

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



ADVANCE RULING NO. GUJ/GAAR/R/90/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/40)
Date: 17.09.2020

Name and address of the applicant	:	M/s. Ashima Dyecot pvt.ltd., Texcellence Complex, Nr.Anupam Cinema, Khokhra, Ahmedabad- 380021.
GSTIN of the applicant	:	24AACCA2753K1ZT
Date of application	:	20.06.2019.
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(b) Classification of any goods or services or both.
Date of Personal Hearing	:	18.08.2020 (through video conferencing)
Present for the applicant	:	Shri Kejul Mehta

BRIEF FACTS

The applicant M/s. Ashima Dyecot pvt.ltd. located at Texcellence Complex, Nr.Anupam Cinema, Khokhra, Ahmedabad-380021 are engaged in the manufacture and supply of fabrics and garments. The present application is filed to determine the classification of the fusible interlining cloth for cotton fabrics which is manufactured by the applicant. The applicant has stated that they are classifying the said product under the HSN Code 5903 attracting 12% rate of Tax. However, the competitors of the Applicant are classifying the said product under the Chapter 52/55 attracting 5% rate of duty depending upon the primary content of the fabric resulting in business loss to the applicant.

2. The applicant has submitted that Fusible interlining cloth for cotton fabrics is a layer of fabric inserted between the shell fabric and the lining of a garment to give clothing a suitable appearance and stability; that based on the application method, there are two kinds of interlinings: Sewn interlining and fusible interlining; that the interlining which could be fixed with the garments components by sewing is called sewn interlining and for the preparation of sewn interlining a piece of fabric is treated with starch and allowed to dry and finally sewn with the main fabric; that in addition, the fusible interlining which could be fixed with the garments components by applying heat and pressure for a certain time is called fusible interlining. The applicant has stated that these fusible materials provide with several properties which can enhance the appearance of finished garment by influencing the following characteristics:-

- a. Handle and bulk.
- b. Shape retention.
- c. Shrinkage control.
- d. Crease recovery.
- e. Appearance after washing or dry cleaning.
- f. Durability.

3. The applicant has stated that the interlining fabrics is mainly used in the collars, cuffs, etc. part of the garments and samples of the interlining fabrics

will be produced at the time of hearing; that under the erstwhile Central Excise regime, the Applicant classified the said product under the HSN code 5903; that under the Central Excise regime, majority of the textile products including the cotton fabrics along with products falling under the HSN 5903 were exempted vide Notification No.30/2004 dated 09.07.2004. The relevant entry of the HSN code 5903 is as under:

Heading	Description
5903	<i>Textile fabrics, impregnated, coated, covered or laminated with plastics, other than those of heading 5902.</i>

4. The applicant has stated that the Chapter Notes were amended from time to time and has tabulated the relevant amendments as below:

Sr.No.	Date of amendment	Particulars
01.	Central Excise Tariff Act, 1985	<p>. Heading 5903 applies to:</p> <p>(a) 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), other than:</p> <p>(1) fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually Chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of colour;</p> <p>(2) products which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15oC and 30oC (usually Chapter 39);</p> <p>(3) products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour (Chapter 39);</p> <p>(4) fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments (usually Chapters 50 to 55, 58 or 60);</p> <p>(5) plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (Chapter 39); or</p> <p>(6) textile products of heading 5811;</p> <p>(b) fabrics made from yarn, strip or the like, impregnated, coated, covered or sheathed with plastics, of heading 5604.</p>
02.	Note 2(c) was introduced in the Chapter Notes w.e.f. 01.03.1989	“Textile fabrics, partially or discretely coated with plastic by dot printing process (Heading No.59.03)
03.	Note 2(c) was modified in the Chapter Notes w.e.f.01.03.1989.	“Textile fabrics, partially or discretely coated with plastic (Heading No.59.03)
04.	Note 2(c) was deleted w.e.f. 16.03.1995.	Hence, the Chapter Notes as per the Original CETA was reinstated.

5. The applicant has submitted that Central Board of Excise and Customs(CBEC) has issued circulars from time to time for clarifying the classification of the interlining fabrics; that prior to the introduction of Note 2(c) in the Chapter 59, CBEC had issued a Circular No.24/Coated Fabrics?88-CX.1 dated 02.09.1988, wherein the relevant para is reproduced hereunder:

“7.From the above definition of the term ‘coated fabrics’ it is obvious that in the case of plastic coated fabric (i) the polymer is coated to give a continuous and adherent film or layer on the fabric and (ii) the fabric has an impervious surface.

6. The applicant has further submitted that in the HSN at Page 816 under the Heading 59.03 (same as in Central Excise Tariff) it is stated that in many of the textile fabrics classified under this heading, the plastic material forms a surface layer; that according to Chapter Note 2(a)(1) of Chapter 59, fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually Chapters 50 to 55, 58 or 60) are excluded from the purview of Heading 59.03; that as per Note 2(a)(3) of Chapter 59, fabrics entirely coated with plastic material on both sides are not covered in Heading 59.03 but are covered in Chapter 39; that similarly according to Chapter Note 2(a)(1) of Chapter 59, fabrics partially coated or partially covered with plastics and bearing designs are also excluded from the purview of Heading 59.03; that in view of the above, textile fabrics including the fusible inter-lining cloth to merit classification as coated fabrics under Heading 59.03 of Central Excise Tariff, should have a continuous and adherent film or layer or plastic on one side of the fabric surface and the fabric should be impervious and satisfy the conditions prescribed in Note 2 of Chapter 59; that assessments in each case would depend on visual and if necessary chemical examination in the light of the above; that accordingly, CBEC had clarified that the fabrics which are partially coated or covered with plastics and bearing designs are also excluded from the purview of Heading 59.03 and covered under the Chapter 52-55; that the product under dispute manufactured by them bears design which can be easily viewed from the naked eye.

7. The applicant has submitted that after introduction of Note 2(c) in the Chapter Notes, CBEC vide Circular No.5/89 dated 15.06.1989 had clarified that before the introduction of Note 2(c), fusible interlining fabrics were classified under the Chapter 52-55 depending upon the textile materials used and the relevant paragraph is reproduced hereunder:

“The fusible interlining cloth made by discrete coating with plastic by dot printing process have been specifically included in Chapter 59 by the said amendments to the Central Excise Tariff from 01.03.1989. In other words, the textile fabrics partially or discretely coated with plastic by dot printing process specifically get covered under heading 59.03 from 01.03.1989. Prior to this date they get covered under Chapter 52 to 55 depending upon the textile materials used – whether cotton or man-made fabrics etc.”

8. The applicant has stated that CBEC had clarified that before the introduction of Note 2(c), CBEC had again issued Circular No.433/66/98-CX dated 27th November, 1998, wherein they had stated that the interlining cloth would be appropriately classified under Chapter Heading 59.03 of the Central Excise Tariff. Relevant para is reproduced hereunder:

“3.In the 1985 budget the Central Excise Tariff was broadly aligned with the Customs Tariff (based on HSN) and as such Chapter Note 2(c) of Chapter 59 of the Central Excise Tariff was omitted. The omission of Chapter Note 2(c) was neither intended to and nor resulted in changing the classification of fusible interlining cloth under Heading 59.03 of the Central Excise Tariff. This is so because as per the HSN Explanatory Notes(1996), end edition, page 894, textile

fabrics which are spattered by spraying with visible particles of thermoplastic material and are capable of providing a bond to other fabrics or materials up the application of heat and pressure are covered under Chapter Heading 59.03 may thus be considered as an exception to Chapter Note 2(a)(4) of Chapter 59 according to which fabrics partially coated or partially covered with plastics and bearing designs resulting from those treatments are excluded from the scope of Chapter Heading 59.03.4. Board is of the view that fusible interlining cloth would be appropriately classified under Chapter Heading 59.03 of the Central Excise Tariff."

9. The applicant has submitted that the said Circular was challenged before the Hon'ble High Court of Madras who in their judgement reported in 2004(163)ELT 164 (Mad.) had stated that the said circular is illegal and ultra-vires and liable to be quashed; that w.e.f. 01.07.2017, erstwhile Central Excise Act was subsumed under the Goods and Services Tax (GST) regime. Notification No.01/2017-Central Tax(Rate) dated 28.06.2017 provided rate of GST applicable on different goods and as per Para(iii) of the Explanation of the said notification, 'Tariff item' 'sub-heading', 'heading' and 'Chapter' shall mean respectively a tariff item, sub-heading, heading, and chapter as specified in the First Schedule to the Customs Tariff Act, 1975; that accordingly, Customs Tariff Act, 1975 is to be referred for the classification of the goods under the GST regime; that the entry under the HSN code 5903 and the relevant Chapter Notes for Chapter 52 and 59 as discussed above, under the Customs Tariff Act, 1975 are identical to the respective entry and the Chapter Notes as mentioned in the Central Excise Tariff Act; that accordingly, in light of the above judgements and Circulars issued during the relevant time the possible entry for classification of the disputed goods is either under Chapter 52(depending upon the weightage of the cotton) or under HSN code 5903. The applicants crave liberty to rely upon the circulars and judgement at the time of hearing and that submission enumerated herein below may be considered relevant for the present Advance Ruling. The applicant has asked the following question seeking Advance Ruling on the same:

"Whether fusible interlining cloth used in cotton fabrics is classifiable under HSN code 5903 or under Chapter 52/55 (depending upon the weightage of Cotton)?"

10. As per the submission of the applicant, their interpretation of law in the proposed factual situation is as under:

- (i) 'Interlining fabrics' is not defined under the GST regime. As per the various judicial precedent, if any term is not defined under any law, references can be taken from the erstwhile regime. Therefore, in absence of any specific definition of the term 'interlining fabrics', references as given under the erstwhile Central Excise regime can be taken for classifying the said product under the GST regime.
- (ii) Considering the same, Circular No.24/Coated Fabrics/88-CX.1 dated 02.09.1988 had clarified that to merit classification as coated fabrics under HSN code 5903, it should meet the following requirements:
 - (a) It should have a continuous and adherent film or layer of plastics on one side of the fabric surface.
 - (b) The fabric should be impervious.
 - (c) It should satisfy the conditions prescribed in Note 2 of Chapter 59.
- (iii) The interlining fabrics manufactured by the applicants do not have continuous and adherent film or layer of plastic on one side of fabrics surface. The fabric is partially coated with thermoplastic. Therefore the product would not fall under the HSN code 5903.

- (iv) The coating done is not impervious because the design created due to interlining can be easily penetrated. Therefore, relying on the Circular No. 24/Coated Fabrics/88-CX.1 dated 02.09.1988, the product under dispute cannot be classified under the HSN code 5903 and will be classified in the Chapter 52.
- (v) As per Chapter Note 2(a)(4) of the Chapter 59 fabrics which are partially coated or partially covered with plastics and bearing designs resulting from these treatments are not covered under the HSN code 5903. The fusible interlining manufactured by the applicant have partial coating of thermoplastics with a specific design at equal distance visible in fabrics which make the product easily marketable. Therefore, as per chapter note 2(a)(4) the product cannot be classified under chapter 5903 and is required to be classified under Chapter 50 to 55, chapter 58 or 60 depending upon the weight of the cotton in the fabrics.
- (vi) The fabric manufactured by the applicants cannot be said to be impregnated, coated, covered or laminated with plastic. For the aforesaid purpose the fabric is required to be continuously impregnated, coated, covered or laminated with plastic throughout the entire surface of fabrics. Hence also the fabric cannot be classified under chapter 5903. The applicant will rely upon Test reports of the fabrics at the time of hearing.
- (vii) The fusible interlining cloth manufactured by the applicant is identical to the one manufactured by M/s. Madura Coats pvt.ltd.. In Madura Coats pvt.ltd., Hon'ble Tribunal of Chennai held that the fusible interlining cloth would not be classified under the HSN code 5903. The applicant would also rely upon recent Advance Ruling in the case of M/s. Goodswear Fashion pvt.ltd. by the Uttarakhand Advance Ruling Authority which also held that the classification of the polyster viscose fusing interlining woven fabric is required to be classified under Chapter 52/55, 58 or 60 and the applicants crave liberty to rely on the same at the time of hearing.
- (viii) The cotton fusible interlining fabric manufactured by the applicant is also partially covered with plastic coated pattern on one side that is easily visible from the naked eye. Therefore, it is submitted that the product in dispute is classified in the Chapter 52 and not classifiable under the HSN code 5903.
- (ix) The classification was changed to the HSN code 5903 due to introduction of the Chapter Note 2(c) for the period from 01.03.1989 to 16.03.1995. CBEC had itself vide Circular No.5/89 dated 15.06.1989 had clarified that the fusible interlining cloth before the introduction of the Note 2(c) would fall under the respective Chapter 52 to 55 depending upon the nature of the content. Accordingly, it is submitted that the product in dispute shall be classified under the Chapter 52 once the chapter note itself is removed.
- (x) Under the GST regime, the goods classified under the HSN code 5903 attracts higher rate of IGST i.e. 12% (CGST 6% + SGST 6%). The goods classified under the Chapter 52 attract IGST rate of 5% (CGST 2.5% + SGST 2.5%). Since, there is huge difference in the taxable rates, it is essential for the Applicant to classify the product at correct rate as it will have higher tax burden on the end consumer. It is also submitted that some competitors of the applicant are classifying the said product under the Chapter 52(depending upon the weight of the cotton in the fabrics) attracting rate of 5%(CGST 2.5% + SGST 2.5%) which has resulted in substantial business loss to the applicant. The

applicant further submits that if the reduced rate of duty is not applied to the fabrics manufactured by the applicant, they may have to close the manufacturing operations due to competitive pricing resulting in losses to the company and loss of employments to huge labour force. Hence also the applicants application may be heard on priority basis and ruling as per the trade practice is required to be issued.

- (xi) The applicant further craves liberty to rely upon following judicial decision/Advance Ruling, wherein the said product is classified under the Chapter 52-55 depending upon the primary content of the fabric:
- (a) Madura Coats private limited v/s. Commissioner of Central Excise, Tirunelveli (2019(365) ELT 345 (Tri.Chennai)).
 - (b) Uttarakhand Advance Ruling authority under the GST regime in the Application made by M/s. Goodswear Fashion private limited.

DISCUSSION & FINDINGS:

11. We have considered the submissions made by the applicant in their application for advance ruling as well as the arguments/discussions made by their representative at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

12. At the outset, we would like to state that the provisions of both the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to similar provisions of the GGST Act.

13. Based on the submission of the applicant as well as the arguments/discussions made by the representative of the applicant during the course of personal hearing, we find that the issue to be decided is whether the product 'Fusible Interlining Fabrics of Cotton' is correctly classifiable under Chapter 52 or Chapter 59. The sequence of events that led the applicant to file the present application seeking Advance ruling on the above issue are as under:

- (a) fusible interlining fabrics were initially classified under various chapters from chapter 50 to 55 of the tariff depending upon the nature of the fabrics under the erstwhile Central Excise regime.
- (b) The Board had vide Circular dated 02.09.1988 clarified that fusible interlining cloth, to merit classification as coated fabrics under CETH 5903, should meet the following requirements:
 - (i) It should have a continuous and adherent film or layer of plastic on one side of the fabric surface.
 - (ii) The fabric should be impervious.
 - (iii) It should satisfy the conditions prescribed in Note 2 of Chapter 59.
- (c) By virtue of amendment to the Central excise Tariff made vide Finance Act, 1989, Note 2(c) came to be introduced in Chapter 59 of the tariff to provide that fusible interlining cloth made by discrete coating of plastic by dot matrix process would be classified under Chapter Heading 5903 with effect from 01.03.1989. Also, another Circular No.5/89 dated 15.06.1989 was also issued by the Board around the same time, clarifying that new note was being introduced in Chapter 59 of the Tariff in order to include fusible interlining cloth made by discrete coating of

plastic by dot matrix process in Chapter Heading 5903. The said note reads as under:

“Textile fabrics, partially or discretely coated with plastic by dot printing process (heading no.59.03)”

- (d)** Thereafter, the said note was further modified w.e.f. 20.03.1990 to provide as under:

“Textile fabrics, partially or discretely coated with plastic (heading no.59.03)”

- (e)** By virtue of amendment brought about w.e.f. 16.03.1995, the said note came to be deleted and was removed from Chapter 59 of the Tariff.

- (f)** The Board vide Circular dated 27.11.1998 expressed that the omission of the note was neither intended to nor resulted in changing the classification of fusible interlining cloth under Heading 5903.

- (g)** Not being agreeable with the stand of the Department as conveyed vide the aforesaid circular, M/s. Madura Coats preferred a writ petition in the High Court of Madras being WP No.354 of 1999 wherein vide order and judgement dated 30.09.2003, the Hon'ble High Court of Madras held that a bare perusal of the tariff heading and notes in issue, it was clear that but for the Chapter Note 2(c), which was introduced under the Finance Act, 1989, such fusible interlining would be coming within Chapters 50 to 55 and only by virtue of introduction of Chapter Note 2(c) of Chapter 59, such fusible interlining came within the scope of Chapter 59.03 and once such Chapter Note 2(c) of Chapter 59 was omitted under the Finance Act, 1995, it is obvious that the position which was available prior to introduction of such Chapter Note (c) revived, that in such background, issuance of Circular would be clearly against the statutory provisions. The Hon'ble Court also noted that the circular was also against the provision of Section 37B of the Central Excise Act as the Board could not shut down the quasi-judicial power of the authorities and in view of the aforesaid finding, the Circular issued by the Board was held to be invalid and illegal.

- (h)** The said order of the Single Judge of the Madras High Court was challenged by the Department before the Division Bench of the Madras High Court under W.A.No.507 of 2005 wherein vide order and judgement dated 05.01.2009, the Hon'ble Division Bench of the Madras High Court dismissed the Writ Appeal and upheld the judgement of the Single Judge as regards the quashing of the circular in view of Section 37B of the Central Excise Act, however no opinion was rendered on the merit of the case and the assessing officer was directed to adjudicate the matter on its own merits.

- (i)** Upon adjudication of the case by the assessing authorities, the issue was held against M/s. Madura Coats pvt.ltd. which became a subject matter of appeal being Appeal No.E/31/2012-DB before the Appellate Tribunal, Chennai.

- (j)** The Appellate Tribunal, Chennai, by Order No.41941/2018 dated 19.06.2018 in the case of M/s.Madura Coats pvt.ltd. vs. Commissioner of Central Excise in Appeal No.E/31/2012 had held that the product 'Fusible Interlining Fabrics of Cotton' were not classifiable under Chapter 5903 but was correctly classifiable under Chapter 52 of the erstwhile Tariff stating that the very basis for changing the classification i.e. Note 2(c), which was introduced in Chapter 59, has thereafter been deleted

w.e.f. 16.03.1995 and therefore, the position as existed prior to introduction of the said note would be restored;

(k) With effect from introduction of Note 2(c), the applicant was classifying their said goods under Chapter Heading 5903 like all other manufacturers of the said product and the said classification was retained by the applicant when transition was made from the erstwhile Central Excise legislation to the present Goods and Service Tax regime.

(l) The product manufactured by M/s. Madura Coats pvt.ltd. is identical to the goods manufactured by the applicant as also other manufacturers throughout the Country.

(m) Subsequent to the pronouncement of the said decision, many of the other manufacturers including M/s. Madura Coats pvt.ltd. as well as the competitors of the applicant have revised their classification from Chapter 59 to Chapter 52 of the present Tariff. However, the applicant has continued to classify the product under Chapter 59 which has led to Business loss.

14. We have gone through the aforementioned order issued by the Appellate Tribunal, Chennai. It is found that the order dated 19.06.2018 is with regard to an appeal filed by M/s. Madura Coats pvt.ltd. against Order-in-Appeal No.330/2011 dated 17.10.2011 passed by the Commissioner of Central Excise(Appeals), Madurai i.e. it pertains to an issue of pre-GST regime. The issue involved in this case is that the appellant M/s. Madura Coats pvt.ltd. had originally classified their product 'coated fusible interlining fabrics of cotton' under Heading 5903 consequent to insertion of Note 2(c) in Chapter 59 of the Central Excise Tariff Act, 1985(CETA) w.e.f 01.03.1989. The said chapter note was omitted w.e.f 16.03.1995 following which the appellants sought reclassification under Heading 5207. After hearing both sides, the Appellate Tribunal came to the conclusion that since Chapter Note 2(c) itself is no longer in existence and the impugned goods otherwise did not satisfy the requirements in Chapter Note 2(a) read with CBEC Circulars, impugned goods will not get classified under CETH 5903. We find that the applicant has relied upon this order of CESTAT in support of their contention. We also find that they have relied upon the order of the Advance Ruling Authority of Uttarakhand under the GST regime in the Application made by M/s. Goodswear Fashion private limited also. In this context, we have to mention that as per Section 103 of the CGST Act, 2017 any Advance Ruling is binding on the Applicant who has sought it and on the concerned officer or the jurisdictional officer in respect of the Applicant only. Accordingly, AARs Ruling as cited above can't be relied upon in the present case of the Appellant. Further, the applicant had stated in their submission that they will rely upon Test reports of the fabrics at the time of hearing. However, no such test reports were produced during the course of personal hearing.

15. The purpose of classification is to ascertain the applicability of any entry, specifying the rate of tax or exemption from payment of tax and under the present regime of GST, the classification of products are based on the First Schedule to the Customs Tariff Act, 1975(51 of 1975). Explanation (iii) and (iv) to the Notification No.01/2017-Central Tax(Rate) dated 28.06.2017 reads as under:

“(iii) “Tariff item”, “sub-heading” “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General

Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification”.

Further, the Tariff Act is aligned to the Harmonised System of Nomenclature and it is a settled position of law that the reference to the Explanatory Notes to the HSN code is admissible for answering any question of classification.

16. To begin with, we will be required to refer to the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) for referring to Heading 5903. Heading 5903 appears in Chapter 59 of the said Tariff which reads as “Impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use” and reads as under:

5903 TEXTILE FABRICS, IMPREGNATED, COATED, COVERED OR LAMINATED WITH PLASTICS, OTHER THAN THOSE OF HEADING 5902

5903 10 - *With polyvinyl chloride :*

5903 10 10 --- Imitation leather fabrics of cotton

5903 10 90 --- Other

5903 20 - *With polyurethane :*

5903 20 10 --- Imitation leather fabrics, of cotton

5903 20 90 --- Other

5903 90 - *Other:*

5903 90 10 --- Of cotton

5903 90 20 --- Polyethylene laminated jute fabrics

5903 90 90 --- Other

17. Chapter Notes to Chapter 59 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) reads as under:

NOTES :

1. *Except where the context otherwise requires, for the purposes of this Chapter, the expression “textile fabrics” applies only to the woven fabrics of Chapters 50 to 55 and headings 5803 and 5806, the braids and ornamental trimmings in the piece of heading 5808 and the knitted or crocheted fabrics of headings 6002 to 6006.*

2. *Heading 5903 applies to:*

(a) 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), other than:

(1) fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually Chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of colour;

(2) products which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15oC and 30oC (usually Chapter 39);

(3) products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour (Chapter 39);

(4) fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments (usually Chapters 50 to 55, 58 or 60);

(5) plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (Chapter 39); or

(6) textile products of heading 5811;

(b) fabrics made from yarn, strip or the like, impregnated, coated, covered or sheathed with plastics, of heading 5604.

3. *For the purposes of heading 5905, the expression “textile wall coverings” applies to products in rolls, of a width of not less than 45 cm, suitable for wall or ceiling*

decoration, consisting of a textile surface which has been fixed on a backing or has been treated on the back (impregnated or coated to permit pasting).

This heading does not, however, apply to wall coverings consisting of textile flock or dust fixed directly on a backing of paper (heading 4814) or on a textile backing (generally heading 5907).

4. For the purposes of heading 5906, the expression “rubberised textile fabrics” means:

(a) textile fabrics impregnated, coated, covered or laminated with rubber:

(i) weighing not more than 1,500 g/m²; or

(ii) weighing more than 1,500 g/m² and containing more than 50% by weight of textile material;

(b) fabrics made from yarn, strip or the like, impregnated, coated, covered or sheathed with rubber, of heading 5604; and

(c) fabrics composed of parallel textile yarns agglomerated with rubber, irrespective of their weight per square metre.

This heading does not, however, apply to plates, sheets or strip of cellular rubber combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (Chapter 40), or textile products of heading 5811.

5. Heading 5907 does not apply to:

(a) fabrics in which impregnation, coating or covering cannot be seen with the naked eye (usually Chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of colour;

(b) fabrics painted with designs (other than painted canvas being theatrical scenery, studio backcloths or the like);

(c) fabrics partially covered with flock, dust, powdered cork or the like and bearing designs resulting from these treatments; however, imitation pile fabrics remain classified in this heading;

(d) fabrics finished with normal dressings having a basis of amylaceous or similar substances;

(e) wood veneered on a backing of textile fabrics (heading 4408);

(f) natural or artificial abrasive powder or grain, on a backing of textile fabrics (heading 6805);

(g) agglomerated or reconstituted mica, on a backing of textile fabrics (heading 6814); or

(h) metal foil on a backing of textile fabrics (generally Section XIV or XV).

6. Heading 5910 does not apply to:

(a) transmission or conveyor belting, of textile material, of a thickness of less than 3 mm; or

(b) transmission or conveyor belts or belting of textile fabric impregnated, coated, covered or laminated with rubber or made from textile yarn or cord impregnated, coated, covered or sheathed with rubber (heading 4010).

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 headings 5908 to 5910), the following only:

(i) textile fabrics, felt and felt-lined 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);

(ii) bolting cloth;

(iii) straining cloth of a kind used in oil presses or the like, of textile material or of human hair;

(iv) flat woven textile fabrics with multiple warp or weft, whether or not felted, impregnated or coated, of a kind used in machinery or for other technical purposes;

(v) textile fabrics reinforced with metal, of a kind used for technical purposes;

(vi) cords, braids and the like, whether or not coated, impregnated or reinforced with metal, of a kind used in industry as packing or lubricating materials;

(b) textile articles (other than those of headings 5908 to 5910) of a kind used for technical purposes [for example, textile fabrics and felts, endless or fitted with linking devices, of a kind used in paper making or similar machines (for example, for pulp or asbestos-cement), gaskets, washers, polishing discs and other machinery parts].

18. Explanatory notes to HSN in respect of Heading 5903 reads as under:

This heading covers textile fabrics which have been impregnated, coated, covered or laminated with plastics (e.g., poly(vinyl chloride)).

Such products are classified here whatever their weight per m² and whatever the nature of the plastic component(compact or cellular), provided:

- (1) *That, in the case of impregnated, coated or covered fabrics, the impregnation, coating or covering can be seen with the naked eye otherwise than by a resulting change in colour.*

Textile fabrics in which the impregnation, coating or covering cannot be seen with the naked eye or can be seen only by reason of a resulting change in colour usually fall in Chapters 50 to 55, 58 or 60. Examples of such fabrics are those impregnated with substances designed solely to render them crease-proof, moth-proof, unshrinkable or waterproof (e.g., waterproof gabardines and poplins), Textile fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments are also classified in Chapter 50 to 55, 58 or 60.

- (2) *That the products are not rigid, i.e. they can, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15 degrees centigrade and 30 degrees centigrade.*

- (3) *That the textile fabric is not completely embedded in, nor coated or covered on both sides with, plastics.*

Products not meeting the requirements of subparagraph(2) or (3) above usually fall in Chapter 39. However, textile fabric coated or covered on both sides with plastics where the coating or covering cannot be seen with the naked eye, or can be seen only by reason of a resulting change in colour, usually falls in Chapter 50 to 55, 58 or 60. Except in the case of textile products of heading 58.11, textile fabrics combined with plates, sheets or strip of cellular plastics, where the textile fabric is present merely for reinforcing purposes, are also classified in Chapter 39(see General Explanatory Note to Chapter 39, part entitled "Plastics and textile combinations", penultimate paragraph).

The laminated fabrics of this heading should not be confused with fabrics which are simply assembled in layers by means of a plastic adhesive. These fabrics, which have no plastics showing in cross-section, generally fall in Chapter 50 to 55.

In many of the textile fabrics classified here, the plastic material, usually coloured, forms a surface layer which may be smooth or be embossed to simulate e.g. the grain of leather ("leathercloth").

This heading also covers dipped fabrics (other than those of heading 59.02), impregnated to improve their adhesion to rubber, and **textile fabrics which are spattered by spraying with visible particles of thermoplastic material and are capable of providing a bond to other fabrics or materials on the application of heat and pressure.**

This heading also includes textile fabrics made from yarn, strip or the like, impregnated, coated, covered or sheathed with plastics, of heading 56.04.

The fabrics of this heading are used for a variety of purposes including furnishing materials, the manufacture of handbags and travel goods, garments, slippers, toys etc., in book binding, as adhesive tapes, in the manufacture of electrical equipment etc.

This heading also excludes:

- (a) *Quilted textile products of heading 58.11*
(b) *Textile fabrics coated or covered with plastics for use as floor coverings (heading 59.04).*

- (c) *Textile fabrics, impregnated or coated, having the character of wall coverings(heading 59.05).*
- (d) *Textile fabrics, impregnated, coated, covered or laminated with plastics made up as described in Part(II) of the General Explanatory Note to Section XI.*

19. We have thoroughly gone through the above and find that the dispute regarding classification of fusible interlining cloth, which is partially coated with plastic by the dot printing process i.e. whether it is covered under Chapter 52 to 55 or Chapter 59, has repeatedly come up before different authorities. In its Circular No.24/Coated Fabric/88-CX.1 dated 02.09.1988, CBEC has referred to the production process. The finished woven fabric passed over pre-heated rolls having a high surface temperature and 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.

20. In Circular No.5/89 dated 15.06.1989, CBEC discussed the significance of the insertion of Chapter 2(c) in Chapter 59 by the Finance Act, 1989. After the insertion of the said note, the fusible interlining cloth made by discrete coating with plastic by dot printing process became classifiable under Heading 5903. CBEC clarified that before that, such cloth had been covered under Chapter 52 to 55, depending upon the textile materials used. Chapter Note 2 (c) was omitted w.e.f. 16.03.1995. CBEC vide Circular No.433/66/98-CX.6 dated 27.11.1998 tried to clear the air about the classification of fusible interlining cloth in the context of removal of Chapter Note 2(c) from Chapter 59 and drew attention to the Finance Act, 1995 that broadly aligned the Central Excise Tariff to the Tariff Act. The significance of the alignment was 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 would continue to be classified under Heading 5903 by issuing Circular No.433/66/98-CX.6 dated 27.11.1998. This Circular differs from Circular No.5/89 dated 15.06.1989. 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 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.

20.1 The Appellate Authority for Advance Ruling, West Bengal in order dated 19.03.2020 in the case of Appeal Case No. 15/WBAAAR/APPEAL/2019 dated 26/09/2019 filed by M/s. Sadguru Seva Paridhan pvt.ltd. stated as under in respect of Circular No.433/66/98-CX.6 dated 27.11.1998 in Para-3(v) to (vii) of the said order:

“(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 officer 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. 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."

20.2 In view of the above, we find that CBEC Circular No. 433/66/98-CX-6 dated 27/11/1998 is relevant even today and has persuasive value. Further, Chapter Note 2(a)(4) to Chapter 59 says that fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments are excluded from Heading 5903 and are usually covered in Chapter 50 to 55, 58 or 60, depending on the materials used. At the same time, according to the Explanatory notes to the HSN code, textile fabrics which are spattered by spraying with visible particles of thermoplastic material and are capable of providing a bond to other fabrics or materials on the application of heat and pressure are classifiable under heading 5903. Also, the process of manufacture of the fusible interlining cloth of cotton fabrics as submitted by the applicant appears to be similar to the one mentioned hereinabove. Further, according to 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. It is also seen that the applicant has, nowhere in their application or in their written or oral submissions, taken 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 views expressed by CBEC in Circular No. 433/66/98-CX-6 dated 27/11/1998 that fusible interlining cloth is classifiable under Heading 5903. In view of the facts mentioned above, we find that the applicant's product 'fusible interlining cloth of cotton fabric' would undoubtedly be classifiable under Heading 5903 only. We, therefore, conclude that the product 'fusible interlining cloth of cotton fabric' of the applicant is classifiable under Heading 5903 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

21. Although we have decided the classification of fusible interlining of cotton fabrics manufactured by the applicant, we feel the need to refer to the relevant headings of Chapter 52 of the First Schedule of the Customs Tariff Act, 1975(51 of 1975) also, since, the applicant is of the view that the subject goods should be classifiable under Chapter 52 of the said Tariff Act. Since headings 5201 to 5207 of the said Chapter covers cotton yarns, we will be referring to Headings 5208 to 5212 of the said Chapter which covers fabrics. The same reads as under:

5208 WOVEN FABRICS OF COTTON, CONTAINING 85% OR MORE BY WEIGHT OF COTTON, WEIGHING NOT MORE THAN 200 G/M²

- Unbleached :

5208 11 -- Plain weave, weighing not more than 100 g/m² :

5208 12 -- Plain weave, weighing more than 100 g/m²:

5208 13 -- 3-thread or 4-thread twill, including cross twill :
5208 19 -- Other fabrics :

Bleached :

5208 21 -- Plain weave, weighing not more than 100 g/m²:
5208 22 -- Plain weave, weighing more than 100 g/m²:
5208 23 -- 3-thread or 4-thread twill, including cross twill :
5208 29 -- Other fabrics :

- Dyed :

5208 31 -- Plain weave, weighing not more than 100 g/m²:
5208 32 -- Plain weave, weighing more than 100 g/m²:
5208 33 -- 3-thread or 4- thread twill, including cross twill :
5208 39 -- Other fabrics :
5208 41 -- Plain weave, weighing not more than 100 g/m²:
5208 42 -- Plain weave, weighing more than 100 g/m²:
5208 43 -- 3-thread or 4- thread twill, including cross twill :
5208 49 -- Other fabrics :

- Printed :

5208 51 -- Plain weave, weighing not more than 100 g/m² :
5208 52 -- Plain weave, weighing more than 100 g/m² :
5208 59 -- Other fabrics :

5209 WOVEN FABRICS OF COTTON, CONTAINING 85%OR MORE BY WEIGHT OF COTTON, WEIGHING MORE THAN 200 G/M2

- Unbleached :

5209 11 -- Plain weave :
5209 12 -- 3-thread or 4-thread twill, including cross twill :
5209 19 00 -- Other fabrics

- Bleached :

5209 21 -- Plain weave :
5209 22 -- 3-thread or 4-thread twill, including cross twill :
5209 29 -- Other fabrics :
5209 31 -- Plain weave :
5209 32 -- 3-thread or 4-thread twill, including cross twill :
5209 39 -- Other fabrics :
5209 41 -- Plain weave :
5209 42 00 -- Denim
5209 43 -- Other fabrics of 3-thread or 4-thread twill, including cross twill :
5209 49 -- Other fabrics :
5209 51 -- Plain weave Lungis
5209 52 -- 3-thread or 4-thread twill, including cross twill :
5209 59 -- Other fabrics :

5210 WOVEN FABRICS OF COTTON, CONTAINING LESS THAN 85% BY WEIGHT OF COTTON, MIXED MAINLY OR SOLELY WITH MAN-MADE FIBRES, WEIGHING NOT MORE THAN 200 G/M2

- Unbleached :

5210 11 -- Plain weave :
5210 19 00 -- Other fabrics m₂

- Bleached :

5210 21 -- Plain weave :

--- Other :

5210 29 -- Other fabrics :

- Dyed :

5210 31 -- Plain weave :
5210 32 -- 3-thread or 4-thread twill, including cross twill :
5210 39 -- Other fabrics :
- Of yarns of different colours :
5210 41 -- Plain weave :
5210 49 -- Other fabrics :

- Printed :
5210 51 -- Plain weave :
5210 59 -- Other fabrics :

5211 WOVEN FABRICS OF COTTON, CONTAINING LESS THAN 85% BY WEIGHT OF COTTON, MIXED MAINLY OR SOLELY WITH MAN-MADE FIBRES, WEIGHING MORE THAN 200 G/M²

- Unbleached :
5211 11 -- Plain weave :
5211 12 -- 3-thread or 4-thread twill, including cross twill :
5211 19 00 -- Other fabrics m₂

5211 20 -- Bleached :

- Dyed:
5211 31 -- Plain weave :

5211 32 -- 3-thread or 4-thread twill, including cross twill :
5211 39 -- Other fabrics :

- Of yarns of different colours :
5211 41 -- Plain weave :
5211 42 00 -- Denim m₂ 10% or Rs. 18 per sq. m. -whichever is higher
5211 43 -- Other fabrics of 3-thread or 4-thread twill, including cross twill :
5211 49 -- Other fabrics :

- Printed :
5211 51 -- Plain weave :
5211 52 -- 3-thread or 4-thread twill, including cross twill :
5211 59 -- Other fabrics :

5212 OTHER WOVEN FABRICS OF COTTON

- Weighing not more than 200 g/m² :
5212 11 00 -- Unbleached
5212 12 00 -- Bleached
5212 13 00 -- Dyed
5212 14 00 -- Of yarns of different colours
5212 15 00 -- Printed

- Weighing more than 200 g/m² :

5212 21 00 -- Unbleached m₂
5212 22 00 -- Bleached m₂
5212 23 00 -- Dyed
5212 24 00 -- Of yarns of different colours
5212 25 00 -- Printed

21.1 Chapter notes of Chapter 52 read as under:

SUB-HEADING NOTE:

For the purposes of sub-headings 5209 42 and 5211 42, the expression “denim” means fabrics of yarns of different colours, of 3 – thread or 4 – thread twill, including broken twill, warp faced, the warp yarns of which are of one and the same colour and the weft yarns of which are unbleached, bleached, dyed, grey or coloured a lighter shade of the colour of the warp yarns.

21.2 Explanatory notes to HSN with respect to Headings 5208 and 5209 read as under:

Cotton fabrics are produced in great variety and are used, according to their characteristics, for making clothing, household linen, bedspreads, curtains, other furnishing articles etc.

The heading does not include:

- (a) Bandages, medicated or put up for retail sale (heading 30.05)*
- (b) Fabrics of heading 58.01.*
- (c) Terry toweling and similar terry fabrics(heading 58.02).*
- (d) Gauze(heading 58.03).*
- (e) Woven fabrics for technical uses of heading 59.11.*

21.3 Explanatory notes to HSN with respect to Headings 5210 and 5211 read as under:

This heading covers woven fabrics as defined in Part(I)(C)of the General Explanatory Note to Section XI. It covers these fabrics provided they are classified as cotton fabrics by the application of Note 2 to Section XI (see also Part (I)(A) of the General Explanatory Notes to Section XI) and provided they meet the following specification:

- (a) Contain less than 85% by weight of cotton.*
- (b) Are mixed mainly or solely with man-made fabrics.*
- (c) Weigh not more than 200 g/m².*

The heading does not include:

- (a) Bandages, medicated or put up for retail sale (heading 30.05)*
- (b) Fabrics of heading 58.01.*
- (c) Terry toweling and similar terry fabrics(heading 58.02).*
- (d) Gauze(heading 58.03).*
- (e) Woven fabrics for technical uses of heading 59.11.*

21.4 Explanatory notes to HSN with respect to Headings 5212 reads as under:

This heading covers woven fabrics (as defined in Part(I)(C)of the General Explanatory Note to Section XI) made of cotton yarns. However, it should be noted that it covers only mixed woven fabrics, other than those of the preceding headings of this Chapter or specified or included in the second part of this Section (Chapter 58 or 59, usually).

Bandages, medicated or put up for retail sale, are excluded (heading 30.05).

21.5 On going through the aforementioned headings, chapter note of Chapter 52 as well as the explanatory notes to HSN with respect of the headings 5208 to 5212, we find that it does not cover laminated fabrics or fabrics coated with plastics. Hence, it can be safely concluded that 'Fusible Interlining cloth for cotton fabrics' will not be covered under Chapter 52 of the First Schedule to the Customs Tariff Act, 1975(51 of 1975).

22. Having decided the classification of the product 'Fusible interlining cloth for cotton fabrics' of the applicant, we would also like to rely on a few judgements which support our view. The same are mentioned hereunder:

- (1) Order No. 33/WBAAR/2019-20 dated 11.11.2019 issued by the West Bengal Advance Ruling Authority in respect of M/s. Sadguru Seva Paridhan Pvt Ltd. wherein it was held that fusible interlining fabric of cotton is classifiable under Heading 5903 in Chapter 59 of the First Schedule to the Customs Tariff Act, 1975.
- (2) Order No.11/2019-20 dated 12.03.2020 issued by the Uttarakhand State Advance Ruling Authority in respect of M/s. The Ruby Mills ltd. wherein it was held that fusible interlining fabric of cotton is classifiable under Heading 5903 of the GST Tariff Act, 2017.
- (3) Order dated 19.03.2020 of the Appellate Authority for Advance Ruling, West Bengal in the case of Appeal Case No. 15/WBAAAR/APPEAL/2019 filed by M/s. Sadguru Seva Paridhan pvt.ltd. wherein the Order No.

33/WBAAR/2019-20 dated 11.11.2019 issued by the West Bengal Advance Ruling Authority was upheld.

23. In light of the foregoing, we rule, as under –

R U L I N G

Question: Whether the article ‘Fusible Interlining cloth for cotton fabrics’ manufactured by the applicant falls under Chapter 5903 or under Chapter 52 or 55 of the HSN?”

Answer: The product ‘Fusible Interlining cloth for cotton fabrics’ manufactured by the applicant M/s Ashima Dyecot Private Limited, Ahmedabad is correctly classifiable under Heading 5903 of Chapter 59 of the First Schedule to the Customs Tariff Act, 1975(51 of 1975).

(SANJAY SAXENA)

MEMBER

(MOHIT AGRAWAL)

MEMBER

Place: Ahmedabad

Date: 17.09.2020.