

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
14 Beliaghata Road, Kolkata – 700015

BENCH

Ms Susmita Bhattacharya, Joint Commissioner, CGST & CX
Mr Parthasarathi Dey, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Act, 2017 or West Bengal Goods and Services Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed under Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	East Hooghly Agro Plantation Pvt Ltd
Address	South Gotu, PO – Sugandha, PS – Polba, Chinsurah - 712102
GSTIN	19AAECE2196A1ZU
Date of application	June 03, 2019
Case No	24 of 2019
ARN	AD1905190022082
Order number and date	19/WBAAR/2019-20 dated 26/08/2019
Applicant's representative	Sri Joydeep Dutta, Authorised Representative

1. Admissibility of the Application

1.1 The Applicant, stated to be a manufacturer of tarpaulins made from High Density Polyethylene (hereinafter referred to as "HDPE") woven fabric, seeks a ruling on whether "HDPE Woven Tarpaulin" is classifiable as textile under Section XI of the First Schedule of the Customs Tariff Act, 1975 (hereinafter the Tariff Act) and, if so, whether it is classifiable under HSN 6306, 6301 or 5903 of the Tariff Act.

1.2 Advance Ruling is admissible on this question under Section 97(2) (a) of the GST Act.

1.3 The Applicant further submits that the question raised in the Application is neither decided by nor pending before any authority under any provisions of the GST Act. The concerned officer from the Revenue, however, points out that this Authority has already decided the question concerning another application, and the decision is confirmed upon appeal. Therefore, the Application is not admissible in terms of 1st proviso to section 98(2) of the GST Act.

1.4 The concerned officer's argument is presumably based on the use of the indefinite article 'an' instead of the definite article 'the' before the word 'applicant' in the above proviso. Although not explicitly stated, it appears from the context that the concerned officer is of the opinion that the indefinite article expands the ambit of the proviso to include all the persons, who have so far applied for advance rulings. If the questions raised have been pending or decided in any proceedings under the GST Act for any such applicant, no other person shall be allowed to raise the same question before this Authority. Following this line of

argument, the concerned officer objects to the admission of the Application, as this Authority has issued a ruling on the same question concerning another applicant.

1.5 The concerned officer's interpretation of the above proviso contradicts the provisions under section 103(1)(a) of the GST Act. The ruling issued in connection with another applicant is not binding upon a person. He, therefore, has the right to apply under section 97 of the GST Act for a ruling on the same question relating to his specific business situation. Applicability of the above proviso is limited to the person making the Application, as evident from the declaration the Applicant must provide under SI No. 17 of GST ARA – 01.

1.6 The Application is, therefore, admitted.

2 Submissions of the Applicant

2.1 The Applicant submits that it manufactures tarpaulins made from HDPE woven fabrics. Tarpaulins made from HDPE woven fabric, according to the Applicant, are different from plastic tarpaulins. The former is derived by weaving method using power looms after textile processing, and the latter are hot-pressed plastic sheets, cut to shapes and stitched.

2.2 The manufacturing process, as described by the Applicant, involves manufacturing of HDPE tapes, which are weaved into a piece of fabric. The Applicant purchases HDPE granules, which are mixed with additives and passed through an HDPE tape line plant to obtain HDPE tapes conforming to IS 6192:1994 (mono-axially oriented HDPE tapes). The HDPE tapes, wound into spools, are passed through power looms for weaving HDPE woven fabric, conforming to IS 6899:1997. It is laminated/covered on both sides with low-density polyethylene (LDPE), hemmed and stitched and fixed with eyelets to make the final product, namely tarpaulin made from HDPE woven fabric, conforming to IS 7903:2017.

2.3 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)"

2.4 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".

2.5 Note 2(p) of Chapter 39 states that it does not cover the goods of Section XI (textile and textile article). Thus, the necessary condition for tarpaulin to be included in Chapter 63 is that 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 the fabric should not be impregnated, coated, covered or laminated with plastics or articles thereof, of chapter 39.

2.6 The Applicant submits that mere impregnation, coating, covering or lamination with plastic cannot be the sufficient reason for excluding 'tarpaulins made from HDPE woven fabric' from HSN 6306, which specifically includes tarpaulins made from synthetic fibre or other textile materials.

2.7 The Applicant further submits that Chapter 59 includes textile fabrics impregnated, coated, covered or laminated with plastics (HSN 5903). The Applicant's supply may also be considered under Chapter 59, if not under Chapter 63.

2.8 The Applicant also submits that an item manufactured from plastics cannot be termed as plastics, as plastic loses its identity after manufacturing and is no longer known in the market as 'plastics'. The Applicant refers to Modern Plastic [2007 (213) ELT A48 (SC)] and NTB International (P) Ltd [2015 (319) ELT 545 (SC)] in support of its argument.

3. Observations and findings of the Authority

3.1 Classification refers to the determination of the nature and character of the goods supplied. The purpose of the exercise is to ascertain the applicability of any entry of the notifications issued under the GST Act, specifying the rate of tax or exemption from payment of tax [Rate of tax on supply of goods is specified under Notification No. 1/2017-CT (Rate) dated 28/06/2017 of the Centre and Notification No. 1125-FT dated 28/06/2017 of the State, as amended from time to time]. Explanation to the Rate Notification mentions that Tariff item, sub-heading, heading and Chapter in the Rate Notification refer to those specified in the Tariff Act. For interpreting the Rate Notification, so far as may be, the Rules of Interpretation, Section and Chapter Notes and the General Explanatory Notes to the Tariff Act may be applied. In the discussion below, therefore, the terms 'textile' or 'textile material' are used in the limited meaning as ascertainable from the Rules of Interpretation, Section and Chapter Notes and the General Explanatory Notes to the Tariff Act. All other interpretations, being extraneous, are beyond the scope of the discussion.

3.2 Headings 3901 to 3915 include plastics in its primary forms and plastic wastes. Headings 3916 to 3926 include article made of plastics. Tarpaulin is classified as an article made of plastics and classified under Tariff item 3926 90 99. Tarpaulin made from textile material, however, is separately classified under Heading 6306. It, therefore, needs to be ascertained whether HDPE woven fabric, impregnated, coated, covered or laminated is textile material.

3.3 Tarpaulin made from HDPE woven fabric is a composite of plastics and textile. It combines a plastic component with textile material. Classification of such composite goods is governed by Note 1(h) to Section XI (Textile and Textile Articles) and Note 2 to Chapter 59. A combined reading of the two notes reveals that a woven fabric if completely embedded in plastics or entirely coated or covered on both sides with such material, and if such coating or covering can be seen with the naked eye, is not to be treated as textile material for classification under the Tariff Act (refer to the Explanatory Notes to Chapter 39 of the Harmonised System of Nomenclature, Brussels).

3.4 The Applicant submits a sample of the HDPE woven fabric (Exhibit No. 2) before it is coated/covered with LDPE. It also submits a sample of the woven fabric after application of the LDPE coating/covering (Exhibit No.3). The Applicant also refers to IS 7903:2017, which provides the specification for tarpaulins made from HDPE woven fabrics. It is required to be laminated with LDPE or LLDPE melt of extrusion coating grade having a specific coating thickness. It also appears from IS: 7903:2017 that the HDPE fabric is covered on both sides with LDPE or LDPPE melt. A comparison between Exhibit No. 2 and Exhibit No. 3 of the samples submitted reveals that the grains of the original fabric, including the weaving, can be felt and seen even after the LDPE coating has covered the rough, uneven surface of the original fabric. At the same time, it is visible to the naked eye that Exhibit No. 3 is a fabric that has been covered or coated with another material. It is, therefore, not a textile material.

3.5 Tarpaulin made from HDPE woven fabric of the variety the Applicant supplies, therefore, is not tarpaulin made from textile material, and not to be classified under Heading 6306. Moreover, this Authority has ruled on an earlier occasion that tarpaulin made of HDPE woven fabric is not classifiable under HSN 6306. The Appellate Authority has confirmed the ruling. The only aspect of the Applicant's questions that needs to be decided, therefore, is whether such a tarpaulin is classifiable under Headings 6301 or 5903 of the Tariff Act.

3.6 The tarpaulin the Applicant supplies is made from HDPE woven fabrics, coated or covered with LDPE melt. Heading 5903 and Note 2 to Chapter 59 are relevant for ascertaining whether the above fabric is textile material. Had it been so, the tarpaulin made from such material would have been classifiable under Heading 6306. Such a classification, however, is ruled out in the light of the discussion in para 3.3 to 3.5 above. The fabric being no textile material, the question of classifying the tarpaulin made from it as a made-up textile article under Heading 6301 does not arise.

Based on the above discussion, we rule as under:

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The HDPE fabric coated/covered with LDPE or LLDPE melt, used for manufacturing the tarpaulin, is not textile material classifiable under Heading 5903. Tarpaulin made from such fabrics of the variety the Applicant supplies, therefore, is not tarpaulin made from textile material, and not to be classified under Heading 6306. The fabric being no textile material, the question of classifying the tarpaulin made from it as a made-up textile article under Heading 6301 does not arise.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.


(SUSMITA BHATTACHARYA)
Member

West Bengal Authority for Advance Ruling


(PARTHASARATHI DEY)
Member

West Bengal Authority for Advance Ruling