

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

4, Vibhuti Khand, Gomti Nagar, Lucknow

**PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING UNDER
SECTION 98 OF THE GOODS AND SERVICES TAX ACT, 2017**

Sub:- GST ACT, 2017 – Advance Ruling U/s 98 – liability to tax under GST Act in respect to application dated 27.08.2018 from M/s Hariom Enterprises registered with GSTIN no. 09AADF9568D1Z3

M/s Hariom Enterprises, A-9/1, Udyog Kunj, Panki, Site V, Kanpur (here-in after called the applicant) registered under GST vide GSTIN no. 09AADF9568D1Z3 have applied for advance ruling on classification of “ Non Laminated HDPE/PP woven Bags” and GST liability applicable on such non laminated bags.

2. Advance Ruling preferred to decide is whether non-Laminated Bags manufactured by the Applicant from HDPE/PP Strips of width not exceeding 5 mm, used for packing Sugar (Sugar bag), Flour (Flour Bag), Food Grain (Grain Bag) and other similar bags are classifiable under Tariff Heading 6305 or heading 3923 of the Customs Tariff Act and (ii) what is the rate of GST on such non laminated bags manufactured by the applicant.

The Applicant’s understanding and its submission are as under:-

2.1 The Applicant inter-alia submitted that they are engaged in manufacturing of HDPE/PP woven bags of both laminated and non laminated variety. The Applicant supplies the bags to various industries like fertilizer, Cement, sugar, flour, food grain etc. The technical specifications for the bags vary from industry to industry, however, in all cases the width of HDPE/PP strips used for manufacturing does not exceed 5mm.

2.2 The manufacturing process of above mentioned non laminated bags includes firstly either high density polyethylene (HDPE) or Polypropylene (PP) granules along with filler and master batch are fed into extruding machine to obtain HDPE/PP Film. The film is then slit into strips of width non exceeding 2.5mm.



Then these strips are bound on bobbins which are fed into circular weaving looms to obtain tubular woven fabric. The fabric is then cut and stitched to form "Non laminated HDPE/PP Bags". Such Non laminated bags are used by the customers of the applicant for packing of sugar, food grains and flour etc.

2.3 That chapter heading 6305 relates to sacks and bags, of a kind used for packing of goods. Further, sub-heading 63053300 relates to sacks and bags, of a kind used for packing of goods made from man-made textile materials if polyethylene or polypropylene strips or the like. Further, the applicant has already submitted specifications issued by BIS which confirms that width of HDPE/PP strips does not exceed 5mm with respect to concerned bags.

2.4 The two rival tariff heading under which "Concerned bags" can be classified are 39232100 and 63053300 however, tariff heading 6305 3300 refers to "polyethylene or polypropylene strips" and appears to be more specific.

2.5 That Note 1(g) to the Section XI (textiles and textiles articles) excludes "Monofilament of which any cross-sectional dimension exceeds 1 mm or strip or the like (for example, artificial raw straw) of an apparent width exceeding 5 mm, of plastics (Ch.39), or plaits or fabrics or other basketware or wickerwork of such monofilament or strip (Ch-46)."

2.5 That note 1(h) to Section XI of the tariff Act, states that the section of 'Textile and textiles articles' covering chapters 50 to 63 does not include "woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of chapter 39." The applicant also submits that concerned bags for manufactured from fabric woven from HDPE/PP Strips of width not exceeding 5mm, further, the woven fabric is neither impregnated, coated, covered or laminated in any manner therefore the above two section notes are not applicable to the concerned bags and hence cannot be excluded from Section XI and chapter 63 falling under it.

2.6 That the chapter note 2(p) of Chapter 39 excludes "goods of Section XI (textile and textile articles)" from purview of chapter 39. The bags under question being textile article cannot be covered under chapter 39 of the tariff.



2.7 Further, sub heading explanatory notes, to sub heading 630532 specifically includes ' flexible intermediate bulk containers as textile article under tariff heading 63053200, therefore, concerned bags under question being manufactured from the identical raw material merit classification as textile article under tariff sub heading 63053300.

2.8 That the reliance may also be placed on classification opinion issued by World Customs Organization classifying the " Tabular fabric made from strips of plastic of an apparent width not exceeding 5mm under sub-heading 540720.

2.9. That on the criteria as discussed above, their goods qualifies to be eligible for classification under tariff head 63053300.

3.0 Personal hearing was fixed on 13.12.2018 in the matter. Shri Ashish Kumar Bansal, CA Appeared in P.H on 13.12.2018 on behalf of M/s Hariom Enterprises, Kanpur. During his oral submission he stated that they have submitted their view vide letter dated 13.12.2018. Further, they would like to submit copy of CESTAT, Mumbai bench order issued in the case of TPI India Ltd. vs. CCE, Mumbai-II. He also stated that he would like to reiterate on the written submission made by them.

3.1. We have considered the submission made by the applicant in their application for advance ruling as well as submissions made by them during personal hearing. We have also taken note of the views/comments of the jurisdictional Assistant Commissioner, CGST sent vide letter C.No. 39/Hari Om/R-V/D-I/KNP/2018 dated 12.12.2018. We also considered the issue on which advance ruling is sought for by the applicant, relevant facts having bearing on the question/issue raised and the Applicant's understanding/interpretation of law in respect of the issue. We have also taken into account the order dated 20.05.2005, passed by Hon'ble CESTAT Mumbai in the case of T.P.India Ltd. Vs CCE, Mumbai-II reported in 2005(189) E.L.T. 311 (Tri.-Mumbai).

3.2 Notwithstanding the aforementioned specifications issued by BIS which confirms that width of HDPE/PP strips does not exceed 5mm with respect to concerned bags the issue for consideration before this forum is simply to determine the relevant HSN code under which the goods manufactured by the applicant for supply is classifiable. In the instant case the applicant is manufacturing HDPE/Woven bags of both laminated and non laminated variety as per their declaration. However, the ruling is sought for, with respect to non laminated bags



manufactured by the applicant from high density HDPE/PP strips, of width not exceeding 5mm. As per understanding of the applicant their product should be classified as a textile article and should fall specifically under the Tariff Head 63053300.

3.3 Textile and Textile articles are covered under Section XI of the Customs Tariff also adopted in GST for the purpose of specification of rate of GST and the rules of interpretation as applicable to the Customs Tariff, are also applicable for GST Tariff as well. Note 2(p) to Chapter 39 of the GST Tariff (plastic and articles thereof) does not cover goods of Section XI (textiles and textiles products). There is no other criterion stated to exclude goods from being included as plastic and articles thereof vis-à-vis chapter 63.

Again Note 1(g) to Section XI, of the Tariff Act states that the Section of Textiles and Textile articles covering chapter 50 to 63 does not include-

“ Monofilament of which any cross-sectional dimension exceeds 1mm or strip or the like (for example artificial straw) of an apparent width exceeding 5mm, of plastics (Chapter 39) or plaits or fabrics or other basket ware or wickerwork of such monofilament or strip (Ch-46).”

Note 1(h) to Section XI, clearly excludes “ woven, knitted, or crocheted fabrics, felt or nonwoven, impregnated, coated, covered or laminated with plastics, or articles thereof, of Chapter 39;” from the purview of the said section dealing with textile and textile articles.

3.4 Therefore, to classify the goods under question, both the explanatory notes, as well as the clarifications in the tariff, should be taken into consideration.

3.5. A combined reading of the aforementioned notes and Sections implies that if articles are manufactured from fabric woven from HDPE/PP strips of width not exceeding 5mm and the woven fabric is neither impregnated, coated, covered, or laminated in any manner , the same cannot be excluded from Section XI and chapter 63 falling under it.

3.6 The bags under question as explained by the applicant are manufactured from fabric woven from HDPE/PP strips of width not exceeding 5mm further, the woven fabric is neither impregnated, coated, covered, or laminated in any manner therefore



cannot be excluded from the purview of Section XI and appear to be more specifically classifiable under sub-heading 63053300 of Chapter 63. To support the above view, we place reliance upon Hon'ble Tribunal decision in the case of T.P.I. India Ltd. Vs CCE, Mumbai-II, reported in 2005(189) E.L.T. 311(Tri-Mumbai).


In view of the above we are in acceptance of the interpretation presented by the applicant in support of their case. Accordingly, we rule as under:-

RULING

“Non-Laminated Bags manufactured by the Applicant from HDPE/PP Strips of width not exceeding 5 mm, used for packing Sugar (Sugar bag), Flour (Flour Bag), Food Grain (Grain Bag) and other similar bags are to be classified under Tariff Heading 6305 of the Customs Tariff Act .

2. The Applicant is liable to pay CGST 2.5% and SGST 2.5% on the subject goods.”


Vivek Kumar Jain
Member of Authority for Advance
Ruling
CGST


R K Khandelwal 14/12/18
Member of Authority for Advance
Ruling
SGST



To,

M/s M/s Hariom Enterprises
A-9/1, Udyog Kunj, Panki
Site V, Kanpur

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Order No. 20

Date: 14.12.2018

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Advance Ruling Appellate Authority.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Advance Ruling Appellate Authority.
3. The Commissioner, CGST & Central Excise, Commissionerate, Kanpur, Uttar Pradesh.
4. Through the Additional Commissioner, Commercial Tax, C.T. Kanpur.....
Uttar Pradesh to jurisdictional tax assessing officers.

