CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 1052 of 2009

[Arising out of Order-in-Appeal No. 86/2009-CE dated 30/09/2009 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.]

WITH

Central Excise Appeal No. 28475 of 2013

[Arising out of Order-in-Appeal No. 605/2013-CE dated 04.11.2013 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.]

AND

Central Excise Appeal No. 20510 of 2018

[Arising out of Order-in-Appeal No. 487/2017-CT dated 01.12.2017 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.]

M/s. SUVIKRAM PLASTIC PVT LTD.
Sy. NO.96, MACHOHALLI VILLAGE,
DASAMPURA HOBLI,
BANGALORE NORTH TALUK
BANGALORE – 560 091.

Appellant(s)

VERSUS

Commissioner of Central Excise
PB.NO.5400, QUEENS ROAD,
CENTRAL REVENUES BUILDING,
BANGALORE – 560 001.
KARNATAKA

Respondent(s)

Appearance:

Mr. B.N.GURURAJ, ADV
"Rathna Krupa" No.20/A
National High School Road,
V.V. PURAM
Bangalore – 560 004.
Karnataka

For the Appellant

Mr. Rama Holla,
Superintendent (AR)

For the Respondent

Date of Hearing: 09/01/2020

Date of Decision: 12/02/2020

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order Nos. 20111 – 20113 / 2020

Per: P. ANJANI KUMAR

Brief facts of the case are that M/s. Suvikram Plastex Pvt. Ltd. are manufacturers of HDPE/PP Tapes/fabrics. The appellant manufacture among various items "shading net fabric". The appellants have classified the same under CETH 60069000 chargeable to duty @ 8% whereas the Department opined that the same be classifiable under CETH 3926 9099 chargeable to duty @16% during the relevant period. Three periodic show-cause notices were issued and were confirmed by the lower authorities and were upheld by Commissioner (Appeals). Hence these appeals.

2. Learned counsel for the appellants contends that "the shade net fabric" manufactured by the appellants was used for protecting crops from birds; the fabric was manufactured out of tapes of less than 5mm width made from HDPE Granules. Learned counsel submits that merely because fabric is made out of HDPE granules it cannot classified under chapter 39; many more fabrics made out of plastic raw material are classifiable under Headings such as 56.03, 54.03; that as long as the plastic strip used is of width less than 5 mm, the strip as well as fabric are classifiable as textile material; during original proceeding, the appellant had relied on the ration of *CCE* v. Lumel Shades P Ltd, 1999 (105) ELT 107 (T); TI 6006 90 00 is more specific to knitted fabrics, than TI 3926 90 99 which is a residuary entry; Rules of interpretation require adopting specific entry over general entry; the issue is settled by two judgments of Hon'ble Tribunal 'classifying this very same product under chapter 60. Reliance is placed on *CCE* v. *Sunpak,* 2016 *(343) ELT 201 (T-Chennai), and Sofeflex international Ltd v. CCE &ST,* 2018-TIOL-2340-CESTAT-DEL.

3. Learned AR for the Department reiterates the findings of the O-I-O and O-I-A and submits that in terms of Section Note (h) to Section (xi), woven, knitted or crocheted fabrics, felt or non wovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of Chapter 39.

The learned AR further submits that “Textile” means any fabric or cloth or yarn or garment or any other articles made wholly or in part of (i) cotton; or (ii) wool or (iii) silk or artificial silk or other fibre and plastic is not included in the definition of textile; Chapter Note (3) to Chapter 60 reads that “throughout this schedule, any reference to “knitted” goods includes a reference to stitch bonded goods in which the chain stitches are formed of textile yarns and in the instant case the stitches are not made by textile yarn but by HDPE strip, which is nothing but an article made of plastic. He relies upon the case of Raj Pack Well Ltd. – 1990 (50) E.L.T. 201 (M.P).

4. Heard both sides and perused the records of the case. We find that learned AR has relied upon the case of Raj Pack Well wherein HDPE strips/tapes/sacks being goods made of plastics and not of synthetic textile material classifiable under Chapter 39 of Central Excise Tariff Act, 1985. However, we find that Tribunal has been consistently holding such material to be falling under Chapter 60 of CETA. We find that in the case of Sunpack (supra) Tribunal has elaborately discussed the issue and have come to the conclusion that the instant goods are classifiable under 6005 9000. The Tribunal was concerned with a knitted fabric made of synthetic yarn made of strips less than 5mm. We find that the Tribunal has also taken into consideration the decision of Ahmedabad Bench of the Tribunal in the case of Flora Agrotech – 2015 (319) (E.L.T) 333 wherein it was held that knitted fabrics are classifiable under 6005 9000. Ahmedabad Bench has also distinguished the decision of the Madhya Pradesh High Court in the case of Raj Pack Well Ltd. (supra) and the CBEC Circular. The Bench noted that the appellants have obtained certificates from Central Institute of Plastics Engineering and Technology, Textile Committee and Sasmira, which confirmed that knitted fabrics made of synthetic yarn of width less than 5mm are classifiable under 6005. We also find that Tribunal has followed this decision in Sofeflex International Ltd. – 2018-TIOL-2340-CESTAT-DEL. Tribunal has observed that –

> “5.3 A specific entry in the CETA, 1985 has to be the proper classification than a general entry in Chapter 39 of the CETA, 1985, as per the Rules of interpretation to the CETA, 1985. The Synthetic & Art Silk Mills Research Association (SASMIRA), Mumbai SASMIRA is linked to the Ministry of Textiles, Govt. of India, SAMSIRA and after giving the definitions of Synthetic Textiles, wrap knitted fabric etc. opined in their letter, dated 18-4-2012 & 15-3-2013 that the product manufactured by the appellant is Wrap Knitted Fabrics Technical Textile made up of man-made synthetic yarn of width less than 5mm. As per

F.No. 1(11)/2011/TTC/Co/XX, dated 7-2-2012 written to the appellant by Assistant Director, Govt. of India, Ministry of Textiles, Office of the Textile Commissioner, Mumbai appellant's unit has been registered as a technical textile unit in the records of the office of Textile Commissioner and has been allotted registration No. 05152007. As per the Technical Textile literature issued by office of Textile Commissioner, Ministry of Textile, Govt. of India "Agrotex" includes technical textile products used in Agriculture, horticulture (incl. floriculture), fisheries and forestry. Example of Agrotex technical textile include Shed nets, mulch mats, crop covers, anti-hail nets, brid protection nets, fisheries nets, etc. Further office of Joint DGFT Surat while issuing Authorisation No. 5230009764 dated 15-11-2011 has held their product Wrap Knitted Fabrics to be classifiable under ITCHS Code 60059000. As per Indian Standard ICS 59.080.70; 65.020.20 Agro Textiles-Shed Nets, for Agriculture & Horticulture purposes are fabrics made from plastic materials.

5.4. The opinions of the above special agencies/departments of Govt. of India given in favour of the appellant cannot be ignored in deciding the products manufactured by the appellant. The nature of facts and circumstances in the present proceedings were not the same in the relied upon case laws. Further, the products plastic bags involved in the relied upon case laws were different than the product 'knitted Fabrics Shed Nets' involved in the case of the present appellant. Therefore, the case laws relied upon by the Revenue are not applicable to the facts and circumstances of the present case.

6. In view of Chapter Note 1(p) of Chapter 39, Section Note 1(g) of Section XI, Chapter Notes 1 & 1A of the Chatper 54 of the Central Excise Tariff Act, 1985; read with relevant HSN Explanatory Notes; the 'Knitted Fabrics Shed Nets' manufactured by appellant will be appropriately classifiable under Chapter 60 of the Central Excise Tariff Act, 1985."

5. In view of the above, we have no doubt that the issue is no longer res integra and the 'Shading Net' manufactured by the appellant is rightly classifiable under CETH 6005 9000. Accordingly, the impugned orders are liable to be set aside and accordingly, they are set aside. All the three appeals are allowed along with consequential relief, if any, as per law.

(Order was pronounced in Open Court on **12/02/2020**)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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