

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE DIVISION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 364 OF 2023

With

IA No.: CAN 1 of 2023

IA No.: CAN 2 of 2023

IA No.: CAN 5 of 2024

Mega Flex Plastics Limited & Anr.

Vs.

The Union of India & Ors.

For the Appellants : Mr. Vinay Kumar Shraff, Adv.
Mr. Rahul Dhanuka, Adv.
Mr. Dev Agarwal, Adv.
Mr. Niraj Baheti Adv.

For Union of India : Mr. Tirtha Pati Acharya, Advocate
Mr. Anindya Sundar Das, Adv.

For the State : Mr. Tanoy Chakraborty, Adv.
Mr. Saptak Sanyal, Adv.

For the CGST Authority : Mr. Uday Sankar Bhattacharya, Adv.
Mr. Tapan Bhanja, Adv.

Hearing Concluded on : April 21, 2026
Judgment on : May 19, 2026

DEBANGSU BASAK, J.:-

1. Appellant has assailed the judgment and order dated February 10, 2023 passed in WPA 3667 of 2019 by the learned Single Judge.

- 2.** By the impugned judgment and order, learned Single Judge has dismissed the writ petition filed by the appellant.
- 3.** Learned Advocate appearing for the appellant has contended that, appellant is a manufacturer of polypropylene leno bags. He has contended that, the major raw material used in the manufacture of polypropylene leno bags is plastic granules.
- 4.** Learned Advocate appearing for the appellant has contended that, prior to the introduction of the Goods and Services Tax Act, 2017, the appellant voluntarily declared the finished products under Chapter Heading 3923 2900 of the Central Excise Tariff Act, 1985 and enjoyed the duty drawback. With the introduction of the Act of 2017, the Tariff Heading of the same product, having the same composition and involving the same process of manufacturing, has been changed to 6305 33 00, except that the rate of tax has become higher.
- 5.** Learned Advocate appearing for the appellant has contended that, the appellant declared polypropylene leno bags for export under the Tariff Heading 3923 2900 and marketed the same product in the domestic market under the Tariff Heading 6305 33 00 of the First Schedule to the Customs Tariff Act, 1975, as made applicable to GST by Notification No. 1/2017-Central Excise Rate dated June 28, 2017.

6. Learned Advocate appearing for the appellant has contended that, polypropylene leno bags manufactured by the appellant are more in the nature of a textile product and is specifically covered under Chapter Heading 6305 33 00 of the First Schedule of the Act of 1975. Appellant had applied for an advance ruling in Form GST AAR-01 before the West Bengal Authority for Advance Ruling (AAR), GST, on April 09, 2018, seeking an advance ruling on the classification of polypropylene leno bags under Chapter Heading 6305 33 00. By order dated July 06, 2018, the AAR had held that the polypropylene leno bags manufactured by the appellant can be classified under Chapter Heading 6305 33 00, if the same is made from woven polypropylene fabric using strips not exceeding a width of 5mm and without any impregnation, coating, excess or lamination with plastic.

7. Learned Advocate appearing for the appellant has contended that, the respondent no. 3 had preferred an appeal before the West Bengal Appellate Authority for Advance Ruling against the order dated July 06, 2018 of AAR. The Appellate Authority for Advance Ruling, by its order dated October 25, 2018, has set aside the order dated July 06, 2018 passed by the AAR.

- 8.** Learned Advocate appearing for the appellant has contended that, the respondent no. 1 on December 31, 2018 issued Circular bearing no. 80/54/2018-GST dated December 12, 2018 clarifying that polypropylene woven and non-woven bags and polypropylene woven and non-woven bags laminated with BOPP would be classified as plastic bags under HSN Code 3923 and would attract 18% GST.
- 9.** Learned Advocate appearing for the appellant has contended that, although the Circular dated December 12, 2018, was challenged in the prayer of the writ petition, during the course of hearing of the writ petition the challenge to the same was withdrawn. He has contended that, the challenge was withdrawn since the circular was assisting the appellant.
- 10.** Learned Advocate appearing for the appellant has contended that, the ruling of the AAR is correct. Polypropylene leno bags manufactured by weaving of polypropylene strips, although being variety of plastic, given the width of the strips involved, the product has to be classified under the Heading 6305 33 00 and nowhere else. He has in this regard, drawn the attention of the Court to Section XI relating to Textile and Textile Articles. He has drawn the attention of the Court to the Notes therein particularly to Note 1(g) and contended that, monofilament of which any cross-sectional

dimension exceeds 1mm or strips or the like of an apparent width exceeding 5 millimeter of plastic or plaits or fabrics or other basketware or wickerwork of such monofilament or strips, are not covered by Section XI.

11. Learned Advocate appearing for the appellant has drawn the attention of the Court to the Chapter Heading 6305 and contended that, it relates to sacks and bags of a kind used for packing of goods. He has drawn the attention of the Court to 6305 33 00 which classifies other, of polypropylene strips or the like. He has contended that, by reason of such classification read with the exclusion note in Section XI the product of the appellant is to be classified under the Chapter Heading 6305 33 00.

12. Learned Advocate appearing for the appellant has contended that, the raw materials composition for manufacture of polypropylene leno bags is plastic granules with the composition of about 92% to 94% of PP is 3% to 5% of LLDPE and Colour Master Batch is 3% to 4% of Colour Master Batch. He has pointed out that, the manufacturing process includes manufacturing of polypropylene strips (tapes) which is woven to produce man-made textile material which is commercially known as leno fabric. He has contended that,

leno fabric is then rolled and fabric rolls are cut into desired length which is converted to form a bag or sack.

13. Learned Advocate appearing for the appellant has contended that, Chapter Heading 6305 relates to sacks and bags. He has further pointed out that sub heading 6305 33 00 relates to sacks and bags of a kind used for packing of goods made of man-made textile materials of polyethylene or polypropylene strips or the like.

14. Learned Advocate appearing for the appellant has contended that, given the manufacturing process employed by the appellant, the sacks and bags are made from the polypropylene strips and then the textile fabrics produced through process of weaving of polypropylene strips and therefore, the sacks and bags are manufactured from textile fabrics.

15. Learned Advocate appearing for the appellant has contended that, polypropylene leno woven bags for packing of agricultural produce is internationally classified under HSN Code 6305 33 00.

16. Learned Advocate appearing for the appellant has contended that, tests report of the Central Institute of Plastics Engineering and Technology, Indian Institute of Technology and Indian Oil Corporation, have certified that, polypropylene leno bags of the appellant are manufactured out of the synthetic woven fabrics.

17. Learned Advocate appearing for the appellant has contended that, the Bureau of Indian Standard has classified High Density Polypropylene/polypropylene leno woven sacks for packaging and storage of fruits and vegetables under Indian Standard 16187 : 2014 which is under the category of textiles.

18. Learned Advocate appearing for the appellant has contended that, appellant was granted capital subsidy by Government of India under the Technology Upgradation Fund Scheme which was introduced to facilitate new and appropriate technology for making the textile industry globally competitive and to reduce capital costs.

19. Learned Advocate appearing for the appellant has relied upon various authorities on various aspects of the matter. On the aspect of the meaning of the word textile, learned advocate appearing for the appellant has relied upon **2000 Volume 1 Supreme Court Cases 466 (Commissioner of Income Tax Vs. Sundaram Spinning Mills), 1990 Volume 1 Supreme Court Cases 461 (Ess Dee Carpet Industry Vs. Union of India & Ors.), 1980 Volume 4 Supreme Court Cases 71 (Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan & Ors.)**

20. Learned Advocate appearing for the appellant has relied upon **1976 Volume 2 Supreme Court Cases 241 (Dunlop India Limited**

Vs. Union of India & Ors & Madras Rubber Factory Limited Vs. Union), 1989 Supp (1) SCC 671 (Elson Machine Private Limited Vs. Collector of Central Excise), 2021 SCC OnLine Mad 16941 (N.V.K. Mohammed Rowther & Sons Vs. Joint Commr. Of GST and C. Ex), 1991 (52) ELT 608 (Shon Ceramics Vs. Collector of Central Excise) 1996 83 ELT A 179 (SC) (Collector Vs. Shon Ceramics) and 1991 (51) ELT 161 (SC) (Plasmac Machine Mfg Co. Private Limited Vs. Collector of Central Excise) for the proposition that there is no estoppel against classification under correct tariff heading.

21. Learned Advocate appearing for the appellant has relied upon ***2012 Volume 3 Supreme Court Cases 518 (Collector of Central Excise, Bhopal Vs. Minwool Rock Fibres Limited)*** and ***2022 Volume 2 Supreme Court Cases 523 (Chief Commissioner of Central Goods and Services Tax and Ors. Vs. Safari Retreats Private Limited and Ors.)*** for the proposition that when two views are possible, one which favours the assessee should be adopted. He has relied upon ***2009 Volume 9 Supreme Court Cases 466 (Collector of Central Excise, Bhubaneshwar-I Vs. Champdany Industries Limited)*** and ***2008 Volume 5 Supreme Court Cases 680 (Mauri Yeast India Pvt. Ltd. Vs. State of U.P and Ors.)*** for

the proposition that specific description should be preferred over the general description.

22. Learned Advocate appearing for the respondent no. 3 and 4 has submitted that, the parties are governed by a decision of Madhya Pradesh High Court reported in **(1990) 50 ELT 201 (MP High Court) (Raj Pack Well Limited Vs. Union of India)**. He has contended that, the West Bengal Authority for Advance Ruling (AAR) fell to take into consideration such decision and therefore, arrived at erroneous finding.

23. Learned Advocate appearing for the respondent nos. 3 and 4 has submitted that, his clients preferred an appeal before the Appellate Authority directed against the order dated July 6, 2018 passed by AAR. He has referred to the Memorandum of Appeal as also the order of the Appellate Authority dated October 25, 2018. He has submitted that, polypropylene leno bags are manufactured by the appellant by weaving polypropylene strips (tapes). He has pointed out that polypropylene is a variety of plastic. He has also pointed out that, appellant declared the polypropylene leno bags voluntarily under Tariff Heading 3923 2900 and enjoyed duty drawback. According to the respondents, the appellant has not given

any cogent reason as to why, the Tariff Heading should now be changed from 3923 2900 to 6305 33 00.

24. Learned Advocate appearing for the respondent nos. 3 and 4 has contended that, in addition to the voluntary action of the appellant in classifying its product under the Heading 3923 2900 and obtaining duty drawback benefits thereon, the appellant is also bound by the decision of the Madhya Pradesh High Court rendered in ***Raj Pack Well Limited (supra)***.

25. The issue that has fallen for consideration is whether the polypropylene leno bags manufactured by the appellant can be classified under 6305 33 00 instead of 3923 2900.

26. Appellant is a manufacturer of polypropylene bags. It has voluntarily declared such bags under Chapter Heading 3923 2900 of the Central Excise Tariff Act, 1985 prior to the introduction of the Goods and Services Act Tax, 2017. It has availed duty drawback benefits on such classification also. It has declared the same product for the export under the Tariff Heading 3923 2900.

27. Appellant had applied for an advance ruling before the West Bengal AAR for classification of polypropylene leno bags manufactured by it under Chapter Heading 6305 33 00. The West Bengal AAR by its order dated July 06, 2018 had held that, the

polypropylene leno bags manufactured by the appellant can be classified under the Chapter Heading 6305 33 00 if the same is made from woven polypropylene fabric using strips not exceeding a width of 5mm and without any impregnation, coating, excess or lamination with plastic. The West Bengal Appellate Authority for Advance Ruling had by its order dated October 25, 2018, set aside the order dated July 06, 2018 passed by the AAR. The Writ Court had dismissed the challenge to the order of the West Bengal Appellate Authority for Advance Ruling dated October 25, 2018.

28. *Dunlop India Limited (supra), Elson Machine Private Limited (supra)* and *Plasmac Machine Mfg Co. Private Limited (supra)* and *Shon Ceramics (supra)* have held that there cannot be any estoppel against classification under the correct Tariff Heading/Sub Heading. On the strength of such authoritative pronouncement, it can be said that, the appellant was entitled to approach AAR for the advance ruling as it had done notwithstanding its voluntary disclosure under 3923 2900 and obtaining duty drawback on the basis of such classification.

29. Chapter Heading 6305 33 00 has prescribed the tariff for sacks and bags, of a kind used for the packing of goods. Section XI has dealt with Textiles and Textile Articles. Note 1(g) of Section XI

has stated that, such Section does not cover, inter alia, monofilament of which any cross-sectional dimension exceed 1 mm of strips or like (for example, artificial straw) of apparent width exceeding 5 mm, of plastics or plates and or fabrics or other basketware or wickerwork of such monofilament or strips. Therefore, in terms of Section XI, the monofilament which comes under the definition of Note 1(g) of Section XI cannot be treated as textile or textile articles. The word 'textile' has been understood by the Supreme Court in **Sundaram Spinning Mills (supra)**, **Ess Dee Carpet Industry (supra)** and **Delhi Cloth and General Mills Co. Ltd. (supra)**. The meaning of the textiles in the three authorities noted above has been considered in the context of the charging provisions in the respective cases. Same charging sections as in this case have not been considered by the Supreme Court in the three authorities noted above.

30. The issue therefore that has fallen for consideration is whether or not the sacks manufactured by the appellant can be classified as textile. **Raj Pack Well Limited (supra)** has considered the issue of classification of a sack manufactured with the same kind of materials, by another manufacturer. **Raj Pack Well Limited (supra)** has held that, on a combined reading of the provisions

relating to monofilament and textile contained in Chapter 39 was not the sole criteria for placing a strip in a particular entry. It has noted entry 54.06 of Chapter 54 and has held that, synthetic monofilament of 60 deniers or more and of which no cross-sectional dimension exceeds 1 mm strip and the like, should be of synthetic textile material. It has relied upon various authorities to hold that, HDPE sacks and articles are made of plastics. In common parlance also, HDPE and woven sacks have been known as plastic woven sacks in the industry.

31. To fall within the classification of textile, the sacks manufactured by the appellant have to qualify various parameters. Given the raw materials used in the manufacture of the sacks, by the appellant, - raw materials being plastic granules – per se, the manufactured sacks cannot be termed as textile product. However, it can be considered as synthetic textile should, various other parameters are fulfilled. To fall within the classification of a synthetic textile, the strip used for the weaving of the sack, must be of a particular cross-sectional diameter with a particular deniers. The strips that the appellant used for the manufacture of the sacks have been concurrently held by the Appellate AAR as well as the Writ Court not to qualify as synthetic textile. We have no material before

us to arrive at a different finding than the concurrent findings of the Appellate AAR and the learned Single Judge. AAR while returning its finding has not considered such aspect.

32. Another aspect has to be borne in mind. The sacks manufactured by the appellant are commonly known in the market as plastic sacks. They are not known as synthetic textile sacks or textile sacks.

33. In view of our finding on the eligibility or the suitability of classification as has been returned by us, we deem it proper not to deal with the various authorities that have been cited by the appellant on various other issues as according to us, they are no longer relevant.

34. In view of the discussions above, MAT 364 of 2023 along with all the connected applications are dismissed without any order as to costs.



[DEBANGSU BASAK, J.]

35. I agree.

[MD. SHABBAR RASHIDI, J.]