

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 4**

EXCISE APPEAL NO. 50573 OF 2024

[Arising out of Order-in-Original No. 09-12/COMMR/CE/UJN/2023-24 dated 29.12.2023 passed by the Principal Commissioner, CGST, & Central Excise, Ujjain]

**PRINCIPAL COMMISSIONER OF CENTRAL
EXCISE & CGST-UJJAIN**
29, Administrative Area, Bharatpuri,
Ujjain-456001 (MP)

.....APPELLANT

Vs.

SHRI SUNIL TRIVEDI
Managing Director,
M/s Neo Corp International Ltd
Plot No. 62-63, Industrial Area,
Sector-1, Pithampur, MP

.....RESPONDENT

	WITH	
E/50574/2024,	E/50637/2024,	E/50642/2024,
E/50643/2024,	E/50644/2024,	E/50612/2024,
E/50613/2024,	E/50638/2024,	E/50639/2024,
E/50645/2024,	E/50640/2024,	E/50641/2024.

Appearance:

Present for the Appellant : Shri R.K. Mishra, Authorised Representative

Present for the Respondent: None

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO'S. 51113-51125 /2025

DATE OF HEARING : 02/07/2025
DATE OF DECISION : 04/08/2025

DR. RACHNA GUPTA

1. Present order disposes of 13 appeals filed by the department for the reason that the issue in all these appeals is same. The respective show cause notices and orders-in-original are mentioned in the Table below.

Sr. No	Appeal No.	Party Name	Show Cause Notice No. & Date	Impugned order
1	Excise Appeal No. 50573 of 2024	Pr. Commissioner vs. Sunil Trivedi	F.No. IV (16)30-67/Adj/Pith-I/17-18 dated 23.02.2018	OIO No. 09-12/COMMR/CE/UJN/2023-24 dated 29.12.2023
2	Excise Appeal No. 50574 of 2024	Pr. Commissioner vs. Sacos Indigo Pvt Ltd.	F.No. IV (16)30-67/Adj/Pith-I/17-18 dated 23.02.2018	OIO No. 09-12/COMMR/CE/UJN/2023-24 dated 29.12.2023
3	Excise Appeal No. 50637 of 2024	Pr. Commissioner vs. Sacos Indigo Pvt Ltd.	F. No. V(54)30-01/2015/Adj-I dated 15.12.2015	OIO No. 09-12/COMMR/CE/UJN/2023-24 dated 29.12.2023
4	Excise Appeal No. 50642 of 2024	Pr. Commissioner vs. Shri Sunil Trivedi	F. No. V(54)30-01/2015/Adj-I dated 15.12.2015	OIO No. 09-12/COMMR/CE/UJN/2023-24 dated 29.12.2023
5	Excise Appeal No. 50643 of 2024	Pr Commissioner vs. Sacos Indigo Pvt Ltd	F. No. V(39)15-01/2015/Adj.-I dated 23.01.2015	OIO No. 09-12/COMMR/CE/UJN/2023-24 dated 29.12.2023
6	Excise Appeal No. 50644 of 2024	Pr. Commissioner vs. Shri Sunil Trivedi	F. No. V(39)15-01/2015/Adj.-I dated 23.01.2015	OIO No. 09-12/COMMR/CE/UJN/2023-24 dated 29.12.2023
7	Excise Appeal No. 50612 of 2024	Pr. Commissioner vs. Neo Corp International Ltd.	F. No. DGCEI/AZU/36-29/13-14 dated 03.05.2013	OIO No. 08/COMMR/CE/UJN/2023-24 dated 29.12.2023
8.	Excise Appeal No. 50613/2024	Pr. Commissioner vs. Sunil Trivedi	F. No. DGCEI/AZU/36-29/13-14 dated 03.05.2013	OIO No. 08/COMMR/CE/UJN/2023-24 dated 29.12.2023
9	Excise Appeal No. 50638 of 2024	Pr. Commissioner vs. Neo Corp International Ltd.	F No. V(39)15-08/2015/Adj-I dated 27.08.2015	OIO No. 22/COMMR./CE/UJN/2023-24 dated 29.12.2023
10	Excise Appeal No. 50639 of 2024	Pr. Commissioner vs. Shri Sunil Trivedi	F No. V(39)15-08/2015/Adj-I dated 27.08.2015	OIO No. 22/COMMR./CE/UJN/2023-24 dated 29.12.2023
11	Excise Appeal No. 50645 of 2024	Pr. Commissioner vs. Sacos Indigo Pvt Ltd.	F. No. DGCEI/AZU/36-29/13-14 dated 03.05.2013	OIO No. 08/COMMR/CE/UJN/2023-24 dated 29.12.2023
12	Excise Appeal No. 50640 of 2024	Pr. Commissioner vs. Polylogic International Pvt Ltd.	F.NO. V(39)15-09/2015/Adj-I dated 01.10.2015	OIO No. 23/COMMR/CE/UJN/2023-24 dated 29.12.2023
13	Excise Appeal No. 50641 of 2024	Pr. Commissioner vs. Utkarsh Trivedi	F. No. V(39) 15-09/2015/Adj-I dated 01.10.2015	OIO No. 23/COMMR/CE/UJN/2023-24 dated 29.12.2023

2. The respondents have not appeared despite the service of notices. Learned authorized representative has mentioned that there has been a decision of this Tribunal on the similar issue and all these appeals can be decided based on the said decision. We have perused the record of appeal memo and observe as follows.

3. The facts of the case are that M/s Sacos Indigo Pvt Ltd. (M/s SIPL) is engaged in the manufacture of HDPE/PP Woven Fabrics, Bags, Sacks and Flexible Intermediate Bulk Containers (FIBC) of Plastics classifying those under chapter 63. M/s Neo Corp International Ltd., (NICL) is engaged in the manufacture of Tape, Woven Fabrics, Wrap Knit Fabrics, Bags and Sacks of Plastics classifying those under Chapter 54 of Customs Tariff Act, 1985. Shri Sunil Trivedi is the Managing Director of M/s Sacos Indigo Pvt Ltd. and M/s Neo Corp International Ltd. and looks after day to day affairs of the said company. The companies had claimed the classification of their goods under Section XI of the CETA, 1985 as Textile & Textile Articles with effect from 01.04.2012 in light of OIO No. IND/CEX/000/APP/81/12 dated 22.03.12, passed by the Commissioner (Appeals), Indore & OIA No. 350/2011 dated 05.09.11, passed by the Commissioner (Appeals) Indore.

4. Similarly the respondents M/s Polylogic international Ltd. Pvt Ltd. & Shri Utkarsh Trivedi were found classifying finished goods viz. Warp knit Fabrics under Chapter Heading No. 60053300, "Film" under Chapter Heading No. 39202090, Thread under Chapter Heading No. 54041990, "Monofilament" under Chapter Heading No. 54041200 and "Plastic Waste" under Chapter Heading No. 39159010. Further it has been observed that the respondent/assessee has willfully classified the goods "Wrap knit Fabrics" under "Textile & Textile Articles".

5. Based on an intelligence that M/s NCIL are indulged in evasion of Central Excise duty and wrong availment of CENVAT

Credit, the officers of Directorate General of Central Excise Intelligence (DGCEI), Regional Unit, Indore, investigated the matter. Searches were conducted and statements of concerned persons were recorded.

6. The department formed the opinion that respondents/ assessee have willfully mis-stated the facts before the Commissioner (Appeals) that the goods, manufactured by them, are Textile & Textile Articles, whereas the raw materials i.e. PP/HDPE/LLDPE which are granules of plastic hence are totally different from Textile & Textile Articles. The representative samples of the manufactured goods also got examined from Central Revenue Control Laboratory, New Delhi. The CRCL has submitted their test report mentioning that P.P. Woven Fabrics & Warp Knit Fabrics are composed of polypropylene & inorganic fillers. It is of plastic grade with ash contents 5.09 and 7.8% respectively.

7. Based on these observations & outcome of further investigation Show Cause Notices as mentioned above were served upon 13 respondents proposing that Woven Fabrics etc. manufactured by them be classified under Chapter Sub-heading 39269099 of Central Excise Tariff Act, 1985, and HDPE/PP/LLDPE bags, sacks and FIBC be classified under Chapter sub-heading 39232100/39232990 of Central Excise Tariff Act, 1985. It has been alleged in the show cause notices that the respondents had evaded Central Excise Duty by way of misclassification of goods manufactured by them. Accordingly, the Central Excise Duty as mentioned in the respective show cause notices with interest and

penalty was proposed to be recovered from them under section 11A (1) of the Central Excise Act, 1944.

The entire demand has been dropped by adjudicating authority vide orders in original as mentioned in the table above. No penalty has been imposed on any of the respondents.

8. Being aggrieved of the said order, the department has filed 13 appeals as mentioned in the table above. However, despite service, all the respondents/ assesses have opted to not to come present. We observe that the assessee have not even appeared before the original adjudicating authority. The reply to show cause notice was also not filed by them. In these circumstances adjourning the matter for awaiting present of respondents is deemed unreasonable. Hence, we proceed to decide all the appeals.

9. We have heard learned authorized representative appearing for the department and perused the records.

10. Learned DR submitted, while rely upon the order of Review No. 08/2023-24 dated 29.12.2023, that from the test reports of the CRCL and the letter of M/s IOCL (a major supplier of the PP/HDPE/LLDPE granules to M/s NCIL & M/s Polylogic International Pvt. Ltd.), it is evident that the goods manufactured by the respondent are out of plastic grade granules of Polypropylene (PP) and High Density Polyethylene (HDPE) instead of being out of textile fibre, as claimed by them. The manufacturing operation undertaken by M/s NCIL as stated in impugned order itself along with statement of Shri Sunil Trivedi

shows that M/s NCIL had manufactured first the film by extrusion process of plastic granules (PP and HDPE) and thereafter were taken the strips and tapes which further were woven into fabrics and then by cutting and stitching, manufacturing of Sacks or bags had taken place. Thus, no fibre or yarn of textile emerges in the process. Textile goods were to be manufactured out of the fibre either natural or manmade, which was completely lacking in the case of these respondents as the tape/woven fabric was manufactured directly from the granules which were admittedly of plastics. There is no denied on part of M/s Polylogic International Pvt. Ltd. and their director Mr. Utkarsh Trivedi that they manufactured the final product from granules of plastic (PP & HDPE).

11. Thus, it is clear that M/s SIPL following their parent company M/s NCIL and M/s Polygenic International Pvt. Ltd. had mis-classified the goods, manufactured by them under section XI of the CETA as Textile & Textile Articles with effect from 01.04.2012 as "Woven Fabrics" under Chapter Sub-Heading 5407.2090 and Bags, Sacks and FIBC under Chapter Sub-Heading 6305.0000 of the CETA, 1985. Woven fabrics appeared more appropriately classifiable under Chapter Sub-Heading 3926.9099, and Bags, Sacks and FIBC appeared more appropriately classifiable under Chapter-Sub-Heading 3923.2100 (of HDPE) and 39232990 (of other Plastics) of the CETA, 1985.

12. The adjudicating authority, therefore, has made a hasty decision in concluding that the decision of the CESTAT Final Order dated 01.11.2022 would be applicable in the instant case. The

adjudicating authority, without throwing any light on any of the relevant facts mentioned in the SCN, concluded to drop the proceedings raised by the SCN.

13. Having heard, it is observed that the original adjudicating authority has followed the Final Order of this Tribunal bearing no. 51048 of 2022 dated 01.11.2022 in the case of **M/s Commissioner of Customs, Central Excise & Service Tax, Indore vs. Neo Corp International Ltd.** i.e. are of the same respondent as in the present appeals wherein it was already been ruled that goods i.e. PP/HDPE/LLDPE, bags, sacks and FIBC are correctly classifiable under Chapter head no. 54 and 53 and do not merit classification under Chapter Heading No. 39 as contended by the department.

14. We have perused the said decision as produced on record, perusal thereof reveals that the issue which is decided in the said Final Order is:

Whether the plastic tape and strips, woven fabrics & woven sacks, FIBC (flexible intermediate bulk carriers), HDPE/PP/LDPE sacks, Bags and wrap knit fabrics manufactured and cleared are correctly classified under Chapter Heading No's. 54041990, 54072090, 63053300, 630533200 and 60053300 or those merit classification under Chapter Heading No. 39201099, 39269099, 39232100/ 39232990 as sought by DGCEI.

15. Admittedly, the issue is same in the present appeal, in fact, the assessee is also same as that of said Final Order except for two of the present appeals. This Tribunal in the said Final Order

has accepted the findings of the Commissioner (Appeals) in the order as was challenged before the Tribunal who had followed an earlier decision of this Tribunal of Ahmadabad Bench in the case of **M/s Flora Agro vs. CCE & ST, Vapi** vide **Final Order No. A/11845/2014 dated 28.10.2014** which was accepted by the Department on merits being communicated vide their letter dated 20.1.2015. The Commissioner (Appeals) had earlier also dealt with the issue in favour of the assessee vide earlier Orders-in-Appeal Dated 05.09.2011 and 22.03.2011. This Tribunal in the earlier Final decision in the case of **M/s Neo Corp International Ltd.** based on the above quoted earlier decisions has held as follows:

"3..... In view of the elaborate discussions on the question of classification of the products manufactured by the Noticee on the basis of which it has been held that the same merit classification under Chapter Heading 54, 63 and 60, I do not find it necessary to discuss the point raised by the Noticee regarding the value of clearance on which the duty demand has been proposed in the Show Cause Notice as also the other contentions of the Noticee in respect of imposition of penalty and issuance of Show Cause Notice"

16. The said decision stands affirmed by the Hon'ble Apex Court in the matter titled as **Commissioner of Customs, Central Excise & Service Tax, Indore vs. Neo Corp International Limited reported as 2023 (8) CENTAX 180 (Tri.-Del.)**. Apparently and admittedly the department has already accepted the earlier orders of departmental adjudicating authorities and of this Tribunals, as well, not only by not filing the appeals against those orders but also by way of written acknowledgment of those order.

17. In the light of the entire above discussion and observing that the issue involved in these appeals stand no more *res*

integra it has attained finality till the Hon'ble Apex Court. Accordingly, we hold that there is no error committed by the Commissioner in the impugned Order-in-Original while dropping the demand as was proposed against the respondents herein. The Commissioner has simply followed the judicial protocol. The judicial discipline requires that the orders of higher adjudicating authority should be followed by the subordinate authorities. We draw our support from the decision of Hon'ble Supreme Court in the case of **Union of India vs. Kamlakshi Finance Corporation Ltd. reported as 199 (55) ELT 433 SC**, wherein department was directed to pay utmost regard to judicial discipline and to give effect to orders of higher appellate authorities which are binding on them. Resultantly, we find no infirmity in the impugned orders-in-originals. We hereby uphold the same. Consequent thereto all the appeals filed by the department are hereby dismissed.

(Order pronounced on **04/08/2025**)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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