

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.1**

Excise Appeal No.76526 of 2016

(Arising out of Order-in-Original No.07-10/COMMR/CE/KOL-II/Adjn/2016-17 dated 02.06.2016/06.06.2016 passed by Commissioner of Central Excise, Kolkata-II.)

Commissioner of Central Excise, Kolkata-II

(15/1, Strand Road, Custom House, M.S. Building, Kolkata-700001.)

...Appellant

VERSUS

M/s. Concord Non Woven Industries Pvt.Ltd.

.....Respondent

(NH-6, Vill: Dhulagari, P.O. Kendua Panchyet, Howrah-711302.)

APPEARANCE

Shri S.K.Singh, Authorized Representative for the Revenue
Shri N.K.Chowdhury, Advocate for the Respondent

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)

HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 77900/2024

DATE OF HEARING : 09.12.2024

DATE OF DECISION : 09.12.2024

Per : RAJEEV TANDON :

The respondent is a manufacturer of non-woven fabrics and classified the manufactured product under the CETH 5603. The Revenue is of the view that the product is classifiable under CETH Chapter 39 and issued three Show Cause Notices for different periods, pointing out that the respondent used PP granules (plastic) as input which is classified under CETH 39021000. After due process, the adjudicating authority confirmed the classification of the goods under Chapter Heading 5603 and dropped the demand. Being aggrieved, the Revenue has filed the impugned appeal.

2. The Ld.AR for the department contends that the Commissioner was in error, by not adhering to the Tribunal's direction, to conduct laboratory test as directed vide its Order No.FO/75695-75696/2014 dated 20.10.2014 deciding the matter, and taking into account the test report of another company by the adjudicating authority was not in order.

3. The Ld.Counsel appearing on behalf of the respondent submits that the Show Cause Notice is vague and the demand was made alleging that the final product was manufactured by using PP granules (Plastic) and master batches input that were classifiable under CETH 39021000. He disputed that the finished goods contained hundred per cent materials of Chapter 39 and the final product was appropriately classifiable under Chapter 39 and not Chapter 56 of CETA, 1985. As 6 digits/8 digits of Central Excise Tariff under which the product would fall have not been pointed out by the Revenue, he submits that on this count itself, the confirmed demand is liable to be set aside.

4. We have heard the two sides and perused the case records. It is an admitted position on record that no samples of finished goods were drawn in the matter, pursuant to the Tribunal's directions referred to supra.

5. We find that the issue involved was examined by the Tribunal in the case of **Tirupathi Nonwoven Pvt.Ltd. v. Commissioner of C.Ex., Nagpur [2016 (340) E.L.T. 240 (Tri.-Mumbai)]** and had held the product as correctly classifiable under CET 5603. As the Department had not conducted any fresh tests, as were directed by the

Tribunal, to support the department's claim, that the product would call for classification under Chapter 39, the issue cannot be considered and interpreted rather differently.

6. As the case is pivoted around a classification dispute, the process of manufacturing and also laboratory test report are a key factor in deciding the instant issue. The Regional Laboratory at Kolkata of the Textile Committee, Ministry of Textiles, described the product as non-woven fabric wherein polyolefin fibers are made use of. From the reports it transpires that polyolefin fibers are present in the sample. Also a report was obtained from the Joint Director, CRCL, Kolkata Customs House who clarified that the sample was found to be Non Woven Sheet Compound of fibers of Polypropylene.

7. The adjudicating authority has opined that while issuing the show cause notice, it was felt that Chapter Note 3(b) of Chapter 56 is applicable to this case, the basis being that the product is made of 100% Polypropylene i.e. plastic. He however notes that a study of the Chapter note, reveals that nonwovens made of manmade filaments are also falling under Chapter 56.

8. The adjudicating authority further notes, that in case there is any possibility of the said product to be classified under Chapter 39 of the Central Excise Tariff Act, 1985, Rule 3(a) of the General Rule for Interpretation of the First Schedule of the Central Excise Tariff Act, 1985, would come into play, stating that the heading providing most specific description is preferred to the headings of a mere general description. The learned authority thus holds that since the Nonwovens

are specifically covered under Chapter 56, the impugned goods should fall under chapter 56 of the said Chapter Heading 5603 which specifically covers the nonwovens of man made filaments. The adjudicating authority also takes note of Chapter Note 2(p) of Chapter 39 which restricts the goods of Section XI i.e. textile and textile material to be a member of Chapter 39. When the presence of polypropylene fiber is proved in the impugned goods it is held the same cannot merit classification under Chapter 39 only because the goods were from/composed of 100% polypropylene i.e. plastics.

9. The adjudicating authority in his order has considered the Chapter Notes for Chapter 56 and arrived at a finding that nonwovens, which are embedded in plastic or entirely coated by such material are excluded from Chapter 56. In other words nonwovens, which contain predominantly the materials of Chapter 39 in higher percentage, cannot be included in Chapter 56. Arriving at a finding that the impugned goods are non-woven, made of polypropylene without being completely embedded in plastics or rubber or entirely coated or covered on both sides with such materials which can be seen with naked eye, hence Chapter Note 3(b) was not applicable in the case. The adjudicating authority categorically notes that the show cause notice took recourse to Chapter Note 3(b) of Chapter 56, on the basis of the fact that the product has been made from 100% plastic material and no fiber is present and thus it cannot be textile material and therefore the show cause notices contend that the goods should merit classification under Chapter 39 instead of Chapter 56.

10. We note that the respondent has been carrying on the manufacture of the said goods and has also been regularly filing their ER-1 Returns showing therein that the product was classifiable under CETH 5603. All the Returns were accepted by the department, without any objection being raised at any point of time. In this view of the factual matrix the Department however cannot sustain its case of suppression on the part of the respondent and is precluded from invoking extended period.

11. We find that the learned adjudicating authority has extensively analyzed the relevant section and chapter notes and as to why the product would merit classification as claimed by the assessee and not as alleged by the Revenue. He has also taken note of such product being cleared by other manufacturers in the jurisdiction classifying them under Chapter 56.

12. For coming to a conclusion that the product will merit classification under Chapter 39, we find that no corroborative evidence in the form of any test report has been placed by the Revenue. We further find that the basis of classification proposed by the Revenue is a bland statement, since the allegation is that the non-woven fabric manufactured by them should be classified under Chapter 39 of CETA, 1985. Section VII of the Central Excise Tariff Act deals with Plastic and Articles thereof and Rubber and Articles thereof whereunder Chapter 39 specifically deals with plastic and articles thereof. It consists of various items falling under Central Excise Tariff 3901 to 3906 with several 6 digits and 8 digits sub-classifications. The 6 digits and 8 digit sub-

classifications are important to arrive at the correct rate of duty applicable to a product. In this particular case, the Revenue has not even made any attempt to give the details of 6 digits/8 digits of Chapter 39 under which they feel that the product should be classified.

13. Coming to the case law of **Tirupathi Nonwoven Pvt.Ltd.**, referred to supra wherein an identical issue had come up before the Mumbai Bench of the Tribunal, the Tribunal had observed as under:-

"3.*The learned Counsel for the appellant argued that Chapter 39.23 where the said fabrics is sought to be classified reads as under :*

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		
3923 10 10	Plastic containers for audio or video cassettes, cassette tapes, floppy disk and similar articles	Kg.	12%
3923 10 20	Watch box, jewellery box and similar containers of plastics	Kg.	12%
3923 10 30	Insulated ware	Kg.	12%
3923 10 40	Packing for accommodating connectors	Kg.	12%
3023 10 90	Other	Kg.	12%

3.1 *He argued that the product manufactured is a flexible product which is cleared in roll form and cannot be treated as an article for conveyance or packing of goods. He argued that the said Heading 39.23 is intended to cover articles like, boxes, cases, crates, etc. The goods manufactured by the appellant cannot be compared with such*

goods. The learned Counsel explained that the said non-woven fabrics is manufactured from the polypropylene chips procured by them. He explained that the polypropylene chips is melted and passed through spinnerets and filament yarn is made out of the polypropylene chips. The said filament yarn is spread thinly and pressed under heat to manufacture the finished goods. He argued that the Heading 56.03 covers such non-woven fabrics. The Heading 56.03 reads as under :

5603	Non-woven, whether or not impregnated, coated, covered or laminated - Of man-made filaments	Kg.	12%
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3.2 He pointed out that the process of the manufacture of the non-woven fabrics is the same as explained in the HSN explanatory notes. He pointed out that HSN explanatory notes explain the various stages in manufacture of non-woven as web formation, bonding and finishing. In their case after spinning the yarn they are doing web formation by randomly lying the fibers. Then they do the bonding using the neat and mechanical bonding. Thus their products are squarely covered under the Heading 5603 as non-woven fabrics. The appellant also relies on the clarification of non-woven spun fabrics issued by the HMRC.

4.The learned AR relies on the impugned order and submitted written submissions. It was argued by the learned AR that material which is predominant in the said product is plastic as it is manufactured out of granule of Chapter 39 and therefore it should be classified under Chapter 39. He also relied on the decision of the Hon'ble Supreme Court in the case of Shree Baidyanath Ayurved Bhawan Ltd., reported in [2009 \(237\) E.L.T. 225](#) (S.C.) to assert that common parlance test is very important and not scientific or technical meaning, while deciding the classification of the product. He argued that the product is used as a packing material for conveyance of goods. Therefore, it should be under Heading 3923. He argued that

the appellant's contention that the product is used in manufacture of sanitary napkins as it only provides a leak proof covering of the napkins and not the absorbent material.

5.*We have gone through the rival submissions. We find that the show cause notice is based on the following observations of Hon'ble Supreme Court in the case of Porritts & Spencer (Asia) Ltd. - [1983 \(13\) E.L.T. 1607](#) (S.C.). Apex Court concluded taking note of dictionary meaning of the textile as follows :*

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 or 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.

The judgment was given while interpreting classified under Punjab General Sales Tax. While the manner of classification in the Punjab General Sales Tax Act was not the same as the manner of classification adopted in the Central Excise Tariff. The said Central Excise tariff is a very advanced scientific method of classification. The said tariff is backed by the explanatory notes which explain the scope of each heading. We find that the HSN explanatory notes to Chapter

Heading 5603 specifically covered non-woven fabrics. We find that Heading 5602 of the Central Excise Tariff specifically covers felt. The decision in the case of Porritts & Spencer (Asia) Ltd. (supra) was given in respect of felt. Felt is clearly classifiable under Heading 5602. Thus, we find that the reliance placed on the said decision in the show cause notice is totally irrelevant. We find that the HSN clearly recognize non-woven textile manufactured by thermal/mechanical bonding of yarn as textile falling under Chapter 56. In view of the above, we set aside the impugned order and allow the appeal. Miscellaneous application is also disposed of."

14. This decision supra was followed by us in the case of **Piyush Polytex Industries Pvt.Ltd. vs. Commr. of CGST & CX, Haldia [Final Order No.77515/2024 dated 22.10.2024]**, also referred to by the respondent. We find that the ratio laid down in the said cases is squarely applicable to the facts of the present case. The manufacturing details recorded in the Show Cause Notice and as recorded by the adjudicating authority are in sync with the details in the two cited cases. Therefore, following the ratio laid down in the said cases we find no merit in the appeal filed by the department and disallow the same. The order of the adjudicating authority is upheld. The respondent would be eligible for consequential relief, if any, as per law.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)