

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

Before:

Mr. Rakesh Kumar Sharma, Member, Mr. Randhir Kumar, Member

In the matter of

Appeal Case No. 06 /WBAAAR/ Appeal/2018 dated 08.08.2018

- 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, Sankrail Division, Howrah CGST & CX Commissionerate.

Present for the Appellant: Mr. Nishant Kumar, Assistant Commissioner of Central Tax, Sankrail Division, Howrah CGST & CX Commissionerate

Present for the Respondent: Mr. Vinay Kumar Shraff, Advocate

Matter heard on: 26.09.2018

Date of Order: 25.10.2018

This Appeal has been filed by the Assistant Commissioner of Central Tax, Sankrail Division, Howrah CGST & CX Commissionerate (**hereinafter referred to as "the Appellant"**) on 08.08.2018 against Advance Ruling No. 09/WBAAR/2018-19 dated 06.07.2018, pronounced by the West Bengal Authority for Advance Ruling in the matter of M/s Mega Flex Plastics Ltd.

2. M/s Mega Flex Plastics Ltd., holding GSTIN No. 19AADCM7598R1Z8, a manufacturer of Polypropylene Leno Bags (PP Leno Bags) having its factory at Polypark, Plot-PPD3, Village-Sandhipur, P.O.-Joynagar, Horwah-711302, 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 TP Leno Bags', if specifically made from woven Polypropylene fabrics 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 requesting 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 Respondent had themselves declared that they manufacture woven sacks of plastic materials of Chapter 39. The learned Advance Ruling Authority 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", and hence the learned Advance Ruling Authority has erred in interpreting the true essence of this Chapter note;
- ii) 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) Though Advance Licence issued by the DGFT, Kolkata on 23.06.2017 (valid for 18 months) classifying the said product under Chapter 39, the assessee without citing any reason to the department or seeking any amendment to DGFT, cleared the

product in the domestic market under Tariff Heading 6305 33 00 instead of 3923 29 90. The *suo motu* change of Tariff Heading is clearly illegal and in violation of the Advance Licence Scheme. Now as the rate of tax has changed for the two Chapter Sub-Headings, the Respondent applied for Advance Ruling while the Chapter Sub-Heading of Advance Licence issued by DGFT is still in force.

5. During the course of the hearing the Appellant reiterated the points as stated in Grounds in Appeal. The Appellant stressed on the point that in spite of Advance Licence issued by the Directorate General of Foreign Trade (DGFT), Kolkata, (Licence No. 0210207709 dated 23.06.2017, valid for 18 months) classifying the "Articles made of polypropylene Leno bags/ sacks containing 100 MT polypropylene granules" under ITCHS 39232990, the assessee decided to change the Tariff Heading for the same product, PP Leno Bags, to 6305 33 00 without citing any reasons for the same. The Appellant also submitted that the rule of estoppel by election is applicable in the matter as the Respondent themselves declared the item in question under Tariff Sub-Heading 3923 29 90 and enjoyed the duty draw back as per Duty Drawback Schedule of DGFT. The Appellant further submitted that the same product cannot be cleared for export and in DTA under two different Tariff Headings.

6. During the course of the hearing, the Respondent submitted the following:

(i) Manufacturing process includes manufacturing of polypropylene strips (tapes) which is woven to produce man-made textile material which is commercially known as Leno Fabric;

(ii) In terms of Chapter Note 2(p) of Chapter 39 of the GST Tariff (Plastics and articles thereof) if textiles or textiles products are manufactured out of materials of Chapter 39, then it will be excluded from the purview of Chapter 39 of the GST Tariff.

(iii) In terms of Note 1(g) to Section XI of the Tariff Act states that the Section of Textiles and Textile Articles covering Chapters 50 to 63 does not include, "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 basket-ware or wickerwork of such monofilament or strip (Chapter 46).

(iv) Note 1(h) to Section XI of the Tariff Act states that the Section of 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"

(v) IS 16187:2014 issued by the Bureau of Indian Standards specifies that, **PP** Leno Woven sacks for packaging and storage of fruits and vegetables. The Standard IS 16187:2014 classifies such Sacks under the category of Textiles.

(vi) The respondent has been granted capital subsidy by the government of India under The Technology Upgradation Fund Scheme (TUFS) for making the textile industry globally competitive and to reduce the capital cost for the textile industry-

(vii) The polypropylene leno bags for packing of agricultural produce is internationally classified under **HSN** code **63053300**.

7. The Respondent submitted copies of the reports of test conducted by the Central Institute of Plastics Engineering & Technology, Haldia, dated 15.03.2018, the Indian Institute of Packaging, Kolkata, dated 27.03.2018 and Indian Oil Corporation note Ltd., Panipat, dated 12.03.2018 on his samples of PP Woven Leno Bags. These test reports are based on samples provided by the Respondent. It is also seen that in the reports of Central Institute of Plastics Engineering & Technology and the Indian Institute of Packaging i.e. Test Reports dated 15.03.2018 and 27.03.2018, respectively, note it is stated that the reports are not to be reproduced without written approval, and that the report dated 27.03.2018 cannot be used for litigation, hence the above references are not considered as supporting evidence.

8. The matter is examined and arguments of Appellant and submissions made by the Respondent are considered.

9. Polypropylene Leno Bags are manufactured by the Respondent by weaving polypropylene strips (tapes). Polypropylene is a variety of plastic and it is a fact that the Respondent declared the Polypropylene Leno Bags voluntarily under Tariff Heading 3923 29 90 and enjoyed the duty drawback. No cogent reason could be offered by the Respondent as to why and how the Tariff Heading is now sought to be changed from 3923 29 90 to 6305 33 00.

10. Hon'ble Madhya Pradesh High Court while dealing with the classification of woven sacks made of HDPE tapes and fabrics in the matter of Raj Pack Well Ltd. vs Union Of India [1993(41)ECC 285; 1993; ECR 351 MP; 1990(50)ELT 201 MP], has rendered the following judgment: -

"... the process of the manufacture of the HDPE tapes, the earlier judgments of the CEGAT approved by the Supreme Court and accepted by the Department, all clearly go to show that the HDPE bags are the bags woven by the 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 the aforesaid HDPE woven sacks has to be classified as an Item under entry 39.20 of Chapter 39 and not under entry 54.06 of Chapter 54. Accordingly the entries of the finished goods have also to be made under the 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 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 into Heading 39.23, sub-heading 3923.90..."

11. The West Bengal Authority for Advance Ruling failed to take note of the aforesaid judgment of the Hon'ble Madhya Pradesh High Court which is squarely

applicable in the instant case. Further, since the Respondent declared that Polypropylene Leno Bags manufactured by weaving polypropylene strips (tapes) under Tariff Heading 3923 29 90 for claiming duty drawback, and no explanation could be offered as to why the Tariff Heading should be changed now to 6305 33 00, it is not permissible under the doctrine of equitable estoppels that the Respondent is allowed to take such a divergent stand now. The Apex Court has consistently struck down such self-serving attitude as held in The Rajasthan State Industrial Development and Investment Corporation and Anr. vs. Diamond and Gem Development Corporation Ltd. and Anr., AIR 2013 SC 1241.


12. In view of the above discussion, we set aside the Advance Ruling No. 09/WBAAR/2018-19 dated 06.07.2018 pronounced by the West Bengal Authority for Advance Ruling in the matter of M/s Mega Flex Plastics Ltd., and order that the item Polypropylene Leno Bags (PP Leno Bags) manufactured by the respondent, be classified under Tariff Heading 3923 29 90.

The Appeal filed by the Assistant Commissioner, CGST & CX, Division, Howrah Commissionerate thus succeeds and is allowed.

The instant appeal stands disposed of accordingly.

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


(RANDHIR KUMAR)
Member
West Bengal Appellate Authority for
Advance Ruling


(RAKESH KUMAR SHARMA)
Member
West Bengal Appellate Authority for
Advance Ruling