

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

BENCH

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

Preamble

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

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

Name of the applicant	Sadguru Seva Paridhan Pvt Ltd
Address	211 Mahatma Gandhi Road, Kolkata - 700007
GSTIN	19AAGCS8830H1ZZ
Date of application	August 30, 2019
Case No	38 of 2019
ARN	AD190819004623U
Order number and date	33/WBAAR/2019-20 dated 11/11/2019
Applicant's representative	Sri Saurabh Bagaria, Advocate Sri Indranil Banerjee, Advocate

1. Admissibility of the Application

1.1 The Applicant, stated to be a manufacturer of fusible interlining cloth seeks a ruling on whether it is classifiable in Chapters 50 to 55 of the First Schedule of the Customs Tariff Act, 1975 (hereinafter the Tariff Act) or under Heading 5903 of the Tariff Act.

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

1.3 The Applicant further submits that the question raised in the Application is neither decided by nor pending before any authority under any provisions of the GST Act. The concerned officer from the Revenue does not object to the admission of the Application.

1.4 The Application is, therefore, admitted.

2. Submissions of the Applicant

2.1 The Applicant submits that fusible interlining cloth is partially coated with plastic which is used for shirt collars, cuffs, pant belts etc. This partial coating of plastic leads to dotted patterns/designs on the fabric.

2.2 A specimen of the fabric is tested by the National Test House, Govt of India. The test certificate confirms that one side of the sample is coated with polyethylene, and the other non-coated side resembles

cotton. The coating is not continuous. It makes a dotted pattern, but light does not pass through almost 95% of the sample. The Applicant has submitted a sample of the cloth for an appreciation of the physical appearance of the product.

2.3 The Applicant argues that the above test confirms that the product, which it describes as “fusible interlining cloth”, is partially coated with polyethylene with a dotted pattern and it should fall within the exclusion No. 4 of Chapter Note 2(a) to Chapter 59 of the Tariff Act. It should be appropriately classifiable in Chapters 50 to 55, depending on the textile material the fabric is made of.

2.4 The Applicant submits that Chapter Note 2(a) to Chapter 59 of the Tariff Act was never intended to apply to textile fabrics partially or discretely coated with plastic. Between 01/03/1989 and 15/03/1995, fusible interlining cloth partially coated with plastic was classifiable under Heading 5903 because of one Chapter Note 2(c) to Chapter 59 of the Tariff Act. It classified textile fabrics partially coated with plastic by dot printing process under Heading 5903. The said Note 2(c), however, was deleted wef 16/03/1995.

2.5 The Applicant also makes submissions on the legal position in this regard, as appears from the circulars of the CBEC issued from time to time and their judicial scrutiny. Way back in 1988, the CBEC issued Circular No. 24/Coated Fabrics/88-CX.1 dated 02/09/1988, read with the subsequent telex dated 30/09/1988. The CBEC concluded that coated fabrics were classifiable under Heading 5903 provided:

- i) The product should have a continuous and adherent film or layer of plastic on one side of the fabric surface,
- ii) The fabric should be impervious,
- iii) The product should satisfy the conditions prescribed in Note 2 to Chapter 59.

2.6 After insertion of Note 2(c) to Chapter 59 of the Tariff Act, the CBEC issued Circular No. 5/89 dated 15/06/1989 which clarified that prior to insertion of Note 2(c) to chapter 59 the product described in para 2.2 and 2.3 had been classifiable under Chapter 50 to 55, depending on the textile materials.

2.7 After deletion of the above Note 2(c), the CBEC issued Circular No. 433/66/98-CX dated 27/11/1998. It concluded that deletion of Chapter Note 2(c) to Chapter 59 did not affect the classification of fusible interlining cloth. It would continue to be classified under Heading 5903. The applicant refers to the judgment delivered by a single bench of the Madras High Court in the case of Madura Coats [2004 (163) ELT 164 (Mad)], which struck down the aforesaid circular being ultra vires and contrary to section 37B of the Central Excise Act, 1944.

2.8 In Madura Coats (supra) the court holds that a bare perusal of the aforesaid provisions makes it clear that but for Chapter note 2(c), which was introduced under the Finance Act, 1989, such fusible interlining would be coming within Chapters 50 to 55 and only by virtue of introduction of Chapter note 2(c) to Chapter 59 such fusible interlining would be coming within the scope of Chapter 59.03. Once such Chapter Note 2(c) was omitted under the Finance Act, 1995, it is evident that the position which was available prior to the introduction of such Chapter Note 2(c) revives. In such background, the court observes that issuance of the Circular is clearly against the statutory provisions.

2.9 The Applicant also refers to the order dated 30/01/2019 of the AAR, Uttarakhand, in the case of Goodswear Fashion Pvt Ltd [2019 (23) GSTL 154], where the AAR rules that polyester viscose interlining woven fabric, partially coated with plastic which leads to plastic coated pattern that is visible on its one side, does not fall under HSN 5903, but falls under Chapters 50 to 55, 58 or 60 of the Tariff Act.

2.10 The Applicant also submits that the provisions of Section Note 1(h) to Section XI do not automatically apply to all the fabrics coated with plastic that are not classifiable under Chapter 59. Chapter Note 2(a)(4) to Chapter 59 makes it clear that fabrics partially coated with plastic and bearing designs usually fall within

Chapters 50 to 55, 58 or 60. Furthermore, Chapter 39 does not include the fabrics partially coated with plastic.

2.11 The Applicant also draws attention to rule 3(b) of the General Rules of Interpretation. Mixtures or composite goods consisting of different materials shall be classified as if they consisted of the material or component that give them their essential character. In the fusible interlining cloth sample cotton fabric by weight ranges from 70% to 85%. It is, therefore, classifiable under Chapter 52.

3. Submissions of the concerned officer from the Revenue and reply of the Applicant

3.1 The concerned officer from the Revenue examines the question from the point where the Applicant concludes its argument. It appears from the test report that the uncoated side of the Applicant's sample is made of cotton. If it were an article classifiable under Chapters 50 to 55, depending upon the yarn used for weaving the fabric, it should be classifiable under any Heading of Chapter 52.

3.2 As the headings relating to woven fabrics of cotton other than 5212 deal primarily with specific articles like a dhoti, saree, etc., the Applicant's product can only be considered under Heading 5212. They include fabrics that are bleached, unbleached, dyed, of yarns of different colours or printed fabrics. Sub-heading Notes to Section XI discuss the meaning of such treatments on the woven fabrics. They do not include coating with plastic – partial or otherwise. The fabrics, coated with plastic, are classified under Chapter 59. As evident from Section Note 8(b) to Section XI, goods covered under Chapters 50 to 60 and the goods covered under Chapters 56 to 59 are mutually exclusive. The Applicant's product is, therefore, not classifiable under Chapter 52.

3.3 The concerned officer from the Revenue has also distinguished the Single Bench judgment in the matter of Madura Coats (supra). He argues that the decision relates to a circular issued by the CBEC under the Central Excise Act, 1944, now repealed. The court holds that the circular is illegal and ultra vires. In any case, a circular issued under the repealed Act does not apply to a provision under the GST Act. The above judgment is, therefore, of little relevance in the present context.

3.4 The concerned officer from the Revenue also points out that the test report does not describe the sample as a 'fusible' article. The judgment referred to above is concerned with a 'fusible' interlining, and, therefore, not applicable in the present context.

3.5 In the opinion of the concerned officer, the Applicant's product is classifiable under Heading 5911. The product is used for providing hardness to the collars, cuffs etc. It is, according to the concerned officer, a technical purpose. Heading 5911 includes textile products and articles for technical use, specified in Chapter Note 7 to Chapter 59. Chapter Note 7(a)(i) to Chapter 59 includes textile fabrics coated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of the kind used for other technical purpose. The Applicant's product fits the above description.

3.6 In its reply the Applicant rebuts that the fusible interlining is classifiable under Heading 5911. It is a residuary group, which covers the goods that do not fall in any other heading of Section XI. The Applicant submits that it is against all principles of classification to consign a product to the orphanage of the residuary clauses when it can be reasonably classifiable under Heading 5212. It refers to the case of Dunlop India [(1983) 13 ELT 1566 (SC)]. Furthermore, the word 'technical' derives its meaning from the accompanying words such as card clothing, narrow fabrics made of velvet impregnated with rubber for covering weaving spindles and the like. The fusible interlining cloth is not a 'technical' article in that sense.

4. Observations and findings of the Authority

4.1 The purpose of classification is to ascertain the applicability of any entry, specifying the rate of tax or exemption from payment of tax, under the notifications issued under the GST Act. Explanation to the Rate Notification No. 1/2017-CT (Rate) dated 28/06/2017 (the corresponding State Notification No. 1125-FT dated 28/06/2017), as amended from time to time, mentions that Tariff item, sub-heading, heading and Chapter in the Rate Notification refer to those specified in the Tariff Act. For interpreting the Rate Notification, so far as may be, the Rules of Interpretation, Section and Chapter Notes and the General Explanatory Notes to the Tariff Act may be applied. The Tariff Act is aligned to the Harmonised System of Nomenclature, developed and maintained by the World Customs Organisation, Brussels (hereinafter the HSN Code). It is a settled position of law that the reference to the Explanatory Notes to the HSN Code is admissible for answering any question of classification.

4.2 Dispute regarding classification of fusible interlining cloth, which is partially coated with plastic by the dot printing process, has repeatedly come up before different authorities. In its Circular No. 24/Coated Fabric/88-CX.1 dated 02/09/1988, CBEC came up with an answer by referring to the production process. The finished woven fabric passed over pre-heated rolls having a high surface temperature. The heated substance was then pressed to a printing roll having fine dots engraved on it. High-density polyethylene powder was taken in a hopper that sat on the engraved printing roll, filling the dots. As a result, the pre-heated fabric got printed with plastic dots. The powder in between the engraved dots was scrapped by a doctor blade provided in the hopper. The dot printed cloth then passed through a heated chamber where the plastic melted and fused with the piece of cloth. CBEC concluded that the fusible interlining merited classification under Heading 5903 if the above printing process covered one side of the fabric with a continuous and adherent film or layer of plastic that made the fabric impervious.

4.3 In Circular No. 5/89 dated 15/06/1989, CBEC discussed the significance of the insertion of Chapter Note 2(c) in Chapter 59 by the Finance Act, 1989. After the insertion of the said Note 2(c) the fusible interlining cloth made by discrete coating with plastic by dot printing process became classifiable under Heading 5903. Before that, CBEC clarified, such cloth had been covered under Chapters 52 to 55, depending upon the textile materials used.

4.4 Chapter Note 2(c) to Chapter 59 was omitted wef 16/03/1995. CBEC issued Circular No. 433/66/98-CX-6 dated 27/11/1998 to clear the air about the classification of fusible interlining cloth in the context of removal of Chapter Note 2(c) from Chapter 59. It drew attention to the Finance Act, 1995 that had broadly aligned the Central Excise Tariff to the Tariff Act. The significance of the alignment was that the Explanatory Notes to the HSN Code would now be applicable to clarify matters of classification under the Excise Act as well. The Explanatory Notes to the HSN Code or the Chapter Notes to Chapter 59 of the Tariff Act had not contained any provision like Chapter Note 2(c) to Chapter 59 of the Central Excise Tariff Act, 1985. The said Chapter Note 2(c) was, therefore, deleted by the Finance Act, 1995. CBEC, however, maintained that fusible interlining cloth partially coated with plastic would continue to be classified under Heading 5903. No doubt, Circular No. 433/66/98-CX-6 dated 27/11/1998 differs from Circular No. 5/89 dated 15/06/1989.

4.5 The difference arises from the application of the provisions of the Explanatory Notes to the HSN Code. In the said Explanatory Notes to Chapter 59 textile fabrics which were spattered by spraying with visible particles of thermoplastic material and were capable of providing a bond to other fabrics or materials on the application of heat and pressure were classifiable under Heading 5903. According to Circular No. 433/66/98-CX-6 dated 27/11/1998, such classification should be treated as an exception to Chapter Note 2(a)(4) to Chapter 59.

4.6 While striking down the aforesaid circular as ultra vires and contrary to section 37B of the Central Excise Act, 1944, the learned Single Bench of the Madras High Court in the case of Madura Coats (supra) took no notice of the applicability of the Explanatory Notes to the HSN Code in deciding a classification issue under the Excise Tariff. Although not stated explicitly, the court held the interpretation of the law, as made in Circular No. 5/89 dated 15/06/1989, a binding legal provision, and the contrary view illegal and ultra vires.

4.7 Upon appeal the Division Bench of the Madras High Court, in its order dated 05/01/2009 (WA No. 507 of 2005), corrects the extreme position taken by the Single Bench. Although the impugned circular is set aside, it is no longer considered illegal or ultra vires. The learned Division Bench refrains from expressing any view on the legality of the said circular so that the assessing officer can apply his judgment without any bias. The court, however, sets aside the impugned circular that the assessing officer has quoted in a show-cause notice in violation of the provisions of section 37B of the Central Excise Act, 1944. Such setting aside of the impugned circular restores the show cause notice, which has otherwise been vitiated by reference to the aforesaid circular. The Division Bench categorically states that it is not done on the ground that the circular is ultra vires.

4.8 It, therefore, appears that reference to the Single Bench judgment in the case of Madura Coats (supra) does not help in deciding the classification of the Applicant's product. The fact that CBEC appealed against the Single Bench judgment in 2005 also indicates that its view in this matter has also evolved from the time it issued Circular No. 5/89 dated 15/06/1989. It continues defending Circular No. 433/66/98-CX-6 dated 27/11/1998 at the court and has not made any further course correction. Circular No. 433/66/98-CX-6 dated 27/11/1998, therefore, reflects CBEC's view on the classification of fusible interlining cloth as on date.

4.9 Tariff under the GST Act has been aligned to the Tariff Act since the GST came into effect. As explained in para no. 3.1, the Explanatory Notes to the HSN Code is, therefore, applicable for answering a classification issue under the GST Act. In this context, Circular No. 433/66/98-CX-6 dated 27/11/1998 of CBEC is relevant and has persuasive value.

4.10 Chapter Note 2(a)(4) to Chapter 59 says that fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments are excluded from Heading 5903 and are usually covered in Chapter 50 to 55, 58 or 60, depending on the materials used. At the same time, according to the Explanatory Notes to the HSN Code, textile fabrics which are spattered by spraying with visible particles of thermoplastic material and are capable of providing a bond to other fabrics or materials on the application of heat and pressure are classifiable under Heading 5903. According to Circular No. 433/66/98-CX-6 dated 27/11/1998 of CBEC, such classification should be treated as an exception to Chapter Note 2(a)(4) to Chapter 59. It appears from the production process described in para no. 3.2 that fusible interlining cloth satisfies the conditions for placing it in the category of the above exception.

4.11 Nowhere in its Application or submissions – written or oral – the Applicant takes the view that Circular No. 433/66/98-CX-6 dated 27/11/1998 of CBEC has erred in treating fusible interlining cloth as a category of textile fabric that is spattered by spraying with visible particles of thermoplastic material and is capable of providing a bond to other fabrics or materials on the application of heat and pressure. In the absence of any such submission, it is reasonable to agree with the view expressed by CBEC in Circular No. 433/66/98-CX-6 dated 27/11/1998 that fusible interlining cloth is classifiable under Heading 5903.

4.12 The Applicant's reference to rule 3(b) of the General Rules of Interpretation is of no use, as recourse to such rules is permitted under rule 1 of the said General Rules only if the terms of the headings and Section Notes or Chapter Notes do not otherwise require. It is evident from the above discussion that the Applicant's product is classifiable under Heading 5903 in terms of the Explanatory Notes to Chapter 59. Rule 3(b) of the General Rules of Interpretation is, therefore, not applicable.

4.13 Validity of other arguments and counterarguments of the Applicant and the concerned officer from the Revenue are not separately discussed, as they are not relevant in the context of the above observations and findings.

Based on the above discussion, we rule as under:

RULING

The Applicant's product, namely fusible interlining cloth, is classifiable under Heading 5903 in Chapter 59 of the First Schedule of the Customs Tariff Act, 1975.

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



(SUSMITA BHATTACHARYA)

Member

West Bengal Authority for Advance Ruling



(PARTHASARATHI DEY)

Member

West Bengal Authority for Advance Ruling