

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL  
BANGALORE**

REGIONAL BENCH - COURT NO. 1

**Central Excise Appeal No. 27614 of 2013**

*(Arising out of Order-in-Appeal No.291/2013 date  
29.7.2013 passed by the Commissioner of Central  
(Appeals), Bangalore.)*

**And**

**Central Excise Appeal No. 27615 of 2013**

*(Arising out of Order-in-Appeal No.290/2013 date  
29.7.2013 passed by the Commissioner of Central  
(Appeals), Bangalore.)*

**M/s. Big Bags International  
Pvt Lt**

*(Formerly M/s. Big Bags India Pvt Ltd)*  
No.61, Nadakerappa Industria Estate,  
Andhrahalli Main Road  
Near Peenya II Stage  
Viswaneedham Post,  
Bangalore – 560 091.

Appellant(s)

**Versus**

**Commissioner of Central  
Excise**

Bangalore-II Commissionerate  
Bangalore – 560 001.

Respondent(s)

**Appearance:**

Mr. Rahesh Kumar,  
Chartered Accountant

For the Appellant

Mr. K. A. Jathin,  
Deputy Commissioner (AR)

For the Respondent

**CORAM:**

**HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)**

**HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

**Final Order No. 20796-20797 /2023**

Date of Hearing: 21.06.2023

Date of Decision: 21.06.2023

**Per : R. BHAGYA DEVI**

Appellants, M/s. Big Bags Pvt Ltd., are manufacturers of Polypropylene (PP) Flexible Intermediate Bulk Containers (FIBC) bags classifiable under Chapter 3923 in addition to other woven fabric products. Appellants from 1.7.2009 reclassified the above products under Chapter 6305 instead of 3923 as 'Other made-up Textiles Articles'; hence, show-cause notice was issued for classifying the said product under Chapter Heading 3923 as was done earlier. The Commissioner (A) in the impugned order held that the goods are rightly classifiable under Chapter 3923 as 'Articles for Conveyance or packing of goods made by other plastics'. Relying on the Board's Circular No.42/2011 held that the goods are not manmade textile material but are of plastic material, hence classifiable under Chapter 3923. The appellant is in appeal against this impugned order on the ground that the goods are rightly classifiable under Chapter 6305 and not under 3923.

2. The learned Chartered Accountant appearing on behalf of the appellant clearly distinguishes Chapter Heading 3923 and 6305, which reads as follows:

**Chapter Heading 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
3923 10 10	Plastic containers for audio or video cassettes tapes, floppy disk and similar articles
3923 10 20	Watch box, jewellery box and similar containers of plastics
3923 10 30	Insulated ware kg. 12%

3923 10 40	Packing for accommodating connectors kg. 12%
3923 10 90	Other 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

**Chapter Heading 6305** : "Sacks and bags of a kind used for the packing of goods".

6305 10	Of jute or other textile bast fibres of heading 5303
6305 10 10	Jute bagging for raw cotton
6305 10 20	Jute corn (grains) sacks
6305 10 30	Jute hessian bags
6305 10 40	Jute sacking bags
6305 10 50	Jute wool sacks
6305 10 60	Plastic coated or paper cum polythene lined jute bags and sacks
6305 10 70	Paper laminated hessian jute
6305 10 80	Jute soil savers
6305 10 90	Other
6305 20 00	Of cotton Of man-made textile material
<b>6305 32 00</b>	<b>Flexible Intermediate bulk containers (FIBC)</b>

2.1 The learned Chartered Accountant quoting the Chapter Heading 6305 32 submits that this chapter specifically mentions Flexible intermediate bulk containers (FIBC) and relying on the HSN Explanatory Notes under this Chapter have claimed that their goods are rightly classifiable under 6305.32. Reliance is placed on Tribunal's decision in the case of **Commissioner of Central Excise, Tiruchirappalli vs. Karur KCP Packaging Pvt Ltd.: 2016 (331) ELT 604 (Tri.-Chennai)** wherein FIBC was classified under Chapter heading 6305. The goods FIBC are rightly classifiable under Chapter Heading 6305 32 00 and not under 3923 29 90.

2.2 He also relied on Board's Circular No.42/2011-cus. dated 22.9.2011 on drawback wherein in Para 13 of the Circular it is stated that FIBCs which are made of manmade textile material are classifiable under Chapter 6305 and only those which are manufactured by using polymers of ethylene and other plastic materials would be classifiable under Chapter 39.

3. The learned Authorised Representative on behalf of Revenue reiterated the findings of the learned Commissioner (Appeals) and relying on the Board's Circular stated that the goods are rightly classifiable under Chapter Heading 3923.

4. The limited question to be decided in the present appeal is regarding classification of the FIBC, whether they are classifiable under Chapter 3923 29 90 or under Chapter 6305 32 00.

4.1 On perusal of the relevant Chapter Headings referred supra, Chapter Heading 3923 reads as "Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics" and Chapter Heading 3923 2100 includes "sack and packs of polythene of ethylene". In contrast, Chapter Heading 6305 reads as sacks and bags of a kind used for packing of goods, and it includes jute and other textile blast fibres. Chapter 6305.32 specifically mentions Flexible Intermediate Bulk Containers of manmade textile materials as shown above.

4.2 Appellant has submitted that monofilament is a thin hair-like long and continuous filament made of various man-made

material, especially suited for weaving nets and plastic fabrics. Monofilaments are always of cylindrical cross-section. This fact has not been disputed by the adjudicating authority.

4.3 Board Circular No. 42/2011-cus. dated 22.9.2011 vide para 13 reads as follows:

“13. There has been a dispute regarding classification of FIBC (Flexible Intermediate Bulk Containers). It has been represented that the field formations are classifying the FIBCs under Chapter 39 whereas the FIBC finds a specific mention under tariff item 6305 02 of the drawback schedule and the exporters are being denied drawback mentioned against the heading 6305 02 in the Drawback Schedule. It is hereby clarified that FIBCs which are made of manmade textile material would be classifiable under drawback tariff item 6305 02. FIBCs which are big or bulk bags or super sacks made of polymers of ethylene and other plastic material would however, be classifiable under chapter 39 of the drawback schedule.”

4.4 In the Minutes of the Meeting of DGFT held on 25-7-2013 clarified item FIBC which is reproduced as under :-

“The Committee considered the case as per agenda along with other relevant papers and considered the written comments received from Dept. of Chemicals & Petrochemicals vide their O.M. No. 46011/37/2012-PC.II, dated 18-7-2013, Regional Office of Textile Commissioner, Noida vide their O.M. No. 21(25)/08/CCY/RON/307, dated 29-6-2013 and e-mail dated 15-7-2013 received from DIPP. The Committee observed that the textile material like manmade yarn, flexible tapes, fabrics, etc. uses the synthetic polymers as raw material. Therefore, it may be drawn that the textile grade polymers as a raw material are used to manufacture the tape/stripe/yarn, etc. Since the process of manufacturing of FIBC involves extrusion of polypropylene strip from the polymers which further lead to weaving process on shuttle circular loom, therefore, FIBC is a technical textile. The Committee after deliberation decided that items in respect of Flexible Intermediate Bulk Containers are covered under ITC (HS) Code 63 and note under ITC (HS) Code 39.”

4.5 DGFT and Board's Circular have clarified that FIBC is classifiable under Chapter Heading 6305; and since there is no test reports relied upon by the Department to claim that it is not

of manmade textile material, the classification cannot be concluded under Chapter 39 as 'Articles for Conveyance or packing of goods made by other plastics'. Both the Board Circular and DGFT have clarified that FIBC is classifiable under 6305 based on the HSN Explanatory Notes to Chapter 39 as seen below:

"The heading excludes 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."

4.6 Further, we find that in the case of **CCE vs. Karur KCP Packaging P. Ltd.** (supra), the Tribunal by relying on the Hon'ble High Court's decision rendered in the case of **Karur KCP Packings Ltd. vs. CC: 2015 (31) ELT 453 (Mad.)**, Board Circular and DGFT clarification, held that:

**13.** We also find that the Hon'ble High Court in the respondent's own case, i.e., *M/s. Karur KCP Packaging Pvt. Ltd.* allowed the writ petition holding that the product is classifiable under 6305 32 00. Para 9 of the Hon'ble High Court's order is reproduced as under :-

"Apart from the above, the issue also has been decided by the Director General of Foreign Trade, Udyog Bhawan, classifying that Flexible Intermediate Bulk Containers are covered under ITC (HS) Code 63 and not under ITC (HS) Code 39. The Ministry of Finance (Department of Revenue) Central Board of Excise & Customs, New Delhi, in Circular No. 42/2011-Cus., dated 22-9-2011, F. No. 609/82/2011-DBK, also has settled the dispute regarding the classification of FIBC by bringing it under Chapter 63, therefore, this Court has no hesitation to allow the prayer made by the petitioner."

**14.** We also find that US International Trade Commission rulings dated 1-9-2011 for Tariff No. 6305 3200 10 for the classification of FIBC originated from Indonesia wherein the Commission has given ruling that FIBC is classifiable under 6305320010 of US (HTS).

**15.** Further, the HSN Explanatory Note of Chapter 39 clearly excludes FIBC of Heading 6305 from Chapter 3923. Parallely

HSN Explanatory Note 6305 3200 specifically includes description of FIBC. It is pertinent to state that prior to alignment of Tariff with the HSN Chapter 63 of CETH had only one sub-heading, i.e., 6301 till 1994-95. With effect from 2005 the Central Excise Tariff was aligned with HSN and the Chapter 63 expanded to include more sub-headings from 6301 to 6310.

**16.** In view of the specific clarification of the Board and by respectfully following the Hon'ble High Court's order, we hold that FIBC is rightly classifiable under 6305 32 00 and not under 3923 29 90. Therefore, we do not find any infirmity in the order passed by the Commissioner (Appeals) and we uphold the same. Accordingly, the appeals filed by Revenue are dismissed. The cross-objections being in the nature of comments/reply to the appeals, they are disposed of."

4.7 In view of the above clarifications by the Board and DGFT and relying on the decisions in the case of **Karur KCP Packaging P. Ltd.** (supra), we hold that the goods are rightly classifiable under Chapter Heading 6305 32 00. Accordingly, the appeal is allowed.

5. In view of the above discussions, we set aside the impugned order and allow the appeal.

*(Order dictated and pronounced in Open Court.)*

**(D.M. MISRA)**  
**MEMBER (JUDICIAL)**

**(R. BHAGYA DEVI)**  
**MEMBER (TECHNICAL)**

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