

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
14 Beliaghata Road, Kolkata – 700015

Name of the applicant	Mega Flex Plastics Ltd
Address	Polypark, Plot – PPD3, Village – Sandhipur, PO – Joynagar, Howrah - 711302
GSTIN	19AADCM7598R1Z8
Case Number / ARN	12 of 2018
Date of application	26 th April, 2018
Order No. & date	09/WBAAR/2018-19 dated 06.07.2018
Applicant's representative heard	Sri Vinay K Shraff, Advocate

- The Applicant stated to be, *inter alia*, a manufacturer of Polypropylene Leno Bags seeks a Ruling on Classification of the above goods under the CGST/WBGST Acts, 2017 (hereinafter referred to as the “the said GST Act”).

Advance Ruling is admissible under Section 97(2) (a) of the said GST Act.

The Applicant submits that the question raised in the Application has neither been decided by nor is pending before any authority under any provisions of the GST Act.

The officer concerned raises no objection to the admission of the Application.

The Application is, therefore, admitted.
- The Application states that the Applicant manufactures Polypropylene Leno Bags which are mainly used for packing of potato, onion, raw mango and other vegetables and citrus fruit in bulk. The Applicant also manufactures other woven Polypropylene bags which may be used for packing of cement, fertiliser and food grain. Ruling is, however, sought for the Polypropylene Leno Bags. The composition of these Polypropylene Leno Bags is i) Polypropylene (hereinafter referred to as “PP”) - 92% to 94%, ii) Linear Low Density Polyethylene (hereinafter referred to as “LLDPE”) - 3% to 5% and iii) Colour Master Batch - 3% to 4%. The raw materials, namely, PP, LLDPE and Colour Master Batch, along with Additives, are fed into the Extrusion Tape line and the extruding film is slit and stretched to form strips (tapes). The strips or tapes are then, wound on bobbins which are fed into Weaving Looms from which Woven Leno Fabric is obtained. The Rolls of the Woven Leno Fabric so obtained are then cut into the desired lengths and stitched to form the bags.

The Applicant is of the opinion that the PP Leno Bags manufactured is classifiable under Tariff Head 6305 33 00 of the GST Tariff which is aligned to the First Schedule of the Customs Tariff Act, 1975 (hereinafter referred to as the “the said Tariff Act”).
- In Statement dated 01.06.2018 before the Superintendent of Central Tax, Range-III, Sankrail Division. Howrah CGST & CX Commissionerate, Shri Hukum Chand Bothra, Director of Mega Flex Plastics Ltd, the Applicant, informed that before the implementation of GST the product, PP Leno Bags were cleared under both Tariff Sub-Headings, 39232990 as well as under 63053300, whereas, on and after the implementation of GST the same product is being cleared under Tariff Sub-Heading 63053300 in the domestic market and under Tariff Sub-Heading 39232990 during export.

The explanation provided by the Applicant for classifying the same product under Different Tariff Codes is that the Advance License issued to the Applicant by DGFT was for export under the Tariff Code 3923 29 90, whereas even though the Applicant had earlier cleared the same product in the domestic market under 3923 29 90 but later, started clearing the product under 6305 33 00, on being convinced that the later Tariff code was more specific.

4. The Applicant submits copies of the reports of test conducted by the Central Institute of Plastic Engineering & Technology dated 15.03.2018, the Indian Institute of Packaging dated 27.03.2018 and Indian Oil Corporation Ltd dated 12.03.2018 on his samples of PP Woven Leno Bags. The Applicant also submits a copy of IS 16187:2014 issued by the Bureau of Indian Standards, providing specifications for HDPE/PP Leno Woven Sacks for Packaging and Storage of fruits and vegetables.

Since the above reports are specific to the samples provided by the Applicant to that particular Institute and also because it is clearly stated in the reports of Central Institute of Plastic Engineering & Technology and the Indian Institute of Packaging that the Test Certificates dated 15.03.2018 and 27.03.2018, respectively, that the reports are not to be reproduced without written approval, and that the report dated 27.03.2018 cannot be used for litigation, the above references will not be considered when at the Ruling.

5. The Applicant has also submitted a communication from State Bank of India dated 29.09.2008 granting 10% capital subsidy under TUFS. The Technology Upgradation Fund Scheme is a scheme under the Ministry of Textiles for providing capital for modernization of Indian Textile Industry at international interest rate. The Applicant has availed of subsidy to the tune of about 22 lakhs in 2008.

On being specifically asked the Applicant has admitted during Hearing that despite availing of subsidy under a scheme of the Ministry of Textiles aimed at providing capital for modernization of Indian textile industry, the product PP Leno Bags have been cleared from their factory under Chapter 39 (Plastics and Articles thereof) for the purpose of Central Excise and not under Chapter 63 (Other made up textile articles; sets; worn clothing and worn textile articles; rags).

6. Again, as per Advance License issued by the Directorate General of Foreign Trade, Calcutta, License No: 0210207709 dated 23.06.2017 it is seen that the Advance Authorisation was given for "Articles made of polypropylene: Leno bags/sacks containing 100 MT polypropylene granules" (ITCHS: 39232990). This License is valid for 18 months from the date of issuance, i.e. up to 22.12.2018. It is seen that during the same month, i.e., 27.06.2017, barely 4 days after issuance of the Advance license by DGFT classifying the products under Chapter 39, the Applicant informs the Revenue that Tariff Heading under Chapter 63 is found to be more appropriate and specific and that they would start clearing their products PP Leno Bags/Sacks in the domestic market under Tariff Code 6305 33 00 instead of Tariff Code 3923 29 90 under which the same products, PP Leno Bags were being cleared till then. The officer concerned also submits that the Applicant had not provided any information to the Revenue regarding the reasons for this change in Tariff Code.

It is significant to note here that the very month in which an Advance License was issued to the Applicant for export clearance of goods under Tariff Code 3923 29 90 the Applicant decided to change the Tariff Code for the same product, PP Leno Bags, to 6305 33 00 without citing any reasons for the change.

Nor has the Applicant applied to DGFT for any amendment with respect to the Tariff Code.

Clearly, the Applicant has been either indulging in supplying the same product in the domestic market and the overseas market by classifying under more than one Tariff Code, in violation of the laws laid down by the Ministry of Finance, or there is a significant difference in the PP Leno Bags which are being cleared for home consumption and which are being exported.

It may be pertinent to note here that under GST the rate of Tax for Tariff Code 3923 29 90 is 18% while that of Tariff Code 6305 33 00 is 5%/12% depending on whether or not the sale value exceeds Rs 1000/- per piece, and that prior to the implementation of GST, under the Central

Excise regime the rate of Central Excise duty for items, both under Tariff Code 3923 29 90 and Tariff Code 6305 33 00 was 12.5%.

7. There is no specific Tariff Code for PP Leno Bags and/or Leno Bags. In the context of textiles the word “Leno” refers to a particular kind of weave in which the warp yarns are twisted together in pairs between the weft of filling yarns.
8. Tariff Sub Heading 3923 29 90 under the GST Tariff covers articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics, namely, sacks and bags (including cones) made of plastics other than polymers of ethylene but not of poly (vinyl chloride).
Tariff Sub Heading 6305 33 00 under the GST Tariff covers sacks and bags, of a kind used for packing of goods, made, not of jute or of other textile fibres of Heading 5303, but of man-made textile materials which are not flexible intermediate bulk containers but are of polyethylene or polypropylene strip or the like.
The product PP Leno Bags, if described as only such, can be placed under either Tariff Code if merely these Tariff descriptions are referred to. However, it is to be seen if “PP Leno bags” have any variation in their composition or specification which may have a bearing on the Tariff Code under which the product is placed. It is, thus, obvious, that to correctly determine the classification of the product explanatory notes and clarifications beyond these Tariff descriptions.
9. Note 2(p) of Chapter 39 of the GST Tariff (Plastics and articles thereof) *does not* cover goods of Section XI (textiles and textile products). There is no other criterion stated to exclude goods from being included as Plastics and articles thereof vis-a-vis Chapter 63.
Again, Note 1(g) to Section XI of the Tariff Act states that the Section of Textile and Textile Articles covering Chapters 50 to 63 *does not* include, “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)”
Note 1 (h) to Section XI of the Tariff Act states that the Section of Textile and Textile Articles covering Chapters 50 to 63 *does not* include, “Woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of chapter 39”
10. Thus, to be included in Chapter 63, the width of the tapes, manufactured from Plastics or articles thereof of Chapter 39, used to weave the fabric should be less than or equal to 5mm and should not be impregnated, coated, covered or laminated with plastics or articles thereof, of chapter 39.
11. The Application states that the Applicant manufactures PP Leno Bags, as well as PP Woven Sacks, which are used, or may be used for packing a variety of materials. The inputs, the manufacturing process and the type of looms used for the manufacture of these Bags are the same.
12. From the explanatory notes and clarification provided for determination of classification of goods it is seen that two more factors are to be considered, namely, the width of the tape used in the weaving and whether or not there is a layer/lining in these bags. The specifications of the PP Leno Bags being manufactured by the Applicant, therefore, become an important feature for determining their classification for the purpose of GST.

13. IS 16187:2014 issued by the Bureau of Indian Standards specifies that, PP Leno Woven sacks for packaging and storage of fruits and vegetables should have range of width from 2.0 to 2.5 mm.
IS 9755:2003, IS 14887:2014, IS 11652:2000 issued by the Bureau of Indian Standards lays down specifications for packing fertilizers, food grains and cements respectively, and it is seen that these bags are for PP Woven Sacks and not for PP Leno Woven sacks.
Since, the Ruling sought for is specifically for PP Leno Bags, the BIS for fruits and vegetables is considered solely.
14. Therefore to classify the product PP Leno Bags both the Explanatory Notes, as well as the clarifications in the Tariff, and the specifications as per IS 16187:2014 should be taken into consideration.
15. Tariff head 6305 33 00 includes the goods that are classifiable as sacks and bags, of the kind used for packing of goods, made from polyethylene or polypropylene strips and the like that qualifies as man-made textile materials. Only those PP strips and the like are considered as textile materials width of which do not exceed 5 mm [refer to Note 1(g) to Section XI of the Tariff Act].
16. The above-mentioned Tariff head is not applicable if the sacks made from PP woven fabric are impregnated, coated, covered or laminated with plastics or articles of plastics covered under Chapter 39 [Note 1(h) to Section XI].

In view of the foregoing, we rule as under:

RULING

'PP Leno Bags', if specifically made from woven Polypropylene fabric using strips or the like of width not exceeding 5 mm and without any impregnation, coating, covering, or lamination with plastics, are to be classified under Tariff Sub Heading 6305 33 00.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.

Sd-
(VISHWANATH)
Member
West Bengal Authority for Advance Ruling

Sd-
(PARTHASARATHI DEY)
Member
West Bengal Authority for Advance Ruling