

**WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING  
AT 14, BELIAGHATA ROAD, KOLKATA-700015**

**Before:**

**Mr. A.P.S Suri, Member**

**Ms. Smaraki Mahapatra, Member**

In the matter of

Appeal Case No. 08 /WBAAAR/Appeal/2018 dated 05.11.2018

- And -

In the matter of:

An Appeal filed under Section 100(1) of the West Bengal Goods and Services Tax Act, 2017/ Central Goods and Services Tax Act, 2017, by the Assistant Commissioner of Central Tax, Howrah CGST & CX Commissionerate.

Present for the Appellant: Sri Dipankar Mukherjee, Superintendent (T&R),  
Central Tax, Howrah CGST & CX Commissionerate

Present for the Respondent: Sri Vinay Kumar Shraff, Advocate

Matter heard on : 29.01.2019

Date of Order : 31.01.2019

This Appeal has been filed by the Assistant Commissioner of Central Tax, Howrah CGST & CX Commissionerate (hereinafter referred to as "the Appellant") on 05.11.2018 against Advance Ruling No. 19/WBAAR/2018-19 dated 28.09.2018, pronounced by the West Bengal Authority for Advance Ruling in the matter of M/s RLJ Woven Sacks Pvt. Ltd.

2. M/s RLJ Woven Sacks Pvt. Ltd., holding GSTIN No. 19AABCJ8866B1ZD, a manufacturer of Polypropylene Leno Bags (PP Leno Bags) having its address at Flat 1A, Radiant Park Building, 201, New Market Road, Kolkata-700017 in West Bengal (hereinafter referred to as "the Respondent"), sought an Advance Ruling on the classification of PP Leno Bags under the GST Tariff which is aligned to the First Schedule of the Customs Tariff Act, 1975 (hereinafter referred to as "the Tariff Act").

3. The Advance Ruling Authority after considering Section Notes 1(g) and 1(h) of Section XI of the Tariff Act and specifications issued by the Bureau of Indian Standards ruled that 'PP Leno Bags', if specifically made from woven



Polypropylene fabric using strips or the like of width not exceeding 5 mm and without any impregnation, coating, covering, or lamination with plastics, are to be classified under Tariff Sub-Heading 6305 33 00.

4. The Appellant has filed an Appeal against the above Advance Ruling with the prayer to set aside/modify the impugned Advance Ruling passed by the Authority for Advance Ruling or pass any such further or other orders as may be deemed fit and proper in the facts and circumstances of the case on the following grounds:

- (i) The learned Advance Ruling Authority has referred to Note 1(h) to Section XI of the tariff Act which covers textile and textile articles from Chapter 50 to 63 and does not include woven, knitted or crocheted fabrics of Chapter 39, hence the learned Advance Ruling authority has erred in interpreting the true essence of this Chapter Note.
- (ii) The learned Advance Ruling Authority has erred in reading the legality of the Section Note in so far as when every word in the above Chapter note is separated by comma then each word should be given equal weightage and from that perspective the word 'woven' should have been considered as an exclusion word in its own right. Hence, the Advance Ruling is not legally tenable.
- (iii) The learned Advance Ruling Authority has failed to take note of the judgment delivered by the Hon'ble Madhya Pradesh High Court in the case of M/s Raj Pack Well Ltd Vs Union of India referred in 1990(50)ELT 201 (M.P) where the Hon'ble High Court has observed in Para 21 that *"in the result we hold that HDPE strips or tapes fall under the Head, 39.20, sub-heading 3920.32 of the Central Excise tariff Act and not under Head 54.06, sub-heading 5406.90. Similarly, the HDPE sacks fall into Heading 39.23, sub-heading 3923.90. Consequently, the petition filed by the petitioners is allowed. The order impugned passed by the Assistant Collector, Central Excise, Indore Division and that of the Collector (CE) Appeals, New Delhi are quashed. The respondents are directed to classify the goods accordingly. No other points pertaining to other issues were raised before us during the course of the arguments. There shall be no order as to costs."*

This order has not been superceded by any decision of any Hon'ble High Court or the Hon'ble apex Court. Hence the judgment delivered by the Advance Ruling Authority is not proper and legal.

- (iv) The said taxpayer has been following this practice of classifying both their products-PP Leno Bags & PP woven sacks-under Chapter 39 for the last 9 years. It is not cogent why the taxpayer did not seek advance Ruling at any point of time, earlier. Under self-assessment regime, the taxpayer is the active agent in seeking such Ruling in case of doubts related to classification, or otherwise. The taxpayer's action of their seeking advance Ruling in this case and a sudden change in classification betrays their self-serving intent of taking undue advantage of a lower tax rate. This



was also held by the Apex Court in Sri Babu Ram alias Durga Prasad vs. Sri Indra Pal Singh (Dead) by lrs., AIR 1998 SC 3021, and P.R.Deshpande vs. Maruti Balramhaibatti, AIR 1998 SC 2979 wherein the Apex Court has observed that such a self-serving action or conduct violates the *doctrine of estoppels*.

- (v) The said taxpayer has relied on the classification given by the Bureau of Indian Standards to classify their products Leno bags under Chapter 63 only when the tax rate has been reduced to 5% against 18% under Chapter 39 which was the previous classification made by the assessee. In a judgment of Hon'ble Apex Court in the case of M/s Novopan India Ltd Vs Collector of Central Excise and Customs, Hyderabad, as reported in 1994(73)ELT769 (S.C), the Hon'ble Apex Court observed "Classification of goods-Commercial understanding is the true test and not what scientific books like Encyclopedia Britannica may say". The Hon'ble Apex Court also observed ".....In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemicals and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in Hansraj Gordhandas v. H.H.Dave [1978(2) E.L.T (J 350) (SC)= 1969 (2) S.C.R 253) that such a Notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the Notification, i.e, by plain terms of exemption."

5. During the course of the hearing the Appellant reiterated the points as stated in Grounds in Appeal. The Appellant also referred to an order passed in appeal by this forum on 25.10.2018 in Appeal Case No. 06/WBAAAR/Appeal/2018 wherein PP Leno Bags of similar description, manufactured by M/s Mega Flex Plastics Ltd., were classified under Tariff Heading 3923 29 90.

6. During the course of the hearing the Respondent opposed the appeal and submitted the following:

- (i) The Respondent pointed out that Note 2(p) of Chapter 39 of the GST Tariff (Plastics and articles thereof) clearly excluded goods of Section XI (textile and textile products) thus textile products manufactured out of chapter 39 get excluded from the purview of Chapter 39 of the GST Tariff.
- (ii) The Respondent further submitted that Note 1(g) to Section XI of the Tariff Act provides that the section of Textile and Textile Articles covering Chapters 50 to 63 do not include "Monofilament of which 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 basket-ware or wickerwork of such monofilament or strip (Chapter 46).

- (ii) Further, the Respondent referred to Note 1(h) to Section XI of the Tariff Act, which states that Textile and Textile 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". It was further submitted that from the bare perusal of Chapter and Section notes it is clear that in order to be included in Chapter 63, the width of the tapes, manufactured from plastics or articles of Chapter 39, used to weave the fabric should be less than or equal to 5 mm and should not be impregnated, coated, covered or laminated with plastics or articles thereof, of Chapter 39.
- (iii) It was further submitted that the Respondent manufacture 'PP Leno Bags' specifically made from woven Polypropylene fabric using strips or the like of width not exceeding 5 mm and without any impregnation, coating, covering, or lamination with plastics and such bags were clearly classifiable under Tariff heading 6305 3300 which includes sacks and bags of the kind used for packing of goods, made from polyethylene or polypropylene strips and the like that qualifies as man-made textile materials. It was further added that this Tariff heading 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]
- (iv) The Respondent submitted that Bureau of Indian Standards has issued Standard for manufacture of High Density Polyethylene (HDPE) / Polypropylene (PP) leno woven sacks for packaging and storage of fruits and vegetables and Standard IS 16187: 2014 classifies such sacks under the category of Textiles. Further, the unit of the Respondent was also registered as a Technical Textile Unit with the Textile Commissioner.
- (vi) The Respondent added that any expert's opinion cannot be discarded without producing contrary opinion of another expert and cited the judgment of the Apex Court in the matter of Parle Agro (P) Ltd. Vs. Commissioner of Commercial taxes, Trivandrum reported in 2017(352)ELT113(SC), in support of his submission.
- (vii) The Respondent admitted that earlier the Leno bags in question were being classified by them under Chapter 39 instead of Chapter 63 not for claiming any benefit but out of ignorance but that does not operate as estoppels/res judicata against them for claiming classification under the correct tariff/subheading of GST Tariff. In support of this submission the Respondent referred to following judgments/orders namely;
  - a. Commissioner of Central Excise, Bhopal Vs. Mahakoshal Potteries [2005(183)ELT 289 (Tri-Del)]



- b. Commissioner of Central Excise, Bhopal Vs. Perfect Refractories [2005(185)ELT 163 (Tri-Del)]
- c. Commissioner of Central Excise, Mumbai-III Vs. Nozzle Auto Association Pvt. Ltd. [2013(290)ELT 731 (Tri-Mumbai)]
- d. Commissioner of Customs, Central Excise & Service Tax, Hyderabad-IV Vs Lamtuf Plastics Ltd. [2016(343)ELT 618 (Tri-Bang)]
- e. Commissioner of Central Excise, Bhopal Vs. Perfect Refractories [2005(185)ELT 163 (Tri-Del)]
- f. Commissioner of Central Excise, Raipur (C.G.) Vs. Simplex Casting Ltd. [2012(285)ELT 365 (Tri-Del)]

(viii) The Respondent also submitted that when two views are possible, one which favours the assessee should be adopted and cited several judgments including that of the Apex Court in the case of Mauri Yeast India Pvt. Ltd. Vs. State of UP reported in [2008]14VST259(SC).

7. The matter is examined and written and oral submissions made before us are considered.

8. The Chapter 63 covers 'Other made up textile articles; sets; worn clothing and worn textile articles; rags'. For sake of clarity, the relevant text of the Tariff Heading 6305 3300 is reproduced as under:

"6305	Sacks and bags, of a kind used for the packing of goods
.....	- Of man-made textile materials
.....	
6305 3300	-- Other, of polyethylene or polypropylene strip or the like"

Further Chapter 39 covers "Plastics and Articles thereof". For sake of clarity the relevant text of Chapter Sub-Heading 3923 2990 is reproduced as under:

"3923	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics
.....	- Sacks and bags (including cones)
.....	
392329	-- Of other plastics
.....	
39232990	--- Other"

From the plain reading of the above, it is evident from the above that to qualify under Chapter Sub-Heading 63053300 the goods i.e., Bags/Sack should be made of "man-made textile material of polyethylene or polypropylene strip or the like", whereas for qualification under the Chapter Sub-Heading 39232990 the goods i.e., Bags/Sack should be made of plastics and articles thereof. In the instant case, as discussed in para 2 of Advance



Ruling Order dated 28-09-2018, the Respondent used the raw materials like Polypropylene, Linear Low Density Polyethylene, Colour Master Batch, to manufacture Polypropylene Leno Bags. The Respondent using the aforesaid raw material, manufactured the extruded film which is again slitted to prepare strips. Such strips are used to manufacture Bags/ Sacks, by way of weaving the same. The moot point is that the Bags/ Sacks are not manufactured out of textile material as defined under Chapter Sub-Heading 6305 of the Tariff Act and is rather made of woven strips manufactured out of Polypropylene/ Linear Low Density Polyethylene (i.e., made of plastics) as defined under Chapter Sub-Heading 3923. Hence, the impugned goods are clearly classifiable under Chapter Sub-Heading 39232990.

9. It is pertinent to mention that the Note 2(p) of the Chapter 39 of GST Tariff (plastics and Articles thereof) does not cover the goods of Section XI (Textiles & Textile Products). In the instant case, the impugned product, by no way of stretch of imagination, could be termed as Textiles or Textile Products. Therefore, unless the impugned goods have been manufactured from the material which qualifies as Textiles of the Chapter 63, it would not be proper to consider the same to be classifiable under Chapter 63053300. Further, Section Note 1(h) of Section XI of the Tariff Act, specifically excludes :

*“woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of Chapter 39;”*

From the plain reading of the above Section Note, it transpires that the goods i.e., woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated, made from the plastics or articles thereof are excluded from the Section XI of Tariff Act. If the impugned goods were made of textile material of polypropylene, then only the same would be classifiable under Chapter 63 and the aforesaid fact is absent in the instant case. Therefore, the impugned goods cannot be classified under Chapter 63 and shall be classifiable under Chapter 39, as discussed supra.

10. The Respondent has referred the Note 1(g) of Section XI of the Tariff Act, relevant to Textiles and Textile Articles, which interalia states that this Section Note does not cover the 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). From the plain reading of the aforesaid Section Note, it transpires that it relates to classification of Monofilament having cross-sectional dimension exceeding 1 mm of an apparent width exceeding 5 mm of plastics and any Articles made from such Monofilament only. If Monofilament having cross-sectional dimension more than 1 mm of an apparent width exceeding more than 5mm of plastics then the same would qualify under Chapter 39. If the goods are plaits or fabrics or other basketware or wickerwork of such monofilament or strip, then the same would be classifiable under Chapter 46. Hence, the above said Section Note 1(g) of Section XI of the Tariff Act does not help the Respondent in the instant case.
11. The Respondent has also made references of Bureau of Indian Standards and Technical Textile Unit for substantiating the classification of the



impugned goods under Chapter 63. However, it is pertinent to mention that the classifications of the goods shall always be determined in accordance to the relevant Section Notes and Chapter Notes of the GST Tariff Act. The Respondent failed to bring out any submissions as to how the aforesaid references i.e., Bureau of Indian Standards and Technical Textile Unit are relevant to the Section Notes and Chapter Notes of the GST Tariff Act to determine the classification of the impugned goods.

12. A different Bench of this Appellate Forum passed an Order dated 25.10.2018 and classified the impugned Item under Tariff Heading 39232990 in the case of M/s Mega Flex Plastics Ltd. In said case, the said party classifying the identical goods in two different Chapters 63 (for domestics) and 39 (for export) for last several years. The Appellate Authority for Advance Ruling observed that the said party tried to classify the Item under two different Tariff Headings to enjoy benefits both i.e., Drawback and lower Tariff rates for domestic clearance. The Appellate Authority for Advance Ruling held that the impugned goods shall be classifiable under Chapter 39. Now, in the instant case the Respondent has been classifying the impugned goods under Sub-Heading No. 3923.90 of the Central Excise Tariff for last 9 (nine) years and their present appeal has the only aim to enjoy lower tax rate of tax under GST. In both the cases, the factual matrix is identical.
13. In the matter of Gujarat Raffia Industries Ltd. vs Commr. of C. Ex. (CESTAT-Delhi) on 14 January, 2003, vide para 6, the Hon'ble CESTAT has observed and held the following:

*"..... If the strip is a strip of plastic only and not a synthetic material and is also known in the common parlance as a commodity of plastic, and the finished goods that is the HOPE woven sacks are also known in the common parlance as plastic woven sacks, then it cannot be held that the strips with which such bags are woven are the strips of synthetic textile material."*

14. The Respondent's intention to change the classification of the impugned goods appears to enjoy of the lower Tariff rate of GST. In this regard, on the similar issue, the Order of the Hon'ble Supreme Court, in the matter of P.R. Deshpande vs. Maruti Balram Haibatti, as reported in AIR 1998 SC 2979, is relevant, wherein the Hon'ble Supreme Court has observed that :

*"... the doctrine of election is based on the rule of estoppel- the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had."*

Therefore, it is settled law that the principle set by the Apex Court, the Respondent cannot be allowed to change the classification which they had pursued for last 9 years in view of the fact that they are now intended to avail lower tariff rate of GST, which is devoid of merit.



15. CBIC, vide para 7 of the Circular 80/54/2018-GST dated 31-08-2018, addressed the following issue:-

Applicability of GST on Supply of Polypropylene Woven and Non-Woven Bags and PP Woven and Non-Woven Bags laminated with BOPP.

CBIC, vide Para 7 of the above said Circular, has clarified the issue as reads hereunder:

*"7.2 As per the explanatory notes to the HSN to HS Code 39.23, the heading covers all articles of plastics commonly used for the packing or conveyance of all kinds of products and includes boxes, crates, cases, sacks and bags.*

*7.3 Further as per the Chapter note to Chapter 39, the expression 'plastics' means those materials of heading 39.01 to 39.14 which are or have been capable, either at the moment of polymerization or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent of plasticizer) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence.*

*7.4 Thus it is clarified that Polypropylene Woven and Non-Woven Bags and PP Woven and Non-Woven Bags laminated with BOPP would be classified as plastic bags under HS code 3923 and would attract 18% GST."*

From the above, it is evident that Polypropylene Leno Bags whether laminated with BOPP or not would be classified as plastic bags under HS code 3923 and would attract 18% GST.

14. In view of the above discussion we find that Polypropylene Leno Bags shall be classifiable under Heading No. 392390 of the Tariff Act.

The Advance Ruling No. 19/WBAAR/2018-19 dated 28.09.2018 is modified to this effect and the Appeal stands disposed of accordingly.

Send a copy of this order to the Appellant and the Respondent for information.



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(Smaraki Mahapatra)  
Member  
West Bengal Appellate Authority  
for Advance Ruling

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