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

ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2022/10
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/26)

Date : 12.07.2022

Name and address of the appellant	:	M/s. Karam Green Bags, Plot No. 190, Ground Floor, Survey No. 127, Nr. Shantidham Society, SIDC Main Road, Veraval, Gujarat
GSTIN of the appellant	:	24AAKFK2714K1ZC
Advance Ruling No. and Date	:	GUJ/GAAR/R/63/2020 dated 17.09.2020
Date of appeal	:	26.10.2020
Date of Personal Hearing	:	31.05.2022
Present for the appellant	:	Shri Paresh Sheth, (Advocate)

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017' and the 'GGST Act, 2017') are in *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal has been filed under Section 100 of the CGST Act, 2017 and the GGST Act, 2017 by M/s. Karam Green Bags (hereinafter referred to as Appellant) against the Advance Ruling No. GUJ/GAAR/R/63/2020 dated 17.09.2020.

3. The appellant has raised the following questions for advance ruling in the application for Advance Ruling filed by it.

> *"1.Whether the product Non-woven Bags manufactured through the intermediate product, Non-Woven Fabrics classifiable under Heading No. 5603 are properly classifiable under Heading No.6305 or under Heading 3923?*
> *2. Whether the product Non-woven Bags would be eligible for exemption under Notification No.01/2017-CT (Rate) and 01/2017-IT(Rate) dated 28.06.2017, as amended?"*

4. The appellant has submitted that they are engaged in the manufacturing of Non-Woven Bags through the intermediate product i.e. Non-Woven fabrics manufactured from Fiber Grade poly propylene granules by adopting Spun Bond technology, in which poly propylene granules are fed to the hopper and passed through extruder at certain temperature and the melted material after filtering passed through the spinning unit to

obtain a continuous single filament which are subjected to lying on the continuous web and under control pressure thermal bonding resulting in product namely Non-Woven fabric which is used in manufacturing of Non-Woven Bags.

5. The appellant has submitted that in view of general rules of interpretation, their product is classifiable under Heading No. 6305.3300 and that Director of DKTE Center of Excellence in Non Wovens clarified that polypropylene non-woven fabrics are basically textiles and not plastic and therefore are classifiable under Heading No. 5603. The appellant also submitted that Commissioner, CGST, Madurai vide letter dated 01.01.2018 had clarified to Madurai District Non-Woven Bag and Cotton Bag Manufacturer Association that non-woven bags are classifiable under Heading 63059000 and eligible for exemption under Notification No. 01/2017-CT(Rate). The appellant also submitted that West Bengal Appellate Authority for Advance Ruling vide ruling 02/WBAAAR/Appeal/2019 dated 13.05.2019 have settled the law that polypropylene non-woven bags are classifiable under Heading 6305.3300 and therefore would prevail over the clarification issued by TRU vide Circular No. 80/54/2018-GST wherein polypropylene non-woven bags are classified under Heading 3923 and attract 18% GST. The appellant also relied upon judgment of Supreme Court in case of Porritts and Spencers (Asia) Ltd V/s State of Haryana [1983 (13) ELT 1607 (S.C.)] wherein it was held that the word 'textile' would also cover the fabric manufactured through any material.

6. The Gujarat Authority for Advance Ruling (herein after referred to as 'the GAAR'), vide Advance Ruling No. GUJ/GAAR/R/63/2020 dated 17.09.2020, *inter-alia* observed that in view of Madhya Pradesh High Court Judgment in case of M/s Raj Packwell Ltd, fiber manufactured from polypropylene granules cannot be considered as textile in view of Textiles Committee Act, 1963 and hence classification of polypropylene non-woven bags under Heading 6305 is not correct. Further, the ruling of WBAAR relied upon by appellant is not applicable in provisions of Section 103 of CGST Act. GAAR also observed that in view of CBIC (TRU) Circular No. 80/54/2018-GST dated 31.12.2018, polypropylene woven and non woven bags as classifiable under Chapter Heading 3923.

6.1 In view of the foregoing, the GAAR ruled as follows:-

> *"Ques.1.Whether the product Non-woven Bags manufactured through the intermediate product, Non-Woven Fabrics classifiable under Heading No. 5603 are properly classifiable under Heading No. 6305 or under Heading 3923?*
> *Ans: The Non-Woven Bags manufactured through the intermediate product i.e. Non-Woven fabric manufactured from fiber grade polypropylene granules by adopting the Spun Bond technology, merits classification under HS code 3923.*
> *The rate of GST applicable on said products during different periods are as below:*

Sr.No.	Period	Rate of CGST	Rate of SGST	Total rate of GST
1.	01.07.2017 to 30.09.2019	9%	9%	18%

2.	01.10.2019 to 30.12.2019	6%	6%	12%
3.	01.01.2020 to till date	9%	9%	18%

Ques.2. Whether the product Non-woven Bags would be eligible for exemption under Notification No.01/2017-CT(Rate) and 01/2017-IT(Rate) dated 28.06.2017, as amended?
Ans: Answered in negative..."

7. Aggrieved by the aforesaid advance ruling, the appellant has filed the present appeal.

7.1 The appellant in the ground of appeal has submitted that the GAAR erred in holding that polypropylene non-woven and non-laminated bags are classifiable under Chapter Heading 3923 and in not considering their submission, in view of Rules of Interpretation, Chapter Heading 6305.3300 being specific heading would prevail over the general Chapter Heading 3923.

7.2 The appellant submitted that the GAAR erred in stating that the decisions of Advance Ruling Authority and Appellate Advance Ruling Authority are binding on applicant under Section 103 of CGST Act without considering the fact that the Advance Ruling Authority and Appellate Advance Ruling Authority, as referred in their submission, have settled the law and confirmed the classification of polypropylene non-woven bags under Chapter Heading 6305.3300 and same were of binding/persuasive in nature. Further, the decision of Appellate Advance Ruling Authority was pronounced after the clarification issued by TRU vide Circular No. 80/54/2018-GST dated 31.12.2018 and therefore would prevail over clarification.

7.3 The appellant submitted that GAAR erred in following the decision of Madhya Pradesh High Court in case of M/s Raj Pack Well Ltd as product under consideration before High Court was Woven Bags and therefore the said decision is not applicable in present case. The appellant further submitted that GAAR erred in following clarification issued by TRU, CBIC as the said clarification pertains to Non-woven bags laminated with BOPP and in Para 7.5 of said circular, it is specifically stated that non-laminated bags would merit classification as per their constituent materials.

7.4 The appellant submitted that GAAR ignored the fact that Director of DKTE Center of Excellence in Non Wovens clarified beyond doubt that polypropylene non-woven is textile material and not plastic and therefore, the product manufactured from such material could never be classified as plastic material. The appellant further submitted that GAAR ignored that the Supreme Court, on similar issue, in case of Porritts and Spencers (Asia) Limited V/s State of Haryana settled the law that the word 'textile' would also cover the fabric manufactured through any material. The appellant submitted that from finding of Supreme Court, it is clear that fabric can be manufactured from any material and need not necessarily be only from cotton.

8. The appellant vide their additional submission dated 12.01.2022 submitted that GAAR failed in considering the fact that while referring to the decision in case of Porritts

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and Spencers (Asia) Limited V/s State of Haryana, it is not the intention but the finding is to be looked into. The Supreme Court in above case settled the law that textile means when yarn, whether cotton, silk, woolen, rayon, nylon or made out of any other material is woven into fabric and the method of weaving may be warp and woof pattern as adopted generally in most of the textiles, or it may be another process. Due to advance in technology, variety of fabrics are manufactured from various unknown materials using new techniques invented for making fabric out of yarn so, it would be unwise to confine the weaving process to the warp and woof pattern; weaving of yarn would mean binding or putting together by some process to form a fabric.

8.1 The appellant vide their additional submission submitted that GAAR erred while dealing with decision of Appellate Authority for Advance Ruling in case of M/s U.S.Polytech observing that said ruling is not applicable in view of Section 103 of CGST Act. It is settled law that any decision of Higher Appellate Authority is binding on lower authority and therefore, finding of GAAR is misapprehension of law as Section 103 of CGST Act does not speak that the order of Appellate Advance Ruling Authority would not be binding on the Advance Ruling Authority.

8.2 The appellant further submitted the Audit objection, raised in case of M/s Girivarya Non-Woven Fabrics Pvt Ltd (firm engaged in similar business), dated 26.11.2020 and reply thereof, on account of pre-consultation to SCN, given by Commissioner dated 06.01.2021. The Commissioner on basis of submission made by appellant at the time of hearing of pre-consultation, dropped the audit objection and also confirmed the classification of Non-woven fabrics under Chapter Heading No.5603.

8.3 Further, The appellant relied upon following judgments in support of their claim:

(i) Anuradha Processors V/s Commissioner of C.Ex. [2007(213) ELT 35],
(ii) Tirupathi Non-woven Pvt Ltd Vs Commissioner of C.Ex. [2016(10) TMI 646],
(iii) Trade Notice No. 35/2001 dated 09.05.2001 issued by Commissioner of C.Ex., Vadodara,
(iv) Onkyo Sight & Sound India Ltd [2019(368) ELT 683 (Tri-Chennai)],
(v) Amit Cotton Industries [2019 (29) GSTL 200],
(vi) Senthilkumar Thilagavathy [2019 (25) GSTL 145] and
(vii) Claris Lifesciences Ltd Vs UOI [2014 (305) ELT 497 (Guj)]

9. During the course of personal hearing held on 31.05.2022, the advocate for the appellant reiterated the submissions made in the appeal dated 02.01.2021 and additional submissions made vide their letter dated 12.01.2022. The advocate for the appellant also submitted that they are manufacturing non-woven non-laminated bags and the same should be classified under 6305. That GAAR has given no findings on the Section Note of Chapter 39. That GAAR has not considered their manufacturing process. That the product manufactured by them will fall, as described, under Para 7.5 of Board's Circular No. 80/54/2018-GST dated 31.12.2018.

FINDINGS :-

10. We have carefully gone through and considered the appeal and written submissions filed by the appellant, submissions made at the time of personal hearing, Advance Ruling given by the GAAR and other material available on record.

11. The main issue here is to decide the classification of the product viz. Poly Propylene Non-Woven Bags manufactured from intermediate product i.e. Poly Propylene Non-Woven fabrics which in turn is manufactured from Fiber grade poly propylene granules by adopting the Spun Bond technology.

12. The appellant in its submission stated that they are engaged in manufacturing of non-woven bags through the intermediate product non-woven fabrics manufactured from fiber grade polypropylene granules by adopting Spun Bond technology in which polypropylene granules are passed through extruder at certain temperature, the melted material is converted into single filament after passing through spinning unit. Then, these filaments are laid on continuous web under control pressure thermal bonding resulting in non-woven fabric and the said intermediate product "poly propylene non-woven fabrics" is classifiable under Chapter Heading 5603 and subsequently Poly Propylene Non-woven Bags is classifiable under Chapter Heading 6305 of Customs Tariff Act, 1975.

13. We find that the classification of goods under GST regime has to be done in accordance with the Customs Tariff Act, 1975, which in turn is based on Harmonized System of Nomenclature, popularly known as 'HSN'. The rules of interpretation, section notes and chapter notes as specified under the Customs Tariff Act, 1975 are also applicable for classification of Goods under GST regime. However, once an item is classified in accordance with the Customs Tariff Act, 1975, the rate of tax applicable would be arrived at on the basis of notifications issued under GST by respective Governments.

14. The appellant claimed that Poly Propylene Non-Woven bag is classifiable under Chapter Heading 6305 of Customs Tariff Act, 1975 which is elaborated below:

CHAPTER 63

6305- Sacks and bags, of a kind used for the packing of goods:
6305.10- Of jute or of other textile base fibres of heading 5303
6305.20- Of cotton
Of man made textile materials:
6305.12- Flexible intermediate bulk containers
6305.33- Other, of polyethylene or polypropylene strip or the like
6305.19- Other
6305.90- Of other textile materials

This heading covers textile sacks and bags of a kind normally used for packing of goods for transport, storage or sale.

These articles which vary in size and shape, include in particular flexible intermediate bulk containers, coal grain, flour, potato, coffee or similar sacks.

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mail bags, and small bags of kind used for sending samples of merchandise by post. The heading also includes such articles as tea sachets.

Packing cloths which after use as bale wrapping are roughly or loosely stitched together at the edges, but which do not constitute finished or unfinished sacks or bags, are excluded (heading 6307).

15. The GAAR held that Poly Propylene Non-Woven bag is classifiable under CTH 3923. The relevant chapter notes, tariff entry and HSN Explanatory note is given below:

CHAPTER 39
Plastics and articles thereof

NOTES:

1. Throughout this Schedule, the expression "plastics" means those materials of headings 3901 to 3914 which are or have been capable, either at the moment of polymerisation or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticiser) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence. Throughout this Schedule any reference to "plastics" also includes vulcanised fibre. The expression, however, does not apply to materials regarded as textile materials of Section XI.

2. This Chapter does not cover:

(a) lubricating preparations of heading 2710 or 3403;

...

(p) goods of Section XI (textiles and textile articles);

....

3923	*ARTICLES FOR THE CONVEYANCE OR PACKING OF GOODS, OF PLASTICS; STOPPERS, LIDS, CAPS AND OTHER CLOSURES , OF PLASTICS*
3923 10	*Boxes, cases, crates and similar articles:*
	Sacks and bags (including cones):
3923 21 00	*Of polymers of ethylene*
3923 29	*Of other plastics:*
3923 29 10	*Of poly (vinyl chloride)*
3923 29 90	*Other*
3923 30	*Carboys, bottles, flasks and similar articles*
3923 40	*Spools, cops, bobbins and similar supports*
3923 50	*Stoppers, lids, caps and other closures*
3923 90	*Other*

This heading covers all articles of plastics commonly used for the packing or conveyance of all kinds of products. The articles covered include :

(a) Containers such as boxes, cases, crates, sacks and bags (including cones and refuse sacks), casks, cans, carboys, bottles and flasks.

The heading also covers :

(i) Cups without handles having the character of containers used for the packing or conveyance of certain foodstuffs, whether or not they have a secondary use as tableware or toilet articles;

(ii) Bottle preforms of plastics being intermediate products having tubular shape, with one closed end and one open end threaded to secure a screw type closure, the portion below the threaded end being intended to be expanded to a desired size and shape.

(b) Spools, cops, bobbins and similar supports, including video or audio cassettes without magnetic tape.

(c) Stoppers, lids, caps and other closures.

The heading excludes, inter alia, household articles such as dustbins, and cups which are used as tableware or toilet articles and do not have the character of containers for the packing or conveyance of goods, whether or not sometimes used for such purposes (heading 39.24), containers of heading 42.02 and flexible intermediate bulk containers of heading 63.05.

16. We find that issue of classification of product viz. Poly Propylene Non-Woven bag is already covered in TRU Circular No. 80/54/2018-GST dated 31.12.2018. For reference, relevant portion of above said circular is reproduced 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" (emphasis supplied)

The GAAR also relied upon above circular in its ruling dated 17.09.2020. The appellant submitted that said clarification/circular pertains to Non-woven bags laminated with BOPP and in Para 7.5 of said circular, it is specifically stated that non-laminated

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bags would merit classification as per their constituent materials. From the bare perusal of the above TRU Circular, it is forthcoming from Para 7.4 that there has been mention of two product viz. '**Polypropylene Woven and Non-Woven Bags**' and '**PP (Polypropylene) Woven and Non-Woven Bags laminated with BOPP**' (both made from polypropylene and separated by using word 'and') and both the products merit classification under HS code 3923 as mentioned in circular. In the above said circular, it is further stated at Para 7.5 that **Non-laminated woven bags** (made from materials other than polypropylene) would be classified as per their constituting materials. What is manufactured by the appellant is non-woven bags and hence Para 7.4 is relevant.

In view of above we find that TRU Circular dated 31.12.2018 is squarely applicable on the product of appellant viz. Poly Propylene Non-Woven bag and the same is classifiable under HSN Code 3923.

17. As regard to appellant's submission that GAAR erred in holding that decisions of Advance Ruling Authority and Appellate Advance Ruling Authority is not binding on applicant under Section 103 of CGST Act without considering the fact that the Advance Ruling Authority and Appellate Advance Ruling Authority, as referred in their submission, have settled the law and confirmed the classification of polypropylene non-woven bags under Chapter Heading 6305.3300 and same were of binding/persuasive in nature, we find that it is clearly mentioned in Section 103 of CGST Act, 2017 that Advance Ruling is applicable on the applicant who sought it as well as on the concerned jurisdictional officer in respect of same applicant. The appellant also submitted that Ruling of Advance Authority and Appellate Authority as mentioned in their submission was pronounced after issuance of TRU Circular and hence would prevail over the TRU Circular. We find that in view of Section 103 of CGST Act, 2017, Advance Ruling is binding only on the applicant who sought it and dismiss the interpretation of the appellant that the ruling passed would prevail over the Circular dated 13.12.2018 issued by TRU. We also find that the WBAAAR (West Bengal Appellate Authority for Advance Ruling) vide their order no. 02/WBAAAR/Appeal/2019 dated 13.05.2019, submitted and relied upon by the appellant in their appeal, in the case of M/s. U S Polytech has proceeded on the premise that the "P P Non-Woven bags manufactured by the applicant from non-woven fabric under HSN 5603 falls under HSN 63053300". Thus they have not considered the classification of Poly Propylene Non-Woven bags independently.

17.1 The WBAAAR in the above order had also held that "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." The said findings do not help the appellant in the present case as the appellant here are manufacturing Poly Propylene Non-Woven Bags wherein their basic raw material is Polypropylene Granules. We also find that WBAAAR has not taken into consideration the above referred TRU circular dated 31.12.2018 issued by the Department of Revenue as there is no finding on the same.

18. The appellant submitted that the GAAR erred in placing reliance upon the decision of Madhya Pradesh High Court in case of M/s Raj Pack Well Ltd as product under consideration before High Court was Woven Bags and therefore the said decision is not applicable in present case. We find that issue of classification of HDPE (High Density Poly-Ethylene, a kind of plastic) Bags or sacks is discussed at length in finding of Madhya Pradesh High Court in said judgement. Relevant portion of the same is reproduced below:

"19. Now, textile material has not been defined in the Tariff Act. However, in the Textiles Committee Act, 1963 (Act 41 of 63) the word 'fibre' has been defined in Section 2(a) as under:

"fibre" means man-made fibre including regenerated cellulose rayon, nylon and the like."

"Textiles" has been defined in Section 2(g) as under :

"textiles" means any fabric or cloth or yarn or garment or any other article made wholly or in part of -

(i) cotton; or
(ii) wool; or
(iii) silk; or
(iv) artificial silk or other fibre, and includes fibre;"

Therefore, according to the above definition, any fabric or cloth or yarn or garment if made wholly or in part of cotton, wool, silk, artificial silk or other fibre shall be called textiles. The definition of 'fibre' includes the regenerated cellulose, rayon, nylon and the like. Nowhere in the aforesaid definition of 'fibre' or 'textiles' plastic has been mentioned as a commodity to be included in the definition of 'fibre' or 'textiles'. Now in the Shree Radhe Industries case (supra) and the Shellya Industries case (supra) irrespective of the entries in the tariff as prevailing then, it has been held that the HDPE sacks are articles made of plastic; they are made of high density polyethylene which is a plastic raw material and it has further been held that they are not man-made filament yarn but are articles of plastic. The Circular of the Central Board of Direct Taxes dated 20-11-1985 also clearly says that the Board has decided that so long as the finished articles of plastic is made out of plastic material falling under Tariff Item No. 15A(i), even if at the intermediate stage articles classifiable under Item No. 15A(ii) if any tariff item emerges, the said product would be considered to have been produced out of the plastic material falling under Tariff Item No. 15A(i) and, therefore, the HDPE woven sacks should be considered as articles of plastic and that the Tribunal's decision be accepted. In common parlance also the HDPE woven sacks are known as plastic woven sacks industry as is apparent from the annexures filed with the petition and the authenticity of which has not been disputed. The Dy. Director of the Ministry of Textile, Office of Textile Commissioner has, vide letter dated 2-3-1989 informed one of the petitioners that the HDPE/PP weaving activity on regular looms as well as circular looms manufacturing fall under the purview of DGTD and no installation permission or registration of circular looms is required under Textile (Control) Order, 1986. Therefore, the petitioner was advised to approach DGTD. The D.G.T.D. certificate is Annexure P-18 which has registered the Company of one of the

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petitioners for weaving HDPE woven sacks. As such the woven sacks are not treated as an item of textile by the Commissioner of Textiles and the DGTD (Plastic and Polymer Directorates) has registered it as an Industry producing HDPE woven sacks. The raw material used for the production of the HDPE strips is covered under Chapter 39 and in absence of anything on the record to show that the HDPE strips are synthetic textile material the only fact that their width is less than 5 mm would not automatically put that item under entry No. 54.06 of Chapter 54 of the Central Excise Tariff of India. What the learned Asst. Collector, C. Excise and the Collector Appeals, Central Excise have done is that they have considered only the width of the strip and have come to the conclusion that since the strip is of less than 5 mm, therefore, it falls within 54.06 ignoring the fact that in addition to this there should be something to arrive at a conclusion that the aforesaid strip is of synthetic textile material. If the strip is a strip of plastic only and not a synthetic textile material and is also known in the common parlance as a commodity of plastic, and the finished goods i.e. the HDPE woven sacks are also known in the common parlance as plastic woven sacks, then it cannot be held that the strips with which such bags are woven are the strips of synthetic textile material.

20. Thus, the view of the Textile Commissioner as discussed above, the registration by the DGTD of the factory of the petitioner, the definition of 'textile' and 'fibre' as discussed above, the process of the manufacture of the HDPE tapes, the earlier judgments of the CEGAT approved by the Supreme Court and accepted by the Department, all clearly go to show that the HDPE bags are the bags woven by the plastic strips and they, therefore, are goods of plastic and the material used for weaving those bags being the strips of plastic made from plastic granules, the strips of plastic used for weaving the aforesaid HDPE woven sacks has to be classified as an Item under entry 39.20 of Chapter 39 and not under entry 54.06 of Chapter 54. Accordingly the entries of the finished goods have also to be made under the proper Chapter of the Tariff Act treating them as the finished goods made of plastic strips.

21. In the result we hold that HDPE strips or tapes fall under the Head 39.20, sub-heading 3920.32 of the Central Excise Tariff Act and not under Head 54.06, subheading 5406.90. Similarly the HDPE sacks fall into Heading 39.23, sub-heading 3923.90" (emphasis supplied)

On bare perusal of above portion of judgement, we find that the judgment in case of Raj Pack Well Ltd is squarely applicable in principle to the present case as High Court in said case observed that as per Textiles Committee Act, 1963, any fabric or cloth or yarn or garment if made wholly or in part of cotton, wool, silk, artificial silk or other fibre shall be called textiles and nowhere in definition of textiles or fiber, the word 'plastic' is used. High Court also observed that HDPE sacks are made from plastic raw-material and they are not man-made filament yarn and that articles of plastic made out of plastic materials should be considered as articles of plastic. High Court observed that Dy.Director of Ministry of Textile informed one of the petitioners that HDPE/Polypropylene weaving activity falls under the purview of DGTD (Plastic and Polymer Directorate) and DGTD registered petitioner's company as Industry producing HDPE woven sacks. The raw material used is covered under Chapter 39 and in absence of anything to show that HDPE strips are synthetic textiles materials, product is not classifiable under Chapter 5406. Therefore the product Poly Propylene Non-Woven Bags

manufactured by the appellant would be covered under Chapter 39 as discussed herein above.

19. In the present case, Non-woven bags are made from polypropylene granules which is also a type of plastics made from polymerization of propylene. As mentioned in General Notes to Chapter Heading 39 of Custom Tariff Act, 1975, Plastics include materials which are capable of polymerization at some stage and therefore, in view of findings of Madhya Pradesh High Court, fabric made from polypropylene, by no stretch of imagination construed as textile but merits classification as plastic or article of plastic under Chapter Heading No. 3923.

20. The appellant submitted that the GAAR failed in considering the fact that while referring to the decision in case of Porritts and Spencers (Asia) Limited V/s State of Haryana [1983 (13) ELT 1607 (S.C.)], it is not the intention but the finding is to be looked into. The Supreme Court in above case settled the law that textile means when yarn, whether cotton, silk, woolen, rayon, nylon or made out of any other material. To understand the findings of Supreme Court in above case, relevant portion is reproduced as under:

> *"6. There can, therefore, be no doubt that the word 'textiles' in Item 30 of Schedule 'B' must be interpreted according to its popular sense, meaning "that scene which people conversant with the subject-matter with which the statute is dealing would attribute to it". There we are in complete Agreement with the Judges who held in favour of the Revenue and against the assessee. But the question is: What result does the application of this test yield ? Are 'dryer felts' not 'textiles' within the ordinary accepted meaning of that word ? the word 'textiles is derived from the Latin 'texere' which means 'to weave' and it means any woven fabric. When yarn, whether cotton, silk, woollen, rayon, nylon or of any other description as made out of any other material is woven into a fabric, what comes into being is a 'textile' and it is known as such. It may be cotton textile, silk textile, woollen textile, rayon textile, nylon textile or any other kind of textile. The method of weaving adopted may be the warp and woof pattern as is generally the case in most of the textiles, or it may be any other process or technique. There is such phenomenal advance in science and technology, so wondrous is the variety of fabrics manufactured from materials hithereto unknown or unthought of and so many are the new techniques invented for making fabric out of yarn that it would be most unwise to confine the weaving process to the warp and woof pattern. Whatever be the mode of weaving employed, woven fabric would be 'textiles'. What is necessary is no more than weaving of yarn and weaving would mean binding or putting together by some process so as to form a fabric. Moreover a textile need not be of any particular size or strength or weight. It may be in small pieces or in big rolls: it may be weak or strong, light or heavy, bleach or dyed, according to the requirement of the purchaser. The use to which it may be put is also immaterial and does not bear on its character as a textile. It may-be used for making wearing apparel, or it may be used as a covering or bedsheet or it may be used as tapestry or upholstery or as duster for cleaning or as towel for drying the body. A textile may have diverse uses and it is not the use which determines its character as textile. It is, therefore, no argument against the assessee that 'dryer felts' are used only as absorbents of moisture in the process of manufacture in a paper manufacturing*

unit. 'That cannot militate against 'dryer felts' falling within the category of 'textiles', if otherwise they satisfy the description of 'textiles'." (emphasis supplied)

Supreme Court further observed that:

Now, what. are 'dryer felts' ? They are of two kinds, cotton dryer felts and woollen dryer felts. Both are made of yarn, cotton in one case and woollen in the other. Some synthetic yarn is also used The process employed is that of weaving according to warp and woof pattern. This is how the manufacturing process is described by the assessing authority in its order dated 12th November, 1971 "the raw material used by the company is cotton and woollen yarn which they themselves manufactured from raw cotton and wool and the finished products called 'felts' are manufactured on power looms from cotton and woollen yarn." 'Dryer felts' are, therefore, clearly woven fabrics and must be held to fall within the ordinary meaning of the word 'textiles'...

From perusal of above findings of Supreme Court we find that it is very clear that the product in question in above case viz. dryer felts is made from cotton and wollen which is covered in the ambit of 'textile' and in present case Non-woven bags are made from polypropylene which is a type of plastic and on this ground alone it can be said that the above case law relied by appellant is not applicable in present case.

21. Therefore we find that the product in question viz. Polypropylene Non-woven bags merits classification under Chapter Heading 3923 of the HSN/Customs Tariff Act, 1975.

22. In view of the foregoing, we reject the appeal filed by appellant M/s Karam Green Bags and uphold the Advance Ruling No. GUJ/GAAR/R/63/2020 dated 17.09.2020 of the Gujarat Authority for Advance Ruling.

(Milind Torawane)
Member (SGST)

(Seema Arora)
Member (CGST)

Place : Ahmedabad
Date : 12.07.2022.