

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/01/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/27)

Date : 11.03.2020

Name and address of the applicant	:	M/s. Mount Fab Packaging LLP. Plot No. 23, Subh Laxmi Industrial Estate, Nr. Ramdev Masala, Changodar, Ahmedabad.
GSTIN of the applicant	:	24ABEFM4330J1ZG
Date of application	:	08.05.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(5) Determination of the liability to pay tax on any goods or services or both.
Fees payment details	:	CIN : ORBC18062400078413 (CGST) CIN : ORBC18052400054716 (SGST 5000/-+5000/-
Date of Personal Hearing	:	7.6.2018, 14.6.2018, 05.03.2020
Present for the applicant	:	K.J.Gandhi.

BRIEF FACTS:

The applicant is an LLP concern and manufacture BOPP (Biaxially Oriented Polypropylene) Laminated PP Woven Sacks which was used in packaging industries . They submitted process of their products in a Chart as below:

POLYPROPYLENE /POLYMER RESINS
----EXTRUDER----
TAPES----
LOOMS---
UNLAMINATED FABRIC---EXTRUSION COATING(PP/LDPE)
LAMINATED FABRIC---PRINTING/CUTTING/STITCHING -
WEBBING -- JUMBO BAGS – QUALITY CONTROL--DISPATCH

2. They submitted that Woven Sacks (bags) were made of Fabric which are Laminated for extra strength and protection and that this was a technical textile; that Tariff Chapter 6305 contains Sacks and bags, of a kind used for the packing of goods’.

3. They further mentioned the Dictionary meaning of sacks- A large bag made of a strong material such as hessian, thick paper, or plastic, used for storing and carrying goods. Polymers— A substance which has a molecular structure built up chiefly or completely from a large number of similar units bonded together, eg many synthetic organic materials used as plastics and resins. Polypropylene—A synthetic resin which is a polymer of propylene, used chiefly for films, fibres or moulding materials. It is used to make Artificial/Technical Textile Fabrics. Polymers are composed of small fragments known as monomers that are joined together in a long chain. A polymer is a chemical compound where molecules are bonded together in long repeating chains. In making textile fiber or fabric, some portion of plastic is used. They therefore put their point

that Tariff Chapter 63 should be applied to them having HSN Cde 6305. They sought departmental confirmation for the same.

4. The applicant made certain additional submissions on 20.7.2018, wherein they enclosed a copy of GST Tariff- Goods indicating category of Chapter 63 wherein it was specifically mentioned that 'Sacks and bags, of a kind used for the packing of goods Other, of polyethylene or polypropylene strip or the like' fall under Chapter 6305 3300 and they manufacture sacks which are made out of polypropylene. They also submitted that as per guidelines of the The Institute of Chartered Accountants of India regarding Classification of mixtures/combinations of a material/substance with other materials/substances as per Rule 3(a) under Classification in case Goods are Classifiable Specific over General, that the heading that provides a more specific description should be preferred over the heading that provides a general description.

5. They therefore requested for guideline for classification of their goods made out of polypropylene strip and to allow them to apply Chapter 6305 3300 in case of their goods.

PERSONAL HEARING :

6. Personal hearing was scheduled on 7.6.2018 and 14.6.2018. On 14.6.2018, Mr. K.J.Gandhi appeared on behalf of the applicant and application was admitted for Final hearing. On 12.9.2018, Mr. Gandhi appeared for personal hearing and he submitted that they wanted to submit further submissions. However no one appeared on 5.3.2020.

DISCUSSION AND FINDINGS:

7. We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing. The issue involved in this case pertains to classification of the product BOPP (Biaxially Oriented Polypropylene Laminated PP Woven Sacks.

8. Reference is invited to Circular No. 80/54/2018-GST issued from F. No. 354/432/2018-TRU dated 31.12.2018. One of the matters referred in the Circular was applicability of GST on supply of Polypropylene Woven and Non Woven Bags and PP Woven and Non woven bags laminated with BOPP due to various representations received regarding the classification.

8.1 It has been clarified that 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. Para 7.3 of the Circular is reproduced below:

7.3 Further as per the Chapter note to Chapter 39, the expression "plastics" means those materials of headings 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 or 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.

7.5 Non-laminated woven bags would be classified as per their constituting materials.

8.2 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. Non-laminated woven bags would be classified as per their constituting materials.

9. We find that the issue has also been decided by Authority for Advance Ruling under GST, Madhya Pradesh in the case of Nagrani Warehousing P Ltd 2019(20)GSTL 799(AAR GST) vide Order No. 21/2018 dated 14.12.2018 in Case No. 22/2018 wherein it was ruled that the goods in question viz PP Woven Bags/Sacks shall be classifiable under Chapter 39 of the GST Tariff and not under Chapter 63. In the above ruling, the Authority for Advance Ruling under GST Madhya Pradesh relied on the judgement of Hon'ble High Court of Madhya Pradesh in case of M/s Raj Packwell Ltd v UOI (1990 (50)ELT 201 (M.P) wherein it was observed as under :

“In the Textiles Committee Act, 1963 (Act 41 of 63) the word fibre has been defined in Section 2 (a) as under: –

‘fibre’ means man made fibre including regenerated cellulose rayon, rayon, nylon and the like.” y “Textiles” has been defined in Section 2 (g) as under: – ‘Textiles’ means any fabric or cloth, or yarn or garment or any other articles made wholly or in part of –

(i) Cotton; or

(ii) Wool; or

(iii) Silk; or

(iv) Artificial silk or other fibre, and includes fibre”.

Therefore, according to the above definition, any fabric or cloth or yarn or garment if made wholly or in part of cotton, wool, silk, artificial silk or other fibre shall be called textiles. The definition of fibre’ includes the regenerated cellulose, rayon, nylon and the like. Nowhere in the aforesaid definition of fibre’ or ‘textiles’ plastic has been mentioned as a commodity to be included in the definition of fibre’ or ‘textiles’. Now in Shree Radhe Industries case (supra) and the Shellya Industries case (supra) irrespective of the entries in the tariff as prevailing then, it has been held that the HDPE sacks are articles made of plastic; they are made of high density polyethylene which is a plastic raw material and it has further been held that they are not manmade. filament yarn but are articles of plastic. The circular of the Central Board of Direct Taxes dated 20.1.1985 also clearly says that the Board has decided that so long as the finished articles of plastic is made out of plastic material falling under Tariff NO.15A (i), even if at the intermediate stage articles classifiable under Item No.15A (ii) if any tariff item emerges, the said product would be considered to have been produced out of plastic material falling under Tariff Item No.15A (i) and, therefore, the HDPE woven sacks should be considered as articles of plastic,”

Having so discussed the and defined the word ‘Man Made Fibre’ and ‘Textile’ for the purpose of arriving at the appropriate classification of HDPE Woven Bags/Sacks, the Hon’ble High Court has opined; ‘ the process of manufacture of HDPE tapes, the earlier judgments of the CEGAT approved by the Supreme Court and accepted by the department clearly go to show that HDPE bags are the bags woven by 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 aforesaid HDPE woven sacks has to be classified as an item under entry 3920 of Chapter 39 and not under entry 5406 of Chapter 54. Accordingly, entries of finished goods have also to be made under 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 3920, Sub-heading 3920.32 of the Central Excise Tariff Act and not under heading 5406, sub-heading 5406.90. Similarly HDPE Sacks fall into heading 3923, Sub-heading 3923.90....’

9.2 The Advance Ruling Authority of Madhya Pradesh also relied on the judgment of the Hon’ble Tribunal in the case of M/s Gujrat Raffia Industries Ltd., V/s Commissioner of Central

Excise on 14.1.2003 [Reported in 2003 .(153). ELT 336 (Tri-Dell] wherein, the Hon'ble Tribunal in the matter had also held classification of similar goods under chapter 39 instead of chapter 63.

10. Since the decision of Hon'ble High Court of Madhya Pradesh is crystal clear and squarely applicable in the present case, the goods in question are being held as classifiable under Chapter 39 of the GST Tariff and not 6305 of the GST Tariff .

(Mohit Agrawal)
Member

(Sanjay Saxena)
Member

Place: Ahmedabad

Date : 11.03.2020