

**HIGH COURT OF DELHI**

**Bench: Justice Yashwant Varma and Justice Dharmesh Sharma**

**Date of Decision: 16 November 2023**

W.P.(C) 5933/2019

**ASSOCIATION OF TECHNICAL TEXTILES**

**MANUFACTURERS AND PROCESSORS & ANR.**

**..... Petitioners**

**Versus**

**UNION OF INDIA & ORS**

**..... Respondents**

**Legislation:**

Section 168 of the Central Goods & Services Tax Act, 2017 (CGST Act)

Customs Tariff Act, 1975

Environment Protection Act, 1986

First Schedule to the Customs Tariff Act, 1975

**Subject:** Classification dispute under GST pertaining to the classification of polypropylene woven and non-woven bags, challenging the validity of Circular No. 80/54/2018-GST dated 31.12.2018 issued by the Tax Research Unit.

**Headnotes:**

Goods and Services Tax – Classification of Polypropylene Woven and Non-Woven Bags – Challenge against Circular No. 80/54/2018-GST dated 31.12.2018 – Circular quashed due to lack of authority of Tax Research Unit to issue such clarifications under CGST Act. [Paras 1, 3, 4, 7, 23]

Judicial Authority – Power of Tax Research Unit under Central Goods & Services Tax Act, 2017 – TRU lacks statutory authority to issue clarifications or directives on classification of goods – Only the Central Board of Indirect Taxes and Customs empowered to issue such directions. [Paras 5, 6, 23]

Tax Classification – Dispute over Classification of Polypropylene Bags – Whether to be classified under plastic goods (Chapter 39) or textiles (Chapters 56 and 63) – Matter left open for competent authority due to lack of comprehensive material and industry-wide ramifications. [Paras 10-12, 26-28]

Statutory Interpretation – Interpretation of Customs Tariff Act, 1975 – Notes in Chapter 39 excluding textiles from its ambit – Circular failed to consider distinctions between plastics and textiles as per the Act. [Paras 9, 26]

Judicial Review – Role of Courts in Classification Disputes – Courts to avoid definitive rulings on classification without adequate material – Importance of addressing industry-wide impacts and statutory framework in classification disputes. [Paras 27, 28]

Decision – Quashing of Impugned Circular No. 80/54/2018-GST dated 31.12.2018 – Petitioners allowed to adopt permissible legal measures for resolving classification issue. [Para 29]

### **Referred Cases with Citations**

- U.S Polytech – 2019 SCC Online WB AAAR-GST 18
- JJ Fabrics – 2018 SCC Online Ker AAR-GST 9
- SMVD Polypack Pvt. Ltd – 2018 SCC Online Ker AAR-GST 9
- Kanniwadi Nagarajan Sharmila – 2018 SCC Online TN AAR-GST 22
- Raj Pack Well Ltd v. Union of India – 1989 SCC Online MP 377
- RLJ Woven Sacks Pvt. Ltd – 2019 SCC Online WB AAAR-GST 14
- Mahalaxmi Polypack Private Ltd – 2019 SCC Online Utt AAR-GST 2
- Mount Fab Packaging LLP – 2020 SCC Online Guj AAR-GST 101
- Mega Flex Plastics Ltd & Anr v. Union of India & Ors – 2023 SCC Online Cal 311
- Praveen Mittal vs. UOI – 2009 SCC Online Del 2643
- Union of India & Ors vs. Bharat Forge Ltd & Anr – 2022 SCC Online SC 1018

### **Representing Advocates**

For Petitioners: Mr. V. Lakshmikumaran and Mr. Kunal Kapoor

For Respondents: Ms. Shubhra Parashar, Mr. Virendra Pratap Singh Charak, Mr. Yash Hari Dixit, Mr. Pushpender Singh Charak, Mr. Jitendra Kumar Tripathi (for UOI/R-1); Mr. Akash Vajpai, Ms. Shweta Shandilya (for R2 and R-3)

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**HON'BLE MR. JUSTICE YASHWANT VARMA**

**HON'BLE MR. JUSTICE DHARMESH SHARMA**

### **JUDGMENT**

1. The writ petition has been preferred seeking the following reliefs:-

“a) Issue a writ of certiorari, or any order or direction in the nature thereof, quashing paragraphs 7.1, 7.2, 7.3 and 7.4 of the Circular No. 80/54/2018-GST dated 31.12.2018 issued by the Tax Research Unit of the Respondent No.1;

b) Issue any other suitable writ, order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case;

c) Pass such further orders/writs and other reliefs as the nature and circumstances of the case may require;”

2. The first petitioner, which is an association of technical textiles manufacturers and the second petitioner which is a member of the said association, are principally aggrieved by the Circular dated 31 December 2018 issued by the **Tax Research Unit**<sup>1</sup> constituted under the first respondent, and to the extent that it purports to clarify that polypropylene woven and non-woven bags including those laminated with **Biaxially**

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<sup>1</sup> TRU

**Oriented Polypropylene**<sup>23</sup> are liable to be classified as falling under Chapter 39 and more particularly Tariff Heading 3923 forming part of the First Schedule to the **Customs Tariff Act, 1975**<sup>3</sup>. The dispute essentially related to a question of classification of polypropylene woven and non-woven bags under the **Harmonized System of Nomenclature**<sup>4</sup>.

3. The TRU has, on due consideration of the aforesaid issue, clarified that those articles would be classifiable as „*plastic bags*“ under Tariff Heading 3923. The petitioners are aggrieved by the aforesaid Circular, since it contends that polypropylene woven or nonwoven bags are made out of textiles and thus cannot be equated with plastics, which form the subject matter of Chapter 39 of the First Schedule to the 1975 Act.

4. It is also their case that polypropylene non-woven fabric is a textile, which is classifiable under Tariff Heading 5603 comprised in Chapter 56 titled as **“Wadding, Felt and Nonwovens; Special Yarns; Twine, Cordage, Ropes and Cables and Articles Thereof”**. Quite apart from the controversy with respect to classification, and which we shall consider in the subsequent parts of this decision, a challenge is also raised to the authority and jurisdiction of the TRU to issue such a clarification in the first place.

5. Appearing for the petitioners, Mr. Lakshmikumaran, learned counsel drew our attention to Section 168 of the **Central Goods & Services Tax Act, 2017**<sup>5</sup>, and which reads as follows:-

**“168. Power to issue instructions or directions.—(1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.**

(2) The Commissioner specified in clause (91) of Section 2, subsection (3) of Section 5, clause (b) of sub-section (9) of Section 25, sub-sections (3) and (4) of Section 35, sub-section (1) of Section 37, sub-section (6) of Section 39, Section 44, sub-sections (4) and (5) of Section 52, sub-section (1) of Section 143, except the second proviso thereof], clause (l) of sub-section (3) of Section 158 and Section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.”

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<sup>2</sup> BOPP

<sup>3</sup> Act

<sup>4</sup> HSN

<sup>5</sup> CGST Act

6. It was submitted that as would be evident from the above provision, the power to issue orders, instructions or directions to Central Tax Officers stands vested exclusively in the **Central Board of Indirect Taxes and Customs**<sup>6</sup>. It was in that backdrop that Mr. Lakshmikumaran contended that no power stands conferred upon the TRU. According to learned counsel, even if a clarification pertaining to classification were to be issued under the CGST Act, the same could have been achieved only by way of a directive issued by the Board and none other.

7. We note that learned counsels for the respondents could not draw our attention to any provision of the CGST Act, in terms of which the TRU could be said to have been clothed with the authority or jurisdiction to render a clarification with respect to classification of goods and articles. That power clearly appears to stand conferred upon the Board exclusively. We are thus of the considered opinion that no authority vested in the TRU to issue the clarification impugned before us.

8. While this would have been sufficient to dispose of the writ petition on this short ground alone, we proceed further in light of the detailed submissions which were addressed by respective counsels and related to the classification of the article itself.

9. Mr. Lakshmikumaran drew our attention to the title of Chapter 39 of the First Schedule to the 1975 Act and which deals with “**Plastics and Articles Thereof**”. Learned counsel laid emphasis on Notes 1 and 2 thereof and which purports to exclude textile materials which would otherwise fall within the ambit of Section XI of the First Schedule to the 1975 Act. Notes 1 and 2 of the said Chapter are extracted hereinbelow:-

“CHAPTER 39

*Plastics and Articles Thereof*

NOTES

1. Throughout this Schedule, the expression “plastics” means those materials of headings 3901 to 3914 which are or have been capable, either at the moment of polymerisation or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticiser) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence.

Throughout this Schedule, any reference to “plastics” also includes vulcanised fiber. The expression, however, does not apply to materials regarded as textile materials of Section XI.

2. This Chapter does not cover:

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<sup>6</sup> the Board

- (a) lubricating preparations of heading 2710 or 3403;
  - (b) waxes of heading 2712 or 3404;
  - (c) separate chemically defined organic compounds (Chapter 29);
  - (d) heparin or its salts (heading 3001);
  - (e) solutions (other than collodions) consisting of any of the products specified in headings 3901 to 3913 in volatile organic solvents when the weight of the solvent exceeds 50% of the weight of the solution (heading 3208); stamping foils of heading 3212; (f) organic surface active agents or preparation of heading 3402;
  - (g) run gums or ester gums (heading 3806);
  - (h) prepared additives for mineral oils (including gasoline) or for other liquids used for the same purposes as mineral oils (heading 3811);
  - (ij) prepared hydraulic fluids based on polyglycols, silicones or other polymers of Chapter 39 (heading 3819);
  - (k) diagnostic or laboratory reagents on a backing of plastics (heading 3822);
  - (l) synthetic rubber, as defined for the purpose of Chapter 40, or articles thereof;
  - (m) saddlery or harness (heading 4201) or trunks, suit--cases, hand--bags or other containers of heading 4202; (n) plaits, wickerwork or other articles of Chapter 46;
  - (o) wall coverings of heading 4814;
  - (p) goods of Section XI (textiles and textile articles);
  - (q) articles of Section XII (for example, footwear, headgear, umbrellas, sun umbrellas, walking-sticks, whips, riding-crops or parts thereof);
  - (r) imitation jewellery of heading 7117;
  - (s) articles of Section XVI (machines and mechanical or electrical appliances);
  - (t) parts of aircraft or vehicles of Section XVII;
  - (u) articles of Chapter 90 (for example, optical elements, spectacle frames, drawing instruments);
  - (v) articles of Chapter 91 (for example, clock or watch cases);
  - (w) articles of Chapter 92 (for example, musical instruments or parts thereof);
  - (x) articles of Chapter 94 (for example, furniture, lamps and lighting fittings, illuminated signs, prefabricated buildings);
  - (y) articles of Chapter 95 (for example, toys, games, sports requisites); or
  - (z) articles of Chapter 96 (for example, brushes, buttons, slide fasteners, combs, mouth--pieces or stems for smoking pipes, cigarette holders or the like, parts of vacuum flasks or the like, pens, propelling pencils, and monopods, bipods, tripods and similar articles.”
10. It would thus appear that while Tariff Heading 3923 speaks of articles for the conveyance or packing of goods, it would essentially extend to articles made

of plastics and read holistically exclude textiles completely therefrom. Tariff Heading 3923 is reproduced hereinbelow:-

<b>“3923</b>		<b>Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics</b>			
3923 10	-	<i>Boxes, cases, crates and similar articles:</i>			
3923 10 10	- - -	Plastic containers for audio or video cassettes, cassette tapes, floppy disk and similar articles	kg	<sup>6</sup> [15%]	-
3923 10 20	- - -	Watch-box, jewellery box and similar containers of plastics	kg	<sup>6</sup> [15%]	-
3923 10 30	- - -	Insulated ware	kg	<sup>6</sup> [15%]	-
3923 10 40	- - -	Packing for accommodating connectors	kg	<sup>6</sup> [15%]	-
3923 10 90	- - -	Other	kg	<sup>6</sup> [15%]	-
	-	<i>Sacks and bags (including cones):</i>			
3923 21 00	- -	Of polymers of ethylene	kg	<sup>6</sup> [15%]	-
3923 29	- -	<i>Of other plastics:</i>			
3923 29 10	- - -	Of poly (vinyl chloride)	kg	<sup>6</sup> [15%]	-
3923 29 90	- - -	Other	kg	<sup>6</sup> [15%]	-
3923 30	-	<i>Carboys, bottles, flasks</i>			

		<i>and similar articles:</i>			
3923 30 10	- - -	Insulated ware	kg	<sup>6</sup> [15%]	-
3923 30 90	- - -	Other	kg	<sup>6</sup> [15%]	-
3923 40 00	-	Spools, cops, bobbins and similar supports	kg	<sup>6</sup> [15%]	-
3923 50	-	<i>Stoppers, lids, caps and other closures:</i>			
3923 50 10	- - -	Caps and closures for bottles	kg	<sup>6</sup> [15%]	-
3923 50 90	- - -	Other	kg	<sup>6</sup> [15%]	-
3923 90	-	<i>Other:</i>			
3923 90 10	- - -	Insulated ware	kg	<sup>6</sup> [15%]	-
3923 90 20	- - -	Aseptic bags	kg	<sup>6</sup> [15%]	-
3923 90 90	- - -	Other	kg	<sup>6</sup> [15%]	- ”

11. It is however the case of the petitioners that polypropylene woven or non-woven fabric is classified under Chapter 56 falling in Section XI [Textiles and Textile Articles], and which is titled **“Wadding, Felt and Non-Wovens; Special Yarns; Twine, Cordage, Ropes and Cables and Articles Thereof”**. According to the petitioners, polypropylene non-woven fabric is classified under Tariff Heading 5603. The said Heading reads as follows:-

“Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential
(1)	(2)	(3)	(4)	(5)



<b>5603</b>		<b>Nonwovens , whether or not impregnated, coated, covered or laminated</b>			
	-	<i>Of man-made filaments:</i>			
5603 11	-	Weighing not more than 25 g/m <sup>2</sup> :	kg.		-
5603 11 10	-	Crop covers, conforming to IS 16718	kg.	20%	-
5603 11 90	-	Other	kg.	20%	-
5603 12 00	-	Weighing more than 25 g/m <sup>2</sup> but not more than 70 g/m <sup>2</sup>	kg.	20%	-
5603 13 00	-	Weighing more than 70 g/m <sup>2</sup> but not more than 150 g/m <sup>2</sup>	kg.	10%	
5603 14 00	-	Weighing more than 150 g/m <sup>2</sup>	kg.	20%	
	-	<i>Other :</i>			
5603 91 00	-	Weighing not more than 25 g/m <sup>2</sup>	kg.	10%	-
5603 92 00	-	Weighing more than 25 g/m <sup>2</sup> but not more than 70 g/m <sup>2</sup>	kg.	20%	
5603 93	-	<i>Weighing more than 70 g/m<sup>2</sup>but not more than 150 g/m<sup>2</sup></i>			
5603 93 10	-	Mulch Mats, conforming to IS 17355	kg.	10%	-



5603 93 90	- - -	Other	kg.	10%	-
5603 94	- - -	<i>Weighing more than 150 g/m<sup>2</sup></i>			
5603 94 10	- - -	Non-woven Geotextile and articles thereof, Conforming to IS	kg.	20%	-
		16391, IS 16392			
5603 94 20	- - -	Mulch Mats, conforming to IS 17355	kg.	20%	-
5603 94 90	- - -	Other	kg.	20%	-”

12. Our attention was also drawn to Note 3 comprised in Chapter 56 of the First Schedule to the 1975 Act, which reads as under:-

“CHAPTER 56

*Wadding, Felt and Nonwovens; Special Yarns; Twine, Cordage, Ropes and Cables and Articles Thereof.*

NOTES

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3. Headings 5602 and 5603 cover respectively felt and nonwovens impregnated, coated, covered or laminated with plastics or rubber whatever the nature of these materials (compact or cellular).

Heading 5603 also includes nonwovens in which plastics or rubber forms the bonding substance.

Headings 5602 and 5603 do not, however, cover:

(a) Felt impregnated, coated, covered or laminated with plastics or rubber, containing 50 per cent or less by weight of textile material or felt completely embedded in plastics or rubber (Chapter 39 or 40);

(b) Nonwovens, either completely embedded in plastics or rubber, or entirely coated or covered on both sides with such materials, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour (Chapter 39 or 40); or

(c) Plates, sheets or strip of cellular plastics or cellular rubber combined with felt or nonwovens, where the textile material is present merely for reinforcing purposes (Chapter 39 or 40).”

13. On the basis of the article in question being classifiable under Chapter 56, Mr. Lakshmikumaran would submit that it clearly cannot be placed alongside articles of plastic. Our attention was also invited to Tariff Heading 6305 and which also deals with packaging material but made of textiles. Tariff Heading 6305 is extracted hereinbelow:-

Tariff Items	Description of goods	Unit	Rate of Duty	
			Standard	Preferential
(1)	(2)	(3)	(4)	(5)
<b>6305</b>	<b>Sacks and bags, of a kind used for the packing of goods</b>			
6305 10	- Of jute or of other textile bast fibres of heading 5303			
6305 10 10	--- Jute bagging for raw cotton	kg.	10%	-
6305 10 20	--- Jute corn (grains) sacks	kg.	10%	-
6305 10 30	--- Jute hessian bags	kg.	10%	-
6305 10 40	--- Jute sacking bags	kg.	10%	-
6305 10 50	--- Jute wool sacks	kg.	10%	-
6305 10 60	--- Plastic coated or paper cum polythene lined jute bags and sacks	kg.	10%	-
6305 10 70	--- Paper laminated hessian jute	kg.	10%	-
6305 10 80	--- Jute soil savers	kg.	10%	-
6305 10 90	--- Others	kg.	10%	-
6305 20 00	- Of cotton - Of man-made textile materials:	kg.	10%	-
6305 32 00	-- Flexible intermediate	kg.	10%	-

	bulk containers			
6305 33 00	-- Other, of polyethylene or polypropylene strip or the like	kg.	10%	-
6305 39 00	-- Other	kg.	10%	-
6305 90 00	- Of other textile materials	kg.	10%	-

14. Mr. Lakshmikumaran also contended that the **Authority for Advance Rulings**<sup>7</sup> in the following cases had also held that polypropylene bags are liable to be placed under Tariff Heading 6305:

- (a) In the matter of **U.S Polytech**<sup>8</sup>;
- (b) In the matter of **JJ Fabrics**<sup>9</sup>;
- (c) In the matter of **SMVD Polypack Pvt. Ltd**<sup>10</sup>;
- (d) In the matter of **Kanniwadi Nagarajan Sharmila**<sup>11</sup>.

15. According to Mr. Lakshmikumaran, although certain decisions rendered by the AAR have taken a contrary view, the conflict in opinions so rendered could not have been resolved or laid to rest by the issuance of a circular and that too by a body, which has not been statutorily conferred that power.

16. Mr. Lakshmikumaran also sought to distinguish the decision of the Madhya Pradesh High Court in **Raj Pack Well Ltd v. Union of India**<sup>12</sup>, a decision which was cited by the respondents, contending that undisputedly the product which formed the subject matter of that judgment related to HDPE strips and tapes of a width not exceeding 5 mm. According to learned counsel for the petitioners, *Raj Pack Well* neither considered nor decided the interplay between Chapter 39 and Section XI of the First Schedule of the 1975 Act.

17. Appearing for respondent nos. 2 and 3, Mr. Vajpai submitted that the AAR and the **Appellate Authority for Advance Rulings**<sup>13</sup> in various States had held that polypropylene bags, whether laminated with BOPP or not, would be liable to be viewed as plastic bags falling under Tariff Heading 3923 as opposed to 6305 as claimed by the petitioners. He has in terms of a Note,

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<sup>7</sup> AAR

which was placed on the record of these proceedings, referred to the following decisions:-

<sup>8</sup> 2019 SCC Online WB AAAR-GST 18

<sup>9</sup> 2018 SCC Online Ker AAR-GST 9

<sup>10</sup> 2018 SCC Online Ker AAR-GST 9

<sup>11</sup> 2018 SCC Online TN AAR-GST 22

<sup>12</sup> 1989 SCC Online MP 377

<sup>13</sup> AAAR

- (a) In the matter of **RLJ Woven Sacks Pvt. Ltd**<sup>14</sup>;
- (b) In the matter of **Mahalaxmi Polypack Private Ltd**<sup>15</sup>; (c) In the matter of **Mount Fab Packaging LLP**<sup>16</sup>.

18. We note that while both the petitioners as well as the respondents have sought to draw sustenance from various decisions rendered either by the AAR or the AAAR, they were neither cited nor placed before us for our consideration. We thus desist from rendering any observation or comment on the correctness or otherwise of the opinions so rendered.

19. While on the subject of decisions rendered on the question that stands posited, we also deem it apposite to take note of a recent decision of the Calcutta High Court decision in **Mega Flex Plastics Ltd & Anr v. Union of India & Ors**<sup>17</sup>. The Calcutta High Court, on the facts of the said case, while dealing with the aspect of classification of polypropylene leno bags under the 1975 Act, held that polypropylene leno bags were classifiable under Chapter 39 of the 1975 Act, rather than Chapter 63. Although the aforesaid decision presently forms subject matter of an appeal preferred before a Division Bench of the Calcutta High Court, no stay operates thereon.

20. Mr. Vajpai further referred to a decision handed down by a Division Bench of this Court in **Praveen Mittal vs. UOI**<sup>18</sup>, in support of his contention that non-woven polypropylene bags were held to fall

<sup>14</sup> 2019 SCC Online WB AAAR-GST 14

<sup>15</sup> 2019 SCC Online Utt AAR-GST 2

<sup>16</sup> 2020 SCC Online Guj AAR-GST 101

<sup>17</sup> 2023 SCC Online Cal 311

<sup>18</sup> 2009 SCC Online Del 2643

within the ambit of plastic bags. We note that in *Praveen Mittal*, the Division Bench had held as under:-

“9. Having considered the arguments advanced on behalf of the parties, the key question that has to be answered is - whether the non-woven bags made out of polypropylene fibre would fall within the ambit of the expression “plastic bags”? It is an admitted position that the non-

woven bags, which form the subject matter of this writ petition, comprise of 98.3% polypropylene. Consequently, it would not be wrong to say that the non-woven bags in question are essentially non-woven polypropylene bags. The definition of polypropylene given in the New Lexicon Webster's Dictionary makes it clear that propylene is a plastic and is used to make moulded objects in various forms. These forms include plates, fibres, films, ropes and toys. Polypropylene fibres are used for the manufacture of these non-woven bags. Polypropylene film is used for making plastic bags as they are normally understood. Whether it is polypropylene fibre or it is polypropylene film, the end product made out of it would remain to be plastic, provided the end product predominantly contains polypropylene, whether fibre or film. In the present case, the admitted position is that the nonwoven bags comprise of 98.3% polypropylene. Therefore, the conclusion is simple that the end product is nothing but plastic. Since the products manufactured by the petitioner are admittedly bags, they would fall within the expression "plastic bags".

21. However, the aforesaid decision, in our considered opinion, cannot possibly be viewed as being determinative of the issue which was canvassed before us for reasons which follow. We note that the aforesaid judgment was rendered in the context of a ban imposed upon plastic bags by the **Government of National Capital Territory of Delhi**<sup>8</sup> in terms of the provisions of the Environment Protection Act, 1986. In the said case, while dealing with the question of whether nonwoven bags containing polypropylene would fall within the ban that stood imposed, the Department of Environment of the GNCTD took the position that since non-woven bags containing polypropylene to the tune of 98.3% would also constitute a non-biodegradable material, those articles would also fall within the scope of the ban. It was this decision which was ultimately upheld by the Division Bench.

22. The observations as appearing in *Praveen Mittal* are thus liable to be understood and appreciated in the aforesaid backdrop. In any case, we find that the Division Bench was neither called upon to consider the issue of classification of the article in question in terms of the various provisions of the 1975 Act nor was any such finding returned.

23. We have for reasons aforesaid come to conclude that in the absence of a conferral of any power upon the TRU, or it being recognized as being statutorily enabled to issue any clarification or directive under Section 168 of the CGST Act, the circular is liable to be quashed and set aside on this ground alone.

24. We note that both the petitioners as well as the respondents have referred to various decisions handed down by the AAR as well as the AAAR

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<sup>8</sup> GNCTD

of different States. As noticed hereinabove, consequent to a failure on the part of respective counsels to place those decisions for our consideration, we are unable to form any opinion on the views that may have been expressed therein.

25. Notwithstanding the above, we are constrained to observe that divergent or contrary views that may be taken by the appropriate AARs" or AAARs" cannot be rendered a quietus by the issuance of a directive or clarification of the nature which was impugned before us. We, in this regard take note of the following pertinent observations as were rendered by the Supreme Court in **Union of India & Ors vs.**

**Bharat Forge Ltd & Anr<sup>20</sup> :-**

**“50.** In this regard, we must not overlook the consequences of reading the word may in the letter dated 05.09.2017 as casting a mandatory duty. This would bring us to frontally face the question of how the purchaser would go about implementing such a direction. Sections 96 to 103 of the Central Act, as also of the State GST Act do provide for the mechanism of advance ruling. If the purchaser is to include the HSN Code, there must be a mechanism to give effect to what is directed by the High Court, viz., “to clarify the issue with the GST Authorities relating to the applicability of the correct HSN Code of the product and thereafter mention in the NIT”. To describe this as impractical and the direction given being without bearing in mind the conspectus of the statutory provisions of the GST Acts, cannot but be correct. Under the provisions relating to advance ruling, while it is true that the question which can become the subject matter of advance ruling includes questions relating to classification of goods and services, there is a detailed procedure provided in the matter. The matter does not rest with the decision of the original Authority. A right of appeal is provided. The matter may travel to the Supreme Court. The provisions contemplate powers of a civil court in the matter of discovery, adducing of evidence etc. In other words, it is long drawn and elaborate procedure and the direction to „clarify“ with the GST Authorities, as directed by the High Court, can hardly square with the cumbersome and elaborate process detailed in the Chapter relating to the advance ruling. The advance ruling, we notice, is binding on the applicant ordinarily. No doubt, it has a wider impact in circumstances detailed in Section 103(1A). We are at a loss to further understand how in the name of producing a level playing field, the State, when it decides to award a contract, would be obliged to undertake the ordeal of finding out the correct HSN Code and the tax applicable for the product, which they wish to procure. This is, particularly so when the State is not burdened with the liability to pay the tax. The liability to pay tax, in the case before us, is squarely on the supplier. There are adequate safeguards and Authorities under the GST Regime must best secure the interests of the Revenue.

**51.** Shri Amar Dave, learned Counsel for the writ petitioner would contend that the Section 168 of the Central Act can be understood



<sup>20</sup> 2022 SCC Online SC 1018

as the fountainhead of statutory power, using which, the appellants can comply with the impugned direction. The power is vested with the Board, it is pointed out. The appellants have floated a global tender. It means that the bidders can be located at any place. The Officers, who would be the Jurisdictional Officers of the bidders, may not even be known to the appellant.

52. It is difficult to accept the case of the writ petitioner that appellants must seek the „clarification“ contemplated in the impugned Judgment by resorting to Section 168 of the Central Act or the State Act. Section 168 does not expressly provide for right to any person to seek a direction as contemplated therein. Further, we may notice that there is an express power provided in the provisions relating to advance ruling. There is an elaborate procedure to be followed and even right of appeal. At any rate, power under Section 168 is essentially meant for officers to seek orders, instructions or directions besides the Board itself on its own passing orders, in the interest of maintaining uniformity in the implementation of the Act.

53. We cannot ignore the case of the appellant that the Circular cannot bind the supplier and the Circular can be challenged in an appropriate proceeding. Appellants contend that it does not represent a final view, and does not bind the court and a circular which is in the teeth of the statute can have no existence in law. In this regard our attention is drawn to the judgment of this Court in (2008) 13 SCC 1. It is further contended that the circular cannot bind the appellants who are only purchasers of the product. There is no duty cast on the Board under the Central Act or on the Commissioner under the State Act to issue any clarification, as directed in the impugned Judgment. There is no duty cast on the appellants to seek such direction. Therefore, the appellants are right in contending that there is no statutory duty, which could have been enforced in the manner done in the impugned Judgment. There is no public duty which is enforceable.”

All that needs to be observed in this regard is that the conflict of opinion that may exist would have to be resolved by parties taking appropriate steps as contemplated under the CGST Act.

26. We further note that the impugned circular while purporting to convey a position with respect to the classification of non-woven polypropylene bags has rested its conclusions solely on the basis of the provisions contained in Chapter 39. It has neither alluded to Section XI of the First Schedule to the 1975 Act nor has it referred to Chapter 56 thereof. The contention of the petitioners that non-woven polypropylene is an article which would fall within Tariff Heading 5603 was neither questioned nor contested before us by the respondents. In any case, a reading of the impugned circular would establish that it fails to examine the issue on the anvil of the distinction which the 1975 Act appears to construct when it places plastics under Chapter 39 and textiles and articles thereof separately in Section XI, and more particularly,



as was contended by the petitioners in Chapters 56 and 63 of the said enactment. The impugned circular also fails to advert to the Notes placed in Chapter 39, and which in unambiguous terms, exclude textiles from the ambit thereof. For the aforementioned additional reasons, we find ourselves unable to uphold the impugned circular.

27. While we were invited by Mr. Lakshmikumaran to render a final verdict on the issue of classification itself, we find that respective sides have, in this respect, failed to place adequate material on the record. The failure of parties to address the question comprehensively constrains us to desist from rendering a definitive opinion in that respect bearing in mind the industry wide ramifications that may ensue. Courts should avoid expressing an opinion on questions of classification unless they are directly raised and adequate and cogent material placed on the record. Bearing in mind the impact that such a ruling may have, findings in that respect, in any case, should not be founded on material which is tenuous and inadequate

28. We are further of the view that since the writ petition itself stood restricted to the validity of the circular, it would be imprudent for us to hand down a verdict imbued with attributes of finality. We are thus of the considered opinion that the issue of classification should be left open for the consideration of the competent authority in appropriate proceedings.

29. The writ petition shall consequently stand allowed. The impugned circular dated 31 December 2018 is hereby quashed. We leave it open to the petitioners to adopt such measures, insofar as the issue of classification is concerned, as may be permissible in law.

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