

**WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING
AT 14, BELIAGHATA ROAD, KOLKATA-700015**

**Before:
Mr. A.P.S Suri, Member
Ms. Smaraki Mahapatra, Member**

In the matter of

Appeal Case No. 02 /WBAAAR/Appeal/2019 dated 13.02.2019

- And -

In the matter of:

An Appeal filed under Section 100(1) of the West Bengal Goods and Services Tax Act, 2017/ Central Goods and Services Tax Act, 2017, by M/s U.S.Polytech, Godown H-1, Belvedere Jute Mill Compound, Sankrail, Howrah- 711313.

Present for the Appellant: Sri Ravi Raghavan, Advocate, Sri Rahul Tangri, Advocate,
Sri Shreyash Agarwal, FCA

Present for the Respondent: None

Matter heard on: 11.04.2019

Date of Order: 13.05.2019

1. This Appeal has been filed by M/s U.S.Polytech (hereinafter referred to as “the Appellant”) on 13.02.2019 against Advance Ruling No. 31/WBAAR/2018-19 dated 08.01.2019, pronounced by the West Bengal Authority for Advance Ruling (hereinafter referred to as the WBAAR) in the matter of M/s U.S.Polytech.
2. The Appellant, a manufacturer of Polypropylene Non-woven Bags seeks a Ruling on Classification of and Rate of Tax applicable on the above goods under the Central Goods and Services Tax Act, 2017/ the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to collectively as “the GST Act”).
3. The WBAAR pronounced that ‘PP Non-woven Bags’, specifically made from non woven Polypropylene fabric are plastic goods to be classified under Sub Heading 3923 29 and taxability at 18 % rate under Serial No. 108 of Schedule III of Notification no. 01/2017-C.T (Rate) dated 28-06-2017 under the CGST Act, 2017 & Notification No. 1125-FT dated 28/06/2017 under the WBGST Act, 2017.
4. The Appellant has filed an Appeal against the above Advance Ruling with the prayer to set aside the impugned Advance Ruling passed by the WBAAR or pass any such further or other order (s) as may be deemed fit and proper in facts and circumstances of the case, on the following grounds:

I) The polypropylene non-woven bags are manufactured from the non-woven polypropylene fabrics classified under heading 5603, are classifiable under heading 6305 39 00.

II) As per Note 1 of Chapter 63, Sub-Chapter I of Chapter 63 of the First Schedule to the Customs Tariff Act applies only to made-up articles of any textile fabrics. Chapter Heading 6305 is covered under sub-Chapter I of 63. Sub-Chapter I of 63 read as 'other made up textile articles.'

III) In the instant case, non-woven bag is produced in a finished state by processing the non-woven fabric which is purchased by the appellant. The appellant does not purchase polypropylene granules as assumed by the WBAAR and also does not have any facility for conversion of the granules into fabric. The non-woven fabric as purchased from the market is processed and bonded to give it a shape of shopping bag. Therefore, in view of Section Note 7 of Section XI of Customs Tariff, the non-woven fabric bags are made up of textile articles.

IV) Citing the case of T.P.I. India Ltd Vs. Commissioner of Central Excise it has been held by the Hon'ble Tribunal that bags being assembled by cutting, gumming and stitching, to be regarded as satisfying the definition of 'made up' given in Section 5(e) to Section XI of erstwhile Central Excise Tariff, 1985 in force during the 1994-95, which is para-materia to Section Note 7(f) to Section XI of the Customs Tariff Act.

V) Chapter Note 2(a) of Chapter 63 states that sub-Chapter I does not cover goods of Chapters 56 to 62. However, Chapter Note 2(a) of Chapter does not exclude goods manufactured from raw materials falling under Chapter 56 to 62. Therefore, non-woven fabric bags are not excluded from Chapter 63 by the virtue of the said Chapter Note.

VI) The polypropylene non-woven fabrics are textile materials and are not plastics. In support of their claim they relied upon the judgment of the Hon'ble Apex Court in the case of Prrrits & Spencers (Asia) Ltd Vs. State of Haryana [1983 (13) ELT 1607 (SC)] where it has discussed the scope of the term 'textile' to cover a wide range of variety of artificial fabrics and not fabrics made of cotton, wool and silk. It was also held by the Hon'ble Apex Court that in view of the rapid development of technology of making fabric, weaving would include any process of binding of fabrics.

VII) The polypropylene non-woven fabrics cannot be classified under Chapter 39 of the First Schedule to Customs Tariff as it is understood that plastics are those articles which are formed by putting external influences by moulding like Casting, extruding, rolling so as to give them a definite shape. However, polypropylene non-woven fabrics are formed from spun-bonding of filaments /fibres to form a fabric. There is no eternal pressure applied to make it of any particular shape.

VIII) The polypropylene non-woven bags are considered as 'cloth bags' in common parlance. Citing various court cases the Appellant stated that 'it is a well known principle that if the definition of a particular expression is not given, it must be understood in its

popular or common sense viz. in the sense how that expression is used everyday by those who use or deal with those goods.

IX)The Appellant mentioned the judgment of Advance Ruling authority Tamilnadu in the case of Kanniwadi Nagarajan Sharmila (Order No 12/AAR/2018 dated 27.09.2018) and Advance Ruling authority, Kerala in the case of M/s J.J.Fabrics, Ernakulam (Order No. CT/5492/18-C3 dated 29.05.2018) wherein it has been held that carry bags made of polypropylene non-woven fabrics are classifiable under heading 6305 and chargeable to 5% GST.

X) The Appellant stated that in the instant case the WBAAR relied upon the ruling of the West Bengal Appellate Authority for Advance Ruling in the case of Mega Flex Plastics Ltd, wherein the Hon`ble Appellate Authority was deciding the classification of polypropylene leno bags relying upon the ruling in the case of Raj Pack Well wherein the Hon`ble Madhya Pradesh High Court was dealing with the issue of classification of HDPE woven sacks. The Appellant claimed that though polypropylene is essentially in a form of plastic, however, once it passes various processes and becomes a polypropylene fabric, it becomes a textile product, classifiable under Tariff heading 5603. Thereafter, any further process thereon to manufacture bag would take it to the Tariff heading 6305.

5. During the course of the hearing the Appellant reiterated the points as stated in Grounds in Appeal.

6. None appeared on behalf of the Respondent and no written submission has been made before us for consideration.

7. The matter is examined and written and oral submissions made before us are considered.

8. The Appellant procures ready-made non-laminated fabric, classifiable under heading 5603 of the Tariff, in the form of rolls of various colours, widths and lengths as per requirement. The Appellant then puts these rolls into an unwinding unit of the automatic non-woven bag making machine. The un-wound fabrics are folded according of the required size and type of the bag. After folding, the sides of the fabric are sealed through ultrasonic radiation to make a bag. After sealing, the bag is cut according to the required size and customized shapes like D-cut, Loop Handle or T-Short. Finally, the Appellant prints designs and logos on the bags which are done manually. In some cases, printing is done prior to the bag making process.

9. These bags are used by industrial units, retail outlets and textile shops for packing their goods and they have been granted registration by the Office of the Textile Commissioner for manufacturing textile based products.

10. It is seen from the sample suppliers' invoices provided that the goods are being procured as 'Non-woven fabric' under HSN 5603 in the form of rolls and then cutting into desired sizes according to differed shapes of requirement of the customers.

11. In terms of explanation (iii) and (iv) to Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017, tariff heading, 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 and the rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall be applied for the interpretation and classification of goods.

Applying this Rule, the Description of *Chapter Heading 6305* is as follows :

Sacks and bags, of a kind used for the packing of goods

and more specifically, *6305 33 00*, states as follows :

Of man-made textile materials : Other, of polyethylene or polypropylene strip or the like

Further, Explanatory Notes to the Heading 6305, is as follows :

63.05		Sacks and bags, of a kind used for the packing of goods
6305.10	-	Of jute or of other textile bast fibres of heading 53.03
6305.20	00-	Of cotton
	-	Of man-made textile materials
6305.32	--	Flexible intermediate bulk containers
6305.33	--	Other, of polyethylene or polypropylene strip or the like
6305.39	--	Other
6305.90	-	Of other textile materials


12. From the above discussion and findings, we hold that the “P P Non-woven bags” manufactured by the Applicant from ‘Non-woven fabric’ under HSN 5603 falls under HSN 6305 33 00 and the applicable rate for the bags of value not exceeding Rs.1000/= per piece is taxable at the rate of 5% under Serial No. 224 of Schedule-I of Notification No. 1/2017-C.T. (Rate), dated 28-6-2017 and Serial No. 224 of Schedule-I of Notification No 1125-FT dated 28/06/2017 under WBGST Act, 2017.


13. The WBAAR has pronounced its ruling mainly based on the Advance Ruling Order No. CT/5492/18-C-3 dated 29.05.2018 issued by the Kerala Authority of Advance Ruling on M/s J J Fabrics, Ernakulam. In the said case, the primary raw materials for polypropylene sheets are polypropylene granules which are further used for manufacture of Polypropylene non-woven bags. In the instant case the polypropylene non-woven bags are manufactured from the non-woven polypropylene fabrics. Hence, the WBAAR erred

in holding that 'PP Non-woven Bags', specifically made from non woven Polypropylene fabric are plastic goods to be classified under Sub Heading 3923 29.

14. Accordingly, the Advance Ruling No. 31/WBAAR/2018-19 dated 08.01.2019 is modified to this effect and the Appeal stands disposed of accordingly.

Send a copy of this order to the Appellant and the Respondent for information.


(Smaraki Mahapatra)
Member
West Bengal Appellate Authority
for Advance Ruling


(A.P.S. Suri)
Member
West Bengal Appellate Authority
for Advance Ruling