

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

Before:
Shri A.P.Suri, Member
Shri Devi Prasad Karanam, Member

In the matter of

Appeal Case No. 15/WBAAAR/APPEAL/2019 dated 26/09/2019

- 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 Sadguru Seva Paridhan Pvt. Ltd.

Present for the Appellant: Shri Saurabh Bagaria, Advocate
Shri Indranil Banerjee, Advocate

Present for the Respondent: Shri Sushanta Saha, Assistant Commissioner
of State Tax, Bankura Charge, Bankura.

Matter heard on: 17.03.2020

Date of Order: 19.03.2020

1. This Appeal has been filed by M/s. Sadguru Seva Paridhan Pvt. Ltd. (hereinafter referred to as SSPPL) on 20.12.2019 against Advance Ruling No. **33/WBAAAR/2019-20 dated 11/11/2019**, pronounced by the West Bengal Authority for Advance Ruling (hereinafter referred to as the WBAAR).
2. The appellant, holding GSTIN No.19AAGCS8830H1ZZ is a manufacturer of fusible interlining cloth, sought a ruling on whether the item is classifiable in Chapters 50 to 55 of the First Schedule of the Customs Tariff Act, 1975 (hereinafter referred to as 'the Tariff Act') or under Heading 5903 of the Tariff Act.
3. The WBAAR, in its Ruling No. 33/WBAAAR/2019-20 dated 11.11.2019, while holding that fusible interlining cloth is classifiable under sub-heading 5903 of Tariff, has observed as follows :

- (i) In its Circular No. 24/Coated Fabric/88-CX.1 dated 02/09/1988, the CBEC came up with an answer by referring to the production process. The finished woven fabric passed over pre-heated rolls having a high surface temperature. The heated substance was then pressed to a printing roll having fine dots engraved on it. High-density polyethylene powder was taken in a hopper that sat on the engraved printing roll, filling the dots. As a result, the pre-heated fabric got printed with plastic dots. The powder in between the engraved dots was scrapped by a doctor blade provided in the hopper. The dot printed cloth then passed through a heated chamber where the plastic melted and fused with the piece of cloth. CBEC concluded that the fusible interlining merited classification under Heading 5903 if the above printing process covered one side of the fabric with a continuous and adherent film or layer of plastic that made the fabric impervious.
- (ii) In Circular No. 5/89 dated 15/06/1989, it was stated that after insertion of the Note 2(c) in Chapter 59, the fusible interlining cloth made by discrete coating with plastic by dot printing process became classifiable under Heading 5903. Before that, CBEC clarified, such cloth had been covered under Chapters 52 to 55, depending upon the textile materials used.
- (iii) Chapter Note 2(c) to Chapter 59 was omitted w.e.f. 16/03/1995. CBEC issued Circular No. 433/66/98-CX-6 dated 27/11/1998, wherein it was stated that the Explanatory Notes to the HSN Code or the Chapter Notes to Chapter 59 of the Tariff Act had not contained any provision like Chapter Note 2(c) to Chapter 59 of the Central Excise Tariff Act, 1985. The said Chapter Note 2(c) was, therefore, deleted by the Finance Act, 1995. CBEC, however, maintained that fusible interlining cloth partially coated with plastic was to be treated as an exception and would continue to be classified under Heading 5903.
- (iv) The difference arises from the application of the provisions of the Explanatory Notes to the HSN Code. In the said Explanatory Notes to Chapter 59, textile fabrics which were spattered by spraying with visible particles of thermoplastic material and were capable of providing a bond to other fabrics or materials on the application of heat and pressure were classifiable under Heading 5903. According to CBEC Circular No. 433/66/98-CX-6 dated 27/11/1998, such classification should be treated as an exception to Chapter Note 2(a)(4) to Chapter 59.
- (v) While striking down the above mentioned Circular No. 433/66/98-CX-6 dated 27/11/1998 as ultra vires and contrary to Section 37B of the Central Excise Act, 1944, the Ld. Single Bench of Madras High Court in the case of Madura coats reported in 2004(163) ELT 164(Mad.), took no notice of the applicability of the Explanatory Notes to the HSN Code in deciding a classification issue under the Excise Tariff. Although not stated explicitly, the court held the interpretation of the law, as made in Circular No. 5/89 dated 15/06/1989, a binding legal provision, and the contrary view is illegal and ultra vires.
- (vi) Upon appeal, the division Bench of the Madras High Court, in its order dated 05/01/2009 in WA No. 507 of 2005, refrained from expressing any view on the

legality of the said Circular so that the assessing office could apply his judgment without any bias. The court however, set aside the impugned Circular that the assessing officer had quoted in a show cause notice in violation of the provisions of Section 37B of the CEA'44. Such setting aside of the impugned Circular restored the SCN. The Division Bench however, categorically stated that it was not done on the ground that the circular is ultra vires.

- (vii) It therefore, appears that reference to the Single Bench judgment in the above mentioned case does not help in deciding the classification of the applicant's product. The fact that CBEC appealed against the Single Bench judgment in 2005 also indicates that it continues defending Circular No. 433/66/98-CX-6 dated 27/11/1998 and has not made any further course correction. Circular No. 433/66/98-CX-6 dated 27/11/1998, therefore, reflects CBEC's view on the classification of fusible interlining cloth as on date.
 - (viii) It appears from the production process described above that fusible interlining cloth satisfies the conditions for placing it in the category of the above exception.
 - (ix) Nowhere in its application or submissions – written or oral – the applicant takes the view that Circular No. 433/66/98-CX-6 dated 27/11/1998 has erred in treating fusible interlining cloth as a category of textile fabric that is spattered by spraying with visible particles of thermoplastic material and is capable of providing a bond to other fabrics or materials on the application of heat and pressure. In the absence of any such submission, it is reasonable to agree with the view expressed by CBEC in Circular No. 433/66/98-CX-6 dated 27/11/1998 that fusible interlining cloth is classifiable under Heading 5903.
 - (x) In view of the above findings, the applicant's reference to rule 3(b) of the General rules of Interpretation is of no use.
4. The Appellant has filed the instant Appeal against the above Advance Ruling with the prayer to set aside / modify the said impugned advance ruling passed by the WBAAR on the following grounds :
- a) The WBAAR grossly has ignored the test report submitted, which establishes that the goods in question bear dotted pattern and are partially coated with polythene and, therefore, the said goods fall outside the ambit of Chapter 59 of the Tariff Act in view of exclusion No. 4 to Chapter Note 2(a) of the said Chapter. Therefore, Chapter 59 was not applicable to the said goods.
 - b) The WBAAR ignored the judgment in the case of Goodswear Fashion Pvt. Ltd. reported in 2019(23) GSTL 154(AAR-GST) where in similar facts and circumstances, the WBAAR of Uttarakhand held that such fabrics would fall under Chapter 52 or 55, 58 or 60 of the Tariff Act and not Heading 5903.
 - c) The WBAAR misread Circular No. 24/Coated Fabric/88-CX.1 dated 02.09.1988, wherein at paragraphs 8 and 9, it has been stated unambiguously that fabrics partially coated or partially covered with plastic and bearing designs were

excluded from purview of Heading 59.03, according to Chapter Note 2(a)(1) of Chapter 59 of the erstwhile Central Excise Tariff.

- d) CBEC's Circular No. 5/89 clearly recognized that barring the period between 20.03.1990 and 16.03.1995 (when the Chapter note 2(c) was in existence), fusible interlining was covered under Chapters 50 to 55, depending on the textile materials contained therein.
 - e) In the case of Madura Coats vs. CBEC reported in 2004(163) ELT 164(Mad), the purported Circular bearing No. 433/66/98-CX dated 27.11.1998 had been challenged, which stated that the deletion or omission of Chapter Note 2(c) of the Excise Tariff did not result in changing the classification of Fusible Interlining Cloth under Heading 59.03. The circular was quashed in the High Court decision. Hence, this Circular should not have been relied upon by the WBAAR, while passing the ruling.
 - f) In the case of Bombay Dyeing & Manufacturing Co. Ltd. reported in 1999(107)ELT 488(T), similar view as that of the Hon'ble Madras High Court in the Madura Coat case was taken.
 - g) Classification of a product can never be decided by merely referring to circulars issued by revenue from time to time and without considering the terms of the applicable tariff.
 - h) The applicant's stand is duly supported by Rules 2(b) and 3 of the General Rules for the Interpretation of the Schedule, as applicable to the Tariff Act.
5. During the course of hearing the Appellant reiterated their submissions. The Advocate appearing on behalf of the appellant reiterated their grounds of appeal. He argued that the product namely fusible interlining cloth merits classification under sub-heading 5208 and not under sub-heading 5903, as done by the department. They have submitted a few samples of the invoices being issued by them at present, which according to them, clearly indicates that the appellants are classifying the item under sub-heading 5208 of the Customs Tariff.
6. The concerned officer from the Revenue pointed out that the test report does not describe the sample as a 'fusible article'. The judgement in the matter of Madura Coats vs. CBEC referred to by the Appellant is thus not applicable in the present context. Further the reference of Goodswear Fashion Pvt. Ltd. is not applicable in the instant case as the judgement dealt with polyester viscose which is quite different from the goods manufactured by the Appellant.
7. The matter is examined and submissions made before us are considered.
8. The product manufactured by the appellant is fusible interlining cloth. Before 1989, the item used to be classified under Chapters 52 to 55, as clarified under Circular No. 5/89 dated 15/06/1989. In the Union Budget of 1989-90, a new chapter note 2(c) was

introduced in Chapter 59 of the Tariff, which led to inclusion of textile fabrics, partially or discretely coated with plastic by dot printing process under heading 5903. Subsequently, in the Union Budget of 1995, the said chapter note 2(c) was omitted with effect from 16/03/1995. It is the claim of the appellant that after removal of the said chapter note, the item cannot be classified under Heading 5903. In their support, the appellant has submitted a few decisions of High Court and a decision of AAR, Uttarakhand.

9. The sample copies of invoices issued by the appellant indicate that it is classifying the product under sub-heading 5208. The product description under Sub-heading 5208 is as follows :

“5208 woven fabrics of cotton, containing 85% or more by weight of cotton, weighing not more than 200 G/M²”

The above description clearly indicates that for a product to be classified under the above sub-heading, it has to be a woven fabric of cotton. Woven fabric is any textile formed by weaving or interlacing two or more threads at right angles to one another. We have examined the sample of the fusible interlining cloth placed before us. It is seen that the product is textile coated with plastic on one of its sides. It is evident from the sample as well as the dot printing process of manufacture as elaborated in Circular No. 24/Coated Fabric/88-Cx.1 dated 02/09/1988 of CBEC that no process of weaving or interlacing is involved in manufacture of the item. Whereas the process of weaving gives rise to a fabric, the dot printing process starts with a finished woven fabric. Thus, evidently fusible interlining cloth manufactured through dot printing process cannot be classified under sub-heading 5208 which contains only woven fabrics of cotton.

10. The appellant also claimed during hearing that their product merits classification under sub-heading 5209 or 5212, if not under 5208. We find that similar logic as in the case of Sub-heading 5208 applies in respect of the Sub-headings 5209 and 5212 also. Sub-heading 5209 contains products namely *woven fabrics of cotton, containing 85% or more by weight of cotton, weighing more than 200 G/M²* and Sub-heading 5212 contains products namely *other woven fabrics of cotton*. It is seen that both the Sub-headings 5209 and 5212 contain products, which are basically woven fabrics of cotton. On the same reasoning as in paragraph 9 above, it can be concluded that fusible interlining cloth is not a woven fabric and hence it cannot be classified under any of the said Sub-headings 5209 and 5212 of the Tariff.

11. The contention of the respondents is that the product merits classification under sub-heading 5903. Sub-heading 5903 contains products namely *textile fabrics, impregnated, coated, covered or laminated with plastics, other than those of heading 5902*. Chapter note 2 of chapter 59 of the Tariff provides the description of products which should come under sub-heading 5903. Note 2(a) says that textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square metre and whatever the nature of the plastic material (compact or cellular), barring a

few exceptions are to be classified under sub-heading 5903. It is clear from the sample produced by the appellant as well as the dot printing process that the product namely fusible interlining cloth qualifies the tests to be classified under sub-heading 5903 of the Tariff. It is seen from the sample of the fusible interlining cloth that the coating of polyethylene can be seen with naked eye, can be bent manually around a cylinder and is not completely coated with plastics. The representative of the appellant strongly pleaded that their product is partially coated with plastic and bears design. However, on examination of the sample, it is seen that the pattern of dots that form on the surface of the product is due to the very process of dot printing and the same is visible on the entire surface of the cloth. Thus, it cannot be said that the cloth is partially coated with plastics and that the dotted design resulted from the treatment leading to such coating. Therefore, the claim of the appellant's advocate does not hold good and the exclusion clause (4) of chapter note 2(a) of Chapter 59, which is essential for being excluded from Chapter 59, is not applicable to fusible interlining cloth manufactured by the appellant. From the above discussion, it is clear that the subject product merits classification under sub-heading 5903 of the Tariff.

12. The appellant has heavily relied upon the decision of Goodswear Fashion Pvt. Ltd. reported in 2019 (23) GSTL 154(AAR-GST). On perusal of the decision of the said decision of the AAR, Uttarakhand, it is seen that it has not taken into account the relevant circulars of CBEC relating to classification of fusible interlining cloth and hence it cannot be said to reflect the true legal position on this issue.
13. In view of the above discussions, we find no merit in the instant appeal. We dismiss the appeal filed by M/s. Sadguru Seva Paridhan Pvt. Ltd. and uphold the WBAAR's Ruling No. 33/WBAAR/2019-20 dated 11/11/2019.

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



(Devi Prasad Karanam)
Member

West Bengal Appellate Authority
for Advance Ruling



(A.P.S. Suri)
Member

West Bengal Appellate Authority
for Advance Ruling