

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(Original Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.O 588 of 2019

With

W.P.O 235 of 2021

Reserved on : 28.03.2024

Pronounced on: 19.06.2024

M/s. Harsh Polyfabric Private Limited

...Petitioner

-Vs-

Union of India & Ors.

...Respondents

Present:-

Mr. Vasudeva. A

... for the Petitioner

**Mr. Anirban Ray,
Md. T.M. Siddiqui,
Mr. Tanmoy Chakraborty,
Mr. Saptak Sanyal**

... for the State

Rajarshi Bharadwaj, J:

1. The present writ petition has been filled in relation to the order passed by the appellate authority wherein Spunbonded Polypropylene Bed Sheets have been classified under the heading 5603 instead of 6304 thereby partially denying the refund of accumulated Input Tax Credit on account of inverted duty structure of Rs. 39,61,030/- for such classification.

2. The facts in a nutshell are that the petitioner is a company duly incorporated under the provisions of the Companies Act, 1956 and are inter alia engaged in manufacturing, exporting and supplying of various non-woven fabrics and Spunbonded Polypropylene Bed Sheets (hereinafter referred to as 'PPSB Bed Sheet') since 2007. The petitioner classifies such non-woven fabrics and PPSB Bed Sheet under the chapter headings 5603 and 6304 of the Customs Tariff Act, 1975 respectively.

3. The Petitioner engages in the production of non-woven fabric utilizing Polypropylene Granules (referred to hereinafter as "PP Granules") through the application of Spun Bond technology. The Spun Bond process, a method employed in non-woven fabrication, involves the transformation of PP Granules into continuous filaments, which are subsequently deposited and fused together to yield non-woven fabric.

4. The aforesaid process of manufacture of polypropylene non-woven fabric and the PPSB Bed Sheet was also verified by the State Tax Officers, Bureau of Investigation, Govt. of West Bengal, during their visit to the petitioner's factory on 14.02.2019. A copy of the report of the said visit was also prepared under the seal of State Tax Officer, Bureau of Investigation, Govt. of West Bengal.

5. The petitioner supplies the Polypropylene non-woven fabric on payment of GST @ 12% (6% CGST+ 6% SGST) as per SL. No. 135 of Schedule II of Notification No. 01/2017-CT (Rate) dated 28.06.2017.

6. With regard to supply of the PPSB Bed Sheet so manufactured, in the pre-GST regime, the Petitioner was a registered dealer under West Bengal Value Added Tax Act, 2003 and the Central Sales Tax Act, 1956. Bed Sheets were covered under item Sl. No. 3B of Schedule A to the WBVAT Act. For goods covered under Schedule A to the WBVAT Act, no tax was payable. The PPSB Bed Sheet falling under Chapter 63 were also exempt from whole of the Excise Duty in terms of Notification No. 30/2004-CE dated 09.07.2004.

Accordingly, the Petitioner was supplying such PPSB Bed Sheets without payment of VAT/CST or Excise Duty.

7. After the implementation of GST w.e.f. July 2017, the Petitioner has been classifying the PPSB under the tariff heading 6304 and discharging GST @ 5% (2.5% CGST+ 2.5% SGST) in accordance with Sl. No. 224 of Schedule I to the Notification No. 01/2017 CT (Rate) dated 28.06.2017.

8. However, the classification of bed sheets manufactured was disputed under the erstwhile VAT regime. In the proceedings before the Hon'ble West Bengal Taxation Tribunal in the case of the Petitioner with Registration Number 1310/2017, the primary argument put forth by the revenue department was the purported distinction between bed sheets and PPSB Bed Sheet. Consequently, it was asserted that bed sheets crafted from polypropylene non-woven fabric would not qualify for the tax exemption stipulated in Serial 3B of Schedule A to the WBVAT Act, 2003. Nevertheless, the Hon'ble Tribunal, in its order dated 30.11.2018, ruled that the PPSB Bed Sheet manufactured and traded by the Petitioner were exclusively utilized as bed sheets and thus were entitled to the exemption from tax payment pursuant to Serial No. 3B of Schedule A to the West Bengal Value Added Tax Act, 2003.

9. In the present matter, the GST rate applicable to the procurement of PP Granules, as classified under HSN 3901 or 3902, stands at 18%. Conversely, non-woven fabric supplies under HSN code 5603 incur a taxable rate of 12%, while supplies of PPSB Bed Sheet under HSN Code 6304 are taxed at 5%. This incongruous rate structure has led to the accumulation of credit on the part of the Petitioner.

10. Section 54(3) of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as the "CGST Act"), in conjunction with Rule 89 of the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as the "CGST Rules"), provides for the refund of unutilized Input Tax Credit resulting

from an inverted tax structure, wherein the GST rate on input supplies exceeds that payable for outward supplies. The refund of Input Tax Credit for a tax period necessitated the submission of Form GST RFD-01A as per Rule 89 of the CGST Rules. Consequently, on 23.02.2019, the Petitioner applied for an online refund by filing Form GST RFD-01A for the accumulated tax credit amounting to Rs. 39,61,030/- attributable to the inverted tax structure for the month of July 2017. Subsequent refund applications were lodged by the Petitioner using Form GST RFD-01A for the subsequent months.

11. On 05.03.2019, the Petitioner submitted physical copies of Form GST RFD-01A, initially filed online on 23.02.2019, alongside pertinent documents including Refund ARN Receipt, GSTR 1, GSTR 3B and GSTR 2A returns for July 2017. Also provided were the Statement of Sales and Purchase for July 2017, Xerox copies of Sale and Purchase invoices and a declaration under Sections 16(2)(c) and 42(2) of the CGST Act, 2017. Acknowledgment of the submission of Form GST RFD-01A was received through the issuance of Form GST RFD-02, with Acknowledgement ARN No. AA1907170033944 dated 23.02.2019. The State Government accepted online submissions of Form GST RFD-01A for subsequent months spanning from August 2017 to February 2019.

12. The Petitioner was served with Show Cause Notice No. 4079 dated March 25, 2019, in the format of GST RFD-08, issued by the Learned Deputy Commissioner of State Tax herein referred to as the respondent no. 5, pertaining to activities in July 2017. Subsequent to this, similar Show Cause Notices were issued for subsequent months, contesting the refund of accumulated input tax credit on goods due to an inverted duty structure. In these notices, the respondent no.5 proposed to disallow the refund claim of Rs. 5,75,99,662/- on grounds of doubting the classification of the Petitioner's final products, namely Non-Woven Fabric and PPSB Bed Sheets under HSN 5603 and 6304 respectively. Thereafter, the Petitioners, in its response filed on

March 25, 2019, in the form of GST RFD 09, elucidated the reasoning behind the classification of their final products.

13. However, the respondent no.5, without granting the Petitioner an opportunity for hearing and without duly considering the detailed submissions made by the Petitioner, passed orders dated May 4, 2019, to May 31, 2019, rejecting the refund due to the inverted duty structure. This rejection was primarily grounded on the assertion that the goods were manufactured using PP Granules, classifiable under Chapter 39. Consequently, the final products should also be classified under Chapter 39 and taxed at 18%, rather than under Chapter headings 5603 and 6304 as claimed by the Petitioner.

14. Discontented with the denial of the refund of accumulated Input Tax Credit due to the inverted duty structure, the Petitioner lodged an appeal under Section 107 of the WBSGST Act before the Senior Joint Commissioner of State Tax, herein referred to as the respondent no. 4 on July 2, 2019, using Form APL-01. Appeals against the Orders passed for subsequent periods were also filed before the respondent no. 4.

15. After reviewing the petitioner's arguments, respondent no. 4 revised the decision issued by respondent no. 5, determining that PPSB Bed Sheet, originating from non-woven fibres under heading 5603, qualify as textile products akin to non-woven fabric. Consequently, they are to be categorized and taxed at a rate equivalent to non-woven fabric, set at 12% (comprising SGST at 6% and CGST at 6%).

16. Pursuant to Section 112 of the CGST Act, recourse to appeal against the order dated 31.10.2019 was directed to the Goods and Service Tax Appellate Tribunal as established under Section 109 of the CGST Act. Regrettably, the absence of such a tribunal and the invalidation of Sections 109(3) and 109(4) by the Hon'ble Madras High Court in the case of **Revenue Bar Association v. Union of India** reported in **2019 SCC OnLine Mad 8910**, left the Petitioner

devoid of an efficacious recourse. Thus, being aggrieved by the said impugned order the present petition has been preferred.

17. The Learned Counsel representing the petitioner has advanced the following arguments:

- I.** The issuance of the Show Cause Notices contravened fundamental principles of procedural fairness, as they lacked specificity by failing to provide any rationale for questioning the petitioner's classification or suggesting any alternative classification. Consequently, solely due to the ambiguity within the Show Cause Notices, the contested orders, insofar as they detrimentally affect the petitioner, are subject to being invalidated.
- II.** The respondent No.5 hastily decided without providing the petitioner sufficient opportunity for a fair hearing prior to passing the impugned order dated 05.04.2019, thus breaching the Principles of Natural Justice. Further, Section 73 and 74 of the CGST Act, 2017 outlines the procedural requirements for adjudication proceedings, mandating the adjudicating authority to grant the assessee herein the petitioner a hearing before passing any adverse order. Moreover, the show cause notices underlying these proceedings were inherently ambiguous, violating the principles of natural justice. Thus, the notice lacked clarity regarding the classification of the final products in question, failing to propose an attentive classification.
- III.** PPSB Bed Sheets are crafted from polypropylene non-woven material, thus, do not constitute plastic composition consequently, falls within the purview of Chapter Heading 6304, encompassing "Miscellaneous Textile, articles, sets used as garments or for industrial purpose".
- IV.** The initial appellate authority/ assessment authority erred in its determination of classification due to a misinterpretation of the Customs Tariff Act, 1975, specifically under the heading 5603 concerning "Non-

Wovens, whether or not impregnated, coated, covered or laminated." The correct classification should have been under heading 6304, as the referenced 'non-woven fabrics' undergo further processing to become 'PPSB Bed Sheets,' constituting a subsequent stage in fabrication. These PPSB Bed Sheets are a derivative form of the aforementioned non-woven fabrics, undergoing shaping and finishing processes such as stitching to achieve the final product. Consequently, they rightfully merit classification under Chapter 6304, which pertains to "other made up Textile Articles, Sets, worn clothing and worn Textile articles and rags of sale value exceeding Rs.1000 per piece" and thus, shall be liable to GST @5%.

- V. The contested decision delineating the classification of PPSB bed-sheets under tariff heading 5603, contrary to the petitioner's position, relies on the Customs & Central Excise Tariff Act to assert that items originating from Chapters 56 to 62 do not fall within the purview of Chapter 63. By equating non-woven fabric with PPSB bed-sheets and associating them with Chapter 5603, it subjects them to a tax rate of 12% (SGST 6% & CGST 6%). The petitioner rebuts this by asserting that Chapter 63 encompasses items from Chapters 56 to 62, as substantiated by Chapter Note 1 and Heading 6304. Section note 7(b) to Section IX elucidates the definition of "made up," endorsing PPSB bed-sheets as meeting such criteria. Consequently, they are correctly classified under Chapter 6304. The Counsel for the petitioner has further placed reliance on the Supreme Court's decision in the matter of **CCE, Meerut v. Kapri International (P) Ltd.** reported in **2002 (142) ELT 10 (SC)**, wherein it was held that by cutting of the cotton fabrics in running lengths into small pieces a new marketable commodity like bed sheet, bed spreads, table cloths and napkins etc. come into existence, having a distinct name, character and use. Thus, 'bed sheets' ought to be regarded as

distinct 'made up' textile articles, distinct from the fabric from which they are crafted. It has been further submitted that Polypropylene Non-Woven Fabrics are textile materials and are not plastics or plastic articles to be clarified under Chapter 39 in terms of Note 1 (H) of Section XI of the Customs Tariff Manual.

- VI.** Various judicial precedents have emphasized the relevance of the Common Parlance Test in product classification under the Tariff Act. According to this test, the interpretation of a product by those who use or trade in it holds paramount importance. This principle finds support in judgments such as **Union of India v. Garware Nylons Ltd., 1996 (87) ELT 12 (SC)**, **Union of India v. G.D. Pharmaceuticals Ltd., 1999 (108) E.L.T. A56 (S.C)** and **Puma Ayurvedic Herbal (P) Ltd. v. CCE, Nagpur, 2006 (196) ELT 3 (SC)**. The PPSB bed sheets produced by the Petitioner are commonly recognized and utilized as bed sheets, including as 'disposable bedsheets' by various customers such as hospitals, hotels, and railways. This understanding is consistent with the distinction drawn by the Hon'ble Supreme Court in the case of **Kapri International Ltd. (supra)**, recognizing cotton fabrics and their derivatives like bedsheets, bedspreads, and napkins as distinct commercial entities. Moreover, in **Harsh Polyfabric Pvt Ltd v. Sr. JCCT, Central Audit Unit-1 & Ors** dated 30.11.2018, a similar issue arose regarding the classification of PPSB Bedsheets under the West Bengal VAT Act. The Hon'ble WBTT employed the Common Parlance Test to conclude that the Petitioner's products are commonly known as 'bedsheets' in trade and thus classified under Schedule A of the West Bengal VAT Act.
- VII.** It is a well-established legal principle that the onus of demonstrating the classification of a product under a specific tariff heading rests with the revenue authority. This obligation necessitates proving that the product

is commonly understood as falling within that classification by consumers or in common parlance as held in the case of **Puma Ayurvedic (supra)**. As the department has failed to meet this burden by demonstrating that the PPSB Bed Sheet manufactured by the Petitioner is not commonly recognized as a 'bed-sheet' but merely as fabric in common parlance, the contested order's assertion that the PPSB Bed Sheets fall under tariff heading 5603 rather than 6304 lacks legal merit.

VIII. Section 56 of the CGST Act prescribes the entitlement to interest on delayed refund, stipulating that if a refund remains undisbursed beyond sixty days from the filing of the refund application, interest shall accrue. The Counsel for the petitioner contends that since the refund remained unprocessed throughout the dispute period, the petitioner is entitled to the refund along with accrued interest.

IX. With regards to the refunds already sanctioned for non-woven fabric and partially for PPSB Bedsheets, statutory interest under Section 56 is due, as each refund was disbursed after the prescribed sixty-day period. Nonetheless, the department has failed to remit the interest owed to the petitioner. Hence, the petitioner is entitled to interest on the sanctioned refunds as well. The petitioner relies on the precedent set forth by the Hon'ble Supreme Court in **Ranbaxy Laboratories Ltd. v. UOI, 2011 (273) E.L.T. 3 (S.C.)**.

X. The petitioner asserts that it consistently filed tax returns and remitted taxes, specifying the classification of PPSB Bedsheets under tariff heading 6304. Importantly, the department has not contested these returns to date. It is highlighted that the dispute regarding the product's classification arose solely upon the filing of refund claims. The petitioner submits that once the classification adopted in the returns is accepted by the department, it cannot be contested during the processing of refund applications. In support of this contention, reference is made to

the decision of the Hon'ble Allahabad High Court in **Commissioner v. M/s HCL Comnet System & Service Ltd Noida, 2017 (12) TMI 1661.**

18. Submissions of the Learned Counsel on behalf of the Respondents no. 3-6 are that:

- I. The petitioner company has submitted a claim for reimbursement under the category "Refund on account of ITC accumulated due to inverted tax structure" via form RFD-01. The petitioner asserts that the primary raw material comprised PP granules categorized under HSN 3902 1000 (PP Granules) taxable at 18%, with the resulting output consisting of non-woven fabric under HSN 5603 9100 to 9400 taxable at 12%, and PPSB bed sheet under HSN 6304 1930 taxable at 5%. Recognizing that the current system of indirect taxation relies heavily on self-assessment and self-declaration, it was imperative to confirm the accurate classification of the aforementioned goods. Consequently, pursuant to the stipulations outlined in sub-rule (3) of Rule 92 of the WBGST Rules 2017, a show cause notice was issued to the petitioner.
- II. The documentary evidence and the application per se were meticulously examined to ensure accuracy and completeness. Confirmation of this examination was provided through FORM GST RFD-02 on 09.03.2019, bearing acknowledgment number 1920170749030000. Upon thorough review of the records, it is apparent that the petitioner obtained PP granules under HSN:3901 or 3902, which are subject to a tax rate of 18%. However, the final products, Non-Woven Fabric under HSN:5603 and PPSB Bed Sheets under HSN:6304, resulting in an inverted duty structure, are taxed at 12% and 5%, respectively. It is undisputed that the refund request arises from the classification of the final product under either heading 5603 or 6304. Consequently, based on the manufacturing process and the documents provided by the petitioner, clarification was sought regarding why the final products should be

- classified under HSN:5603 & 6304. Owing to which the authorities duly served a show-cause notice to the petitioner on 18.04.2019.
- III.** It is also submitted that pursuant to the provisions of the West Bengal Value Added Tax Act, 2003, the imposition of tax is predicated upon the nomenclature of the items delineated within the schedules appended to the Act. Conversely, under the West Bengal Goods and Services Tax Act, 2017, the imposition of tax is exclusively predicated upon the Tariff Code as stipulated in the first schedule to The Customs Tariff Act, 1975, inclusive of its associated Schedules and Section Notes, pursuant to notification number 1125 F.T dated 28.06.2017. Consequently, a substantial alteration in factual circumstances is evident.
- IV.** Furthermore, it has been contended that the pertinent jurisdictional authority duly considered the comprehensive submissions of the petitioner and addressed the raised objections appropriately. Subsequent to due consideration and mindfulness of the nature of the final product, various pronouncements issued by the West Bengal Authority on Advanced Ruling, the West Bengal Appellate Authority in Advanced Ruling and judicial precedents rendered by diverse courts, a final order was issued, incorporating the effective determinations therein. Therefore, it is asserted that the orders were not issued in flagrant contravention of the principles of natural justice. Additionally, it is emphasized that the manufactured product of the petitioner is categorized as a textile article under Chapter 63, rather than as plastic under Chapter 39.
- V.** The order pertaining to the PPSB bed-sheet was rendered subsequent to affording the petitioner a reasonable opportunity to be heard and after thorough consideration of all materials presented on record, a circumstance duly acknowledged by the petitioner in its assertions. It is contended that note 2 to Chapter 63 unambiguously excludes from its

ambit all goods encompassed within Chapters 56 to 62 without delineating any distinction based on the nature of products within said chapters.

VI. Moreover, it is asserted that the mere acts of stitching, slitting, and pasting of a non-woven fabric falling under Chapter 56 do not alter its classification and all such products within Chapter 56 retain their characterization as non-woven fabric notwithstanding any modifications. Additionally, it is emphasized that achieving the accurate classification of goods holds paramount importance in the context of processing refund applications. Consequently, it is posited that such classification should be duly addressed during the processing of refund applications. Furthermore, it is underscored that under the West Bengal Goods and Services Tax Act, 2017, neither has the classification adopted by the present petitioner attained finality through any order issued by an authority designated under the Act prior to the petitioner's submission of the refund application nor has said classification been endorsed through the rulings of any authority appointed under the Act.

19. Upon a thorough examination of the documents presented to the Court and taking into account the arguments put forth by the parties, this Court opines that respondent no. 4 inadequately considered various factual elements in its decision-making process. It is firmly established, as reiterated by the Supreme Court in **Puma Ayurvedic (supra)**, that the onus of proving a product's classification under a specific tariff heading lies with the revenue authority, which must demonstrate that such classification aligns with the understanding of consumers or common parlance. However, the respondent authorities have failed to fulfil this burden of proving that the PPSB Bed Sheets, manufactured by the petitioner, fall under tariff heading 5603 rather than 6304. Furthermore, as established by the Supreme Court in **Union of India v. Garware Nylons Ltd**, reported in **1996 (87) ELT 12 (SC)**, the burden

of proof rests with the taxing authorities herein the respondent authorities to substantiate their claims regarding the taxable nature of a particular case or item. Mere assertions in this regard hold no weight. Thus, this Court has maintained that there must be tangible evidence to support the appropriate findings, which may be presented either orally or through documentation. It is the responsibility of the taxing authority herein respondent no.4 to furnish such evidence, even before the initial adjudicating authority.

20. Moreover, the respondent authority neglected to recognize that the aforementioned PPSB Bed Sheets essentially represent a processed manifestation of the referenced non-woven fabrics. These fabrics undergo cutting into desired configurations followed by subsequent finishing processes, thereby transforming them into 'made-up' textile articles. Consequently, the failure to acknowledge this crucial aspect further underscores the inadequacy of the respondent's determination. In light of these considerations, this Court concludes that the respondent's decision lacks sufficient evidentiary support and proper consideration of pertinent factual and legal principles, necessitating a reassessment of the matter at hand. Therefore, the impugned order is quashed.

21. It is imperative to acknowledge that this Court, functioning as a writ court, operates within a supervisory capacity rather than having an appellate jurisdiction. Consequently, it refrains from scrutinizing factual determinations made by lower Courts or Tribunals, regardless of any potential errors therein. This stance aligns with the doctrine expounded by the Supreme Court in the case of **Hari Vishnu Kamath v. Syed Ahmad Ishaque** reported in **(1955) 1 SCR 1104**. This doctrine maintains that a Court possessing jurisdiction over a particular subject matter has jurisdiction to decide wrong as well as right and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to rehear the case on the evidence and substitute its own findings. Thus, as

these propositions are well-settled and are not in dispute this Court shall not get into reviewing of factual findings made by the Appellate Tribunal.

22. In the case of **Apparel Export Promotion Council v. A.K. Chopra** reported in **1999 (1) SCC 759**, the Supreme Court elucidated the principle of judicial review. It expounded that judicial review, distinct from an appellate process, entails an examination of the procedural propriety of a decision rather than its merits. The court underscored the significance of adhering to established legal principles and natural justice in arriving at decisions by tribunals. It emphasized that if due process and fair treatment were accorded to an individual in the adjudicative process, Writ Courts are constrained from substituting their judgment for that of the appellate authority. This pronouncement underscores the limited role of writ courts in matters which falls squarely within the sphere of jurisdiction of the appellate authority.

23. For the forgoing reasons, order of the appellate authority are quashed and set aside, the appellate authority is requested to reassess the aforementioned facts, nonetheless, such reassessment must be conducted de novo, devoid of any influence from the observations made by this Court, ensuring impartiality in the process.

24. All pending applications are accordingly disposed of.

25. There shall be no order as to costs.

26. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata

19.06.2024
PA (BS)