


GUJARAT AUTHORITY FOR ADVANCE RULING, GOODS AND SERVICES TAX, A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
--	---

ADVANCE RULING NO. GUJ/GAAR/R/2022/46

(In Application No. Advance Ruling/SGST&CGST/2022/AR/34)

Dated: 18 / 10 / 2022

Name and address of the applicant	:	M/s Shree Ambica Geotex Pvt. Ltd., 15, Saijpur Shahwadi Road, Saijpur-Gopalpur, Narol, Ahmedabad-382 405
GSTIN of the applicant	:	24AALCS5822J1Z4
Date of application	:	23-06-2022
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a)
Date of Personal Hearing	:	08-07-2022 and 26-09-2022
Present for the applicant	:	Shri Hem Chhajed, CA

Brief Facts

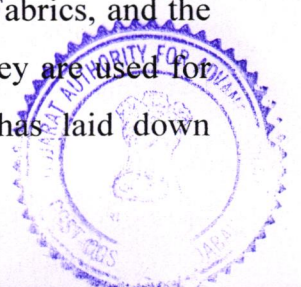
M/s Shree Ambica Geotex Pvt. Ltd, hereinafter referred to as ‘the applicant’ for the sake of brevity, submitted that it is engaged in the business of manufacture and sale of textile products and articles like Geomembranes. The applicant has submitted that it also produces intermediate products like Tapes/Strips, but almost entire quantity of these intermediate products is used within the factory in relation to manufacture of the final products, viz. Geomembranes. The applicant is licensed by the Bureau of Indian Standards (BIS) for manufacture of the above referred goods in accordance with IS 15351:2015 and IS 7903 : 2017. The Indian Standard i.e. IS 15351:2015 is for ‘Agro-textiles – Laminated HDPE woven Geomembranes for water proof lining’.

2. The applicant has submitted that the present application is filed for classification of the final products namely, Geomembranes under the GST Tariff and claim that Geomembranes merit classification under Heading 5911 Sub Heading 59111000, as textile products and articles for technical uses.

3. The applicant has submitted details like manufacturing process, materials used for manufacture, use of the product as follows:

4. Geomembrane

4.1 The BIS has published IS 15351:2015 for the products, namely, Laminated HDPE woven Geomembrane for waterproof lining. These goods are also known and referred to in the trade by various other nomenclatures like Agro-textiles, Geo-grid Fabrics, and the like. However, the products are basically in the nature of fabrics, and they are used for water proofing in ponds, and for agricultural applications. The BIS has laid down



specifications for different types of woven Geomembranes. The applicant has BIS licence to manufacture different types of woven Geomembranes.

4.2 Manufacturing process

(a) The basic raw materials for manufacturing Geomembrane is High Density Polythene Granules (HDPE Granules) and Master Batch containing carbon black. These raw materials are melted in Extruder by applying heat and friction, and they are extruded in form of thin sheet, in molten form. Such thin sheet in molten stage is passed through a quenching tank containing water, to form a solid thin sheet, which is then slit into tapes/strips. Such slit tapes/strips are passed through hot plate for orientation process so as to impart strength. The width of such tapes/strips is below 5 mm, and they are wound on metal pipes for producing bobbins.

(b) These tapes/strips are then loaded on circular looms or flat looms for weaving purpose. By employing weft and warp method of weaving, woven fabrics are produced by using the tapes/strips of width below 5 mm. These are uncoated woven fabrics of plastic; and such fabrics in rolls are further processed for producing coated/laminated fabrics on extrusion lamination machine within the applicant factory.

(c) Rolls of uncoated fabrics loaded on extrusion lamination machine are drawn for feeding into the laminating unit. Mix of Low Density Polythene (LDPE), LLDPE and colour/black master batch is fed into the extruder through a Hopper, and melted by applying heat and friction, for forming a thin film in a molten state. Uncoated fabric is thus coated/laminated on one side by this molten mix, and passed over a chill roll containing chilled water. Edges of coated/laminated fabrics are trimmed and then wound on steel pipes on a winder.

(d) Same way, the other side of the fabric is also coated/laminated to form a waterproof fabric. For increasing thickness of such fabric, one side coated/laminated fabrics are sandwiched laminated with a film and then laminated again with one more layer of fabric to form a coated/laminated fabric of higher thickness. Trimming of edges is undertaken, and such coated/laminated fabric in rolls is subjected to inspection, where defects, if any, are removed, and the ends of the fabrics are rejoined by heat sealing. After inspection of such coated/laminated fabric rolls, they are sent for overlap sealing to increase the width of the coated/laminated fabric, and then they are cut in required length to obtain the required size of Geomembranes. These final products i.e. products or articles of textile fabrics are packed, and are ready for sale and supply.

4.3 The use of the product

HDPE Reinforced Geomembrane in Biofloc Ponds:

- i) HDPE Reinforced Geomembrane lined aquaculture ponds teamed with Biofloc technology is a highly beneficial bacterial colony based culture which keeps diseases at bay making it an ecologically sustainable symbiotic system.



- ii) Biofloc technology ensures minimal water exchange and keeps the pH levels steady by feeding on the nitrogen produced by the fish & shrimps. In conventional farming where Biofloc technology is not used nitrogen is flushed out through water exchange every 25-30 days to keep the aquatic animals disease free. The Biofloc uses up the nitrogen and converts it into proteins for the animals.
- iii) For Biofloc technology to be used, Geomembrane lined ponds are a must. Ponds lined with Rainshield Reinforced Geomembranes insulate the animals from diseases.
- iv) Biofloc cuts down fish meal giving cost advantages to the farmers. Production per unit area is high in biofloc system.
- v) The stocking density of animals in Geomembrane lined biofloc pond is twice the density of an ordinary unlined pond.
- vi) Aquaculture ponds using Biofloc technology can bring big benefits to aquaculture farmers.

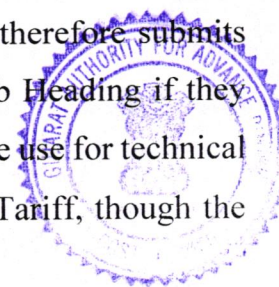
5. The applicant has submitted that Heading 5911 of the Tariff is the most appropriate classification for the products viz. Geomembrane, because the product is textile products for technical uses. The product is in the nature of textile fabrics coated or laminated with plastic processed further, and used for technical purposes. Further submitted that none of the exclusions provided under any of the Notes to the relevant Chapters of the Tariff is attracted for classification of the goods in question, and therefore the goods in question are not excluded from Chapter 59 of the Tariff for classification.

6. The applicant has submitted the scope of Heading 5911 as follows:

i. Textile products and articles, for technical uses, specified in Note-7 to Chapter- 59 are covered under Heading 5911 by virtue of the broad description of the goods for this heading. Textile fabrics coated, covered or laminated with rubber, leather or other material used for technical purposes are specified against Sub Heading 59111000. It is explained under note (1) of part (A) of Heading 59.11 of HSN that 'other material' includes plastics. Sub Heading 591190 covers other textile products and articles, for technical uses, specified in Note-7 to Chapter 59.

ii A plain reading of the broad description of the goods against Heading 5911 shows that Textiles products and articles are covered under this classification. The same way, a plain reading of description of the goods against Sub Heading 59111000 shows that it covers Textile fabrics coated, covered or laminated with rubber, leather or other material (e.g. plastics) used for technical purposes.

iii Thus, Textile products and Textile fabrics for technical uses are covered under the above classification, subject to Note-7 of this Chapter. The applicant therefore submits that Geomembrane would fall for classification under this Heading/Sub Heading if they were textile products and textile fabrics, subject to other requirements like use for technical purposes. But the terms Textile and Fabric are not defined under the Tariff, though the



expression textile fabrics is clarified under Note-1 of Chapter 59 as the expression applicable only to the woven fabrics of Chapters 50 to 55 and Headings 5803 and 5806 etc. A perusal of Chapters 50 to 53 and Headings 5803, 5806, 6002 to 6006 referred to in Note No.1 of Chapter 59 also shows that the terms Fabrics or Textile are not defined or clarified there under.

iv Since Heading 5911, Sub Heading 59111000, is for Textile products and articles, and Textile fabrics coated, covered or laminated and used for technical purposes, it would be relevant to find out what is "Textile products and articles" and "Textile fabrics".

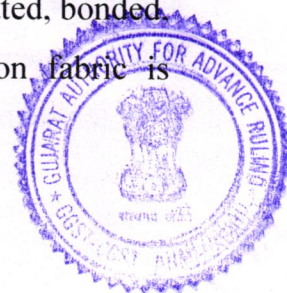
7. Shree Ambica submits as follows:

i. The Hon'ble Supreme Court in case of Porritts & Spencer (Asia) Ltd. 1983 (13) ELT 1607 (SC) has held that the word "textiles" was derived from the Latin "texere" which meant "to weave", and it meant any woven fabrics. It is further held that when yarn of any material and description was woven into fabrics, what came out into being was a "textile" and it was known as such. Phenomenal advancement in science and technology resulting in a large variety of fabrics manufactured from materials till then unknown or un-thought of and new techniques invented for making fabric out of yarn have also been taken into consideration by the Hon'ble Supreme Court while laying down the law that any woven fabrics were "textiles" irrespective of the materials used, technique of weaving adopted and the end-use of the product.

ii Plastic is a well known textile material and various varieties of yarns and fabrics are produced out of plastic materials, namely, terelene, polyester, nylon, acrylic, texturized yarns, silicon yarns, etc. As held by the Hon'ble Apex Court, phenomenal advancement in science and technology would result in different and new variety of fabrics manufactured from materials unknown or unthought of till a particular time; but fabrics produced out of any such materials by weaving were textile fabrics i.e. textile products

8. The applicant submits that Geomembranes are manufactured by weaving of fabrics on circular looms as well as flat looms. Geomembranes are in the nature of fabrics which are processed further for imparting strength, water proofing quality and such attributes; but the basic nature of both the products is that of fabric. Geomembranes are produced out of plastic material, but fabrics produced out of plastic material are textile fabrics i.e. textile products.

9. The applicant submits that Fairchild's Dictionary of Textiles is considered to be the most reliable book on textile terms and their meaning. The term 'textile' is explained therein as a word derived from the Latin term "textilis", based on the verb "texere", to weave. It is further explained that textile was a broad classification of any material that can be worked out into fabric, such as fabrics and yarns, including woven, knitted, bonded, felted, needle punched fabrics; lace and crocheted goods. The expression fabric is



explained in Fairchild's Dictionary as a cloth that was woven, knitted, braided, netted, felted or pleated with any textile fibre, or was a bonded web.

9.1 Further, it is submits that the expression "Weave" is explained in this dictionary as "the method or process of interlacing two yarns or similar materials so that they cross each other at right angles to produce woven fabric. The warp threads or ends run lengthwise in the fabric, and filling threads (weft or picks) run from side to side".

10. The applicant has submitted that Hon'ble Gujarat High Court has rendered a judgement in case of M/s. CTM Technical Textiles Ltd. V/s. Union of India – Special Civil Application No.8332/2020, after considering the judgement of the Hon'ble Supreme Court in case of Porritts & Spence (Asia) Ltd. and the dictionary meaning of the terms Textile, Fabrics etc. In the judgement rendered on 24.12.2020, the Hon'ble Gujarat High Court has considered a dispute of classification of two products, namely, Geo-grid fabrics and Agro Shed Net. The Revenue's stand that these goods were articles of plastic because they were made of HDPE tapes and also the Revenue's reliance on judgement of the Hon'ble Madhya Pradesh High Court in case of Raj Packwell Ltd. 1990 (50) ELT 201 (M.P) have not been accepted by the Hon'ble Gujarat High Court; and it is also held that Raj Packwell Ltd. was not a case where classification of fabric of plastic was considered.

11. The jurisdictional High Court, has in terms held that the judgement of the Hon'ble Supreme Court was an answer to what was the Revenue argued about what was textile, and whether woven fabric of plastic material was a textile product or not (para 55 of the judgement); that plastic was used for producing textile fabrics, and raw material for various fabrics was plastic (para 53 of the judgement); that the judgement in Raj Packwell Ltd. had nothing to do with HDPE fabric; and that woven fabric would be textile irrespective of the method of weaving through any technique and the materials used for weaving may also be anything like cotton, silk, rayon, nylon or any other description or made out of any other material. But when any such material was woven into fabric, what came into existence was a textile.

12. The applicant has further submitted that it is clear from the judgements of the Hon'ble Supreme Court as well as the Hon'ble Gujarat High Court that textiles means any woven fabrics, and weaving adopted may be simple warp and weft pattern or it could be any other process or technique. It is also clear that fabrics produced by weaving technique were textiles, and they were to be treated as textile fabrics even for the purpose of taxing statute. Even in common parlance, fabrics are considered to be those goods which are produced as a result of any weaving methods because all woven fabrics are considered to be textile goods or textile fabrics among the people producing such goods, people dealing in such goods, people using such goods and people connected with textile trade. The applicant has placed reliance on the ruling pronounced by the Gujarat Authority of

Advanced Ruling in the case of M/s. Texel Industries Ltd. Vide AAR No. GUJ/GAAR/R/2022/11 dated 07.03.2022 wherein it has been affirmed that Geomembranes are classifiable under Heading 5911

13. The applicant submits that Geomembrane is woven fabrics, and hence textile goods, which are coated or laminated with plastic; and is used for technical purposes. Therefore, Geomembrane merit classification under Heading 5911, Sub Heading No.59111000 of the Tariff.

14. The applicant submits that the broad description of the goods against Heading 5911 provides that textile products and articles for technical uses should be as "specified in Note-7 to this Chapter". Note-7 of Chapter 59 clarifies that "Heading 5911 applies to the following goods, not falling in any other Heading of Section-XI". Clause (b) of Note-7 provides for inclusion of textile articles of a kind used for technical purposes under Heading 5911.

15. The applicant further submits that products like Geomembranes in question are textile goods i.e. textile articles in view of the law laid down by the Hon'ble Supreme Court and also by the Hon'ble Gujarat High Court, and also considering the meaning of textile in textile technology as well as in common parlance. Textile articles include textile fabrics, because textile fabrics are specified at Sub Heading 59111000 of the Tariff. By virtue of Note-7(b) of Chapter 59, Geomembranes are covered under Heading 5911. It is emphasized that Geomembranes are admittedly textile fabrics, and are coated or laminated with plastic; and Geomembranes are used for technical purposes like water proofing of Ponds and lining of fields for agricultural applications. It is submitted that considering this position, **the Authority for Advance Ruling under GST for Daman, Diu and D&NH has decided in cases of Emmbi Industries Ltd. 2019 (29) GSTL 105 (AAR-GST) that Geomembrane for waterproof lining and used as pond liner laminated textiles were classifiable under Heading 5911.**

16. The applicant submits that any contrary decision based on judgement in case of Raj Packwell Ltd. (supra) and without considering the law of the land laid down by the Hon'ble Supreme Court in case of Porritts & Spencer (Asia) Ltd., and also the judgement of the jurisdictional High Court in case of CTM Technical Textiles Ltd. is in the nature of per incuriam; and hence not requiring any consideration being contrary to the binding judgements of the Hon'ble Supreme Court and the Hon'ble High Court.

Textile products and articles

17. The applicant submits that woven fabrics come into existence at intermediate stage, and such woven fabrics are processed further to manufacture textile fabrics coated or laminated with plastic for using in respect of technical purposes. The intermediate product, namely, woven fabrics fall under Heading 5407 of the Tariff. Such textile fabrics are processed further as aforesaid. Further submits that Note-1 of Chapter 59 clarifies that the



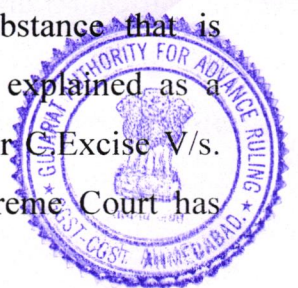
expression "textile fabrics" applies to woven fabrics of Chapters 50 to 55 and a few other products specified in the Note. Woven fabrics of Heading 5407 are thus textile fabrics in view of this Note also. When such textile fabrics are processed further and textile products/articles in the nature of textile fabrics coated or laminated with plastic meant for being used for technical purposes are manufactured, such textile products/articles merit classification under Heading 5911 of the Tariff.

Products and Articles

18. The applicant submits that the broad description of goods under Chapter 59 of the Tariff clarifies that the goods covered there under are Impregnated, Coated, Covered or Laminated textile fabrics; Textile articles of a kind suitable for industrial use. A perusal of Tariff Items 5901 to 5903 shows that these three Tariff Items cover Textile fabrics. A perusal of the other Headings i.e. T.I. 5904 to 5910 shows that they cover Textile fabrics which have been processed further, i.e. textile fabrics subjected to further processing and operations. Reference of goods like Floor coverings with jute base in Heading 5904, Insulating tape and electrical of cotton in Heading 5906, Fabrics covered partially or fully with textile flocks in Heading 5907, Wicks and gas mantle fabrics in Heading 5908, Textile hose piping and similar textile tubing in Heading 5909, and Transmission or conveyor belts or belting of textile material in Heading 5910 shows that the goods classified there under are not mere textile fabrics, that is to say, fabrics brought into existence only by weaving method/s. This Heading Nos. 5904 to 5910 are for classifying products which were not textile fabrics, but they were textile fabrics processed further, and subjected to other operations. It is thus clear that there is a distinction between textile fabrics (which may be impregnated, coated or covered) on one hand, and goods obtained by subjecting textile fabrics to further operations and processes on the other hand.

18.1 It is further submits that Heading 5911 specifically refers to Textile products and articles, for technical uses, specified in Note-7 to this Chapter. The broad description of the goods therein makes it clear that the goods classified under Heading 5911 of the Tariff are not textile fabrics, that is to say, products brought into existence by mere weaving; but the goods classified there under are textile products and articles, which are produced upon subjecting textile fabrics to further operations or processes. Such textile products and articles cease to be textile fabrics for the purpose of classification under Chapter 59 of the Tariff.

19. The applicant submits that the terms products and articles are not defined under the Tariff. Dictionary meaning of the term Product is an article or substance that is manufactured or refined for sale. The term "article" in Dictionary is explained as a particular item or object, typically one of a specified type. In Collector of Excise V/s. Protein Products of India 1988 (38) ELT 749 (SC), the Hon'ble Supreme Court has



observed that the word product was defined in Webster's Comprehensive Dictionary as anything produced or obtained as a result of some operation or work.

20. The applicant submits that the Appellate Tribunal, Delhi in case of M/s. Bharat Rubber Regenerating Co. Ltd. V/s. Collector of Central Excise, 1984 (18) ELT 85, has observed that reclaimed rubber sheets having come out of a definite process of manufacturing or production, they were a product in their own right. It is also observed by the Appellate Tribunal that milk was a product but when we talk of "milk products", we do not include therein milk itself but only the products made out of milk. On that basis, the Appellate Tribunal held that rubber was also a product, but the expression rubber products would include products made out of rubber and not rubber as such.

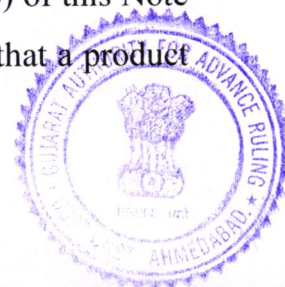
21. Shree Ambica submits that there are several other decisions and judgements on the meaning of these two terms, namely, product and article, but the common thread running through such case law is that a product was an article produced or obtained as a result of some operation or work.

22. The applicant submits that in the context of Heading 5911 of the Tariff, textile products and articles are classified there under; and not textile fabrics as such. When textile fabrics are subjected to any other operation/s and/or process/es, what emerges is a textile product and textile article. The textile fabrics i.e. a product obtained by weaving ceases to be a textile fabrics when it is subjected to further operation/s and/or process/es because what emerges is a textile product and textile article.

23. The applicant further submits that Geomembranes are produced by subjecting textile fabrics to further operations and processes, and therefore they are in the nature of textile products and articles meriting classification under Heading 5911 of the Tariff.

Products and Articles for technical uses

24. The applicant submits that Textile products and articles for technical uses are classified under Heading 5911. The term technical uses is not defined under the Tariff, nor anywhere else like Dictionaries of English language, Dictionary for Scientific and Technical Words or the Law Lexicon. Note-7 of Chapter 59 is referred to under Heading 5911; and therefore a general idea could be gathered from Note-7 about what type of textile products and articles were for technical uses. But in Note-7 also, a few products and article are specifically referred to under Clause (a), whereas Textile articles of a kind used for technical purposes are separately referred to under Clause (b), while giving a few examples of such textile articles. The applicant submits that various types of goods like Bolting cloth, Straining cloth of a kind used in oil presses etc. are referred to under Clause (a) of Note-7, signifying that such fabrics or cloth cease to be textile fabrics for the purpose of classification under Heading 5911 of the Tariff, and such products are considered to be textile products because they are meant for technical uses. Under Clause (b) of this Note also, products like textile fabrics and felts are referred to, again signifying that a product



ceases to be textile fabrics for the purpose of classification under Heading 5911 when it is obtained by subjecting textile fabrics to further operation/s and process/es.

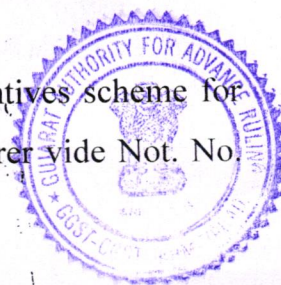
25. It is submitted by the applicant that under Heading 5911 of Harmonious System of Nomenclature, it is explained that the expression Textile articles of a kind used for technical purposes are any of the fabrics which have been made up and also textile fabrics and felts of a kind used in paper making or similar machines. It is also explained under HSN that the textile articles of this Heading may incorporate accessories in other material provided the articles remained essentially the articles of textile.

26. The applicant submits that the operations like overlap sealing, stitching, cutting and sealing edges, affixing eyelets, etc. are the operations/processes undertaken by the applicant on textile fabrics for producing Geomembrane. Such operations and processes are undertaken within the factory of production where textile fabrics are produced first, and then they are processed further by subjecting them to various operations as shown in the product brochures. The uses of these products are not ordinary uses of textile fabrics, but Geomembranes are used for technical purposes. Heading 5911 of the Tariff is therefore most appropriate for Geomembrane; because they are textile products and articles for technical uses.

27. The applicant submits that Woven fabrics emerging at intermediate stage in its factory are admittedly produced from strip of plastic having less than 5 mm width. **As observed by the Hon'ble Gujarat High Court in the above referred case of M/s. CTM Technical Textiles Ltd., nylon fabrics, terelene fabrics, polyester fabrics etc. are well known varieties of fabrics, and the raw material for all such fabrics is plastic.** The Hon'ble Supreme Court has also taken note of phenomenal advance in science and technology and also wondrous variety of fabrics manufactured from materials hitherto unknown or unthought-of. Woven fabrics of strip and the like of HDPE is also woven fabrics under Heading 5407 of the Tariff, because they are woven out of materials of Heading 5404. Such fabrics are textile fabrics by virtue of Note-1 of Chapter 59, and also in view of the law laid down by the Hon'ble Supreme Court as well as the Hon'ble Gujarat High Court in the above referred cases. The operations like overlap sealing, stitching, cutting and sealing edges, affixing eyelets, etc. are the operations/processes undertaken by the applicant on textile fabrics for producing Geomembrane. Uses of these products are not ordinary uses of textile fabrics, but Geomembranes are used for technical purposes, and therefore they are products most appropriately falling under Heading 5911, Sub Heading 59111000, because such textile products and articles are used for technical purposes.

28. The applicant vide letter dated 7-7-22 received by mail dated 7-7-22 submitted as follows:

- i. The Ministry of Textile implemented a production linked incentives scheme for textiles in order to provide incentives to the textiles manufacturer vide Not. No.



12015/03/2020-IT dated 24-9-21. The goods viz. Geo Textiles including Geomembranes are listed under the category of technical textile products in Annexure-III to the Notification, at Sr. No. 1

- ii. Geomembranes have been classified under HSN 54071099 in the above Notification in as much as these are technical textiles products of Chapter 54.
- iii. The product manufactured by M/s Shree Ambica is such textile fabrics are coated/laminated form of Geomembranes and hence aptly classifiable under Heading 5911 as coated technical textile.

29. The applicant vide letter dated 11-7-22 has submitted Test Report No. 100/04-1819/64 dated 28-6-18 issued by Indian Institute of Packaging (An autonomous body under the Ministry of Commerce & Industry, Govt. of India) for the product 'Laminated HDPE Fabric for canal lining' (Type-I) wherein 'width of Tape' is mentioned 3.1 mm C.L. Ref, Result obtained 3.0 mm and Remarks mentioned 'complies'.

30. **Question on which Advance Ruling sought**

- 1. Whether the product, namely, Geomembranes merits classification under Heading 5911, Sub Heading 59111000 or Sub Heading 59119090, as Textile products, coated, covered or laminated with plastic, used for technical purposes?

Personal Hearing

31. Personal hearing granted on 8-7-22 and 26-9-2022 was attended by Shri Hem chhajed, CA and he reiterated the submission.

Revenue's submission:

32. Revenue has neither submitted its comments nor appeared for hearing.

Discussion and Findings

33. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by authorised signatory, during the personal hearing proceedings on 26-9-2022 before this authority. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law.

34. At the outset we would like to make it clear that the provisions of CGST Act and GGST Act are in "*pari material*" and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the GGST Act.



35. The main issue here is to decide the correct classification of product Geomembranes for water proof pond Lining. Classification refers to the determination of the nature and character of the goods manufactured and supplied by the applicant. To decide the correct classification, we have to refer the ingredient used for manufacture the impugned goods, manufacturing process and technical uses of the goods. All these factors cumulatively help to decide the correct classification of the goods viz. Geomembranes.

36. The main raw materials for manufacturing Geomembranes are High Density Polythene Granules (HDPE Granules), LDPE, LLDPE, UV and Master Batch containing carbon black.

36.1 The applicant has submitted the manufacturing process of Geomembranes and as per the submission first stage of the goods in question comes in existence is Tape/Strips. A thin solid sheet is manufactured by applying the heat on HDPE granules which is then slit into tapes/strips.

36.2 The width of such tapes/strips is below 5 mm, and they are wound on metal pipes bobbin. These tapes/strips of below 5 mm are then loaded on circular looms or flat looms and by employing weft and warp method of weaving, woven fabrics are produced.

36.3 Rolls of uncoated fabrics loaded on extrusion lamination machine are drawn for feeding into the laminating unit. Mix of Low Density Polythene (LDPE), LLDPE and colour/black master batch is fed into the extruder through a Hopper, and melted by applying heat and friction, for forming a thin film in a molten state.

36.4 Uncoated fabric is thus coated /laminated on one side by this molten mix, and passed over a chill roll containing chilled water. Edges of coated/laminated fabrics are trimmed and then wound on steel pipes on a winder. Same way, the other side of the fabric is also coated /laminated to form a waterproof fabric. For increasing thickness of such fabric, one side coated/laminated fabrics are sandwiched laminated with a film and then laminated again with one more layer of fabric to form a coated/laminated fabric of higher thickness. Thereafter overlap sealing is done to increase the width of the coated/laminated fabric, and they are cut in required length to obtain required size of Geomembranes.

36.5 Now we discuss the flow of classification for the above products which are arising during the course of manufacturing. The first product which comes into existence is the "HDPE Tapes Less Than 5 mm in Width" and **Note 1 (g) of Section XI (Textile and Textile Articles) excludes only strips of plastic where the width is exceeding 5 mm.** The said wording read as under:

Note 1 (g) of Section XI (Textile and Textile Articles)

"1. This Section does not cover :

(a)

(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 basket ware or wickerwork of such monofilament or strip (Chapter 46)**".

From the above Section Note 1(g) to Section XI, it would be observed that Plastics Strips of width less than 5 mm shall be covered under Section XI (Textile and Textile Articles) which covers Chapter 50 to Chapter 63 of HSN.

36.6 Further, uncoated fabric of Geomembranes is manufactured by weaving of less than 5mm of tapes/strips of HDPE granules by wrap and waft method on circular or flat loom and these uncoated fabrics is laminated with LDPE, LLDPE, UV on both sides " and no doubt the same are covered under HSN 5404 90 20. As Section XI covers Textile & Textile Articles and Section Note 1(g) excludes only strips of plastic where the width is exceeding 5 mm. Heading 5404 which reads as under :

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

36.7 The Explanatory Notes to the HSN (**Pg. 556 of Vol. III of Harmonized Commodity Description & Coding Systems**) also confirms that the said HDPE Tapes and Strips less than 5 mm are covered under Heading 5404. Explanation of this Heading 54.04 covers goods as per Clause (1) & (2) and relevant clause (2) is reproduced;

"(2) Strip 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 a by extrusion or cut from wider strips or from sheets.

Provided their apparent width (i.e. in the folded, flattened, compressed or twisted state) does not exceed 5 mm, this heading also covers :

- (i) Strip folded along the length.*
- (ii) Flattened tubes, whether or not folded along with the length.*
- (iii) Strip, and articles referred to in (i) and (ii) above, compressed or twisted.*

If the width (or apparent width) is not uniform, classification is to be decided by reference to the average width.

This heading also includes multiple (folded) or cabled strip and the like".

36.8 The above "HDPE strips or tapes less than 5 mm" of 5404 90 20 are Woven into Fabrics shall be covered under Heading 5407. HSN 5407 is reproduced as under :

5407 - Woven Fabrics of Synthetic Filament Yarn, including Woven Fabrics obtained from materials of Heading 5404".

➤ *"5407 20 - Woven Fabrics obtained from strip or the like*

Woven Fabrics from HDPE Strips and Tapes of less than 5 mm of Heading 5404 shall be covered under Heading 5407 20 of the HSN. The above Woven Fabric is subjected to sandwich lamination of plastics and brings into existence a new product viz. Geomembranes pond lining fabrics. The said Geomembranes pond lining fabrics are supplied in piece form or are in cut to length as per the specification of the customer.



36.9 In this regard, we note that the Strips made from HDPE granules, have width less than 5 mm and are then weaved. Thus Section note 1(g) to Section XI- Textile and Textile Articles has been complied with. The phrase 'for technical use' is mentioned in the Chapter Notes to HSN 5911.

Heading 5911 is read as under :

"5911 - Textile products and articles, for technical uses, specified in Note 7 to this Chapter; such as Textile fabrics, felt and feltlined woven fabrics, coated, covered or laminated with rubber, leather or other material of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams); Bolting cloth, whether or not made up; whether or not impregnated or coated, of a kind commonly used in other machines, Cotton fabrics and articles used in machinery and plant, Jute fabrics and articles used in machinery and plant, Textile fabrics of metalized yarn of a kind commonly used in paper making or other machinery, Straining cloth of a kind used in oil presses or the like, including that of human hair, Paper maker's felt, woven, Gaskets, washers, polishing discs and other machinery parts of textile articles".

5911 10 00 - Textile fabrics, felt and feltlined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams)".

- i. In this regard, as the phrase technical uses has been stipulated as a criteria for Tariff 5911, we thereby give weightage to the 'functional use' / 'end use classification' concept to determine the classification of 'Geomembrane'.
- ii. End Use Classification/ Functional use concept for Geomembrane:

The technical uses of HDPE reinforced Geomembrane in Biofloc ponds has been submitted by the applicant and we hold that Geomembrane has technical uses.

36.10 Now, we refer to Chapter Note 7 to Chapter 59 of Tariff/HSN and HSN 5911 which covered the phrase 'technical use' of Textile Fabrics and are reproduced as under as under :

Chapter Note 7 to Chapter 59 of Tariff/HSN is read as under :

7. Heading 5911 applies to the following goods, which do not fall in any other heading of Section XI

(a) Textile products in the piece, cut to length or simply cut to rectangular (including square) shape (other than those having the character of the products of Heading 5908 to 5910), the following only :

(i) Textile fabrics, felt and felt line woven fabrics, coated, covered or laminated with rubber, leather or other materials, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams);

(iv) Flat Woven textile fabrics with multiple warp of weft whether or not felted, impregnated or coated, of a kind used in machinery or for other technical purposes."

36.11 Construing the wordings of Chapter Note 7(1)(a) to Chapter 59 that textile fabrics



coated with 'other materials' used for technical purposes are included in this Chapter, we hold that the goods Geomembrane, though coated with Plastic but used for technical purposes finds place in the Tariff 5911, for the dual reason that the phrase 'other materials' used in this Tariff is vast to include plastics also; coupled with the technical use of Geomembrane.

36.12 We find that in Clause (A) of HSN 59.11 of Harmonised System of Nomenclature (Page No. XI-5911-1) has mentioned that in 'other material' includes plastic also. Clause (A) of HSN 59.11 of HSN is reproduced as under:

(A) Textile Fabrics and other textile products, for technical uses, in the piece, cut to length or simply cut to rectangular (including square) shape

Provide that they do not have the character of the products of heading 59.08 to 59.10, these products are classified here (and not in any other heading of Section IX), whether in the piece, cut to length or simply cut to rectangular (including square) shape.

This group covers only the textile fabric and other textile products as defined in Note 7 (a) to the Chapter, and listed at (1) to (6) below.

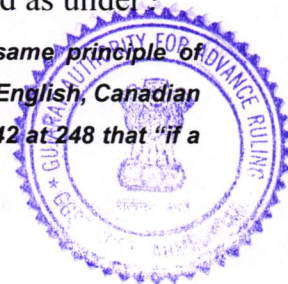
*(1) Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or **other material (e.g. plastic)**, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams).*

36.13 We find that the impugned goods Geomembranes have purely technical use as it is used in aquaculture ponds teamed with Biofloc technology which is a highly beneficial bacterial colony based culture which keeps diseases at bay making it an ecologically sustainable symbiotic system. For Biofloc technology to be used, Geomembranes lined ponds are a must. Ponds lined with Geomembranes insulate the animals from diseases. The stocking destiny of animals in Geomembrane lined biofloc pond is twice the density of an ordinary unlined pond.

36.14 Thus, in light of the following: technical uses of Geomembrane, Geomembrane passing the test of Section note XI(1)(g) to Section XI, Geomembrane satisfying the test of Chapter 59 Note 7(1)(a); we are of the view that 'Geomembrane' is a textile article. We find that our view that Geomembrane is a textile article is in compliance to the H'ble Apex Court view held in *Porritts & Spencer (Asia) Ltd.* 1983 (13) ELT 1607 (SC).

36.15 The Hon'ble Supreme Court of India in the case of *PORRITTS & SPENCER (ASIA) LTD. Vs. State of Haryana reported in 1983(13) ELT 1607 (S.C.)* in Para 5 has observed as under :

5. It was pointed out by this Court in Washi Ahmed's case (supra) that the same principle of construction in relation to words used in a taxing statute has also been adopted in English, Canadian and American Courts. Pollock B. pointed out in Gretfell v. I.R.C. (1976) 1 Ex. D. 242 at 248 that "if a



statute contains language which is capable of being construed in a popular sense, such a statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning, of course, by the words 'popular sense' that which people conversant with the subject-matter with which the statute is dealing would attribute it."

36.16 The applicant has referred the Ruling pronounced by the Authority for Advance Ruling, Daman, Diu & DNH in case of M/s. EMMBI Industries Ltd. reported in 2019 (29) GSTL 105 (AAR- GST) wherein held that,

*Geomembranes for water proof lining - Classification of - "Laminated High Density Poly Ethylene HDPE Woven Geomembrane for water proof Lining Type-II, IS:15351:2015" - Product known in market as agro textiles - Main product around which whole process of manufacturing revolves is HDPE Woven Fabrics - Perusal of Chapter Note 1 to Chapter 39 of Customs Tariff Act, 1975 making it clear that textile materials of Section XI excluded from scope and terms of plastics and cannot be covered under scope of Heading 3926 of HSN - HDPE Tapes/Strips of less than 5 mm specifically covered under HSN Heading 5404 as Synthetic Textile Material and specially woven fabrics from said HDPE Tapes/Strips covered under HSN Heading 5407 20 - HDPE Woven Fabrics referred as Woven Fabrics made from Synthetic Textile Material subjected to LDPE Coating and Lamination referred as Sandwich Lamination - Two or more pieces of said Sandwiched Laminated Geomembrane fabrics joined/seamed together by a suitable heat air blower sealing process keeping into requirement of customer based on which said fabrics cut and joint and cut sealed as per standard sealing process to be used as pond liner - **Such Laminated Coated Fabrics used for technical purpose and is specifically covered under scope of HSN Heading 5911 10 00 - Product fit for using as pond liner laminated textiles products and correctly classifiable under HSN Code 5911.** [paras 7.3, 8, 8.1, 8.2, 8.3, 9]*

36.17 We find that Authority for Advance Ruling, Gujarat in case of M/s. Texel Industries Ltd. vide Advance Ruling No. GUJ/GAAR/R/2022/11 has held that,

'Geomembrane is classified at HSN 5911, tariff item 59111000'.

36.18 It is observed that in both the above Ruling of Authority of Advance Ruling has held that the product viz. Geomembrane merits classification under HSN 59111000. The issue and facts in both the Advance Rulings are similar to the instant case and therefore it has persuasive value in the applicant identical matter.

37. In view of the above findings and discussion, we pass the Ruling:

Ruling

Geomembrane merits classification at HSN 5911, tariff item 59111000.

(MILIND KAVATKAR)
MEMBER (S)



(AMIT KUMAR MISHRA)
MEMBER (C)

Place: Ahmedabad
Date: 18.10.2022