



सत्यमेव जयते

**आयुक्त(अपील) का कार्यालय,**  
**Office of the Commissioner (Appeal),**  
**केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद**  
**Central GST, Appeal Commissionerate, Ahmedabad**  
**जीएसटी भवन, राजस्वमार्ग, अम्बावाडी अहमदाबाद 380015.**  
**CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015**  
**☎ 07926305065- टेलीफैक्स 07926305136**



**DIN : 20211164SW0000515061**

**स्पीड पोस्ट**

क फाइल संख्या : File No : GAPPL/COM/CEXP/365/2020 / **HM II TO HM15**

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-51/2021-22**  
 दिनांक Date : **29-10-2021** जारी करने की तारीख Date of Issue 30.11.2021

आयुक्त (अपील) द्वारा पारित  
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **AHM-CEX-003-ADC-MS-004-2020-21** दिनांक: **10.09.2020**  
 issued by Additional Commissioner, CGST & Central Excise, Gandhinagar Commissionerate

ध अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**

M/s Colourflex Laminators Ltd  
 821, Near Kothari Char Rasta,  
 Santej Village, Kalol, Gandhinagar-382721

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए संक्षम 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 :**

(i) 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 अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौधी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(ii) 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 हानिकार खाने 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.

(क) 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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

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

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

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 हैं।

(c) 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 ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनोंक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता ई.का मुख्य शीर्ष 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 होतो 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.

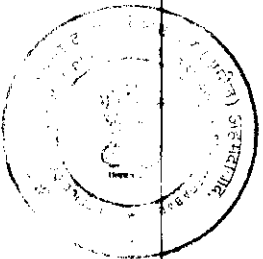
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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

(क) 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 2<sup>nd</sup>माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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 पढ़ी 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 Appellant 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय 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 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 और 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.

- (31) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट), के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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

- (lxxvi) amount determined under Section 11 D;
- (lxxvii) amount of erroneous Cenvat Credit taken;
- (lxxviii) amount payable under Rule 6 of the Cenvat Credit Rules.

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।

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

The present appeal has been filed by M/s. Colourflex Laminators Ltd., 821, Near Kothari Char Rasta, Village : Santej, Taluka : Kalol, District : Gandhinagar – 382 721 (hereinafter referred to as the appellant) against Order in Original No. AHM-CEX-003-ADC-MS-004-20-21 dated 10-09-2020 [hereinafter referred to as "*impugned order*"] passed by the Additional Commissioner, CGST & Central Excise, Commissionerate Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. The facts of the case, in brief, is that the appellant was having Central Excise Registration No. AAACC4768LXM001 for manufacturing of Laminated Printed Film, Printed Laminated Pouch etc. falling under Chapter 39 of the Central Excise Tariff Act, 1985. During the audit of the records of the appellant for the period from January, 2016 to June, 2017, it was noticed that the appellant had classified Printed Laminated Pouch under CETH 39239090 and were clearing the same on payment of Central Excise duty @ 12.5% as per Notification No. 12/2012-CE dated 17.03.2012. The appellant was classifying the Printed Laminated Pouch under CETH 39239090 i.e. 'Others' on the ground that there is no specific heading for the same. It appeared to the audit officers that the said goods merited classification under CETH 39232990 which is relating to 'Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures of plastics'. It appeared from the dictionary meanings that a bag is a synonym of a pouch and is a broader term used to address a pouch and all other containers. The applicable rate of duty on the articles under CETH 39232990 was 15% by virtue of Notification No. 12/2016-CE dated 01.08.2016. The improper classification of their product by the appellant had resulted in short payment of Central Excise duty amounting to Rs.50,62,498/-.

2.1 The appellant was therefore, issued a SCN No. VI/1(b)/Tech-27/SCN/Colour Flexi/2019-20 dated 09.09.2019 proposing to :

Classify Printed Laminated Pouch under CETH 39232990;



- ii. Recover Central Excise duty amounting to Rs.50,62,498/- under Section 11A (4) of the Central Excise Act, 1944 along with interest under Section 11AA;
- iii. Imposition of penalty under Section 11AC (1) (c) of the Central Excise Act, 1944.

2.2. The said Show Cause Notice was adjudicated vide the impugned order wherein :

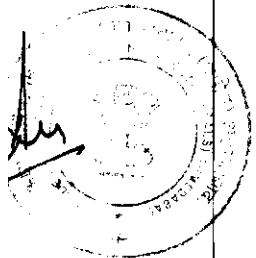
- I. Printed Laminated Pouch was ordered to be classified under CETH 39232990;
- II. The demand of Rs.50,62,498/- was confirmed under Section 11A (4) of the CEA, 1944;
- III. Interest was ordered to be recovered under Section 11AA of the CEA, 1944;
- IV. Penalty of Rs.50,62,498/- was imposed under Section 11AC (1) (c) of the CEA, 1944.

3. Being aggrieved with the impugned order, the appellant firm has filed the instant appeal on the following grounds:

- A. The impugned order is a non-speaking order and demand has been confirmed based on a selective reading of the judgement of the Hon'ble Supreme Court without offering any reasons for the same.
- B. The demand has been confirmed on the basis of dictionary meaning without carrying out any exercise or providing any reasons for coming to the conclusion that even in trade parlance, sacks or bags or pouches are 'more or less' considered the same.
- C. The adjudicating authority has neither distinguished the judgements relied upon by them nor provided any reasons for his findings. Both the SCN and the impugned order fail to bring out any evidence, technical experts opinion or any case

law to support the findings that the Printed Laminated pouch are classifiable under CETH 39232990.

- D. A bag consists of a handle since the primary utility of a bag is to permit carrying of goods whereas the pouches in question are primarily intended to store the goods safely during transport and to protect it from external elements to increase the shelf life of the goods contained. Therefore, it would be completely incorrect to say that the terms 'Bags' and 'Pouch' are synonymous and that the term Bag could cover all kinds of containers including Pouches.
- E. The methodology adopted to change the classification cannot be accepted as it is totally dependent on the Dictionary meaning whereas in common trade parlance the utility of both the products is entirely different.
- F. During the relevant period, in the case of Simplex Packaging Ltd reported in 2017 (345) ELT 659 (Tri.-Del) and Packaging India Pvt Ltd reported in 2017 (5) TMI 1078 – CESTAT, New Delhi though the Hon'ble Tribunal was deciding the applicability of exemption notification, there classification of Printed Laminated Pouches under CETH 39239090 was not disputed and the same was accepted by the department as well.
- G. As long as the impugned product is commercially treated and traded as Pouch, classification under CETH 39239090 cannot be denied. It has been held by the Apex Court that the Schedule/Tariff entry of a taxing statute should be interpreted in the commercial sense or in trade parlance and not as per its scientific or technical meaning alone. They also rely upon Circular No. 972/06/2013-CX issued by the CBIC.
- H. To support the contention that the goods in question are known as pouches in common parlance they submit purchase orders placed upon them wherein the buyers of the goods have referred to the items in question as pouches. In view of the fact that the goods in question are not referred to as sacks or bags



in common parlance the demand confirmed by classifying pouches under CETH 39232990 is liable to be set aside.

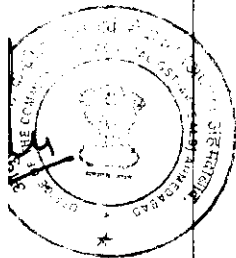
- I. Extended period of limitation is not invocable and entire demand is time barred as there is no fraud, collusion or any willful mis-statement or suppression of facts. They regularly file monthly ER-1 returns which contain all details relating to the clearance of Printed Laminated Pouches along with Tariff heading under which they have been cleared. They submit copies of a few returns.
- J. The dispute has arisen entirely out of the records maintained by them and is based on audit of their own records. Therefore, in any case there cannot be any suppression of facts.
- K. The department is well aware of their manufacturing Laminated Printed Pouches since their inception. They submit copies of invoices issued in the year 2005 for clearance of the same product adopting the same classification. The department never objected to the classification adopted by them since 1995 and only upon increase in the rate of duty, classified the goods under CETH 39232990.
- L. It is settled law that extended period of limitation cannot be invoked when the demand arises from the audit of records maintained by the appellant and they have been audited from time to time. The present dispute arises out of an audit conducted from 08.05.2019 to 09.05.2019. They were also audited for the period from October 2013 to December, 2015. However, no objection was raised by the audit party regarding classification of the product under CETH 39232990.
- M. No penalty can be imposed as there was no suppression or willful mis-statement in the present case. They have always acted in good faith and have been following this practice and the same was within the knowledge of the department. Thus the onus is on the department to prove that the appellant had mala fide of evading duty payment by suppression or willful mis-statement.

N. The issue in the present dispute involves interpretation of provisions of law. Penalty is not imposable for this reason as well. Further, when the demand is found to be non-sustainable, the question of imposition of penalty does not arise.

4. Personal Hearing in the case was held on 12.10.2021 in physical mode on the request of the appellant's advocate. Shri Ishan Bhatt, Advocate, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum and submitted a compilation of case laws and relied on the case law of Simplex Packaging Ltd Vs. CCE, Noida.

5. I have gone through the facts of the case, submissions made in the Appeal Memorandum and in the course of the personal hearing as well as evidences available on record. The issue before me for decision is whether Printed Laminated Pouch manufactured by the appellant is classifiable under CETH 39239090 as claimed by the appellant or under CETH 39232990 as proposed by the department. The demand pertains to the period March, 2016 to June, 2017.

6. I find that the effective rate of duty for goods classifiable under CETH 39239090 is 12.5%, while the effective rate of duty for goods of heading 39232990 was 18%, which was reduced to 15% w.e.f 01.03.2016, in terms of Serial Number 148AA of Notification No. 12/2016-CE dated 01.03.2016. The appellant have contended that they have all along, right from their inception, been classifying the product under CETH 39239090 and despite their records being audited during January, 2015 and January, 2016, no objection was raised by the audit officers as regards the classification. It is the contention of the department that as per the dictionary meaning, terms bags and pouches are synonymous and, hence, are classifiable under CETH 39232990 attracting duty @ 15% w.e.f 01.03.2016 in terms of Notification No. 12/2016-CE dated 01.03.2016.





6.1 I find that CETH 3923 is for goods of the description 'ARTICLES FOR THE CONVEYANCE OR PACKING OF GOODS, OF PLASTICS; STOPPERS, LIDS, CAPS AND OTHER CLOSURES, OF PLASTICS'. The relevant entries under CETH 3923 is reproduced as under :

Tariff Item (1)	Description of goods (2)	Unit (3)	Rate of duty (4)
3923 10	- Boxes, cases, crates and similar articles:		
3923 10 10	--- Plastic containers for audio or video cassettes, cassette tapes, floppy disk and similar articles	kg.	12.5%
3923 10 20	--- Watch-box, jewellery box and similar containers of plastics	kg.	12.5%
3923 10 30	--- Insulated ware	kg.	12.5%
3923 10 40	--- Packing for accommodating connectors	kg.	12.5%
3923 10 90	--- Other		
	- Sacks and bags (including cones)		
3923 21 00	-- Of polymers of ethylene	kg.	18%
3923 29	-- Of other plastics:		
3923 29 10	--- Of poly (vinyl chloride)	kg.	18%
3923 29 90	--- Other	kg.	
3923 30	- Carboys, bottles, flasks and similar articles:		
3923 30 10	--- Insulated ware	kg.	12.5%
3923 30 90	--- Other	kg.	12.5%
3923 40 00	- Spools, cops, bobbins and similar supports		
3923 50	- Stoppers, lids, caps and other closures :		
3923 50 10	--- Caps and closures for bottles	kg.	12.5%
3923 50 90	--- Other	kg.	12.5%
3923 90	- Other :		
3923 90 10	--- Insulated ware	kg.	12.5%
3923 90 20	--- Aseptic bags	kg.	12.5%
3923 90 90	--- Other	kg.	12.5%

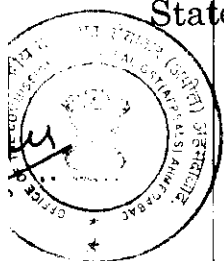
6.2 I find that CETH 39232990 is in respect of 'Others' for goods of the description " Sacks and bags (including cones) and the department has sought classification under this heading primarily on the grounds that as per the dictionary meanings bag is a synonym of pouch and is a broader term to address a pouch and all other containers.

6.3 I find that the expression " Sacks and bags (including cones) is restrictive as regards the scope of the goods covered. Even a plain reading indicates that only Sacks, Bags and Cones are covered under this description. By referring to the dictionary meaning, the department has sought to expand the scope of the description to cover pouch within its ambit which is not permissible in law.

6.4 I further find that heading 392390, which is in respect of the residuary heading 'Others', also covers 'Aseptic bags' under heading 39239020. Aseptic bags are a kind of packaging material generally used in the packaging of edible products. If the contention of the department is to be accepted, even Aseptic bags would be classifiable under the heading covering 'Sacks and bags (including cones)' which would lead to heading 39239020 being rendered redundant. Consequently, the only conclusion which can be drawn is that not all goods which are in the nature of bags, pouch, packets or packaging material are covered within the description of 'Sacks and bags (including cones)'. Resultantly, pouch, being a product distinct from a bag, would not merit classification under the category of sacks and bags.

6.5 I find that the appellant have in their appeal memorandum reproduced a picture of their product i.e. Printed Laminated Pouch along with that of a bag. The appellant have also submitted a sample of the Printed Laminated Pouch manufactured by them in the course of the personal hearing. Having examined these goods, I find that one of the prominent characteristic of the pouch is that the same is not a product which is designed for use as such for carrying of goods or articles. I find that the product under dispute is of the kind which is generally used for packaging of different kind of products viz. spices, pulses, cereals, confectionery etc.

6.6 I find that while the dictionary meaning of bag may cover or include pouch, that cannot be the sole test or criteria for determining the classification of the product under the Central Excise Tariff Act, 1985. All the more so, when the department has not adduced any evidence or material for treating Bags and Pouches to be synonymous and that commercially also both the products are one and the same. When there is ambiguity in the classification of a product, one of the methods to determine the correct classification is the common parlance test. I find that the Hon'ble Supreme Court had in the case of A. Nagaraju Bros Vs. State of Andhra Pradesh reported in 1994 (72) ELT 801 (SC) held that :



"4. In its order in T.A. No. 566 of 1984, followed in the present case, the Tribunal has given more importance to the respective values of the plastic and the other materials (like steel including locks and other fixtures) and opined that since the value of other components is more than the value of plastics used therein, they cannot be called 'plastic articles'. It gave certain illustrations to emphasise that value is the determining factor. The Tribunal pointed out that in the case of a diamond ring, the major component may be gold or silver and the diamond may represent a small portion of it, yet no body would call it gold or silver ring; it would be called a diamond ring. It is undoubtedly so. **But this only shows that there is no one single universal test in these matters. The several decided cases drive home this truth quite eloquently. It is for this reason probably that the common parlance test or commercial usage test, as it is called, is treated as the more appropriate test, though not the only one.** There may be cases, particularly in the case of new products, where this test may not be appropriate. In such cases, other tests like the test of predominance, either by weight or value or on some other basis may have to be applied. It is indeed not possible, nor desirable, to lay down any hard and fast rules of universal application." [Emphasis supplied]

6.7 Further, in the case of Commissioner of C.Ex., Vs., Wockhardt Life Sciences Ltd reported in 2012 (277) ELT 299 (SC), the Hon'ble Supreme Court had held that :

"30. There is no fixed test for classification of a taxable commodity. This is probably the reason why the 'common parlance test' or the commercial usage test' are the most common [see *A. Nagaraju Bors. v. State of A.P.*, 1994 Supp (3) SCC 122 = 1994 (72) E.L.T. 801 (S.C.)]. Whether a particular article will fall within a particular Tariff heading or not has to be decided on the bases of the tangible material or evidence to determine how such an article is understood in 'common parlance' or in 'commercial world' or in 'trade circle' or in its popular sense meaning. It is they who are concerned with it and it is the sense in which they understand it that constitutes the definitive index of the legislative intention, when the statute was enacted [see *D.C.M. v. State of Rajasthan*, 1980 (4) SCC 71 = 1980 (6) E.L.T. 383 (S.C.)]. One of the essential factors for determining whether a product falls Chapter 30 or not is whether the product is understood as a pharmaceutical product in common parlance [see *C.C.E. v. Shree Baidyanath Ayurved*, 2009 (12) SCC 413 = 2009 (237) E.L.T. 225 (S.C.)]; *Commissioner of Central Excise, Delhi v. Ishaan Research Lab (P) Ltd.* - 2008 (13) SCC 349 = 2008 (230) E.L.T. 7 (S.C.)]...."

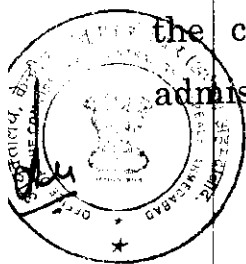
31....

32. Moreover, the functional utility and predominant or primary usage of the commodity which is being classified must be taken into account, apart from the understanding in common parlance [see *O.K. Play (India) Ltd. v. C.C.E.*, - 2005 (2) SCC 460 = 2005 (180) E.L.T. 300 (S.C.); *Alpine Industries v. C.C.E., New Delhi* - 1995 Supp. (3) SCC 1; *Sujanil Chemo Industries v. C.C.E. & Customs* - 2005 (4) SCC 189 = 2005 (181) E.L.T. 206 (S.C.); *ICPA Health Products (P) Ltd. v. C.C.E.* - 2004 (4) SCC 481 = 2004 (167) E.L.T. 20 (S.C.); *Puma Ayurvedic Herbal* (supra); *Ishaan Research Lab (P) Ltd.* (supra); *C.C.E. v. Uni Products India Ltd.*, 2009 (9) SCC 295 = 2009 (241) E.L.T. 491 (S.C.)]."

6.8 I find that the Hon 'ble Supreme Court in the case of Westinghouse Saxby Farmer Ltd Vs. Commissioner of C.Ex, Calcutta reported in 2021 (376) ELT 14 (SC) relied upon the judgement in the case of A. Nagaraju Bros Vs. State of Andhra Pradesh (*supra*) and held that case of Commissioner of C.Ex., Vs., Wockhardt Life Sciences Ltd reported in 2012 (277) ELT 299 (SC) the Hon'ble Supreme Court had held at para 38 of their judgement that "*Therefore, the respondents ought not to have overlooked the 'predominant use' or 'sole/principal use' test acknowledged by the General Rules for the Interpretation of the Schedule*".

7. From the above judgements of the Apex Court, it emerges that for determining the classification of a product the common parlance test and the predominant/principle use test has to be applied, when other methods do not help. In the present case, I find that the appellant have submitted a copy of purchase order received by them from their buyer. I find that in the purchase order the product description is mentioned as "Printed Pouches". The appellant have also submitted copies of a few Central Excise invoice issued by them as well as copies of Form CT-3 issued by the department to the appellant. I find that both, in the Central Excise Invoice as well as in the CT-3, the product is described as 'Laminated Printed Pouch'. Therefore, it is clear that the product is commercially known and traded as 'Pouch' and not as bag. Consequently, there is no merit in the proposition of classifying the product under the description of 'Sacks and bags' on the ground that as per the dictionary meanings bag is a synonym of pouch and is a broader term to address a pouch and all other containers.

8. The appellant have in support of their stand also relied upon the decisions in the case of Simplex Packaging Ltd reported in 2017 (345) ELT 659 (Tri.-Del) and Packaging India Pvt Ltd reported in 2017 (5) TMI 1078 - CESTAT, New Delhi. I find that in the case of Simplex Packaging Ltd, though the dispute was with regards to Cenvat Credit, one of the product involved was Laminated Plastic Pouch and the classification of the product under CETH 39239090 was not disputed by the department. Similarly, in the case of Packaging India Pvt Ltd, the issue was regarding the admissibility of area based exemption. In this case too, one of the products



involved was Laminated Pouch of CETH 39239090 and the classification of the same was not disputed by the department. While these case laws do not have any direct relation to the issue involved in the present appeal, the fact that the classification of Laminated Plastic Pouch under CETH 39239090 was accepted by the department is implicit from the said cases.

9. I further find that the appellant was subjected to audit by the department in January, 2015 covering the period from October, 2013 to November, 2014. The appellant was also subjected to audit during January, 2016 covering the period from December, 2014 to December, 2015. However, I find that during the course of these audits, there was no objection as regards the classification of the goods in dispute in the present appeal. I further find that while the extended period of limitation has been invoked in terms of Section 11A (4) of the Central Excise Act, 1944, the demand has been issued only for the period from March, 2016 to June, 2017, the reasons which are not forthcoming either from the SCN or the impugned order. From the documents submitted by the appellant, I find that their records for the period from October, 2013 to November, 2014 were audited by the departmental officers on 06.01.2015 and 07.01.2015. Therefore, without going into the other aspects concerning invoking of extended period of limitation, I am of the view that for the period subsequent to 06.01.2015 the extended period of limitation cannot be invoked.

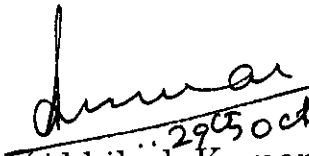
9.1. I also find that the appellant were classifying the goods under heading 39239090 for long which was also indicated in the periodical returns filed with the department. Considering these facts, I am of the view that the extended period cannot be invoked against the appellant as there is no suppression or mis-statement on their part.

10. In view of the facts and discussions in the foregoing paragraphs, I am of the considered view that the proposal of the department to change the classification of Laminated Plastic Pouch without adducing any substantial material except relying upon some dictionary meanings is not legally tenable, particularly in view of the fact that the proposed change in


classification has been ostensibly prompted by the higher rate of duty under CETH 39232990. I am, therefore, of the view that the adjudicating authority has erred in ordering change in classification from CETH 39239090 to CETH 39232990. Consequently, the demand for Central Excise duty, Interest and Penalty also do not survive.

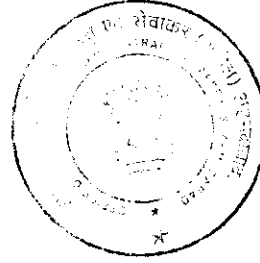
11. In view of the above discussions, I set aside the impugned order for being not legal and proper and allow the appeal filed by the appellant.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant stands disposed off in above terms.

  
(Akhilesh Kumar)  
Commissioner (Appeals)  
Date: .10.2021.

Attested:

  
(N.Suryanarayanan. Iyer)  
Superintendent(Appeals),  
CGST, Ahmedabad.



BY RPAD / SPEED POST

To  
M/s. Colourflex Laminators Ltd.,  
821, Near Kothari Char Rasta,  
Village : Santej, Taluka : Kalol,  
District : Gandhinagar – 382 721

Appellant

The Additional Commissioner,  
CGST & Central Excise,  
Commissionerate : Gandhinagar

Respondent

Copy to:

- 1) The Chief Commissioner, Central GST, Ahmedabad Zone.
- 2) The Commissioner, CGST, Gandhinagar.
- 3) The Assistant Commissioner (HQ System), CGST, Gandhinagar.

(for uploading the OIA)

4) Guard File.

5) P.A. File.