

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

**Excise Appeal No.60808 Of 2019**

[Arising out of Order-in-Original no.JAL-EXCUS-000-COM-002-19-20 dated 30.05.2019 passed by the Commissioner of CGST, Jalandhar]

**Ravipal Sachdeva**

**: Appellant**

1085, Gali Bardane Wali,  
Opp. Santbaba Bhuri Wala  
Tara Taran Road, Amritsar,  
Punjab-143504

*VERSUS*

**The Commissioner of Central Excise  
and Service Tax, Jalandhar**

**: Respondent**

GST Bhawan, F-Block, Rishi Nagar,  
Ludhiana, Punjab-141001

**WITH**

**Excise Appeal No.60809 Of 2019**

[Arising out of Order-in-Original no.JAL-EXCUS-000-COM-002-19-20 dated 30.05.2019 passed by the Commissioner of CGST, Jalandhar]

**Sunil Sachdeva**

**: Appellant**

1085, Gali Bardane Wali,  
Opp. Santbaba Bhuri Wala  
Tara Taran Road, Amritsar,  
Punjab-143504

*VERSUS*

**The Commissioner of Central Excise  
and Service Tax, Jalandhar**

**: Respondent**

GST Bhawan, F-Block, Rishi Nagar,  
Ludhiana, Punjab-141001

**AND**

**Excise Appeal No.60810 Of 2019**

[Arising out of Order-in-Original no.JAL-EXCUS-000-COM-002-19-20 dated 30.05.2019 passed by the Commissioner of CGST, Jalandhar]

**M/s Sunil Trading Co.**

**: Appellant**

1085, Gali Bardane Wali,  
Opp. Santbaba Bhuri Wala  
Tara Taran Road, Amritsar,  
Punjab-143504

*VERSUS*

**The Commissioner of Central Excise  
and Service Tax, Jalandhar**

GST Bhawan, F-Block, Rishi Nagar,  
Ludhiana, Punjab-141001

**: Respondent**

**APPEARANCE:**

Shri Naveen Bindal and Shri Bharat Jain, Advocates for the Appellant  
Shri Pawan Kumar, Authorised Representative for the Respondent

**CORAM: HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)  
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINALORDER Nos.60509-60511/2024**

DATE OF HEARING: 31.07.2024  
DATE OF DECISION: 04.09.2024

***PER: P. ANJANI KUMAR***

The appellants, M/s Sunil Trading Co.(Appeal No. E/60810/2019), are engaged in the manufacture and clearance of HDPE/ PP Bags; the appellants classified the bags manufactured by them under CETH 6305 and were clearing the same without payment of duty claiming exemption available under Notification No.30/2004. Officers of the DGCEI, Ludhiana conducted searches at the factory of the appellants and residences of the Directors; they collected documents and recorded statements of the concerned; officers of DGCEI were of the opinion that the bags manufactured by the appellants were classifiable under CETH 3923 2990. The appellants pleaded that even if the product manufactured by them falls under Chapter 39, no duty is payable on goods which were supplied against H-Form; they are eligible for CENVAT credit and cum-duty benefit. Bags valued Rs.5,44,854/- were seized and proceedings were initiated. A Show Cause Notice dated 22.02.2017 was issued to the appellants seeking to confiscate the bags seized; demanding Central Excise Duty of Rs.81,728/- along with penalties and interest and proposing to impose penalty on Shri Sunil Sachdeva (Appeal No.

E/60809/2019), Authorized Signatory of the appellant. On conclusion of the investigation, another Show Cause Notice, dated 24.08.2018, was issued to the appellants seeking to re-classify the goods manufactured by the appellants under CETH 3923 2990; demanding Central Excise Duty of Rs.4,84,89,409/- under proviso to Section 11A along with interest and penalties and proposing penalty on Shri Ravipal Sachdeva(Appeal No.E/60808/2019), Authorized Signatory of appellant. Both the Show Cause Notices were adjudicated by the impugned order dated 30.05.2019 vide which:

- Bags seized of value Rs.5,44,854/- were confiscated; Central Excise Duty of Rs.81,728/- was confirmed against M/s Sunil Trading Co. and penalty of Rs.1,00,000/- was imposed on Shri Sunil Sachdeva.
- Central Excise duty of Rs.4,71,24,465/- along with interest was confirmed against M/s Sunil Trading Co.
- Bags manufactured by the appellants were held to be classifiable under CETH 3923 2990.
- Penalty of Rs.4,71,24,465/- under Section 11AC of Central Excise Act, 1944 and penalty of Rs.1,00,000/- under Rule 25 of Central Excise Rules, 2002 was imposed on M/s Sunil Trading Co.
- Penalty of Rs.1,00,000/- under Rule 26 of Central Excise Rules, 2002 was imposed on Shri Ravipal Sachdeva.

Hence, these appeals.

2. Shri Naveen Bindal, assisted by Shri Bharat Jain, learned Counsels of the appellants, submits that the appellant's contention on the

classification of HDP/ PP Bags was not discussed in the impugned order; Heading 6305 is meant for "Sacks and Bags of a kind used for the packing of goods" and the subtitle of the Chapter is "of man-made textiles materials"; Chapter Heading 6305 3300 is meant for "other, of Polyethylene or Polypropylene Strip or the like" though what constitutes man-made textile material is not defined in the Central Excise Tariff, Hon'ble High Court of Punjab & Haryana in the case of M/s AR Plastics Pvt. Ltd. - VATAP No.134 of 2013 dated 14.05.2014 relying on the Hon'ble Supreme Court's decision in the case of Porrits and Spencer (Asia) Ltd. - (1979) 1 SCC 82 and in the case of Indo International Industries- (1981) 2 SCC 528 held that HDPE fabric is a textile and is exempt from VAT in the State of Haryana; it is clear from the above judgment that HDPE/ PP Fabric is fully covered under the definition of "Textile Material" and as such would fall under CETH 6305 3300 and CETH 6305 9000; it is important to note that Shri Nitin Garg, one of their suppliers, stated that the manufacture of HDPE Fabrics involves weaving; Department's reliance on CETH 3923 2990 under "other" is incorrect as the bags manufactured by the appellants are squarely covered under Chapter 63.

3. Learned Counsel further submits that the impugned order relies more on the classification of HDPE and PP and not on the goods manufactured out of such raw material i.e. HDPE and PP; the classification of raw material cannot be attributed to the final product. Learned Counsel submits that Chapter Note 1A of Chapter 54 supports the contention; plastic and plastic waste including PTE bottles falls under

Chapter 39 whereas yarn manufactured out of this fall under Chapter 54/55.

4. Learned Counsel submits that the Adjudicating Authority denied the CENVAT credit of Rs.2,42,54,161/- for the reason that CENVAT credit can be taken only within one year of the issue of the invoice and that there was no provision to wave the limitation; the assertion was not correct in view of various judgments cited by the appellants to the effect that if the product is held liable to duty, benefit of CENVAT credit cannot be denied; the appellants have maintained records and regularly filed VAT Returns. Learned Counsel submits that though the appellant did not export directly, they exported the goods through merchant exporters against H-Form prescribed in CST Act, 1956; actual exports of the goods can be established from the VAT Returns and H-Forms and therefore, the benefit of export cannot be denied. Learned Counsel also submits that cum-duty benefit cannot be denied in view of the Hon'ble Supreme Court's decision in the case of Maruti Udyog Ltd. – 2002 (141) ELT 3 (SC). Learned Counsel submits the data and pleads that if the above benefits are given, there is no duty payable as the appellant would be entitled to a refund of Rs.3,64,985/-.

5. Learned Counsel for the appellants further submits that the issue involved is interpretational in nature as the classification of the goods is in question; looking into the fact that there is no net duty payable if the due benefit of CENVAT credit, cum-duty and export are given to the appellants, intent to evade payment of duty cannot be alleged; non-registration and non-filing of Returns being a result of the bona fide belief

that the bags manufactured by the appellants are not subjected to duty, cannot be a reason for invocation of extended period.

6. Learned Counsel for the appellants relies on the following cases in support of his arguments on each of the issues:

- R. Plastics Pvt. Ltd. Vs. State of Haryana-VATAP No. 134/2013 DOO: 14.05.2014.
- CTM Technical Textiles Ltd. Vs. UOI- 2020(12) TMI 1100-Gujarat High Court
- Poritt's& Spencer (Asia) Ltd. Vs. State of Haryana - 1997 (1) SCC 82
- CC, Jamnagar Vs. Shankar Packaging Ltd.-2023 (386) ELT 462 (Tri. Ahmd)
- Commissioner of Sales Tax, UP Vs. Kanpur Plastic Pack (P) Ltd.-1984 SCC Online ALL 978
- State of Tamil Nadu Vs. Polyweb Private Limited-1980 SCC Online Mad 364
- Mahalaxmi Polyplast Pvt. Ltd. Vs. State of UP-1990 SCC Online All 968
- Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and others-MANU/SC/0399/1980
- Commissioner of Central Excise Vs. Karur KCP Packagings Pvt. Ltd.-2016 (331) ELT 604 (Tri. Chennai)
- TPI India Ltd. Vs. CCE, Mumbai-II-2005 (5) TMI 159 CESTAT, MUMBAI
- Raj Pack Well Ltd. Vs. UOI-1990 (50) ELT 201 (MP)
- Assessment Orders by Punjab VAT for the year 2013-14, 2014-15, 2015-16 & 2016-17
- Eves Fashions Vs. CCE, Delhi-1-2006 (205) ELT 619 (Tri. Delhi)
- Tropical Clothing Co. Pvt. Ltd. Vs. UOI- 2019 (369) ELT 231 (Guj)
- Ramani Plastics Pvt. Ltd. Vs. CCE, Chennai-1- 2015 (317) ELT 343
- Universal Packaging Vs CCE, Mumbai-V-2011 (264) ELT 147
- CCE. Mumbal-V Vs Universal Packaging- 2013 (292) ELT 191
- Hare Krishna Boxes Pvt. Ltd. Vs. CCE, Belapur-2011 (267) ELT 525
- Pioneer Magnesia Works Ltd. Vs. CCE, Ahmedabad-II-2010 (251) ELT 316
- Aromatic & Allied Chemicals Vs. CCE, Meerut-II-2009 (245) ELT 499
- Haldia Petrochemicals Ltd. Vs Joint Secretary-2019-TIOL-116-HC- KOL-CX
- Circular No. 648/39/2002-CS Dated 25.07.2002

- Formica India Division Vs. CCE-1995 (77) ELT 511
- CCE, Coimbatore Vs. CEGAT, Chennai-2008 (227) ELT 361
- CCE, Jalandhar Vs. Bhawani Weaving Factory-2010 (255) ELT 206
- Narmada Enterprises Vs. CCE, Bhopal-2013 (298) ELT 394
- Tata Iron and Steel Co. Ltd. Vs. CCE, Jamshedpur-2016 (344) ELT 994
- Blue Star Communications Final and others Vs. CCE, Ludhiana-Order No.A/60167-60171/2019 dated 22.02.2019
- CCE, Delhi Vs. Maruti Udyog Ltd.-2002 (141) ELT 3
- CCE, Madurai Vs. Vasu 2018 (361) ELT 167 Chemicals (Mad)
- Uniworth Textiles Ltd. Vs. CCE, Raipur-2013 (288) ELT 161
- Pushpam Pharmaceuticals Company Vs. CCE, Bombay-1995 (78) ELT 401
- CST Vs. Naresh Kumar & Company Pvt. Ltd.-2022 (67) GSTL 324 (Cal)
- Astik Dyestuff Pvt. Ltd. VS. CCE & Customs-2014-TIOL-237-HC- AHM-ST

7. Shri Pawan Kumar, learned Authorized Representative for the Department reiterates the findings of OIO and OIA. He takes us through the General Rules for Interpretation of the Harmonized System, relevant Section/ Chapter Notes under 39 & 63 and submits that the classification, under CETH 3923 (articles for conveyance or packing of goods, of plastic) as arrived by the Adjudicating Authority is correct.

6. Heard both sides and perused the records of the case. The issue involved is of classification of HDPE/PP Sacks manufactured by the appellants. The appellant seeks to classify the same under CETH 6305 3300 whereas the Department seeks to classify the same under CETH 3923 2990. The rival entries are as follows:

6.1. 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

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-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

6.2. 6305 Sacks and Bags, of a kind used for the packing of goods  
6305 10 - Of Jute or of other textile-based fibres of heading 5303

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6305 20 00 - Of cotton

- Of man-made textile materials:

6305 32 00 -- Flexible intermediate bulk containers

6305 33 00 -- Other, of polyethylene or polypropylene strip  
or the like

6305 39 00 -- Other

6305 90 00 -- Of other textile materials

7. We find that as submitted by the learned Counsel for the appellants, Chapter Note 1A to Chapter 54 gives scope for the raw materials to be classified under plastics under Chapter 39 whereas the final products made out of them can fall under Chapter Heading 54/ 55. In the instant case, the sacks are made out of HDPE/ PP strips. We find that learned Commissioner appears to have classified the goods under Chapter 39 because of the fact that they are made of strips of plastic falling under Chapter 39; learned Commissioner relies on the case of Raj Pack Well Ltd. – 1990 (50) ELT 201 (MP) and other cases cited therein. Learned Commissioner finds as below:

In this regard, it is observed that the basic constituent of HDPE / PP bags is HDPE/PP granules. HDPE or High-density polyethylene (HDPE) is a thermoplastic polymer produced from the monomer ethylene. Similarly, polypropylene is also thermoplastic polymer produced from the chain-growth polymerization of propylene, and is the most widely produced commodity plastic along with polyethylene. These complex

polymers of polyethylene and polypropylene are classifiable under chapter 39 of the first Schedule to the Central Excise Tariff Act, 1985 as Plastics and Articles of Plastics. It is also on record that the invoices procured by the noticee of "HDPE/PP Fabric" were classified by respective suppliers under heading 3926. There is nothing on record that any textile material was being used by the noticee in the process of manufacture of HDPE/PP Fabric. The headings under which the notice seeks classification, that is 63053300 and 63059000, pertain to sacks of textile materials, whereas the tariff item 3923 29 90 specifically covers sacks and bags entirely made of other plastics. It becomes graphically clear that the HDPE/PP Bags and Sacks are bags and sacks made of other plastics and are specifically covered in the Tariff Item 39232990.

8. On going through the relevant entries, we find that the entry 3923 covers articles for conveyance or packing of goods; however, it is important to note that it does not talk about the process of manufacture of sacks; the impugned goods are manufactured by weaving; it is pertinent to note that HSN Explanatory Notes under Heading 3923 clarifies that 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. We find that Hon'ble High Court of Gujarat in latest judgment in the case of M/s CTM Technical Ltd. – 2021 (15) GSTR-OM 290 (Guj.) [2020 (12) TMI 1100 Guj. High Court] has gone into the issue in a detailed manner and has come to the conclusion that if the sacks/ bags are woven from plastic strips, they will be classifiable under Heading 6305. Hon'ble High Court distinguished the decision of the

Hon'ble MP High Court in the case of Raj Pack Well Ltd. (supra). Hon'ble Gujarat High Court observes as follows:

52. Thus, prima facie it appears that both the products are woven fabrics, and they are brought into existence by weaving method.

53. The raw materials used for both the products is High Density Polyethylene (HDPE) strips which is a plastic material. But, plastic is used for producing textile fabrics. Polyester fabrics, terelene fabrics, nylon fabrics, etc. are well known varieties of fabrics, and the raw material for all such fabrics is plastic.

54. The term "textile" is derived from the Latin "texere" which means "to weave", and it means any woven fabric. The Apex Court has observed as under at para 6 of judgment in Porritts & Spencer (Asia) Ltd. (supra):

"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 sense 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 or 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 of technique.

There is such phenomenal advance in science and technology, so wondrous is the variety of fabrics manufactured from materials hitherto 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, bleached 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'."

55. What is held by the Supreme Court is an answer to what the respondents have argued in this case about what is 'textile', and whether woven fabric of any material is a textile product or not.

56. Prima facie, it appears that the understanding of the word 'textiles' in common parlance has not been considered by the Board as well as by the Ahmedabad Collector while issuing the impugned Order and the Trade Notice respectively. Instead of considering the method of weaving as a relevant factor, the nature of the raw material seems to have been taken into consideration while issuing such Order and Trade Notice. The Board's Circular and the Collector's Trade Notice prima facie appear to be contrary to the law laid down by the Apex Court about what is 'textiles', and cannot be relied upon for classifying woven fabric.

57. Both the goods in question are being manufactured by the writ-applicants by weaving; it being warp knitting in case of the Agro Shade Net and weaving by warp and weft in case of the Geo Grid fabrics. Both these commodities are in the nature of fabrics, and the respondents have also accepted the fact that the Agro Shade Net are fabrics manufactured on the Raschel knitting machine, whereas the Geo Grid fabrics are woven fabrics manufactured on the weaving machines.

58. The judgment in Raj Pack Well Ltd. (supra) relied upon on behalf of the respondents has nothing to do with the HDPE fabric, but it relates to the HDPE strips/tapes/sacks. The question whether fabric woven out of strips or tapes are textile products or not, was

not involved in this judgment. The contention raised by the writ-applicants is that the woven fabric would be 'textile' irrespective of the method of weaving through any technique and the materials used for weaving may also be anything like cotton, silk, rayon, nylon or any other description or made out of any other material; but when any such material is woven into fabric, what comes into existence is a "textile".

59. A specific and categorical submission was raised by the writ-applicants before the authorities that similarly situated manufacturers located elsewhere in the State as well as in the country have classified similar products as textiles, and the Central Excise officers have not initiated any proceedings against them on the basis that the goods are articles of plastics chargeable to excise duty. In the representations made before the Chief Commissioner, the Ministry of Finance and the Principal Chief Commissioner as well as the jurisdictional Commissioner, the writ-applicant has submitted as under:-

"It may be noted sir that more than 100 manufacturers in the country are treating this product as a Textile material and following HSN code under chapter 60. We understand that we are the only company who have the Show cause Notice pending."

9. In view of the above, we find that the impugned bags and sacks having been manufactured by weaving material derived from HDPE/ PP strips merits classification under Heading 6305; therefore, we find that the argument put forth by the learned Counsel for the appellants is acceptable in view of the judgment of the Hon'ble Gujarat High Court as discussed above and the appeal succeeds on this count. We find that even otherwise, without prejudice to the above classification, the appellants request for giving benefit of CENVAT credit, export and cum-duty is also acceptable in view of the catena of judgments cited by the appellants. Therefore, we find that the appeals succeed on both issues. Therefore, we are not discussing the issue on limitation. When the duty itself is held to be not chargeable, the question of interest and penalties does not arise and the same have to set aside.

10. In the result, all the three appeals are allowed with consequential relief, if any, as per law.

(Order pronounced in the open court on 04/09/2024)

**(S. S. GARG)**  
**MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)**  
**MEMBER (TECHNICAL)**

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