

रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील -I) का कार्यालय, केन्द्रीय उत्पाद शुल्क, :  
: सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास, :  
: आंबावाडी, अहमदाबाद- 380015. :

क फाइल संख्या : File No : V2(39)50 /Ahd-III/2015-16/Appeal-I <sup>35 10 39</sup>  
ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-021-16-17  
दिनांक Date : 25.05.2016 जारी करने की तारीख Date of Issue 13/06/16  
श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित  
Passed by Shri Uma Shanker Commissioner (Appeals-I) Ahmedabad  
ग \_\_\_\_\_ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-I आयुक्तालय द्वारा जारी मूल  
आदेश सं \_\_\_\_\_ दिनांक : \_\_\_\_\_ से सृजित

Arising out of Order-in-Original: 02/AC/DEM/C.Ex./2015-16 Date: 29.05.2015  
Issued by: Assistant Commissioner, Central Excise, Din: Kadi, A'bad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता  
Name & Address of the Appellant & Respondent  
**M/s. Plastene India Ltd. Unit-II**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे  
बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as  
the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :  
**Revision application to Government of India :**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में  
पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार,  
वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को  
की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision  
Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building,  
Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the  
following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने  
में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में  
चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

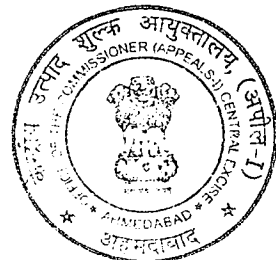
(ii) In case of any loss of goods where the loss occur in transit from a factory to a  
warehouse or to another factory or from one warehouse to another during the course of  
processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क  
कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित  
हैं।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside  
India of on excisable material used in the manufacture of the goods which are exported to any  
country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया  
माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of  
duty.



ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-ए/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

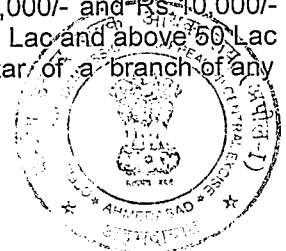
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

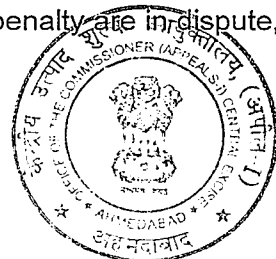
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस संदर्भ में, इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



**ORDER-IN-APPEAL**

This appeal has been filed by **M/s Plastene India Limited, Unit-II, Survey No.1551 & 1552, Ahmedabad-Mehsana Highway, Village: Raipur, Taluka Kadi, Dist. Mehsana** (hereinafter referred to as "the appellant) against Order-in-Original No.02/AC/Dem/CEx//2015-16 dated 29.05.2016 (hereinafter referred to "as the impugned order") passed by the Assistant Commissioner of Central Excise, Kadi Division (hereinafter referred to as "the impugned order").

2. The appellant is engaged in manufacturing of plastic articles and obtained central excise registration for manufacturing of PP Woven Bags/PP Laminated bags (CETH 39232990), HDPE woven and laminated bags (CETH 39232100) and PP Jumbo Bags (CETH 39269080). Vide letter dated 23.02.2011 and 11.09.2014, the appellant applied for change in classification of their products viz. Flexible Intermediate Bulk Container (FIBC)/ Jumbo bags under CETH 63053200 instead of 39232990, PP tapes under CETH 54041990 instead of 39191000, PP Woven fabrics under CETH 54072090 instead of 39269080 and PP woven Sacks & Bags under CETH 63053300 instead of 39232990 and accordingly they have started clearing under the said CETH. As it appeared that the appellant had wrongly classified the above said products by contravened the provisions of Rule 2(b) of the general rules for the interpretation of the schedule under CETA and Rule 9 of Central Excise Rules, 2002, a show cause notice dated 03.02.2015 was issued to them for classifying and clearance of finished goods as per their central excise registration. The said show cause notice was decided vide the impugned order by the adjudicating authority, by classifying the products viz PP/HDPE taps under CETH 39203200, PP/HDPE fabrics under CETH 339269080, PP/HDPE sacks/bags under CETH 39232990 and FIBC under CETH 39232990.

3. Being aggrieved, the appellant has filed the present appeal on the grounds that :

(a) when strips and the like goods are made from polymers and if such strips are of apparent width not exceeding 5 mm then their correct classification is under chapter 54 by virtue of chapter note /HSN explanatory notes under chapter heading 39, 54, 55 and 63.

(b) There is no dispute that strips and like materials of apparent width less than 5 mm would not be considered as 'man- made fibers; that they are not claiming the same as man- made fibers. Such strips are man- made textile materials by virtue of chapter not under chapter heading 5404 and HSN explanatory note (2) under the said chapter head.



© The CBEC circular No.54/12/19-CX.1 dated 24.09.1992 may be binding on authorities under the Act but not on assessee; that the CBEC have not considered at II HSN provisions and CETA.

(d) In the impugned show cause notice, PP/HDPE strips, Tapes has adduced classification under sub-heading 39191000 which pertains to self-adhesive plates, sheets, film, tape, strip and other flat shapes of plastic whether or not in rolls; that however, in the impugned order it has been adduced and also finally ordered for classification under sub heading 39203200; that there is no such heading in CETA.

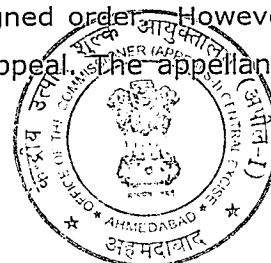
(e) The heading 3919 or 3920 otherwise also do not apply to plastic strips of the heading 54.04 or 54.05 by application of chapter 39 note; that for PP/HDPE fabrics, the adjudicating authority has adduced classification under heading 39269080 which pertains to other articles of plastics and articles of material heading 3901 to 3914. Chapter heading 39269080 pertains to polypropylene articles, not elsewhere specified or included.

(f) Heading 3923 applies only if articles for conveyance and packing of goods are made of plastics. The sub headings 6305ew00 and 63053300 are very specific in terms of heading 6305; that the sub heading title 'of man made textile material' and specific entries also viz 63053200- flexible intermediate bulk containers and 63053300- other of polythelene or polypropylene strip or the like. The more specific will prevail less specific chapter 39232990 viz polypropylene articles, not elsewhere specified or included.

(g) They relied on the ratio of the decision in the OIA No.12/Commr(A)/JMN/2012 dated 20.01.2013 issued by Commissioner (A), Customs, Jamnagar and decisions under the CBEC circular No.28/MMF/88 dated 18.11.1988, case law reported at 2002 (142) ELT 233 (Commr.Appeal) read with Madurai collectorate trade notice 132/86 dated 22.11.1986 (1986(26) ELT -T 78).

4. A personal hearing in the matter was held on 13.04.2016 and Shri Prakash Parekh, M.D appeared for the same. He reiterated the grounds of appeal and further submitted OIA No.AHM-CUSTM-OOO-APP-236-14-15 dated 17.06.2014 passed by Commissioner (Appeals), classifying the same item FIBC under chapter heading 63053200 of Customs Tariff Act. He also submitted US classification and TUFF subsidiary given to them as 'textile material'.

5. Before going into the merits, I find that the appellant has filed the instant appeal on 07.09.2015 against the impugned order received by them on 10.06.2015. They have filed application for condonation of delay in filing the appeal. As per provisions of Section 35 of Central Excise Act, 1944, the appeal is required to file within 60 days on receipt of the impugned order. However, in the instant there was delay of 28 days in filing the appeal. The appellant has

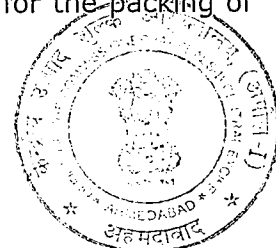


requested to condone the delay as per provisions of 35(1) of CEA. Therefore, in exercise of power conferred under the said Section, I condone the delay.

6. Now I take the issue of classification dispute questioned in the instant case. The limited point to be decided in the matter is relating to classification of (1) PP/HDPE Taps under CETH 3920.3200, (2) PP/HDPE Fabrics under CETH 3926.9080, PP/HDPE Sack/Bags under CETH 3923.2990 and (4) Flexible Intermediate Bulk Containers under CETH 3923.2990 as held by the adjudicating authority or under CETH (1) 5404.1990, (2) 5407.20, (3) 6305.3300 and (4) CETH 6305.3200 respectively as classified by the appellant. In respect of matter relating to classification under CETA 1985, I find that to decide such matter, it is essential to go through the concerned chapter of CETA i.e chapter 39, 54 and 63 which deals the goods in dispute and a specific heading of classification is to be preferred to the general heading.

6.1 Chapter 39 of CETA deals with 'plastics and articles thereof'. The process of manufacturing articles in question has been indicated in the impugned order. Looking into the process of manufacturing and other technical aspects as laid down in the chapter notes, explanatory notes of HSN under chapter 39, the adjudicating authority has come to the conclusion that the ingredients or raw materials used in the products cannot be considered as manmade articles and therefore, the products in questions cannot attract classification under chapter 54 or 63. On other hand, chapter 54 deals with 'Man made filaments' and 63 deals with 'other made up textile articles'. It was contended by the appellant that as per chapter note to chapter 54, the strips and the like remain under heading 54 or 55; that the sub headings 6305.3200 and 6305.3300 are very specific in terms of the heading 6305 'of man- made textile materials' and there is specific entry for Flexible Intermediate Bulk Container as 6305.3200.

6.2 As stated above, chapter 39 deals with the plastics and articles thereof. As regards classification of goods pertains to the instant case, I find that (1) Chapter 39.20 describe 'other plates, sheets, film, foil and strip, of plastics, non cellular and not reinforced, laminated, supported or similarly combined with other material'. On other hand, chapter 54.04 describes 'synthetic monofilament of 67 decitex or more and of which no corss-sectional dimension exceeds 1 mm; strips and the like of synthetic textile materials of an apparent width not exceeding 5mm'. (2) 39.26 describe 'other articles of plastics and articles of other material of heading 3901 to 3904 and on other hand 54.07 deals with 'woven fabrics obtained from high tenacity yarn of nylon or other polyamides or of polyester'. Finally (3) 39.23 describe 'Articles for the conveyance or packing of goods, of plastics; stoppers; lids, caps and other closures, of plastics and on other hand 63.05 describes 'Sacks and Bags, of a kind used for the packing of goods'.



6.3 The adjudicating authority, in the manufacturing process, has found that (a) Tapes- the granules of polypropylene and polythelene are fed into the extruder hopper, where they are plasticized and melt flow is passed through a T Die. Film thus formed is slit into the form of strips/tapes. These strips are then oriented by stretching them under head condition at a predetermined ratio. Finally, the tapes which are of width less than 5mm are wound on chees winders. (b) Fabrics- the tapes so obtained are fed to circular weaving looms are woven into tubular woven fabric respectively. The fabric being manufactured from the tapes/strips of PP/HDPE which are of width less than 5mm. The fabric so manufactured is further being used for the manufacture of sack and bags and flexible intermediate bulk containers. (c) The woven fabrics produced may require to be coated with LDPE/LLDPE/PP and after some process over T-die, the woven fabrics being cut/stitched and printed as per requirement.

6.4 Looking into the above stated manufacturing process, the tapes/sacks/fabrics are made of plastics materials and not from synthetic materials. Further, heading 39.26 applies to articles of plastics and articles of other materials of heading 39.01 to 39.14. The said heading is a residuary heading but residuary to chapter 39 as all articles of plastics which are not covered by earlier heading. As far as any articles made of plastic, I feel that it will fall either in any one of the specific heading in chapter 39 and failing which under chapter 39.26. Hence, the product in question in the instant case i.e HDPE/PP tapes/sacks/fabrics appears to be classifiable under chapter 39 of CETA. I find that in the case of M/s Rajpack Well Ltd reported in 1990 (50) ELT 201 (MP), the Hon'ble High Court of Madya Pradesh has been held that the HDPE/PP strips or tapes falls under chapter heading 3920.32 of the CETA and are not under chapter 54.06. Similarly, it has also been held that the HDPE sacks fall into Heading 39.23.

6.5 The question remains classification of Flexible Intermediate Bulk containers. As per the order of adjudicating authority it falls under chapter heading 39.23 which describes 'Articles for the conveyance or packing of goods, of plastics, stoppers, lids, caps and other closures, of plastics' and the sub-heading 3923.29- 'of other plastics'- 3923.2990-'other'. Chapter heading 63.05 as held by the appellant with regard to the said product, the chapter describes 'Sacks and bags, of kind used for the packing of goods'. Under the chapter heading there is specific heading of the goods Flexible Intermediate Bulk container as 6305.3200.

6.6 However, before coming in to the conclusion of the proper classification of the products, as per discussion at para 6.4 and 6.5 and the decision of M/s Raj Well Pack Ltd relied on, I find that the sub headings of the Tariff have changed after 1995. Prior to 1995, tariff item sub-headings were of 4 digits and 1995 onwards, it was changed to 6 digits. Since 2005 onwards, tariff item headings



are of 8 digits. Classification of the products has to be determined as per the description of the products given in the various headings/sub headings of schedule to the CETA. More specific heading will prevail over the less specific heading. Further, the dispute relating to tariff classification, as far as possible, is required to be resolved with reference to nomenclature indicated by the HSN unless there be an expressed different intentions indicated by the CETA itself. I find that since the article in question is a composite article, Rule 3 (b) of Rules for the Interpretation of Tariff Entries would apply. The said Rule 3 states that :

*3. When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*

*(a) 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 to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, 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.*

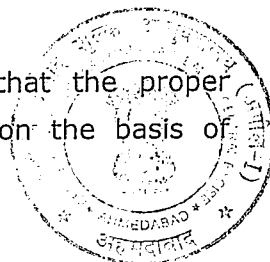
*(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to Rule 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.*

*(c) When goods cannot be classified by reference to Rule 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.*

6.7 For a classification of product/article in question as per Rule 3(b) above, appropriate testing of such product/article is essential. The Chemical Test refers to essential characters of the product/articles. The test reveals the essential character of the manufactured goods, mainly the % age of composite contained etc. However, in the instant case, I find that no such test was conducted at any stage. The adjudicating authority has classified the goods in question on the basis of manufacturing process and relevant chapter notes and explanatory notes of HSN under concerned chapter.

6.8 The appellant relied on the decision of Commissioner of Central Excise, Indore order dated 30.01.2015, where-in the classification of goods upheld as Plastics tape, strips -54041990, Woven fabrics - 540772090, Bags, Sacks and Flexible Intermediate Bulk Containers (of HDPE) -63053200 and 63053300 (of other plastics). The appellant further relied on Commissioner (Appeals), Customs Jamnagar order dated 17.06.2014, wherein he has classified the Goods Flexible Intermediate Bulk Container under customs chapter heading 63053200. I find that the authorities had taken the decision in support of lab testing of the articles in dispute.


6.9 In view of above discussion, I am of the opinion that the proper classification of the products in question should determine on the basis of





essential character of the manufactured goods which can reveals by conducting necessary lab test. Therefore, the adjudicating authority may conduct necessary lab test of the disputed articles and decide the classification accordingly. For that purpose, I remand back the case to the adjudicating authority. Necessary principles of natural justice may be followed by the adjudicating authority before taking any such decision. Till such afresh decision of the adjudicating authority, I order that the classification of the disputed products may continue as per the impugned order, especially in the circumstances, there is no revenue matter involved in the matter.


7. The appeal is disposed off in above terms.



(UMA SHANKER)  
COMMISSIONER (APPEALS-I)  
CENTRAL EXCISE,  
AHMEDABAD

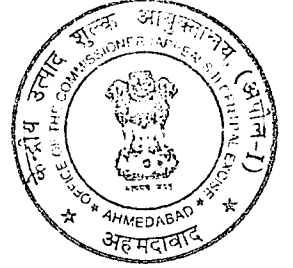
Attested

25/05/2016

  
(Mohanan V.V.)  
Superintendent (Appeals-I)  
Central Excise, Ahmedabad

By R.P.A.D.

To  
**M/s Plastene India Limited,  
Unit-II, Survey No.1551 & 1552,  
Ahmedabad-Mehsana Highway, Village: Raipur,  
Taluka Kadi, Dist. Mehsana**



1. The Chief Commissioner, Central Excise Zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-III
3. The Addl./Joint Commissioner, (Systems), Central Excise, Ahmedabad-III
4. The Dy. / Asstt. Commissioner, Central Excise, Division- Kadi, Ahmedabad-III
5. Guard file.
6. P.A (Commissioner-Appeals-I) file.

