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Central Board of Indirect Taxes & Customs
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Advance Ruling Number. F.No. V/AR-01/Emmbi/DMN/2019-20,

Dated 2nd August, 2019

Passed by:-

Dr. Satish Kumar, Member (CGST) & Shri Nilesh Gurav, Member
Advance Ruling Daman (UTGST)
Advance Ruling Daman

Date of Advance Ruling: - 02/08/2019

Date of Issue :-02/08/2019

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Brief facts of the case :

The present application has been filed by M/s. Emmbi Industries Ltd., [herein after referred as 'Applicants'], for obtaining an Advance Ruling as visualized under the provisions of Sec. 97 of Central Goods & Services Tax Act, 2017 read with sec. 21(xix) of UTGST Act, 2017 vide ARN AD260619000003L, dated 1-6-2019. The application has been filed as per the provisions of Rule 104 of CGST Rules, 2017 read with Rule 2 of UTGST (Dadra and Nagar Haveli) Rules, 2017.

2. The applicant, M/s. Emmbi Industries Ltd., are having their factory at Plot No. 99/2/1 & 9, Madhuban Industrial Estate, Madhuban Dam Road, Rakholi Village, Silvassa, for which they are holding GSTIN Registration No. 26AAACE3423GSIZ3 with the Union Territory of Dadra & Nagar Haveli.

2.1 The applicant is engaged in the manufacturing of various products which are used in packaging process and in agro based water conservation. The applicants have been carrying out activity of manufacturing various types of packaging material falling under Headings 6305, 3923 and 3926 and the description of the said goods are as under;

Sr.	Item Description	HSN Code.
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No.		
1.	Flexible Intermediate Bulk Containers i.e. FIBC Bags	6305 32 00
2.	PP Woven Bags/HDPE Woven Bags	6305 33 00
3.	PP Stitching Yarn	6305 90 00
4.	HDPE/LDPE/LLDPE/PP Extruded &/or Co- extruded Plastic Film Rolls.	3920 10 12/ 3920 10 92/ 3920 20 20
5.	HDPE/LDPE/LLDPE Poly Bags.	3923 21 00/ 3923 29 90

2.2 In addition to the above, the applicant is also manufacturing and supplying products for water conservation and other water preserving products which are predominantly used for agricultural sector. The applicant is a leading manufacturer of the products namely "Geo Membrane for Water Proof Lining-Type-II as per IS:15351:2015" which is used for Water Proof Lining of Ponds, Canals and Other Water storage places. The said products are also referred as Pond Liners and are specific Laminated High Density Polyethylene Woven Geo-Membrane for water proof lining which is manufactured specifically as per Indian Standard prescribed under IS:15351:2015 and are used primarily for farming water and as liners for water ponds, canals, water pits, etc., for storage of water bodies. In the States with scanty rain falls, the said pond liners are primarily used for the agricultural sector for water preservation.

3. Defence Submissions:

The applicant came forward before us with the issue for deciding as to whether the product under reference i.e. "Laminated High Density Poly Ethylene HDPE Woven Geomembrane for Water Proof Lining Type-II, IS:15351:2015" which are also known as 'agro textiles' or 'Geomembranes' used for water proof lining, would be correctly classified under HSN Code 5911 10 00 as "Textile Fabrics Coated, Covered Or Laminated With Plastics, of A Kind Used For Technical Purposes" with IGST @ 12% [CGST @ 6% + UGST @ 6%]; OR covered under HSN Code 3926 90 99 as "Other Articles of Plastics" with IGST @ 18% [CGST @ 9% + UGST 9%]. Whereas the applicant has claimed that the products under reference would be correctly classifiable under HSN Code 5911 10 00.

3.1 They submitted that the product are manufactured as per IS Specification as "Laminated High Density Poly Ethylene HDPE Woven Geomembrane for Water Proof Lining Type-II, IS:15351:2015" and they are

known in the market as agro textiles and are covered in the family of Geomembrane used for water proof lining. They further submitted that the products are used for water proof lining such as Pond Liners, Canal Liners or for making artificial water bodies. The said laminated HDPE Woven Geomembrane is a textile fabric used exclusively for technical purpose of water proof lining.

3.2 They explained their brief manufacturing process for the said "Laminated High Density Poly Ethylene HDPE Woven Geomembrane for Water Proof Lining fabrics" as under;-

"Tape/Strip Extrusion : Tapes/ Strips are manufactured from raffia grade HDPE granules which shall be UV stabilized by incorporating 2.5 ± 0.5 per cent of carbon black with uniform dispersion and required suitable UV stabilizer is added. Granules are then extruded through sheet die to produce solid sheet which is further uniformly slitted into no. of tapes. These tapes are then passed through hot air oven for twist stretching with proper orientation to the tapes to achieve the required tape width and desired strength. Width of the tape/ strip is between (2.1 mm to 3.7 mm.) and the Linear Density of the tape/ strip is 1900 - 2100 Denier. Tapes/ strips are wound on bobbins for further processing.

Fabric Weaving : HDPE woven fabrics are manufactured on circular looms. As per design of woven fabric creels & shuttle of loom is loaded with bobbins. As per requirement of fabric adjust the size of ring and mesh. These tapes are then passed through circular ring on horizontal & vertical direction. Set the all parameter as per geomembrane fabric standard.

Liner Film Extrusion : Film is manufactured from Polyethylene (PE) granules and required suitable UV stabilizer is added. Granules are then extruded through circular die to produce blowing film which further uniformly passed through take up roller to get the required film width & micron. Tubular film is made on surface winder & it flatten with help of guide roller.

Lamination Coating : The HDPE woven fabric is laminated on both sides with LDPE with suitable combination of LLDPE. The coating film is UV stabilized by incorporating 2.5 ± 0.5 per cent of carbon black with uniform dispersion. HDPE woven fabric is bonded with single side LDPE coating. Similarly other side of the fabric is bonded together by sandwich lamination. For sandwich lamination, HDPE woven fabric is bonded with LDPE coating and LDPE liner film. The roll is ready for sealing process.

Sealing : Two or more pieces of geomembrane fabrics are used, the Geomembrane are joined/ seamed together by a suitable heat air

blower sealing process keeping an overlap as per standard sealing process".

3.2.1 On perusal of the above manufacturing process it would be observed that the Geomembrane for water proof lining comes into existence in three stages namely :-

(A) Tape Extrusion Stage, wherein HDPE Granules with UV Stabilized Property, with appropriate carbon black admixture for suitable UV Stabilization, are duly extruded, slitted and hot twist stretched for proper orientation to get HDPE Tapes/Strips with Linier Density of 1900-2100 Denier and width of the Tapes/Strips being 2.1 mm to 3.7 mm. The said HDPE Tapes/Strips of width less than 5 mm are wound on bobbins for enabling weaving into fabrics.

(B) The Fabric Weaving Stage, where the said HDPE Tapes/ Strips of width less than 5 mm are taken to circular rooms and they are woven into HDPE Woven Fabrics. The said High Density UV Stabilized HDPE Woven Fabrics are manufactured with specific weaving pattern through Circular ring on horizontal and vertical direction to impart the essential property of Geomembrane fabrics i.e. impermeable to water for the specific end use for water retention.

(C) The Lamination Coating and then Cutting Scaling, where the HDPE Woven Fabrics are laminated on both side with specific thickness LDPE Film with suitable combination of LLDP Bonding with single side LDPE Coating. Thereafter Two or more pieces of Geomembrane fabrics are Cut to size or length and used to make the Geomembrane for pond liner by joining/ sealing together by a suitable heat air blower sealing process keeping an overlap as per standard sealing process. The said process of sandwich lamination and coating with further heat sealing of two or more pieces of Geomembrane fabrics to the specification of the customer to provide complete water resistance so as to be used for water proof linings.

3.2.2 As regards to the flow of classification for the above products which are arising during the course of manufacturing, they clarified as under;-

(A) The first product which comes into existence is the "HDPE Tapes Less Than 5 mm In Width" and it is the claim of the applicant that the same are covered under HSN 5404 90 20. In support of the said classification, they referred the following :-

(i) Chapter Note 2(p) to Chapter 39 of HSN/GST Tariff visualizes exclusion of "Goods of Section-XI (Textile & Textile Articles)" from the scope of the Chapter 39.

(ii) Section XI covers Textile & Textile Articles and Section Note 1 (g) excludes only strips of plastic where the width is exceeding 5 mm. The said wording read as under :-

"1. This Section does not cover :

(a)

(g) 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)".

From the above Section Note 1(g) to Section XI, it would be observed that Plastics Strips of width less than 5 mm shall be covered under Section XI which covers Chapter 50 to Chapter 63 of HSN.

(iii) They referred to Chapter 54 which covers "Manmade Filaments; Strip and the like of Manmade Textile Materials". In other words the said Chapter 54 covers products of Manmade Filaments as well as Strips and other manmade textile material.

(iv) They further referred to Heading 5404 which reads as under :-

"5404 - Synthetic monofilament of 67 decitex or more and of which no cross section dimension exceeds 1 mm; Strip and the like (for example artificial straw) of Synthetic textile materials of an apparent width not exceeding 5 mm"

They referred to the said Heading 5404 which covers strips and the like of Synthetic Textile Material of width not exceeding 5 mm and accordingly the above referred HDPE Tapes/Strips of width not exceeding 5 mm shall be covered under sub-heading 5404 90 20.

(v) They further referred to Pg. 968 & 969 of Vol. II of Harmonized Commodity Description & Coding Systems; explanatory Notes, Third edition, wherein scope of Heading 54.04 has been illustrated. The applicants refer to the Explanation that this Heading covers goods as per Clause (1) & (2) and relevant clause (2) is reproduced;

"(2) Strip and the like, of synthetic textile materials. The strips of this heading are flat, of a width not exceeding 5 mm, either produced as such a by extrusion or cut from wider strips or from sheets.

Provided their apparent width (i.e. in the folded, flattened, compressed or twisted state) does not exceed 5 mm, this heading also covers :-

- (i) Strip folded along the length.
- (ii) Flattened tubes, whether or not folded along with the length.
- (iii) Strip, and articles referred to in (i) and (ii) above, compressed or twisted.

If the width (or apparent width) is not uniform, classification is to be decided by reference to the average width.

This heading also includes multiple (folded) or cabled strip and the like".

The said Explanatory Notes to the HSN also confirms that the said HDPE Tapes and Strips less than 5 mm are covered under Heading 5404.

(B) The above "HDPE strips or tapes less than 5 mm" of 5404 90 20 are Woven into Fabrics on special circular looms and the said HDPE Strips Woven Fabrics shall be covered under Heading 5407 and under sub-heading 5407 20. To substantiate the said claim, the applicants are reproducing the description of both the Headings as under :-

- "5407 - Woven Fabrics of Synthetic Filament Yarn, including Woven Fabrics obtained from materials of Heading 5404".
- "5407 20 - Woven Fabrics obtained from strip or the like"

The said Heading and sub-heading clearly visualizes that the Woven Fabrics from HDPE Strips and Tapes of less than 5 mm of Heading 5404 shall be covered under Heading 5407 20 of the HSN.

(C) The above Woven Fabrics covered under Heading 5407 20 is subjected to sandwich lamination of plastics as explained above and brings into existence Geomembrane pond lining fabrics which is a textile fabrics of a kind used for technical purposes. The said Industrial Technical Fabrics are supplied in piece form or are in cut to length as per the specification of the customer and supplied in pieces and are covered under Heading 5911, for which they refer to the following :-

- (i) Chapter Note 7 to Chapter 59 of Tariff/HSN visualizes the scope of Textile Fabrics covered under Heading 5911 for technical purposes as under :-

"7. Heading 5911 applies to the following goods, which do not fall in any other headings of Section XI :-

(a) Textile products in the piece, cut to length or simply cut to rectangular (including square) shape (other than those having the character of the products of Heading 5908 to 5910), the following only :

(i) Textile fabrics, felt and felt line woven fabrics, coated, covered or laminated with-rubber, leather or other materials, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams);

(ii)

(iii)

(iv) Flat Woven textile fabrics; With multiple warp of weft whether or not felted/ impregnated or coated, of a kind used in machinery or for other technical purposes."

(ii) The applicants now refers and reproduces the Heading and sub-heading of 5911 to illustrate that the product Textile Fabrics coated and laminated with plastics for use for technical purposes would be covered under said Heading :-

"5911 - Textile products and articles, for technical uses, specified in Note 7 to this Chapter; such as Textile fabrics, felt and feltlined woven fabrics, coated, covered or laminated with rubber, leather or other material of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams); Bolting cloth, whether or not made up; whether or not impregnated or coated, of a kind commonly used in other machines, Cotton fabrics and articles used in machinery and plant. Jute fabrics and articles used in machinery and plant, Textile fabrics of metalized yarn of a kind commonly used in paper making or other machinery, Straining cloth of a kind used in oil presses or the like, including that of human hair,

Paper maker's felt, woven, Gaskets, washers, polishing discs and other machinery parts of textile articles".

5911 10 00 - Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams)"

3.3 They submitted that on perusal of the above, it would be observed that the, "Laminated High Density Poly Ethylene HDPE Woven Geomembrane for water proof lining - IS:15351:2015", are made from HDPE Tapes/ Strips of less than 5 mm which are specifically covered under Heading 5404 as Synthetic Textile Material and the specially woven fabrics from the said HDPE Tapes/ Strips are covered under Heading 5407 20.

3.3.1 The applicant submitted that it is the said HDPE Woven Fabrics which is referred as Woven Fabrics made from Synthetic Textile Material which is subjected to LDPE Coating and Lamination referred as Sandwich Lamination. After the said process two or more pieces of said Sandwiched Laminated Geomembrane fabrics are joined/ seamed together by a suitable heat air blower sealing process keeping into the requirement of the customer based on which the said fabrics are cut and joint and cut sealed as per standard sealing process to be used as pond liner. The said Laminated Coated Fabrics is used for technical purpose and is specifically covered under scope of Heading 5911 10 00 as enumerated above.

3.4 They submitted that the said product cannot be covered under Chapter 39 as it is specifically made from Textile Material as per the scope of Heading 5404 and Woven into Fabrics of 5407 and the specially coated and laminated fabrics duly fabricated by Heat sealing brings into existence the technical fabrics of Heading 5911. The said Chapters 54 & 59 is covered under Sec. XI of the HSN and the said products are excluded from the scope of Chapter 39 of the Tariff.-

The applicants refer to Chapter Note-2(p) to Chapter 39 which clearly enumerates that this Chapter does not cover, "Goods of Section XI (Textiles & Textile Articles)".

3.5 They submitted that they had been adopting Heading 3926 90 99 which refers to Other Plastic Articles and the same is incorrect as the product under reference would not be covered under Heading 3926. To enable the evaluation of the said Heading 3926 it is reproduced as under :-

"3926 - Other articles of plastics and articles of other materials of Heading 3901 to 3914 [other than bangles of Plastics, plastic beads and feeding bottles]"

On perusal of the Heading 3926, it would be observed that it should be articles of plastics or of materials covered under Heading 3901 to 3914. The scope of the said term "Plastics" one has to refer to Chapter Note 1 to Chapter 39 which reads as under :-

"1. Throughout this schedule, the expression "plastics" means those material of Heading 3901 to 3914 which are or have been capable, either at the movement 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 the schedule any reference to "plastics" also includes vulcanized fibre. The expression, however, does not apply to materials regarded as textile material of Section XI".

On perusal of the above Chapter Note 1 to Chapter 39, it would be amply clear that the textile materials of Section XI are excluded from the scope and terms of plastics for the said chapter and the HDPE Tapes and Fabrics are covered under Section XI and they are out of the scope of Chapter 39 and accordingly the same cannot be covered under the scope of Heading 3926 of the HSN.

3.6 The applicant reserve their right to produce copies of all the GST tariff/HSN Pages and the relevant pages of the Explanatory Notes to HSN which have been referred above, at the time of hearing or as and when directed as a separate paper book.

3.6.1 Without prejudice to the above, the Applicant further submit that on perusal of various sub-headings and elements covered under the Heading 3926 dearly illustrates that the "Laminated High Density Poly Ethylene HDPE Woven Geomembrane for water proof lining - IS:15351:2015", would not be covered under any of the sub-heading under 3926.

3.7 In addition to the above submissions, the applicants wish to refer and rely on the following Notifications and Circulars which substantiate that the relevant Government authorities also considered the said product i.e. "Laminated High Density Poly Ethylene HDPE Woven Geomembrane for water proof lining IS:15351:2015", as Textile Fabrics for technical purposes and technical uses and is considered as a part of Textile Industry and not as a part of Plastic Industry. The applicants wish to refer and rely on;-

(a) Notfn. No. 54/2015-2020, dated 15-1-2019 issued by the Directorate General of Foreign Trade, Department of Commerce, Ministry of Commerce and Industry, GOI, as per the power conferred under sec. 5 of F.T. (D & R) Act, 1992 read with Paras 1.02 and 2.01 of FTP, 2015-2020, wherein they had incorporated list of 207 items as technical textiles. The said Notification covers the above referred products of Heading 5911 10 00 at Sr. No. 138. The said product is recognized by the DGFT as Technical Textiles.

(b) A Publication made by the Ministry of Textiles, Govt. of India, titled as "Government of India's Initiatives in Technical Textile". It was for giving Unprecedented Thrust to the Sunrise Sector of Technical Textile and was published for Technical Textile Conclave held at Mumbai on 29-1-2019. The said publication gave the facts above technical textile sector and enumerated Major Items of Technical Textile Segments. It listed out twelve (12) segments of technical textile and at clause(iv) it read as under :-

"(iv) Geotech [Geogrids, geonets, Geomembranes, Geocomposites, Pre-fabricated Drains-PVD & Geo foams]"

The above publication specifically recognized Technical Textile Segment of "Geotech" and it covers "Geomembranes" as one of the technical textile segments. The said publication also supports the claim of the applicants that the product Geomembrane is recognized as technical textile segments and not as a product of plastic industries.

3.8 The applicant submit that their products are in no way comparable to HDPE Woven Tarpaulin nor with HDPE Woven Sacks and Bags [which are separately covered under independent IS Specification No. IS7903 and IS16703 respectively]. The product under reference is totally different from the said HDPE Woven and Laminated Tarpaulin and Sacks and Bags for which there have been Advance Rulings by certain States that they are covered under Chapter 39 of HSN.

3.9 The applicant submit that during various discussions regarding the classification of the above products, references are made to the decision of Madhya Pradesh High Court in case of Raj Pack Well Ltd. v. U.O.I, reported at 1990 (50) E.L.T. 201 (M.P.) which is then adopted and followed by Rajasthan High Court in case of Rajasthan Synthetic Industries Ltd. v. U.O.I, reported at 2008 (223) E.L.T. 44 (Raj.).

3.10 The applicant submitted that the said two High Court decisions shall not apply to the facts of the case as the products are different and further the scope of Section XI and Chapters 54 & 55 for the

relevant period before the High Courts and before your Honour during the tenure of GST i.e. in HSN is different.

3.10.1 It is observed that the product in case of Raj Pack Well Ltd. before M.P. High Court was classification of HDPE Tapes and HDPE Woven Bags and Sacks. Similarly in Rajasthan Synthetic Industries Ltd., before Rajasthan High Court, the products were HDPE/PP tapes and HDPE/PP Woven Sacks respectively. None of the said High Courts had an opportunity to evaluate the classification under Heading 5911 for Textile Fabrics duly laminated and coated with plastics for technical purpose and technical uses as enumerated above. Accordingly the said High Court decisions cannot be applied to the facts of the case.

3.11 Without prejudice to the above, the applicant further submitted that the period before both the Hon'ble High Courts were 1988-89 & 1989-90, wherein the scope of Chapter 54 was different as compared to the scope of Chapter 54 under HSN and GST.

3.12 During the period before the Hon'ble High Court i.e. 1988-89 and 1989-90, Chapter 54 was covering only 'Manmade Filament' and there was no provisions for covering strips of width less than 5 mm under Heading 54.04. The said Heading 54.04 read as :-

"54.04 - Artificial Filament Yarn and sewing thread, including artificial mono-filament of less than 60 denier, not texture".

3.12.1 However, under HSN and the GST Tariff as on now, the Chapter 54 covers "Manmade Filaments; Strip and the Like of Manmade Textile Material" and there is specific inclusion of strips with width less than 5 mm being covered under Heading 54.04. Since the department wanted the said HDPE Strips less than 5 mm to be covered as Manmade Textile Material they had amended the Chapter 54 as well as Heading 54.04 which now reads as :-

"5404 - Synthetic monofilament of 67 decitex or more and of which no cross section dimension exceeds 1 mm; Strip and the like (for example artificial straw) of Synthetic textile materials of an apparent width not exceeding 5 mm"

3.13 In view of the said amended scope of Chapter 54, which covers specifically strips of Synthetic Textile Materials of width less than 5 mm as Manmade Textile Material the same would be covered under the scope of Section XI for Textiles.

3.13.1 Accordingly the said High Court decisions cannot be referred for the present advance authorization as the products are different with different manufacturing process, different nature of the goods,

different end use and different scope of the Chapter Notes and Chapter Headings at the relevant periods.

3.13.2 The applicant also referred and rely on Rule 3(a) of the General Rules for the Interpretation of the Schedule which enumerates that in case for any reasons goods are prima facie classifiable under two or more Headings then the Heading which provides the most specific description shall be preferred to Headings providing a more generic description.

3.14 The applicant further submitted that the product under reference i.e. "Laminated High Density Poly Ethylene HDPE Woven Geomembrane for water proof lining - IS:15351:2015", are specifically covered under Heading 5911 10 00 as Textile Fabrics for Technical Purposes and Technical Uses and the same should be preferred over Heading 3926 90 99 as Other Articles of Plastics. The applicant requested to pass appropriate order confirming the said classification and requested to grant the PH.

4. Records of personal hearing:

To abide by the law of natural justice personal hearing in the case was fixed on 22-7-2019 vide this office letter F. No. V/AR-01/Emmbi/DMN/2019-20/ , dated 15-7-2019. But they requested for another date. Hence, one more chance of personal hearing was given to them and PH in this case was fixed on 30-7-2019. Shri S.T. Manimarpan, GM (Commercial) of the applicant appeared for personal hearing before us. He submitted sample of the product manufactured by them alongwith supporting literature. Further he argued that the raw material used for the product is LDPE and its further process is to convert into tape to fabrics which is later on laminated. In the market their product is used for lining of Pond and water bodies. They further contested that their product is laminated fabrics, hence, falls under Ch. 59 instead of 39 of GST Tariff and requested that their application may be decided accordingly.

5. Discussion and Findings :

5.1 In the present case we have to decide the correct classification of the material goods in question i.e. "Laminated High Density Poly Ethylene HDPE Woven Geomembrane for water proof Lining Type-II, IS:15351:2015", as to whether is classifiable under HSN Code 5911 10 00 or as Article of Plastics under HSN Code 3926 90 99. The applicant have paid required fee vide Challan Number CIN 19052600006524, dated 30-5-2019 for seeking of Advance Ruling for the said product. Now, we the members of Advance Ruling, have to decide as to whether the goods "Laminated High Density Poly Ethylene HDPE Woven Geomembrane for water proof Lining Type-II, IS:15351:2015" is

classifiable under HSN Code 5911 10 00 or under HSN Code 3926 90 99.

5.2 We note that the manufacturing process of the product in question has been detailed by the applicant. Accordingly the product is being manufactured as per IS specification as "Laminated High Density Poly Ethylene HDPE Woven Geomembrane for Water Proof Lining Type-II, IS:15351:2015" and it is known in the market as agro textiles and are covered in the family of Geomembrane used for water proof lining. The applicant further submitted that the products are used for water proof lining such as Pond Liners, Canal Liners or for making artificial water bodies. The said laminated HDPE Woven Geomembrane is a textile fabric used exclusively for technical purpose of water proof lining. Before deciding the correct classification it will be in the interest of justice to discuss stage wise manufacturing process of the product in question which is detailed below -

5.2.1 First stage of manufacturing of the goods in question comes in existence is Tape/Strip Extrusion which are manufactured from raffia grade HDPE granules which is UV stabilized by incorporating 2.5 ± 0.5 per cent of carbon black with uniform dispersion and required suitable UV stabilizer is added. Granules are then extruded through sheet die to produce solid sheet which is further uniformly slitted into no. of tapes. These tapes are then passed through hot air oven for twist stretching with proper orientation to the tapes to achieve the required tape width and desired strength. Width of the tape/ strip is between (2.1 mm to 3.7 mm.) and the Linear Density of the tape/strip is 1900 - 2100 Denier. Tapes/ strips are wound on bobbins for further processing.

5.2.2 Second stage after Tape/ Strip Extrusion, is Fabric Weaving. HDPE woven fabrics are manufactured on Circular looms. As per design of woven fabric creels & shuttle of loom is loaded with bobbins. As per requirement of fabric adjust the size of ring and mesh. These tapes are then passed through circular ring on horizontal & vertical direction. Set the all parameter as per geomembrane fabric standard.

5.2.3 The third stage is Liner Film Extrusion. Film is manufactured from Polyethylene (PE) granules and required suitable UV stabilizer is added. Granules are then extruded through circular die to produce blowing film which further uniformly passed through take up roller to get the required film width & micron. Tubular Film is made on surface winder & it flatten with help of guide roller.

5.2.4 Fourth stage of manufacturing of the product in question is Lamination Coating. The HDPE woven fabric is laminated on both sides with LDPE with suitable combination of LLDPE. The coating film is UV stabilized by incorporating 2.5 ± 0.5 percent of carbon black with uniform dispersion. HDPE woven fabric is bonded with single

side LDPE coating. Similarly other side of the fabric is bonded together by sandwich lamination. For sandwich lamination, HDPE woven fabric is bonded with LDPE coating and LDPE liner film. The roll is ready for sealing process.

5.2.5 The final stage of the product in question is Sealing. The two or more pieces of geomembrane fabrics are used, the geomembrane are joined/ sealed together by a suitable heat air blower sealing process keeping an overlap as per standard sealing process.

5.3 In view of the above we the members of Advance Ruling find that the main product around which the whole process of manufacturing revolves is HDPE Woven Fabrics.

5.4 The applicant contended that the product in question is known as Agro Textiles. They further contended that the HDPE Woven Fabrics made from synthetics Textile Material and coated with LDPE covered under the scope of Heading 5911 and to justify their claim they have given number of justification in their favour. We find their justification are acceptable to certain extent. However, we discuss the details of the possible HSN code where the said goods can be classified.

5.5 The applicant contended and referred Notfn. No. 54/2015-2020, dated 15-1-2019 issued by the Directorate General of Foreign Trade, Department of Commerce, Ministry of Commerce and Industry, GOI, as per the power conferred under sec. 5 of F.T. (D & R) Act, 1992 read with Para 1.02 and 2.01 of FTP, 2015-2020, wherein they had incorporated list of 207 items as technical textiles. The said Notification covers the above referred products of Heading 5911 10 00 at Sr. No. 138. The said product is recognized by the DGFT as Technical Textiles. We find that the contention of the applicant is acceptable.

5.6 We note that as referred a Publication made by the Ministry of Textiles, Govt. of India, titled as "Government of India's Initiatives in Technical Textile" and was published for Technical Textile Conclave held at Mumbai on 29-1-2019. The said publication gave the facts above technical textile sector and enumerated Major Items of Technical Textile Segments. The said publication recognized Technical Textile Segment of "Geotech" and it covers "Geomembranes" as one of the technical textile segments. Hence the claim of the applicant appears justifiable.

6. Now we discuss the HSN code 3926. Heading 3926 90 99 refers to Other Plastic Articles. Before proceeding further and deciding the issue it is in the interest of justice to discuss the said Heading 3926 which is reproduced as under :-

"3926 - Other articles of plastics and articles of other materials of Heading 3901 to 3914 [other than bangles of Plastics, plastic beads and feeding bottles]"

6.1 On perusal of the Heading 3926, it is observed that HSN code 3926 covers the goods Articles of plastics or of materials covered under Heading 3901 to 3914. The scope of the said term "Plastics" has to refer to Chapter Note 1 to Chapter 39 which reads as under :-

"1. Throughout this schedule, the expression "plastics" means those material of Heading 3901 to 3914 which am or have been capable, either at the movement 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 the schedule any reference to "plastics" also includes vulcanized fibre. The expression, however, does not apply to materials regarded as textile material of Section XI".

6.2 On perusal of the above Chapter Note 1 to Chapter-39, it is amply clear that the textile materials of Section XI are excluded from the scope and terms of plastics for the said chapter and the HDPE Tapes and Fabrics are covered under Section XI and they are out of the scope of Chapter 39 and accordingly the same cannot be covered under the scope of Heading 3926 of the HSN.

7. Now we discuss the flow of classification for the above products which are arising during the course of manufacturing. The first product which comes into existence is the "HDPE Tapes Less Than 5 mm In Width" and no doubt the same are covered under HSN 5404 90 20. As Section XI covers Textile & Textile Articles and Section Note 1 (g) excludes only strips of plastic where the width is exceeding 5 mm. Heading 5404 which reads as under :-

"5404 - Synthetic monofilament of 67 decitex or more and of which no cross section dimension exceeds 1 mm; Strip and the like (for example artificial straw) of Synthetic textile materials of an apparent width not exceeding 5 mm".

The Explanatory Notes to the HSN also confirms that the said HDPE Tapes and Strips less than 5 mm are covered under Heading 5404. The above "HDPE strips or tapes less than 5 mm" of 5404 90 20 are Woven into Fabrics shall be covered under Heading 5407. The above Woven Fabric is subjected to sandwich lamination of plastics and brings into existence a new product viz. - Geomembrane pond lining fabrics. The said Industrial Technical Fabrics are supplied in piece form or are in cut to length as per the specification of the customer.

The applicant claims that the correct classification of the said sandwich fabrics under HSN Code 5911.

7.1 We note that Chapter Note 7 to Chapter 59 of Tariff/HSN visualizes the scope of Textile Fabrics covered under Heading 5911 for technical purposes which read as under :-

"7. Heading 5911 applies to the following goods, which do not fall in any other headings of Section XI :-

(b) Textile products in the piece, cut to length or simply cut to rectangular (including square) shape (other than those having the character of the products of Headings 5908 to 5910), the following only :

(iii) Textile fabrics, felt and felt line woven fabrics, coated, covered or laminated with rubber, leather or other materials, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams);

7.2 Now we refer and reproduce the Heading and sub-heading of 5911.-

"5911 - Textile products and articles, for technical uses, specified in Note 7 to this Chapter; such as Textile fabrics, felt and feltlined woven fabrics, coated, covered or laminated with rubber, leather or other material of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams); Bolting doth, whether or not made up; whether or not impregnated or coated, of a kind commonly used in other machines, Cotton fabrics and articles used in machinery and plant, Jute fabrics and articles used in machinery and plant, Textile fabrics of metalized yarn of a kind commonly used in paper making or other machinery, Straining cloth of a kind used in oil presses or the like, including that of human hair, Paper maker's felt, woven, Gaskets, washers, polishing discs and other machinery parts of textile articles"

5911 10 00 - Textile fabrics, felt and feltlined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams)"

7.3 On perusal of the above , it is observed that the, "Laminated High Density Poly Ethylene HDPE Woven Geomembrane for water proof lining IS:15351:2015", are made from HDPE Tapes/ Strips of less than 5 mm which are specifically covered under Heading 5404 as Synthetic Textile Material and the specially woven fabrics from the said HDPE Tapes/Strips are covered under Heading 5407 20. It is the said HDPE Woven Fabrics which is referred as Woven Fabrics made from Synthetic Textile Material which is subjected to LDPE Coating and Lamination referred as Sandwich Lamination. After the said process two or more pieces of said Sandwiched Laminated Geomembrane fabrics are joined/ seamed together by a suitable heat air blower scaling process keeping into the requirement of the customer based on which the said fabrics are cut and joint and cut sealed as per standard sealing process to be used as pond liner. The said Laminated Coated Fabrics is used for technical purpose and is specifically covered under scope of Heading 5911 10 00 as enumerated above.

8. We note that the Section Notes and Chapter Notes sometimes expand and sometimes restrict the scope of certain headings. In other words, the scheme of the Tariff is to determine the coverage of the respective headings in the light of the Section Notes and Chapter Notes. In this sense, the Section Notes and the Chapter Notes have an overriding force on the respective headings. As we take support from the case of CCE v. Metrowood Engineering Works - 1989 (43) E.L.T. 660 (Tri.). Accordingly. 'Industrial laminates' having insulation properties were held as Electrical Insulators falling under CETA : Ch. 8546.00, not 3920.31 even if they were plastic laminates and notwithstanding some minor fabrication like punching/ drilling of holes therein. Industrial laminates were automatically excluded from the purview of Chapter 39 of the Tariff in view of Chapter Note 2(n) of Chapter 39 as the "Electrical Insulators of any material" classifiable under Heading 8546.00. In CC v. Sanghvi Swiss Refills P. Ltd., 1997 (94) E.L.T. 644 (CEGAT), it was held that Section Notes and Chapter Notes being statutory in nature, have precedence over functional test and commercial parlance for the purpose of classification. This principle was reaffirmed by the Supreme Court in CCE v. wood Polymers Ltd. - 1998 (97) E.L.T. 193 (S.C.), wherein it was reiterated that classification should be done as per the rules of interpretation contained in the Tariff and not as per trade parlance and commercial understanding. Trade parlance was to be examined only if the tariff entry is ambiguous - Nirlon Synthetic Fibres v. UOI - 1999 (110) E.L.T. 445 (Bom.) or if the statute did not define the words - Indo International Industrial v. CST -47 STC 359 (S.C.) = 1981 (8) E.L.T. 325 (S.C.).

8.1 We further note that the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer part only

of the materials or substances contained in mixed or composite goods or to part only of the items in a set, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. According to Rule 3(a), a heading which provides the most specific description shall be preferred to heading providing a more general description. Collector v. Metrowood Engineering Works - 1989 (43) E.L.T. 660 (Tri.). When an article has by all standards, a reasonable claim to be classified under an enumerated item in the CET, it will be against the very principle to deny it the parentage and consign it to be an orphanage of the residuary clause -Dunlop India Ltd. v. UOI - 1983 (13) E.L.T. 1566 (S.C.) (b) Mixtures, composite goods consisting of different materials or made up of different components and goods put up in sets, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

8.2 While deciding the classification of composite articles of plastics made out of a combination of plastic and non-plastic materials, according to the Bombay-I Collectorate Trade Notice No. 128/88, dated 6-9-1988 classification would depend on the predominance of weight and value of the component materials which have gone into the manufacture of such composite articles of plastics, keeping in view, the Rules of Interpretation to the Schedule to the Central Excise Tariff Act, 1985. While deciding the classification of such products, due regard should be given to the trade identity of the produce, i.e. how the same was known in the commercial/trade parlance. Thus, classification of such composite articles is not purely a technical matter and common parlance tests are given due weightage. In *sprint RPG India Ltd. v. CC - 2000 (116) E.L.T. 6 (S.C.)*, computer software loaded on hard disk drive was imported. Value of hard disk drive was only ₹ 65,000/- while the cost of software was ₹ 67 lakhs. It was held that computer software gives it the essential character. The hard disk was only a container and hence the goods were classified as "software". Similarly, machines that are capable of multiple functions would be classifiable according to its main function - *Luminous Electronics v. CCE - 2001 (129) E.L.T. 605 (CEGAT 5 Member Bench)*. The identity of a particular product is associated in the mind of the consumer with its primary function. The consumer buys an article because it performs a specific function for him. This mental association with a product is very relevant in classification - *Atul Glass Industries P. Ltd. v. CCE - 63 STC 322 (S.C.) = 1986 (25) E.L.T. 473 (S.C.)*.

8.3 In view of the above the, "Laminated High Density Poly Ethylene HDPE Woven Geomembrane for water proof lining -IS:15351:2015", made from HDPE Tapes/Strips of less than 5 mm and specially woven fabrics from the said HDPE Tapes/ Strips and subjected to LDPE Coating and Lamination referred as Sandwich Lamination and further

fit for using as pond liner laminated textiles products and correctly classifiable under HSN Code 5911.

Order/ Advance Ruling

9. We the member pronounce Advance Ruling for the Technical laminated Fabrics woven out of strips below 5 mm fit for use as Pond liner are "Laminated Textiles Products" and are covered under HSN Code 5911.

ATTESTED

Dr. Satish Kumar, Member (CGST)

Advance Ruling Daman

Shri Nilesh Gurav,
Member (UTGST)

Advance Ruling
Daman