV AGRAWAL
(MEMBER)


MANOJ KUMAR CHOUBEY
(MEMBER)

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INDORE dt. 14/12/18

1. Applicant
2. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST)
4. The Commissioner, CGST & Central Excise, Indore
5. The Concerned Officer
The Jurisdictional Officer – State/Central

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