

ODISHA AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX

GST & CENTRAL EXCISE, RAJASWAVIHAR, BHUBANESWAR-751007 (ODISHA)

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING

U/S.98 OF THE GOODS AND SERVICE TAX ACT, 2017

Members present are:

1. Sri Anand Satpathy, OFS(SAG), Addl. Commissioner of CT&GST
Office of the Commissioner, CT&GST, Odisha Banijyakar Bhawan,
Old Secretariate Compound, Cuttack-753001-Odisha.
2. Sri Nilanjan Pan, IRS, Joint Commissioner, Office of the Audit
Commissionerate GST & Central Excise, Bhubaneswar

1	Name and Address of the Applicant	M/s Utkal Polyweave Industries (P) Ltd., 26-Ganeswarpur Industrial Estate, Januganj, Balasore-756019, Odisha.
2	GSTIN or User ID	21AAACU3799H1Z8
3	Date of Filing of Form GST ARA-01	28.08.2018
4	Present for the Applicant	Shri Vinay Kumar Shraff, Advocate. Shri .B Maharana , Asst Manager(Com) of the Company
5	Date of Personal Hearing	09.10.18

ORDER NO.05/ODISHA-AAR/2018-19 DATED 16.11.2018

Subject: GST Act, 2017-Advance Ruling U/s 98 on 'Classification of Polypropylene Leno Bags'

1.0 M/s Utkal Polyweave Industries (P) Ltd., 26-Ganeswarpur Industrial Estate, Januganj, Balasore-756019, Odisha (hereinafter referred to as the 'Applicant') assigned with GSTIN 21AAACU3799H1Z8 having registered address at 26-Ganeswarpur Industrial Estate, Januganj, Balasore-756019, Odisha have filed an application on 28.08.2018 under Section 97 of CGST Act, 2017 & OGST Act, 2017 read with Rule 104 of CGST Rules 2017 & OGST Rules, 2017 in Form GST ARA-01 seeking an Advance Ruling on 'Classification of P P Leno Bags'. The applicant enclosed copies of challans as proof of payment of Rs.5,000/- for SGST bearing CIN No.SBIN18082100017988 dated 10.08.2018 and Rs.5000/- for CGST bearing CIN No.SBIN17082100000562 dated 11.08.2017 towards the fee for

Advance Ruling . The applicant submits that the question raised in the application has neither been decided by nor is pending before any authority under any provisions of the GST Act. The officer concerned raises no objection to the admission of the application. The application is therefore, admitted.

2.0 The applicant's understanding and its submission are as under.

2.1 The applicant inter-alia submitted that the applicant is engaged in manufacturing of P P Leno Bags used in bulk packing of potato, onion, garlic, oranges, raw mango and other vegetables and citrus fruits. The raw materials composition for manufacture of P P Leno bags is polypropylene -92% to 94%, LLDPE-3% to 5% and Colour Master Batch-3% to 4%.

2.2 That the manufacturing process includes manufacturing of polypropylene strips (tapes). PP Strips (tapes) Bobbin are fed on the loom and PP Leno Fabric is manufactured by weaving and than fabric is rolled in a Roll. The warp strips are twisted together in pairs between the weft of filing strip. Leno fabric is then rolled and fabric rolls are cut into desired length which is converted to form a bag (sacks).

2.3 That chapter heading 6305 relates to Sacks and bags, of a kind used for packing of goods. Further sub heading 63053300 relates to Sacks and bags, of a kind used for packing of goods made from manmade textile materials of polyethylene or polypropylene strip or the like.

2.4 That Note 1(g) to Section XI of the Tariff Act states that the Section of Textile and Textile Articles covering Chapters 50 to 63 does not include, "Monofilament of which any cross-sectional dimension exceeds 1 mm or strip or the like (for example, artificial straw) of an apparent width exceeding 5 mm, of plastics (chapter 39), or plaits or fabrics or other basket-ware or wickerwork of such monofilament or strip (chapter 46)"

2.5 That Note 1 (h) to Section XI of the Tariff Act states that the Section of Textile and Textile Articles covering Chapters 50 to 63 does not include, "Woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of chapter 39". It is also submitted that, to be included in Chapter 63, the width of the tapes, manufactured from Plastics or articles thereof of Chapter 39, used to weave the fabric should be less than or equal to 5mm and should not be impregnated, coated, covered or laminated with plastics or articles thereof, of chapter 39.

2.6 That it satisfies both the above criteria to be eligible to classify their product under Tariff code 63053300 .

3.0 The Personal Hearing was fixed on 09.10.2018. Shri Vinay Kumar Shraff, Advocate appeared for personal hearing and represented on behalf of the company. He re-iterated the earlier submission made in the application. During personal hearing, it was reported that earlier (before implementation of GST), P P Leno Bags were cleared under chapter 39 of the GST Tariff heading. However, during personal hearing the Ld. Advocate submitted



additional written submission wherein he argued that 'wrong classification of the goods at one stage does not operate as estoppels/res judicata for subsequently claiming correct classification'. In this regard, he placed reliance on the judgments of Hon'ble Delhi Tribunal in the case of Commissioner of Central Excise, Bhopal VS Mahakoshal Potteries reported in 2005 (183)E.L.T.289(Tri-Del) and Several Judgments of other Tribunals.

3.1 The Jurisdictional Officer of State GST & the jurisdictional Officer of Central GST appeared in person. The officer concerned of CGST informed that in the similar case, the West Bengal Authority for Advance Ruling Goods and Service Tax,14, Beliaghata Road, Kolkata-700015 vide Order No. 09/WBAAR/2018-19 dated 06.07.2018 in the case of "Mega Flex Plastics Ltd" have ruled for 'P P Leno Bags' to be classified under Tariff sub-heading 63053300, but the department have gone for appeal against the said order. The CGST jurisdictional Officer subsequently vide letter dated 15/11/2018 have further informed that the West Bengal AAAR has allowed the appeal and the instant case be decided accordingly.

4.0 We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by the representatives during personal hearing. We also considered the issues on which advance ruling is sought for by the applicant, relevant facts having bearing on the question / issue raised and the Applicant's understanding/interpretation of law in respect of the issue.

4.1 Ruling is sought for 'classification of P P Leno Bags' under GST Tariff heading. The applicant contended that the said goods are coming under chapter heading 63053300. In this regard, they have submitted copies of the reports of test conducted by the central institute of plastic engineering & technology dated 26.07.2018 and the Indian institute of packaging dated 02.08.2018 on their samples of P P Leno Bags. Further, the applicant also submitted a copy of IS 16187:2014 issued by the Bureau of Indian Standards, providing specifications for P P Leno Woven Sacks for packaging and storage of fruits and vegetables.

4.2 Notwithstanding the aforementioned certification by different certifying agencies, the issue for consideration by this forum is simply to determine the relevant HSN Code under which the goods manufactured by the applicant for supply is classifiable. This forum is not mandated to give any opinion on the standard or manufacturing process of the product manufactured by the applicant. In this regard, the goods manufactured by the applicant might be out of Woven PP Fabrics and might be conforming to the BIS standard, but the standard is not in question to be decided by this forum. In this case, the applicant is manufacturing PP Leno bags as per their declaration and as per their understanding it should be classified as a textile article and specifically under the Tariff Head 63053300.



4.3 Textile and Textile articles are covered under Section XI of the Customs Tariff which has also been adopted in GST Tariff for the purpose of specification of rate of GST and the rules of interpretation as applicable to the Customs Tariff are also applicable for GST Tariff as well. In Section XI, in notes 1 (h) which reads as under clearly excludes Woven Fabrics of plastics and article thereof of Chapter 39 from the purview of the said section dealing with Textile and Textile Articles.

Note 1(h) of Section XI

"woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of Chapter 39;"

This implies that Goods/Articles covered under Chapter 39 are not to be classified under any of the Chapters falling under Section XI. It further implies that articles of plastics specified under Chapter 39, even if woven are not to be classified under any of the Chapters including Chapter 63 falling under Section XI.

4.4 In Chapter 39, in Tariff heading 3923, under sub-heading 39232990, PP sacks and bags are very well covered. There being a clear sub-heading in Chapter 39 assigned to PP Sacks and bags, the same can not be included in Chapter 63 and more specifically under sub-heading 63053300

4.5 The applicant has placed reliance on order no.09/WBAAR/2018-19 dated 06.07.2018 of the West Bengal Authority for Advance Ruling, Goods and Service Tax in the case of M/s Mega Flex Plastic limited, Howrah, wherein, the authority, classified "P P Leno bags" under Tariff sub heading 63053300. The aforesaid ruling of the West Bengal Authority of Advance Ruling has, in the meanwhile, been reversed by the West Bengal Appellate Authority of Advance Ruling in the Appeal Case No.06/WBAAAR/Appeal/2018 dated 08.08.2018 wherein PP Leno Bags have been ordered to be classified under Tariff Heading 39232990.

4.6 While passing the order, the authority relied upon Hon'ble Madhya Pradesh High Court Order in the case of Raj Pack Well Ltd Vs Union of India [1993(41)ECC 285;1993;ECR 351 MP; 1990(50)ELT 201MP] regarding classification of woven sacks made of HDPE tapes and fabrics . The relevant portion of the judgment reproduced below.

" the process of the manufacture of the HDPE tapes, the earlier judgments of the CEGAT approved by the Supreme Court and accepted by the Department, all clearly go vide its Order dated 25.10.2018 to show the HDPE bags are the bags woven by the plastic strips and they, therefore, are goods of plastic and the materials used for weaving those bags being the strips of plastic made from plastic granules, the strips of plastic used for weaving the aforesaid HDPE woven sacks has to be classified as an item under entry 39.20 of Chapter 39 and not under entry 54.06 of Chapter 54. Accordingly, the entries of the



finished goods have also to be made under the proper chapter of the Tariff Act treating them as the finished goods made of plastic strips.

In the result we hold that HDPE strips or tapes fall under the Heading 39.20, sub-heading 3920.30 of the Central Excise Tariff Act and not under Heading 54.06, sub-heading 5406.90. Similarly the HDPE sacks fall into Heading 39.23, sub-heading 3923.90".

4.7 Tariff heading 3923 includes goods that are classifiable as 'Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics'. Polypropylene Leno Bags, as stated by the applicant, are manufactured by weaving polypropylene strips (tapes), Linear Low Density Polyethylene (LLDPE) and Plastic Master Batch. Polypropylene is a wide variety of plastic. LLDPE is a plastic that is softer and more flexible and has lower tensile strength. These raw materials are made from Plastic Granules. The strips of plastic (polypropylene) are used for weaving 'PP Leno Bags' which are clearly classifiable under Tariff Item 39232990 of GST Tariff. The applicant had also been clearing the said goods under Chapter 39 all along and now seeks to reclassify them under Tariff Head 63053300 just to avail the lower GST Rate prescribed in the GST rate schedule for the goods classifiable under Chapter 63. As observed above and also as decided by the West Bengal Appellate Authority of Advance Ruling, PP Leno Bags are classifiable under heading 39232990 and not under 63053300. It is a fact that both the headings bear reference to Sacks and Bags but, in view of the exclusion in the Chapter Note 1(h) appearing under Chapter XI, Woven Fabrics and articles thereof specified under Chapter 39 are not to be covered by the articles mentioned against the heading 63053300.

4.8 Further, as per the existing CBEC Revised Duty Drawback rates schedule applicable w.e.f. 01.10.2017, "polypropylene woven fabrics/bags/sacks, whether or not laminated, with or without U.V. stabilization, with or without liners/fasteners" are specifically classified under drawback chapter 39 under Tariff Item 392302. The item under consideration being woven bags of polypropylene therefore merits classification under this Chapter as it stands today without any ambiguity.



RULING

In view of the foregoing discussions, we pass the following ruling.

The item "Polypropylene Leno Bags (PP leno Bags)", be classified under GST Tariff Heading '3923 29 90'.

The instant application stands disposed of accordingly.

The applicant or the jurisdictional officer, if aggrieved by the ruling given above, may appeal to the Odisha State Appellate Authority for Advance Ruling under Section 100 of the OGST/CGST Act, 2017 within 30 days from the date of receipt of the Advance Ruling.



Nilanjan Pan
Member CGST



Anand Satpathy
Member SGST

File No. V (1) ARA/Odisha/BBSR/2018/05/ 12458A-6DA dated- 19.11.2018

To

M/s. Utkal Polyweave Industries Pvt Ltd, 26, Ganeswarpur Industrial Estate,
Januganj, Balasore, Odisha- 756019.

Copy Forwarded to:-

1. The Commissioner, GST and Central Excise, Bhubaneswar Commissionerate, C.R. Building, Rajaswa Vihar, Bhubaneswar-751007 Odisha.
2. The Commissioner, GST Odisha, Banijyakar Bhawan, Old Secretariat Compound, Cuttack, Odisha, 753001.
3. Office Copy.



(Adhir Kumar Das)
Superintendent (CGST),
Advance Ruling Authority, Odisha.