IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Mr. Justice Md. Nizamuddin

WPA No. 3667 of 2019

Mega Flex Plastics Ltd. & Anr.
Vs
The Union of India & Ors.

For the Petitioners	:-	**Mr. Vinay Kr. Shraff, Adv.** **Mr. Rahul Dhanuka, Adv.** **Mr. Pratik Samajpati, Adv.** **Ms. Priya Sarah Paul, Adv.** **Ms. Priyanka Sharma, Adv.**
For the Respondents	:-	**Mr. Uday Sankar Bhattacharya, Adv.** **Mr. Vipul Kundalia, Adv.** **Mr. Tapan Bhanja, Adv.** **Mr. Sujit Mitra, Adv.** **Ms. Aishwarya Rajyashree, Adv.** **Mr. Abhirup Maity, Adv.**
For Union of India	:-	**Mr. Vipul Kundalia, Adv.**
For the State	:-	**Mr. Anirban Ray, Ld. Govt. Pleader,** **Mr. Md. T.M. Siddiqui, Adv.** **Mr. Soumitro Mukherjee, Adv.** **Mr. Debasish Ghosh, Adv.** **Mr. Nilotpal Chatterjee, Adv.**
Judgement On	:-	**10.02.2023**

MD. NIZAMUDDIN, J.

Heard learned advocates appearing for the parties.

By this writ petition petitioner has challenged the legality of the impugned order dated 25th October, 2018 passed by the West Bengal Appellate Authority for Advance Ruling and has prayed for two-fold relief, firstly, for declaring the impugned circular no. 80/54/2018-GST dated 31st December, 2018, issued by the Government of India, Ministry of Finance being Annexure – P-9 to the Writ Petition as unconstitutional and secondly, for setting aside the impugned order

dated 25th October, 2018, passed by the West Bengal Appellate Authority for Advance Ruling.

Main issue involves in the instant writ petition relates to a classification disputes of the product in question and refusal by the authority concerned to consider the petitioner's prayer for allowing it to change the classification of Tariff head of its same product under the Central Excise Tariff Act after introduction of the GST Act, 2017.

Facts involve in brief in the instant case as appears from relevant records are as hereunder:

Petitioner is a manufacturer of Polypropylene Leno Bags by weaving polypropylene strips (tapes). Polypropylene is a variety of plastic. The major raw material in manufacture of PP Leno Bags is plastic granules.

Petitioner, before the introduction of the Goods and Services Tax Act, 2017, had voluntarily declared its finished product under the Chapter Heading 3923 29 90 of the Central Excise Tariff Act, 1985 and enjoyed the Duty Drawback. No cogent reason has been shown by the petitioner as to why and how the Tariff Heading of the same product having same composition and involving same process of manufacturing sought to be changed from classification 3923 29 90 to 6305 33 00 except that rate of tax on the same product under the same tariff heading is higher under newly GST regime.

It appears from record that petitioner declared the aforesaid product in foreign market under the Tariff Heading 3923 29 90 and started to clear the same product in the domestic market under the Tariff Heading 6305 33 00 of the First Schedule to the Customs Tariff Act, 1975, as made applicable to GST vide Notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017. Petitioner neither sought for any amendment to DGFT nor cited any reason to the department for such sudden suo moto change of Tariff Heading for only domestic market, in the Tariff Heading from 3923 29 90 to 6305 33 00.

It has been contended by the petitioner that the PP Leno Bags being manufactured by the petitioner are more in the nature of textile product and are specifically covered under Chapter Heading 6305 33 00 of the First Schedule to the Customs Tariff Act, 1975.

Petitioners filed an application for Advance Ruling in Form GST ARA-01 before the West Bengal Authority for Advance Ruling, GST (hereinafter referred to as 'AAR') on 9th April, 2018, seeking an advance ruling on classification of PP Leno Bag under Chapter Heading 63053300 of the said Tariff.

Advance Ruling by its order dated July 6, 2018, held that the PP Leno Bags being manufactured by the petitioner can be classified under Chapter Heading 63053300 of the said Tariff if the same is made from woven polypropylene fabric using strips not exceeding width of 5mm and without any impregnation, coating, covering or lamination with plastics.

Respondent no. 3/CGST authority concerned preferred appeal before the West Bengal Appellate Authority for Advance Ruling against the aforesaid order dated July 6, 2018.

Appellate Authority for Advance Ruling by its order dated October 25, 2018 set aside the order dated July 6, 2018 passed by the AAR and allowed the appeal filed by the respondent no. 3. Pursuant to the order of the AAR, the petitioner made 'under protest' payment of differential tax amounting to Rs.6,57,38,093/- for the period 1st July, 2017 to 23rd November, 2018.

Respondent no. 1 on 31st December, 2018, issued Circular bearing No. 80/54/2018-GST dated December 12, 2018 clarifying that Polypropylene Woven and Non-woven Bags and PP Woven and Non-woven Bags laminated with BOPP would be classified as plastic bags under HS Code 3923 and would attract 18% GST.

It is to be specifically recorded that petitioner in course of hearing of this writ petition did not press for its prayer in the writ petition relating to challenging the constitutional validity of the aforesaid circular.

Relevant portion of the impugned order of the Appellate Authority for Advance Ruling reversing the order of the Authority for Advance Ruling particularly Paragraph Nos. 7-12 of which are relevant are as follows:

"7. The respondent submitted copies of the reports of test conducted by the Central Institute of Plastics Engineering & Technology, Haldia, dated 15.03.2018, the Indian Institute of Packaging, Kolkata, dated 27.03.2018 and Indian Oil Corporation Ltd., Panipat dated 12.03.2018 on his samples of PP Woven Leno Bags. These test reports are based on samples provided by the respondent. It is also seen that in the reports of Central Institute of Plastics Engineering & Technology and the Indian Institute of Packaging i.e. Test Reports dated 15.03.2018 and 17.03.2018, respectively, it is stated that the reports are not to be reproduced without written approval, and references are not considered as supporting evidence.

8. The matter is examined and arguments of Appellant and submissions made by the respondent are considered.

9. Polypropylene Leno Bags are manufactured by the respondent by weaving polypropylene strips (tapes). Polypropylene is a variety of plastic and it is a fact that the respondent declared the Polypropylene Leno Bags voluntarily under Tariff Heading 3923 29 90 and enjoyed the duty drawback. No cogent reason could be offered by the respondent as to why and how the Tariff Heading is now sought to be changed from 3923 29 90 to 6305 33 00.

10. Hon'ble Madhya Pradesh High Court while dealing with the classification of woven sacks made of HDPE tapes and fabrics in the matter of Raj Pack Well Ltd. –Vs- Union of India [1993(41)ECC 285; ECR 351; 1990(50)ELT 201 MP], has rendered the following judgment:-

"..... the process of the manufacture of the HDPE tapes, the earlier judgments of the CEGAT approved by the Supreme Court and accepted by the Department, all clearly go to show that the HDPE bags are the bags woven by the plastic strips and the, therefore, are goods of plastic and the material used for weaving those bags being the strips of plastic made from plastic granules, the strips of plastic used for

weaving the aforesaid HDPE woven sacks has to be classified as an Item under entry 39.20 of Chapter 39 and not under entry 54.06 of Chapter 54. Accordingly the entries of the finished goods have also to be made under the proper Chapter of the Tariff Act treating them as the finished goods made of plastic strips.

In the result we hold that HDPE strips or tapes fall under the Heading 39.20, sub-heading 3920.32 of the Central Excise Tariff Act and not under Heading 54.06, sub-heading 5406.90. Similarly, the HDPE sacks fall into Heading 39.23, sub-heading 3923.90.....”

11. The West Bengal Authority for Advance Ruling failed to take note of the aforesaid judgment of the Hon’ble Madhya Pradesh High Court which is squarely applicable in the instant case. Further, since the respondent declared that Polypropylene Leno Bags manufactured by weaving polypropylene strips (tapes) under Tariff Heading 3923 29 90 for claiming duty drawback, and no explanation could be offered as to why the Tariff Heading should be changed now to 6305 33 00, it is not permissible under the doctrine of equitable estoppels that the respondent is allowed to take such a divergent stand now. The Apex Court has consistently struck and Investment Corporation and Anr. –Vs- Diamond and Gem Development Corporation Ltd. and Anr., AIR 2013 SC 1241.

12. In view of the above discussion, we set aside the Advance Ruling No. 09/WBAAR/2018-19 dated 06.07.2018 pronounced by the West Bengal Authority for Advance Ruling in the matter of M/s. Mega Flex Plastics Ltd., and order that the item Polypropylene Leno Bags (PP Leno Bags) manufactured by the respondent, be classified under Tariff Heading 3923 29 90.

The appeal filed by the Assistant Commissioner, CGST & CX, Division, Howrah Commissionerate thus succeeds and is allowed.”

Crux of the argument of the petitioner in support of its claim for changing the head of classification for the purpose of tariff rate for its product Polypropylene strips (tapes) is that though it is manufactured from plastics since it is less than 5mm in width as such it should be treated as textile product while the very same product manufactured having same composition and manufacturing of it involves same procedure was claimed by the petitioner

for a long time as plastic products prior to introduction of GST regime of classification and never contended that the said classification was not correct.

In support of its contention and claim of transfer of Tariff Head and challenging the impugned order of the Appellate Authority of the Advance Ruling petitioner relies on some reports of test conducted by several Institutes which has been discussed by the Appellate Authority. Petitioner also relies on several decisions on different propositions of law including that doctrine of estoppels should not be made applicable in the case of the petitioner.

Judgments relied upon by the petitioners are as hereunder:

(i) Mauri Yeast India Pvt. Ltd. –Vs- State of U.P reported in 2008 (225) E.L.T. 3231 (SC) on the proposition of law that the scientific entry in the schedule to a taxing statute over rides a general and residual entry.

(ii) Chief Information Commissioner –Vs- State of Manipur reported in (286) E.L.T. 485 (S.C.) on the proposition of law that no statute should be interpreted in such a manner as to render a part of it redundant or surplusage.

(iii) Diwan Brothers –Vs- Central Bank of India reported in AIR 1976 SC 1503 on the proposition of law that literal interpretation will prevent any interpretation of taxing statute.

(iv) Westinghouse Saxby Farmer Ltd. –Vs- Commissioner of Central Excise, Calcutta reported in 2021 (376) E.L.T. 14 (S.C.) on the proposition of law that petitioner can change classification at any stage and no estoppels/res judicata principle will apply for claiming correct classification.

(v) Parley Agro (P) Ltd. –Vs- Commissioner of Commercial Taxes Trivandrum reported in 2017 (352) E.L.T. 113 (S.C) on the proposition of law that expert opinion cannot be ignored in the absence of any contradictory finding by another expert.

(vi) State of Madhya Pradesh –Vs- Marico Industries Ltd. reported in 2016 (388) E.L.T. 335 (S.C) on the proposition of law that burden of proof is on the

taxing authorities to show that the particular case or item in question is taxable in the manner claimed by them.

Learned advocate appearing for the respondents opposing the writ petition submits as hereunder:

It is admitted factual position that the Chapter-39 of the Tariff Act covers 'Plastics and articles thereof' whereas the Chapter-63 of the Tariff Act covers 'Other made up textile articles, sets, worn clothing and worn textile articles, rags'. Sacks and bags under Chapter Heading 39 of the Tariff Act are the plastic articles.

HDPE bags are the bags woven by the plastic strips and thereof, the said products are the product of plastic and the material is made from plastic granules. As such, the HDPE strips fall under the Chapter Heading 3920 sub-heading 3920.32 of the Central Excise Tariff Act and not under the Heading 6305 33 00. Similarly, HDPE sacks fall into the heading 39.23.

Before introduction of the GST regime, the rate of Duty under the Tariff Heading 3923 29 90 and 6305 33 00 both were 12.5%. however, in present regime of GST the rate of tax under the Tariff Heading 3923 29 90 is 18 % and under the Tariff Heading 6305 33 00 it is 5% or 12% depending upon the sale value of the products whether exceed Rs.1000/- per piece or not.

By Circular No. 80/54/2018-GST dated 31st December, 2018, the Board only clarified the classification of the Polypropylene Woven and Non-woven Bags under Chapter Heading 3923 as the finished goods which is manufactured from HDPE strips as raw materials. After discussing the relevant Chapters, it has also clarified that the said product has been classified under the HSN code 3923 which attracts 18% GST.

The writ petitioners have not been able to demonstrate as to on what basis they are seeking change of the classification of its finished product after the introduction of GST and it appears that petitioner has no basis for the sudden

suo moto change of classification of the same finished products of the petitioner for the purpose of Tariff Head when the petitioner itself has been using the classification under the Tariff Head 3923 of its same finished products voluntarily for a long period of time prior to introduction of GST regime.

From July 1, 2017, GST laws were to be made applicable and there were some changes in classification of goods and rate of GST, however, as regards to the instant case, the Tariff Head 6305 was always available in said CETA but in spite of that the writ petitioner classified their products under the Tariff 3923. The classification of good under the Tariff Head 6305 is exactly similar to the Tariff Head 6305 of the Customs Tariff Act which is made applicable under the GST Act. Therefore, as regard to Tariff Head 6305, there is no change in the classification/description of goods before and after the introduction of GST regime. Therefore, the claim of the petitioner that from 1st July, 2017 the classification of goods and rate of taxation of goods was highly varied does not hold good at least in respect of the products in question, in this instant writ petition.

To qualify under Chapter sub-heading 6305 33 00 the goods i.e., Bags/sack should be made of "man-made textile material of polyethylene or polypropylene strip or the like", whereas for qualification under the Chapter sub-heading 3923 29 990 the goods i.e., Bags/sack should be made of plastics and articles thereof. In the instant case, the petitioner used the raw materials like polypropylene to manufactured the extruded film which is again slitted to prepare strips. Such strips are used to manufacture Bags/sacks, by way of weaving the same. The moot point is that the Bags/sacks are not manufactured out of textile material as defined under Chapter sub-heading 6305 of the Tariff Act and is rather made of woven strips manufactured out of Polypropylene (i.e., made of plastics) as defined under Chapter sub-heading 3923. Hence, the impugned goods are clearly classified under Chapter heading 3923.

It is pertinent to mention that the Note 2 (p) of the Chapter 39 of GST Tariff (Plastics and Articles thereof) does not cover the goods of Section XI (Textile & Textile Products). In the instant case, the impugned product, by no stretch of imagination, could be termed as Textile or Textile Products. Thereofore, unless the impugned goods have been manufactured from the material which qualifies as Textiles under Chapter 63, it would not be proper to consider the same to be classified under Chapter 6305 33 00. Further, Section Note 1 (h) of Section XI of the Tariff Act, specifically excludes:

"woven, knitted or crocheted fabrics, felt or non-wovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of Chapter 39;"

According to the West Bengal Advance Ruling Authority while deciding the issue in favour of the writ petitioner, it failed to take note of the decision in the case of Raj Pack Well Limited –Vs- Union of India, reported in 1990 (50) E.L.T. 201 (M.P.). The Appellate Authority of the West Bengal Advance Ruling, after considering the materials on record and after hearing the parties has rightly upheld the contention of the respondent department vide order dated 25.10.2018 and allowed the appeal by holding against the writ petitioner.

Learned advocate appearing for the respondents opposing the writ petition has relied on several judgments with regard to the propositions of law which are as hereunder:

(i) In the case of Raj Pack Well Ltd. –Vs- Union of India reported in 1990 (50) E.L.T. 201 (M.P) in which the Hon'ble Madhya Pradesh High Court has held that plastic-HDPE strips/tapes/sacks being goods are made of plastic and not of synthetic textile materials and is classifiable under Chapter 39 of Central Excise Tariff Act, 1985.

(ii)In the case of RLJ Woven Sacks Pvt. Ltd. reported in 2019 (22) G.S.T.L 120 (App. AAR-GST) the Appellate Authority for Advance Ruling under GST, West Bengal has held that Polypropylene Leno Bags whether laminated with BOPP or not would be classifiable as plastic bags under HSN Code 3923 and

would attract 18% GST and the assessee cannot be allowed to change classification which it had pursued for last 9 years in view of the fact that it intended to avail lower tariff rate of GST.

(iii) In the case of Utkal Polyweave Industries (P) Ltd. reported in 2019(21) G.S.T.L 108 (A.A.R-GST) the Appellate Authority for Advance Ruling under GST, Odisha, has held that Polypropylene Leno Bags manufactured by weaving polypropylene strips (tapes), Linear Low Density Polyethylene (LLDPE) and Plastic Master Batch which are made from plastic granules are classifiable under tariff item 3923 of GST Tariff.

(iv) In the case of Nagrani Warehousing Pvt. Ltd. reported in 2019(20) G.S.T.L 108 (A.A.R-GST) the Appellate Authority for Advance Ruling under GST, Madhya Pradesh has held that P.P Woven Bags/Sacks shall be classifiable under Chapter 39 of the GST tariff and not under Chapter 63.9.

(v) In the case of Mahalaxmi Polypack Pvt. Ltd. reported in 2019(23) G.S.T.L 157 (A.A.R-GST) the Appellate Authority for Advance Ruling under GST, Uttarakhand has held that Polypropylene leno bags made of woven polypropylene classifiable under HSN 3923 of GST Tariff.

(vi) In the case of Mount Fab packaging LLP reported in 2020(38) G.S.T.L 245 (A.A.R-GST-Guj) the Appellate Authority for Advance Ruling under GST, Gujarat has held that Polypropylene Woven and Non-woven bags and PP Woven and Non-woven bags laminated with BOPP would be classified as plastic bags under HS code 3923 and would attract 18% GST.

(vii) In the case of Texbond Non-wovens reported in 2021(49) G.S.T.L (A.A.R-GST-Puducherry) the Appellate Authority for Advance Ruling under GST, Puducherry, has held that goods/articles covered under Chapter 39 cannot be classified under any of the chapters falling under Section XI as Textile and Textile articles by virtue of Note 1(h) of Section XI and consequently, the item “polypropylene Non-woven bags” is classifiable under HSN Code 3023 29 90 an taxable at 18%.

(viii) In the case of Appropriate Authority and anr. –Vs- Sudha Patil (Smt) and anr. Reported in 1998 (8) SCC 237 the Hon'ble Supreme Court has held that merely because no appeal is provided for against the order of the Appropriate Authority, the Supervisory power of the High Court does not get enlarged nor can the High Court exercise an appellate power.

(ix) In the case of Collector of Customs, Madras –Vs- K. Ganga Setty reported in AIR 1963 Supreme Court 1319 the Hon'ble Supreme Couurt has held that if there were two constructions which an entry could reasonable bear and one of which was in favour of revenue was adopted, the Court has no jurisdiction to interfere merely because the other interpretations favourable to the subject appeals to the Court as the better one to adopt.

(x) In the case of Mauri Yeast India Pvt. Ltd. –Vs- State of U.P. reported in 2008 (225) E.L.T 321 (SC) the Hon'ble Supreme Court has held that different construction to an entry cannot be resorted to only because the rate has been lowered and the classification having been accepted by the revenue for a long time, the onus would be on it to show why a different interpretation thereof should be resorted to particularly when no change in statutory provision has taken place.

(xi) In the case of Commr. Of Central Excise Nagpur –Vs- Shree Baidyanath Ayurved Bhawan Ltd. reported in 2009 (237) ELT (SC) the Hon'ble Supreme Court has held that the primary object of the Excise Act is to raise revenue for which various products are differently classified in New Tariff Act. Resort should, in the circumstances, be had to popular meaning and understanding attached to such products by those using the product and not to be had to the scientific and technical meaning of the terms and expressions used.

(xii) In the case of Hamdard (Wakf) Laboratories –Vs- Commissioner of Commercial Taxes reported in 2019 (20) G.S.T.L 46 (All) the Hon'ble Allahabad High Court has held that in absence of a statutory definition in precise term,

words, entries and items in physical statute must be construed in terms of their commercial or trade understanding or according to their popular meaning – Resort to rigid interpretation in terms of artificial and technical meaning should be avoided in such circumstances. Further it was also held that process of manufacture of a product and the end-use to which it is put, not necessarily determinative of classification of that product under a fiscal statute.

(xiii) In the case of Bharti Telecom Ltd.- Vs- Commissioner of Customs reported in 2001 (134) ELT 327 (SC) it has been held that in a taxing statute there is no room for any intendment and regard must be had to the clear meaning of the words used there and the matter should be governed only by its language.

Learned advocate appearing for the respondents distinguishes the judgments relied upon by the petitioner by submitting as hereunder:

(i) The decision relied upon by the petitioners, in the case of Parle Agro (P) Ltd. –Vs- Commissioner of Commercial Taxes, Trivandrum reported in 2017 (352) E.L.T 113 (S.C) to substantiate that in interpreting a taxing statute entries which have technical meaning to be looked into and commercial and nomenclature or trade understanding to such term and further submitted that the said decision relied upon by the petitioner is not applicable in this case. And that in a taxing statute there is no room of any intendment and regard must be had to clear meaning of the words used therein and the matter should be governed only by its language. As decided in the case of Bharati Telecom Ltd.- Vs- Commissioner of Customs reported in 2001 (134) E.L.T 327 (SC). Moreover, a fiscal statute must be construed strictly.

In this regard respondent relied upon the decision of the Hon'ble Allahabad High Court on the case reported in 2019 (20) G.S.T.L 46 (All). Furthermore, the decision in the case of Parle Agro (P) Ltd. has been considered by the Appellate Authority of Advance Ruling in the case of RLJ Woven Sacks Pvt. Ltd. reported in 2019 (22) G.S.T.L 120 (App. A.A.R-GST wherein the Appellate Authority of

Advance Ruling after considering the same has ruled in favour of the Revenue by holding that product is classifiable under Chapter heading 3923.

(ii)The decision relied upon by the writ petitioners in the case of Westinghouse Saxby Farmer Ltd. –Vs- Commissioner of Central Excise, Calcutta reported in 2021 (376) E.L.T 14 (SC) is not applicable in the present facts and circumstances of the case. In the referred case the Departmental authority approved the classification of the material/goods therein and accepted the duty paid by the appellant/assessee therein. Subsequently, in the year 1996 the Department issued nine different show cause cum demand notice as to why the goods therein should not be classified under other sub-heading and why the differential duty, interest and penalty should not be collected from the appellant. The Hon'ble Apex Court thereafter came to the conclusion that the goods classified earlier and accepted by the Department is as per fiscal statute. Therefore, subsequent demand for change of heading classification of goods by the Department is contrary to the fiscal statute.

In the instant case, the fact is just reverse, here the petitioner wants to change the classification of the goods without any reason whatsoever and contrary to the tariff heading of the Fiscal Statute which is clearly in favour of the Department and supports the impugned order of the West Bengal Appellate Authority of Advance Ruling.

(iii) That the decision relied upon by the petitioners in the case of State of Madhya Pradesh –Vs- Marico Industries Ltd. reported in 2016 (388) E.L.T 335 (S.C), is not applicable in the facts of the present case. In the referred case the matter relates to imposable entry tax on Mediker treating it as a hair shampoo and "Revive Instant Starch" as a chemical and the Department asked for payment of tax, interest and penalty and argued that the goods falls under Entry-32 by relying upon the technical and/or scientific points of view. But in order to determine as to whether a product is cosmetic or medicament, a common parlance test has been consistently well recognized by the Hon'ble

Court without relying upon the technical and/or scientific point of view. In the said case it was observed that Mediker which is used for anti-lice treatment is a drug because of its medicinal affect. This position has been accepted by this Court. Once it is a drug, it cannot be a shampoo. As a natural corollary, it will not invite the liability of levy of entry tax. Though the Department wanted to put it under entry 55 schedule but could not satisfy by any cogent material or evidence in support of its contention. Therefore, the Court observed that the burdened shifted on revenue.

(iv) Further the decision of the Hon'ble Supreme Court in the case of Hewlett Packard India Sales Pvt. Ltd. –Vs- Commissioner of Customs passed in Civil Appeal No. 5373 of 2019 relied upon by the petitioner is also not applicable in this case. In the referred case the Department sought to change the classification of the goods which classified earlier by the assessee of its own and there the Department failed to discharge their burden of proof to classify the goods differently.

In the instant case, the fact is just reverse here the petitioner wants to change the classification of the goods without any reason whatsoever and contrary to the tariff Heading of the Fiscal Statute which clearly is in favour of the Department and supports the impugned order of West Bengal Appellate Authority of Advance Ruling.

(v) The decision in the case of CTO, Anti Evasion, Circle III, Jaipur –Vs- Prasoon Enterprise reported in 2019 (23) G.S.T.L 44 (SC) relied upon by the petitioner is not applicable in this case. In the referred case the issue was that the wire ropes were essential part of mobile crane and the same was specifically classified under entry 155 of Schedule IV of the Rajasthan VAT Act, 2003, which the Departmental authority tried to change the classification of the goods under different entry in Schedule 5 of the said Act. Since, the entry clearly stipulates that the wire ropes fall under entry 155 of Schedule IV, the Hon'ble Apex Court held that the rate of tax of the goods specified in entry 155

chargeable as per tax mentioned therein and the Hon'ble Court held that the it has examined only the question of taxability of the wire ropes in the context of its use in mobile crane. In view of the facts of the instant case the said decision has got no relevance and not applicable in this cases.

(vi) The larger Bench of the Hon'ble Supreme Court in the case of K. Ganga Setty (supra) (AIR 1963 Supreme Court 1319) specifically held that if there were two constructions which an entry could reasonably bear and one of them which was in favour of revenue was adopted, the Court has no jurisdiction to interfere merely because the other interpretations favourable to the subject appeals to the Court as the better one to adopt. In any event, there cannot be two views in respect of the goods in question which have been specifically classified under Chapter Heading 39 of the Tariff Act.

The decision cited by the petitioners have got no relevance in view of the facts and circumstances of the present case.

All the Learned Appellate Authority of Advance Ruling of the different States have relied upon and followed the decision of the West Bengal Appellate Authority of Advance Ruling in the case of Mega Flex and decided the issue in favour of the revenue against the assessees by holding that the goods are classifiable under Chapter 39 of the Tariff Act being the plastic articles and the reasoning given by the aforesaid Appellate authorities though being subordinate authorities and not binding upon this Court but I find the same convincing. Petitioner has also failed to produce any judgment or order by any High Court or Supreme Court reversing the order of such Appellate authorities by taking a different view.

Considering the facts and circumstances of the case, submission of the parties and the decisions relied upon by them and the reasons and findings recorded in the impugned order by the Appellate Authority for Advance Ruling , I am not inclined to grant any relief in this writ petition for the following reasons:

(i) Merely because no further appeal is provided for or against the impugned order of the Appellate Authority for Advance Ruling the scope of interference under the jurisdiction under Article 226 of the Constitution of India cannot be enlarged and the findings of the Appellate Authority cannot be substituted unless the same is without jurisdiction or there is violation of principle of natural justice or the order is patently contrary to any specific provision of law which factors for invoking constitutional writ jurisdiction of this Court are absent in the instant case.

(ii) This Court in exercise of its jurisdiction under Article 226 of the Constitution of India is not inclined to allow the petitioner to change the classification of Tariff Heading to avail lower rate of Tariff under GST regime when admittedly the product of the petitioner is Polypropylene Leno Bags manufactured by weaving Polypropylene strips and the major raw material of which is plastic granules and admittedly before the introduction of GST regime, petitioner had been declaring the said product under the Chapter 3923 29 90 of the Central Excise Tariff Act, 1985, and enjoyed the Duty Drawback and never contended before the authority till the introduction of GST law that its classification was wrong. Now simply on the ground that width of the polypropylene strips is less than 5mm and that the rate of duty on the very same product under the same heading after the introduction of GST Act is higher and just for availing the lower rate of Tariff, it cannot be allowed to change the classification of Tariff heading.

(iii) It is an admitted position that neither the product in question nor its composition nor the process of manufacturing of the goods in question, Tariff heading of which petitioner sought to change, has been changed after the introduction of GST Act.

(iv) As the HDPE strips or tapes fall under the Heading 39.20, sub-heading 3920.32 of the Central Excise Tariff Act and not under Heading 6305

33 00, order of the Appellate authority rejecting the claim of the petitioner is justifiable in law.

(v) Petitioner has already waived its right during hearing of the writ petition to challenge the legality and validity of the Circular No. 80/54/2018-GST dated 31st December, 2018 issued by the Board which has clarified the aforesaid classification that the product in question manufactured by the petitioner is plastics and not textile product. In such circumstances, the Writ Court should not rewrite or modify the aforesaid circular of the Board.

(vi) It is not only a question of application of principle of estoppels against the petitioner, there is also admittedly factual position that petitioner has chosen to not to press the ground challenging the explanatory circular relating to classification issued by Board, dated 31st December, 2018, clarifying the classification Head of the product in question as plastic.

(vii) The view that the product in question manufactured by the petitioner is made from plastic granules and cannot be treated as textile articles, has been held by the Hon'ble Madhya Pradesh High Court in case of Raj Pack Well Ltd. (supra), as well as it has been uniformly adopted by the Appellate Authority for Advance Ruling in several States.

In view of the discussion made above, I find no merit in this writ petition being W.P.A No. 3667 of 2019 and accordingly the same is dismissed. No order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(MD. NIZAMUDDIN, J.)