CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

COURT-1

Central Excise Appeal No. 1416 of 2011

[Arising out of the Order-in-Original No.7/2011 dated 28.2.2011 passed by the Commissioner of Central Excise, Bangalore-II Commissionerate, Bangalore.]

M/s. Bishen Saroop Ram Kishen Agro (P) Limited No.50/12, SLV Industrial Estate, Andhrahalli Main Road, Peenya II Stage Bangalore – 560 058.	**....Appellant**

Vs.

Commissioner of Central Excise Bangalore-II Commissionerate Central Revenue Building, Queens Road, Bangalore – 560 001.	**....Respondent**

Appearance:

Shri B. N. Gururaj, Advocate	**....For Appellant**
Shri H. Jayathirtha, AR	**.... For Respondent**

CORAM:

HON'BLE DR. D. M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing: 04.01.2024

Date of Decision: 04.01.2024

FINAL ORDER No. 20054 of 2024

Per R. BHAGYA DEVI:

The appellant, M/s. Bishen Saroop Ramkishen Agro P Ltd., are manufactures of PP fabric, barrels, plain films and PP FIBC bags. They were issued with show-cause notice dated 26.202010 classifying the products PP FIBC bags under Chapter Heading 3923 2990 as against the classification claimed by the appellant 6305 3200. In addition, since the sale of the goods between the appellant and the buyers did not represent a normal business transaction and the price was not sole consideration, it was alleged that the appellant had resorted to undervaluation with an intention to evade payment of duty during the period from February 2009 to July 2009. Accordingly, a differential amount of Rs.1,80,403/- was also demanded on account of undervaluation along with interest and penalty.

2. Heard both sides and perused the records.

3. With regard to classification, this Bench has already taken a view in the case of M/s. Big Bags Inda (P) Ltd. vide Final Order No.20796-20797/2023 dated 21.6.2023 wherein it has been clearly held that items PP FIBC bags are rightly classifiable under Chapter 6305 3200. The relevant findings of the above referred Final Order is reproduced herein below:

> "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.
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> 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 :-
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> "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."
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> **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).
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> **15.** Further, the HSN Explanatory Note of Chapter 39 clearly excludes FIBC of Heading 6305 from Chapter 3923. Parallelly 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.
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> **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."

Following the above decision of this Bench, we set aside the demand of Rs.83,96,616/- along with interest and penalty. The appellant has not disputed the issue of undervaluation and therefore, the demand of Rs.1,80,403/- along with interest and penalty is upheld.

4. In view of the above, the appeal is partially allowed on the issue of classification of PP FIBC Bags under Chapter Subheading 6305 3200 and accordingly, demand of Rs.83,96,616/- along with interest and penalty is set aside and the demand of Rs.1,80,403/- with interest and penalty is upheld. Appeal disposed of accordingly.

(Operative portion of the was order was pronounced in open court on conclusion of hearing.)

(D. M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI
MEMBER (TECHNICAL)

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