CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 51283 of 2023

[Arising out of Order-in-Original No. 11/2022-23/Simmi Jain/Principal Commissioner dated 16.09.2022 passed by the Principal Commissioner of Customs (Air Cargo Complex Import), New Delhi]

M/s. Mishra Dhatu Nigam Limited **...Appellant**
Sector 30A, Plot No. 8 & 13, Phase II,
IMT Rohtak, Haryana - 124001

VERSUS

Principal Commissioner of Customs,
Air Cargo Complex (Import), New Delhi **...Respondent**
New Customs House, Near IGI Airport,
New Delhi - 110037

APPEARANCE:
Shri Mayank Srivastava, Advocate and Shri Sudhir V.S. and Shri Asish Chaudhary, Chartered Accountant for the Appellant

Shri Rakesh Kumar, Authorized Representative for the Respondent

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

DATE OF HEARING: 23.09.2025
DATE OF DECISION: **16.01.2026**

FINAL ORDER NO. 50142/2026

DR. RACHNA GUPTA

Present appeal has been filed to assail Order-in-Original No. 11/2022-23 dated 16.09.2022. The facts which culminated into the said order are as follows:

1.1 M/s. Mishra Dhatu Nigam Limited, the appellant herein filed 16 Bills of Entry on three different dates i.e. 12.11.2020, 13.11.2020 and 04.12.2020 for clearance of imported goods declared as "Polyethylene Fiber Product Name HB26 A" by classifying those under CTH 39201099 which covers 'other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials. The Basic Customs Duty (BCD) was paid at the rate of 10%, Social Welfare Surcharge (SWS) on BCD at the rate of 10% and IGST was paid at the rate of 18%. On perusal of the import invoices issued by the supplier M/s. DSM Protective Materials BV, Netherlands uploaded on e-sanchit in respect of all the said Bills of Entry, it was found that the product name mentioned therein is 'HB26 A' and the commodity code is mentioned as 540730 which covers woven fabrics of synthetic filament yarn. The effective rate of BCD on the goods classifiable under sub-heading 540730 is 20%, SWS on BCD is payable at the rate of 10%. With these observations, the department at the stage of post clearance audit of the Bills of Entry filed by the appellant, alleged that the appellant has short paid the duty on the imported goods while wrongly classifying the imported goods. Accordingly, vide Demand Cum Show Cause Notice No. 66/2021-22 dated 24.08.2021, it was proposed that the imported goods may be classified under CTH 540730 instead of declared CTH 39201099 having the assessable value of Rs.10,42,68,575/-. In view of the mis-declaration the goods were proposed to be confiscated. Differential amount of duty of Rs. 1,14,69,543/- on the goods imported vide all 16 Bills of Entry was proposed to be recovered from the appellant. Penalty is also proposed to be imposed upon the appellant under Section 112 (a) (ii) and Section 117 of the Customs Act, 1962. The said proposal has been confirmed vide the aforementioned impugned order. Being aggrieved, the appellant is before this Tribunal.

2. We have heard Shri Mayank Srivastava, learned Advocate along with Shri Sudhir V.S. and Shri Asish Chaudhary, learned Chartered Accountants for the appellant and Shri Rakesh Kumar, learned Authorized Representative for the department.

3. Learned counsel for the appellant has submitted that the imported product is in the form of sheet which is neither woven nor is a fabric but purely a plastic sheet. Learned counsel has impressed upon the certificate issued by Northern India Textile Research Association certifying that HB-26 is a plastic fabric. The input used to manufacture the product is polyethylene fiber and the imported sheet (HB26A) is the raw material for hard pressed ballistic protective applications and is sold only for downstream industrial processing. Learned counsel has impressed upon that the imported product is neither a fabric nor fiber nor yarn nor even textile. Resultantly, the product cannot be classified under CTH 540730. To support his submissions learned counsel has relied upon the following decisions:

(i) Aos Systems Vs. Commissioner of Central Excise, Delhi reported as 2019 (370) ELT 966 (Tri.-Del.)

(ii) Commissioner of Central Excise, Coimbatore Vs. Jawahar Mills Ltd. reported as 2001 (32) ELT 3 (SC)

The order under challenge is therefore liable to be set aside and appeal is prayed to be allowed.

4. While rebutting these submissions, learned Departmental Representative has elaborated the features of Chapter 39 and Chapter 54. It is submitted that CTH 39201099 does not cover the

products which have been reinforced, laminated, supported or similarly combined with the material other than plastics. Learned Departmental Representative has impressed upon that for this purpose "similarly combine" must be the combinations of plastics with materials, other than plastics, which enhanced the strength of the plastic material. The heading also excludes cellular products (heading 39.21) and strip of plastics of an apparent width not exceeding 5mm which are covered under Chapter 54. The Notes specifically excludes textiles and textile articles. General Explanatory notes to the respective chapters are impressed upon and while relying upon the general rules for interpretation of the harmonized system, it is submitted that the classification of goods in the nomenclature has to be governed in accordance of the titles of the Sections, chapters and the sub-chapters are provided for the ease of reference only. The decision of the Hon'ble Apex Court in the case of **Collector of Central Excise, Shillong Vs. Wood Craft Ltd. Reported as 1995 (77) ELT 23 (SC)** has been relied upon. It is submitted that the impugned goods are rightly held classifiable under 540730. The BCD at the rate of 20% was to be paid. Hence the short paid duty has rightly been demanded. For the same reason there is no infirmity in the order while confiscation of imported goods is ordered and penalty has been imposed. With these submissions, the appeal is prayed to be dismissed.

5. Having heard both the parties and perusing the entire records, It is observed and held as follows:

5.1 The issue herein pertains to the misdeclaration of goods in terms of classification and the consequent short payment of customs duty. The appellant-importer in the Bills of Entry had classified the goods imported by him as HB26 A under CTH 39201099. However, the department has raised demand underSection 28(1) of the Customs Act, 1962 on the premise that the correct classification of the impugned goods as per Note 9 to Section XI and as per HSN explanatory note is CTH 540730. To appreciate the correctness of the classification, we foremost need to peruse both the customs tariff headings.

Chapter 39

Plastics and articles thereof				
Tariff item	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
3920	Other plates, shetts, film, foil and strip of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials			
39201099	------ Other	Kg.	10%	-

1. Throughout this Schedule, the expression "plastics" means those material of headings 3901 to 3914 which are or have been capable, either at the moment of polymerization or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticizer) by moulding, casting extruding, rolling or other process into shapes which are retained on the removal of the external influence.

Throughout this Schedule any reference to "plastics" also includes vulcanized fibre. The expression, however, does not apply to materials regarded as textile materials of Section XI.

2. This Chapter does not cover:

(a) xxxxxxxxxxxxxx

(b) xxxxxxxxxxxxxx

(c)xxxxxxxxxxxxxxx

(d) xxxxxxxxxxxxxx

(e) xxxxxxxxxxxxxx

(f) xxxxxxxxxxxxxx

(g) xxxxxxxxxxxxxx

(h) xxxxxxxxxxxxxxx

(i) xxxxxxxxxxxxx

(j) xxxxxxxxxxxxx

(k) xxxxxxxxxxxxx

(l) xxxxxxxxxxxxx

(m) xxxxxxxxxxxxxx

(n) xxxxxxxxxxxxxx

(o) xxxxxxxxxxxxxx

(p) goods of Secton XI (textiles and textile articles):

(q) xxxxxxxxxxxxxx

(r) xxxxxxxxxxxxxx

(s) xxxxxxxxxxxxxx

(t) xxxxxxxxxxxxxx

(u) xxxxxxxxxxxxxx

(v) xxxxxxxxxxxxxx

(w) xxxxxxxxxxxxxx

(x) xxxxxxxxxxxxxx

(y) xxxxxxxxxxxxxx

(z) xxxxxxxxxxxxxx

CHAPTER 54

Man-made filaments and textile material thereof				
Tariff item	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
5407	**Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials or heading 5404**			
540730	- Fabrics specified in Note 9 to Section XI:			

1. Throughout this Schedule, the term 'man-made fibres' means staple fibres and filaments of organic polymers produced by manufacturing processes either:

(a) by polymerization of organic monomers to produce polymers such as polyamides, polyesters, polyolefins or polyurethanes, or by chemical modification of polymers produced by this process (for example, poly (vinyl alcohol) prepared by the hydrolysis of poly (vinyl acetate); or

(b) by dissolution or chemical treatment of natural organic polymers (for example, cellulose) to produce polymers such as cuprammonium rayon (cupro) and other proteins, or algnic acid), to produce polymers such as cellulose acetate or alginates.

The terms "man-made", "synthetic" and artificial" shall have the same meaning used in relation to "textile materials".

2. Headings 5402 and 5403 do not apply to synthetic or artificial filament tow of Chapter 55.

The bare perusal of both the tariff entries reveals that the tariff entry claimed by appellant i.e. 39201099 is about plastic articles whereas the one claimed by the department is CTH 540730 is about textile material. We have taken judicial notice of the literature available on internet to appreciate the differences between plastic article and the textile material. It is observed that **plastic articles** are typically solid, non-porous objects made from polymers that can be molded into shape, while **textile materials** are flexible, fibrous materials made from natural or synthetic fibers woven or felted together. Plastics are often rigid, while textiles are inherently flexible and used for making things like clothing, upholstery, and carpets. The chapter notes as discussed above have also established the said distinction.

5.2 We have also perused the fact in the present case that the importer in their self-assessment of the impugned Bill of Entry w.e.f. 12.11.2020 has been classifying the impugned goods I.e. HB26A under CTH 3920 and the goods were cleared as HB26A. HB26A is noticed to be a composite material, specifically a cross-ply unidirectional laminate, primarily used for low-weight hard armor applications. It's composed of ultra-high molecular weight polyethylene (UHMWPE) fibers, specifically Dyneema® SK76, known for their high strengths and low weight. The fibers of this material are arranged in a [0°/90°/0°/90°] configuration and hot-pressed to create a hard ballistic panel. It's a composite laminate with a cross-ply unidirectional structure, meaning the fibers are aligned in different directions (0° and 90°) within each layer. Admittedly HB26 is widely used in ballistic protection, including personal armor, bullet proof Jackets due to its lightweight and high strengthproperties. UHMWPE fibers are known for their exceptional tensile strength and modulus, making them ideal for high-impact applications.

5.3 We have also perused Chapter Note 10 of Chapter 39 according to which the expression 'plates, sheets, film, foil and strip' applies only to plates, sheets, film, foil and strip and to blocks of regular geometric shape, whether or not printed or otherwise surface worked (for example, polished, embossed, coloured, merely curved or corrugated), uncut or cut rectangles (including squares) but not further worked (even if when so cut they become articles ready for use, for example, tablecloths). Plats, sheets, etc., whether or not surface worked (including squares and other rectangles cut therefrom), with ground edges, drilled, milled, hemmed, twisted, framed or otherwise worked or cut into shapes other than rectangular (including square)are generally classified as articles of headings 39.18, 39.19 or 39.22 to 39.26. Relevant Chapter Notes of Chapter 54 is also perused as:

Throughout the Nomenclate, the terms "man made fibres" means staple fibres and filaments of organic polymers produced by manufacturing processes, either:

(a) By polymerization of organic monomers, such as polyamides, polyesters, polyurethanes or polyvinyl derivatives; or

(b) By chemical transformation of natural organic polymers (for example, cellulose, casein, proteins or algae), such as viscose rayon, cellulose acetate, cupro or alginates.

The terms "synthetic" and "artificial", used in relation to fibres, mean : synthetic : fibres ad defined at (a); artificial : fibres as defined at (b) The terms "man made" , "synthetic" and "artificial" shall have the same meanings when used in relation to "textile materials".

The perusal of Chapter Notes when read in light of admitted facts and the literature about impugned goods discussed above is sufficient for us to hold that product in question is absolutely different product from the plastic articles elaborated under Chapter 39.

5.4 The title of both the chapters, sub-chapters and chapter notes are relevant for determining classification as general Rules for the interpretation of harmonized system. Hon'ble Apex Court also in the case of **Wood Craft Ltd. (supra)** observed that it is internationally accepted norm that the nomenclature and HSN being the safe guide, the tariff classification should totally be based on HSN explanatory notes.

5.5 This Tribunal has also followed the above view while deciding the case titled as **Hewlett Packard India Ltd. Vs. Commissioner of Customs, New Delhi reported as 2017 (356) ELT 151 (Tri.-Del.)**, wherein it was held that:

> *9. Before we finalize the classification of the impugned goods, it is useful to refer to the relevant Section/Chapter notes which*

governed the classification of Automatic Data Processing Machine under 84 71. Note 3 to Section 16(XVI) rights as follows:-

"Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the Principal function."

Here, we have a machine which performs the alternative functions of Automatic Data Processing Machine as well as cellular telephone; which function is considered as a principal function will be depending upon the use.

6. In view of the above discussion, we do not find any infirmity with the findings arrived at by adjudicating authority holding the goods to be woven fabric of synthetic filament/yarn as different from plates, sheets, films, foil and ships of plastic etc. The classification of the appellant has rightly been rejected and classification under CTH 540730 instead of declared CTH 39201099 has rightly been arrived at. Based thereupon the order demanding differential duty of Rs.1,14,69,543/- is hereby upheld.

7. Insofar as holding the imported goods liable to confiscation under section 111(m) of the Customs Act and consequently imposition of fine of Rs. 2,00,000/- on the appellant are concerned, we have perused section 111(m) which reads as follows:

> **Section 111. Confiscation of improperly imported goods, etc. -** The following goods brought from a place outside India shall be liable to confiscation: -
>
> xxxxx
>
> (m) **any goods which do not correspond in respect of value or in any other particular with the entry made under this Act** or in the case of baggage with the declaration made under section 77 in respect

> thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54 ;

8. There is no dispute that the imported goods corresponded to the goods described in the Bills of Entry. The only dispute was regarding their classification. Classification of goods under the Customs Tariff is a part of the assessment. It is a matter of opinion of the person who is assessing or modifying it. The importer may, during self-assessment, classify the goods as he thinks is correct and the proper officer re-assessing the Bill of Entry may classify the goods under a different heading. Similarly, when deciding on a demand of duty under section 28, the adjudicating authority may take a different view regarding classification. If appealed against, this Tribunal and further Hon'ble Supreme Court may also take a different view about the classification. Nothing in section 111(m) of the Customs Act requires the importer to anticipate what classification the officer would find correct while filing the Bills of Entry accordingly. Above all appellant is a public undertaking, question of any mala fide intent with appellant does not arise. In such circumstances, the goods will not be liable to confiscation under section 111(m) simply because the importer's classification of the goods is different from the view taken by the officers. Therefore, the goods were not liable to confiscation at all.

9. Penalty under section 112 can be imposed for acts or omissions which render the imported goods liable to confiscation. Since we have found that the finding in the impugned order that the imported goods were liable to confiscation under section 111(m)

was not correct, the consequential penalty imposed under section 112 also needs to be set aside.

10. The appeal is partly allowed upholding the classification of the goods in the impugned order and the consequential demand of duty of Rs.1,14,69,543/- with interest but setting aside the finding that goods were liable to confiscation and the penalty imposed under section 112. The appellant will be entitled to consequential relief, if any.

[Order pronounced in the open court on **16.01.2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

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