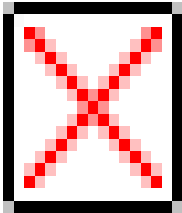


The right hand pats while the left hand slaps

NOVEMBER 16, 2021

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WITH

much fanfare, the Prime Minister Office and Ministry of Textiles went in for promoting Tech Textiles as a matter of national policy. India also laid for itself a target of increasing its share of exports of Tech Textiles in the world market just like China and other countries. Tech Textiles are basically made of polypropylene - spun fibres and are non-woven by character. Such textiles find usage in PPE Kits, Sacks and bags and are therefore, good substitute of polythene bags and are considered eco-friendly. Annual reports of Ministry of Textiles have a separate chapter devoted to the promotion of Tech Textiles as they have usage in agriculture, hospitals, in packaging industry and are even used for wearing jackets by construction labourers and others. They are basically textiles and not item of plastics as has been held even by the DGFT while classifying products made of non-woven fabrics as a textile item. With such laudable policy objectives, such items were enjoying a lower rate of GST of 5% till a clarification by CBIC upset the apple cart, vide Circular No. [80/54/2018-GST](#) dated 31.12.2018.

Relevant extract re-produced below:

"7. Applicability of GST on supply of Polypropylene Woven and Non-Woven Bags and PP Woven and Non-Woven Bags laminated with BOPP:

7.1 Representations have been received seeking the classification and GST rates on Polypropylene Woven and Non-Woven Bags and Polypropylene Woven and Non-Woven Bags laminated with BOPP

7.2 As per the explanatory notes to the HSN to HS code 39.23, the heading covers all articles of plastics commonly used for the packing or conveyance of all kinds of products and includes boxes, crates, cases, sacks and bags.

7.3 Further as per the Chapter note to Chapter 39, the expression "plastics" means those materials of headings 39.01 to 39.14 which are or have been capable, either at the moment of polymerization or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticizer) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence.

7.4 Thus it is clarified that Polypropylene Woven and Non-Woven Bags and PP Woven and Non-Woven Bags laminated with BOPP would be classified as plastic bags under HS code 3923 and would attract 18% GST.

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

Earlier to this clarification and even after it being communicated there were case law holding the item made of Polypropylene Spun Fibres to be item of Chapter 56 or Chapter 63 (as in case of bags and sacks).

The flow of judgments pro and against the Revenue is as follows:

IN FAVOUR OF THE REVENUE:

- 2021 (54) GSTL 106 (AAR GST Gujarat) IN RE: Rotex Fabrics Pvt. Ltd. - [2021-TIOL-71-AAR-GST](#)

which held following the CBIC Circular that 'non-woven fabric from fibre grade polypropylene by adopting spun bond technology will merit classification under HS Code 3923 as clarified by CBIC Circular No.80/54/2018- GST dated 31.12.2018.

-2021 (49) G.S.T.L. 151 (A.A.R. - GST - Puducherry): IN RE : TEXTBOND

NON-WOVEN S: Order No. 01/PUDUCHERRY-AAR/2020-21, dated 18-11-2020 - [2021-TIOL-115-AAR-GST](#): PP

Non-Woven Bags even when spun bound were held to be falling under Chapter 39 in ruling which went in favour of the department.

AGAINST THE REVENUE PRIOR TO CBIC CIRCULAR: -The

Kerala Authority for Advance Ruling in J.J. Fabrics, ORDER No. CT 15492/18-C3 dated 29/05/2018

, held that the carry bags made from polypropylene non-woven fabrics is classifiable under Sl. No. 224 of Schedule-I of the Notification No. [1/2017-Central Tax \(Rate\)](#)

dated 28.06.2017 and Kerala State Notification 360/2017, dated 30.06.2017 and hence, taxable at 5% [CGST @2.5% & SGST @2.5%].

-The West Bengal Authority for advance ruling in SMVD Polypack Pvt. Ltd. Order No. & date 16/WBAAR/2018-19 dated 18.09.2018 - [2018-TIOL-155-AAR-GST](#)

held that the woven bags made from polypropylene without any impregnation, coating, covering or lamination with plastics are classifiable under sub-heading 6305 33 00 and not under sub-heading 3923 29 90.

- Further on 27.09.2018,

the Tamil Nadu Authority for advance ruling in Kanniwadi Nagarajan Sharmila held that the non-woven rice bags made from 100% polypropylene fiber, are classifiable under HSN 6305 33 00.

-Again in 2018 (18) G.S.T.L. 324 (A.A.R. - GST): IN RE : KANNIWADI NAGARAJAN SHARMILA: Order No. 12/AAR/2018, dated 27-9-2018 - [2018-TIOL-214-AAR-GST](#) in Application No. 18

-On 28.09.2018, t

he West Bengal Authority for advance ruling in RLJ Woven Sacks Pvt. Ltd. Order No. 19/WBAAR/2018-19 dated 28.09.2018 - [2018-TIOL-172-AAR-GST](#)

-2021 (48) G.S.T.L. 204 (A.A.R. - GST - H.P.): IN RE : SHIVALIKA ENTERPRISES: -

Advance Ruling No. HP-AAR-10/2020-26703-707, dated 20-10-20 - [2020-TIOL-288-AAR-GST](#)

-2014 (307) E.L.T. 784 (Tri. - Del.): J.S. FABRICS Versus COMMISSIONER OF CENTRAL EXCISE, KANPUR - [2014-TIOL-1012-CESTAT-DEL](#):

- For tool Bags made of textile material classification e under Heading 6305 of Central Excise Tariff is proper in view of HSN Explanatory Notes under the heading and eligible for exemption under Notification No. 30/2004-C.E., no input duty Cenvat credit being availed. (The ruling is under Central Excise Law for same tariff item).

-2021 (47) G.S.T.L. 399 (A.A.R. - GST - Haryana): IN RE : MANAS GEO TECH INDIA PVT. LTD.: Advance Ruling No. HAR/HAAR/R/2018-19/21, dated 25-10-2018 in Application No. 21/2018-19

-2019 (25) G.S.T.L. 311 (App. A.A.R. - GST): IN RE : U.S. POLYTECH: Appeal Case No. 2/WBAAAR/Appeal/2019, dated 13-5-2019 - [2019-TIOL-45-AAAR-GST](#)

AGAINST THE REVENUE DESPITE TAKING NOTE OF CBIC CIRCULAR:

- A.R. Appeal No.1/2020/AAAR dated 02.03.2021 passed by the Pudducherry Appellate Authority for Advance Ruling vide Order-in-Appeal No. AAAR/01/2021 (AR) in the matter of RE: TEXTBOND NONWOVENS

- [Order of M/s Neel Kanth Fabrics, Joint Commissioner Appeals, Panchkula \(Haryana\) GST](#)

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2020 (34) G.S.T.L. 635 (A.A.R. - GST - T.N.): IN RE : V. PONRAJ: Order No. 04/ARA/2020, dated 31-1-2020 in Application Sl. No. 25/2019.

By other ministries:

- Director General of Foreign Trade vide notification No. 54/2015-2020 dated 15-01-2019

incorporated Appendix-V (List of 207 Technical Textile Items) under ITC(HS) 2017, Schedule-I(import policy). Entry No. 171 of this Appendix-V, clearly states that Sacks and bags of manmade textile materials comes under Technical textile items and classified under 63053200 code of ITC (HS) Codes.

- M/s Disha Jute & Allied Products (P) Ltd., Bhiwani an ORDER OF CLARIFICATION

issued by the Additional Chief Secretary to Government of Haryana, Excise & Taxation Department dated 16.07.2018 classifying these products under TH6305.

From the foregoing, it is clear that CBIC Circular has mostly not met with approval even of Ministry of Textiles and DGFT and even Haryana VAT Authorities as well as some of its own Departmental Officers. A pleasant change to see is that adjudicating authorities have also started coming out of unnecessary fear of vigilance in post GST era and have started following judicial discipline than conflicting executive instructions. It appears that Circular has been issued without evolving consensus of other ministries within Central Government which are users of HSN Code as well as state Governments. If Circulars are issued haphazardly, they can rather increase litigation. Though, MOF has remedied the revenue situation and future litigation by providing now a higher rate of duty of 18% for Chapter 63 items also, like it is existing for Chapter 39 of 9% + 9% but it also shows that somewhere there is a thinking evolving that the legality of Circular may be difficult to withstand further judicial scrutiny. Haste causes waste and by increasing rate under TH6305, somewhere the policy of PMO to promote tech textiles has also got jettisoned. Matter in this regard is already pending before Delhi H.C. after grant of stay in

Association of Technical Textile Manufacturers V/S Union of India and others (CM Appl. 25692/2019).

Revenue considerations apart, the policy of Prime Minister Office, Ministry of Commerce, as well as Ministry of Textiles and various other States to promote Tech Textiles, their production and exports get hampered with the taxes getting raised suddenly, at a time when higher production, usage of destructible green fabric as well as exports are being systematically promoted by various other Ministries of the Government.

[The views expressed are strictly personal.]

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