

(1989) 09 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1205 of 1988

Raj Pack Well Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 19-09-1989

Acts Referred:

Central Excise Rules, 1944 — Rule 173B
Constitution of India, 1950 — Article 226, 227
Textiles Committee Act, 1963 — Section 2

Citation : (1993) 41 ECC 285 : (1993) ECR 351 : (1990) 50 ELT 201

Hon'ble Judges : V.D. Gyani, J;A.G. Qureshi, J

Bench : Division Bench

Advocate : A.M. Mathur and I.C. Upadhyay, for the Appellant; B.G. Neema, for the Respondent

Judgement

A.G. Qureshi, J.—The petitioners in this petition are limited companies registered under the provisions of the Indian Companies Act, 1956, having their offices at Indore and factories at Pithampur, district Dhar. The petitioners are manufacturing HDPE woven sacks and for that purpose they have installed HOPE tape plants for manufacture of oriented tape (plastic tape). The petitioners made representations to the Assistant Collector, Central Excise, Indore Division, to the effect that the HDPE woven sacks are articles of plastic and are thus classifiable under Chapter 39 of the Central Excise Tariff Act, 1985. The contention of the petitioners was not accepted by the Assistant Collector, Central Excise, Division Indore (respondent No. 4). Therefore, he passed an order dated 11-1-1988 wherein the respondent No. 4 held that the HDPE strips of an apparent width of 5 mm are classifiable under sub-head. No. 5406.11 and of Polypropylene under Chapter sub-head. 5406.90 and fabrics thereof under Chapter heading 5408.00. It has further been held that the provisions of Notification No. 223/86-C.E., dated 3-4-1986 are no longer applicable as the term sacks produced on circular looms is nothing but sacks produced out of fabrics manufactured on circular looms. As such they are required to pay duty under Chapter 63.01 at 12 per cent ad

valorem. The petitioners have filed appeals against the order of the Assistant Collector before the Collector (Appeals) Central Excise, New Delhi. But in the meanwhile, pending the decision of the appeals, they have filed this writ petition.

2. This Court, vide its order dated 1-12-1988 directed the Collector Appeals to dispose of the appeals expeditiously, preferably within a period of four months and after the disposal of the appeals copy may be filed before this Court. This Court had followed the procedure adopted by a Division Bench of the Gujarat High Court in Special Civil Application No. 4604 of 1987 filed by M/s. Arms Polymers Ltd, Ahmedabad. Accordingly, later on the order of the Collector Appeals was passed and after perusing the same the matter was finally heard by this Court.

3. The petitioners have challenged the order of the Assistant Collector dated 11-1-1988 (Annexure P-5) read with Corrigendum dated 15-1-1988 (Annexure P-6) and order of Collector Appeals (C.E.) New Delhi dated 28-2-1989 (Annexure P-21) on the ground that the HDPE tapes fall under Heading 39.20 of the Central Excise Tariff Act, 1985 and, therefore, the HDPE fabrics fall under Heading 39.26 and the HDPE sacks fall under Heading 39.23 sub-heading 3923.90. But the Assistant Collector, Excise has wrongly classified the goods of the petitioner. The grounds on which the aforesaid orders have been challenged are that the basic raw material for the manufacture of HDPE tapes is HDPE granules of non-textile grade; there is a difference between HDPE tape and textile tape, HDPE fabrics and textile fabrics and HDPE sacks and textile sacks; properties of textile material and non-textile material are different; the respondent No. 4 has ignored the principles of classifying the goods under the New Tariff Act, 1985 wherein all the goods have been classified under one head beginning with raw materials and ending with finished products. The Chapter and Section, according to the scheme of the Act being the same, the finished goods cannot be taken out of the Chapter wherein the raw material has been kept for the purposes of classification. The Central Excise & Gold Appellate Tribunal in the case of Shellya Industries, Bangalore v. Collector of Central Excise, Bangalore -1983 (14) Excise Law Times, 1827 has held that the HOPE woven sacks are well known articles of plastics. The Assistant Collector Central Excise and the Appellate Collector have not followed the aforesaid decision of the Tribunal which was binding on them by simply saying that in view of the New Tariff Act, 1985 the aforesaid decision is not of any relevance to the facts of the present case. According to the petitioners the HOPE woven sacks or plastic sacks are not textile sacks in view of the DGTD registration, letter of Textile Commissioner, report of Sasmira dated 17-2-1989, report of Professor P.K. Sengupta, University College of Science and Tech., Calcutta and contents of textile materials as has been explained in Annexure P-16 and the fact that in common parlance it is known as HDPE woven sacks or plastic sacks. It has further been averred that when a particular commodity is not defined in the Act itself, then the trade meaning of the commodity concerned has to be accepted. Recent judgments of the Supreme Court have been cited in support of the contention. It has also been pleaded that when any entry is

subject to two interpretations, then the interpretation favourable to the petitioner has to be accepted. Therefore, the petitioners have prayed for quashing of the order of the Assistant Collector, Central Excise as confirmed by the Collector, Appeals of Central Excise with a further prayer that the HDPE sacks be classified under Chapter 39 of the Central Excise Tariff Act, 1985.

4. The respondent No. 4 has filed return and resisted the petition on the ground that this petition has been filed without exhausting the other channels available for redressing the grievance under the Central Excise Law. The petitioners instead of filing a petition before this Court should have filed an appeal before the Central Excise Gold Appellate Tribunal as has been provided by the Central Excise Act. Therefore, in view of the availability of alternative remedy itself this petition deserves to be dismissed.

5. On merits it has been stated that originally there was no controversy of classification because the petitioners had themselves filed the classification list under Rule 173-B of the Central Excise Rules, 1944 classifying the goods HDPE tapes, HDPE fabrics, HDPE laminated fabrics and woven sacks under Chapters 54,59 and 63 respectively of S. XI of the Textiles and Textile articles of the schedule to the Central Excise Tariff Act, 1985. The above classification was approved by the Assistant Collector, Central Excise and the petitioners have been paying Central Excise duty accordingly. Thereafter they have filed representation for change of classification which was rejected by the Assistant Collector, vide impugned order. In the representation a claim for MOD-VAT benefit was also made. According to the Revenue the petitioners used plastic granules as raw material for manufacturing woven sacks. This process involves manufacture of HDPE tapes/strips first and then fabrics in tubular form on circular looms and thereafter cutting the circular fabrics and stitching one or other sides for making sacks. If flat fabrics are required tubular fabrics are slitted before winding on reels. HDPE tapes manufactured by the petitioners are primarily sold as woven sacks. Sometimes the tapes and fabrics are also sold.

6. As regards the judgments of the Tribunal it has been stated that they all relate to the period before of introduction of Central Excise Tariff Act, 1985, but from 1-3-1986 the new Tariff Act has come into force, based on the harmonised system of nomenclature and the classification has to be decided on the basis of the Tariff Act, 1985. According to Head. No. 54.06 of the Schedule to the Tariff Act, in respect of strips, it has been very clearly mentioned as under:

"Strips and the like (for example, artificial straw) of synthetic textile materials of an apparent width not exceeding 5 mm."

As such the HDPE/PP tapes of an apparent width not exceeding 5 mm fall under subheading No. 5406.00. Section XI of the Schedule to the Tariff Act is comprised of fourteen Chapters bearing number from 50 to 63. Therefore, the provisions of S. XI are applicable to these Chapters. It is evident from Note No. 1(c) to Section 11 that strip and the like of an apparent width exceeding 5 mm

are not covered under this section. This necessarily means that the strips and the like upto 5 mm are covered by this section. Therefore, the respondents have not erred in any way in rejecting the representation of the petitioners. Similarly Note No.10 to Chapter 39 makes it abundantly clear that the expression "strip" amongst others appearing in Heading No. 39.06 also include HDPE and PP as defined in Note No. 2(D) to S. XI. Thus, a strip of synthetic textile material of an apparent width not exceeding 5 mm is correctly classifiable under sub-head. No. 5406-90. In respect of strip/tape the width thereof is the sole criteria which determines its classification. Therefore, the contention of the petitioners that irrespective of the width of the tapes the HDPE/PP tapes should be classified under Heading 39.20 is not correct.

7. Similarly from Note No. 1 to Chapter 46 also it is clear that woven sacks of plastic strip of apparent width exceeding 5 mm are classifiable under Heading 46.01 and not under Heading No. 39.23. It is also evident from Note No. 2(i) to Chapter 39 that this chapter does not cover plait, wicker work or other articles of Chapter 46. Similarly Note No. 1(c) to Section 11 also clarifies that Section 11 does not cover plaits or fabrics and other basket and wicker work of strips and like of an apparent width exceeding 5 mm since it falls under Chapter 46. As such the woven sacks made from the strips and the like synthetic material of an apparent width not exceeding 5 mm should be classifiable under Heading No. 63.01 and the woven sacks made from strips and the like of an apparent width exceeding 5 mm should be classified under Heading No. 46.01. Woven sacks of polymer of ethylene or propylene or a combination thereof falling under Heading No. 46.01 or 63.01 are exempt from whole of the duty vide Notification No. 223/86-C.E., dated 3-4-1986 provided such woven sacks are not manufactured on circular looms. However, the petitioners are employing circular looms for manufacture of tabular fabrics which are cut into desired length and stitched into sacks/bags of required shape and size and they are marketed as Circular Woven Bags. As such they are not entitled to exemption from whole of the duty in terms of Notification No. 223/86-C.E., dated 3-4-1986. Therefore, it is not correct to say that HDPE tapes, HDPE fabrics and HDPE woven sacks are not textile material. Even according to ISI specifications the products of the petitioners are treated as textile material. It has also been stated that the Circular No. 32/85 dated 20-11-1985 of the Department of Revenue (Annexure-17) was issued according to the order of the Central Excise Gold Appellate Tribunal's order No. 194/84-C dated 11-7-1983 passed in the appeal case of Shellya Industries, Bangalore. But that circular was under the old tariff. After the passing of the New Tariff Act the anomalies are removed and u/s 11, HDPE tapes of width not exceeding 5 mm are clearly classified under the head textiles and textile articles. Therefore, the circular based on the judgments of the CEGAT is of no avail. The registration certificate issued by the Government of India, Directorate General of Technical Development (Plastic and Polymers Directorate) New Delhi (Annexure-18) and letter from Textile Commissioner, Bombay (Annexure P-19) do not support in any way the classification of HDPE tapes of width not exceeding

5 mm because the plastic classification is based on the width of the strip or tape and not the components of the tape. The order of the Assistant Collector Central Excise and the Collector Appeals, Central Excise has been passed in view of the clear provisions contained in the Central Excise Tariff Act and not influenced by any trade notice of the department. Therefore, the petition should be dismissed.

8. The learned counsel for the petitioner Shri A.M. Mathur has strenuously urged that in view of the fact that the impugned order of the Assistant Collector, Central Excise has been passed in violation of the clear provisions of law and the judgments of the CEGAT and the Circular of the Board of Direct Taxes, it is manifestly illegal and such an order can be challenged directly before the High Court in a writ petition without availing of the alternative remedy. However, the petitioners also took a chance to approach the Collector Appeals, but the order of the Collector Appeals itself goes to show that the order has been passed in routine without the application of mind to the points raised by the appellants and without taking into consideration the documents and earlier judgments of the CEGAT. Therefore, it is a fit case wherein the Court should invoke its jurisdiction under Article 226/227 of the Constitution of India. In support of his arguments on this point Shri Mathur has placed reliance on various authorities of the different High Courts and the judgment of the Supreme Court in the case of A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, wherein it has been held as under:

"It is true that existence of an alternate remedy is a bar to the maintainability of a Petition under Article 226 of the Constitution unless there is a complete lack of jurisdiction in the officer of authority concerned or where the order has been passed in violation of principles of natural justice, but this rule is a rule of policy, convenience and discretion rather than that of law. Therefore, where the order levying duty at the higher rate is based on an incorrect interpretation of the tariff entry and that too on the Board's ruling, the alternative remedy being facility, would not operate as a bar in exercising writ jurisdiction under Article 226 of the Constitution of India.:

9. Shri Mathur has also invited our attention to the copy of the order of the Gujarat High Court filed by the petitioners wherein the Gujarat High Court in the case of M/s. Arms Polymers Limited v. Union of India and Others (Sol. Civil Application No. 4610 of 87) wherein the Division Bench has held that the question being about the correct interpretation of the entry, the High Court can be regarded as a better and proper forum for deciding such questions and exactly in the similar facts and circumstances as of this case, has admitted the petition for final hearing. In the instant case also we have heard the case finally on merits, after perusing the order of the Appellate Collector and the aforementioned view taken by the Gujarat High Court.

10. The learned counsel Shri Neema has, on the other hand, vehemently argued that the Supreme Court in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, has clearly criticised the tendency

of the courts to grant interim order for mere asking. It has also deprecated the practice of granting interim relief while practically giving the principal relief sought in the petition for the mere reason that prima facie case has been made out. It has also been held that Article 226 is not meant to short circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public injury and the vindication of public justice and the require it that recourse may be had to Article 226 of the Constitution, then only the Court should interfere under Article 226. But where the petitions are filed solely for the purpose of obtaining interim relief and thereafter prolong the proceedings by one device or other, the practice needs to be strongly discouraged.

11. In the instant case, as observed above, the order of the Assistant Collector has been challenged by the petitioner not only on the ground that he has wrongly exercised his discretion, but on the ground that the order is manifestly illegal in view of the two decisions of the Central Excise Gold Appellate Tribunal, which is the final authority for the Department and the verdict of which has to be followed and further more the view taken by the Tribunal has been upheld by the Supreme Court and the Adjudicating Authority has just brushed aside the judgments by saying that in view of the new Tariff Act they have no relevance, whereas the judgments clearly state that the HDPE tapes and goods made therefrom are goods of plastic. As such the order on the face of it being against the order of the Apex Body of the department and confirmed by the Supreme Court, the learned Adjudicating Authority should have considered those judgments and distinguished them on facts or law. But simply ignoring those judgments is clearly arbitrary and illegal. Similarly the Appellate Authority has also not cared to go into that question and has passed a perfunctory order in respect of the classification. In *A.V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadkwani and Another* (supra) five Judges' Bench of the Supreme Court has said that where the order levying duty at a higher rate is based on an incorrect interpretation of tariff entry and that too on Board's ruling, the alternative remedy being facility would not operate as a bar in exercising writ jurisdiction under Article 226 of the Constitution of India. In our opinion, the view of the aforesaid Supreme Court decision is fully applicable to the facts of the present case and we hold that availability of alternative remedy in the instant case is no bar to the decision of this petition on merits by this Court in exercise of its powers under Article 226/227 of the Constitution of India.

12. On merits it has been urged by Shri Mathur that in the instant case the basic raw material is HDPE granules of non-textile grade. Therefore, it is distinguished from the textile fabric and they are well known articles of plastic. The Central Excise Gold Appellate Tribunal had also held that they are well known articles of plastic. In common parlance the HDPE woven sacks are known as HDPE woven sacks or plastic sacks but not textile sacks. The DGTD registration, letter of Textile Commissioner, report of Sasmire dated 17-2-1989, opinion of experts on

this subject, the newspaper cuttings all go to support the fact that the HDPE sacks are goods of plastic and they are known in common parlance as such. In absence of the definition of the word "textile fabrics" the trade name of the commodity has to be accepted and even if there be the possibility of two interpretations to a particular entry the one favourable to the assessee should be accepted.

13. Shri Mathur further argued that HDPE tapes and sacks are materials of plastic, has already been decided by the Central Excise Gold Appellate Tribunal and that finding has been upheld by the Supreme Court and in pursuance of that finding the Board of Direct Taxes has also issued a letter which clearly says that HDPE tapes should be treated as article of plastic, but the Board directives, the judgments passed by the highest authority of the Department have been ignored by the authorities concerned. Therefore, also the order is illegal. When there is a specific entry about the item in question, the general entry cannot be used by the Department and the fact that the HDPE tapes of the petitioners fall under entry No. 39.20 is also supported by the Notification issued by the Government itself. As such the orders impugned are manifestly illegal based on incorrect interpretation of the entry and ignoring the earlier decisions which have achieved finality in the matter.

14. On the other hand the learned counsel for the Revenue Shri Neema has vehemently argued that the earlier decisions of the CEGAT and confirmed by the Supreme Court are of no avail to the petitioners. The various explanations and the clauses of Section XI of the Tariff Act clearly go to show that the classification has to be based, in the instant case, on the width of the strip. If the strip is of the width of 5 mm then the classification shall be u/s XI and the different entries under the Schedule to that section. However, if the strip is over 5 mm in width, then of course the plea of the petitioners may be acceptable. In the instant case indisputedly the width of the strips produced by the petitioners are of the width of less than 5 mm. Therefore, the challenge to the order passed by the Assistant Collector, Central Excise is without any force.

15. To appreciate respective contentions of the parties, first let us see the process of manufacture of HDPE tapes, fabrics or sacks. The raw material undisputedly is HDPE granules. They are manufactured from polymers of ethylene or propylene from their primary form of granules of high density of polyethylene (HDPE). The manufacturing operation is undertaken in following steps-extrusion of granules into tubular films, then cutting of tapes into flat films, then films are slitted into strips, then the strips are stretched into plastic tapes, then plastic tapes are wound in bobbins and then these plastic tapes are woven into tubular fabric. This fabric can be cut into flat fabric also. It may also be, according to requirement, laminated with low density polyethylene. The tubular or flat fabric, as the case may be, laminated or unlaminated, is cut into desired length, then the pieces are stitched into sacks (bags) of required shape and size. As such in the manufacture of the aforesaid tapes, sacks and fabric the material

used is the plastic granules. Now in the case of Shellya Industries, Bangalore v. Collector of Central Excise, Bangalore (1983 ELT 1827) the Special Bench of CEGAT had an opportunity to consider a similar controversy as has been raised before us. The point involved before the CEGAT was whether plastic sacks known as high density polyethelene woven sacks are classifiable under Item 15A(2) of the Central Excise Tariff or under Item 68 thereof. Tariff Item 15A(2) at the material time read as under:

"Articles made of plastics, all sorts, including tubes, rods, sheets, foils, sticks other rectangular or profile shapes, whether laminated or not, and whether rigid or flexible including lay flat tubings and polyvinyl chloride sheets, not otherwise specified."

There were two conditions for the falling of the item under Tariff Item 15A(2) - one was that the article should be made of plastics and the second was that they should not be specified elsewhere in the Central Excise Tariff. There was no dispute before the Tribunal that the HDPE woven sacks are entirely made of plastic and, therefore, in view of the aforesaid position and the popular meaning or the trade, it was held that since in their own right the HDPE sacks remain an article made of plastics, they should fall in Item 15A(2) and the classification of the intermediate stage product, i.e. HDPE woven fabric, was of no consequence.

16. Similarly the CEGAT Special Bench in the case of Shree Radhe Industries, Kalol v. Collector of Customs and Central Excise, Ahmedabad (1983 ELT 379) has held that since the HDPE tapes are neither man-made filament yarn nor cellulosic spun yarn, therefore, they do not fit into any category of Item 18 of CET. HDPE is a well known plastic raw material, therefore, tapes made from this material would be covered as articles made of plastics. This decision of the CEGAT was taken to the Supreme Court by the Union of India, but the appeal was dismissed on merits in C.A. No. 8369 of 83 dated 21-10-1983. Thereafter the Government of India issued Circular 32/85 - A.U. dated 20th November, 1985. In the Circular it was said that the Board had decided that HDPE woven sacks should be considered as articles of plastic and that the Tribunal's decision in Shellya Industries v. Collector, Central Excise (supra) can be accepted. This circular further said that in view of the dismissal of Government's appeal against CEGAT's order dated 30-12-1982 in M/s. Shree Radhe Industries v. Collector of Customs and Central Excise (supra) wherein the CEGAT has held that the HDPE tape is a plastic material, the tape shall fall in Tariff Item 15A(2) and not under Tariff Item No. 18. Therefore, in view of the aforesaid decisions on facts by the two Tribunals as confirmed by the Supreme Court and accepted by the Department there is no dispute that the HDPE woven sacks are articles of plastic. The learned Assistant Collector Central Excise, and the Collector Appeals have not given any reason as to why the articles of plastic should be treated as articles made of textile material or that the HDPE tapes are textile material. They have simply refused to go into the aforesaid decisions in view of the fact that under the new Tariff Act there is different classification and it has got a synthetic

basis after research.

17. However, before us in the return as well as during the course of the arguments Shri Neema, learned counsel for the Revenue, has pointed out the different provisions in the Tariff Act wherein even the items under the head of Plastic Material have been treated as items of textile material and for that purpose entries under Chapter 39 of the Tariff Act would be of no avail. Shri Neema has first drawn our attention to Note I(c) of Section XI of the Central Excise Tariff Act of India. Section XI-1 (c) of the Tariff Act reads as under:

"1. This Section does not cover:

(a) xx xx xx xx(b) xx xx xx xx (c) Monofilament of which any cross-sectional dimension exceeds 1 mm and strip and the like (for example, artificial straw, of an apparent width exceeding 5 mm of plastics (Chapter 39), or plaits or fabrics and other basketware and wicker work of such monofilament or strip (Chapter 46)."

Our attention has also been drawn to Note 2(k) of Chapter 39, wherein it has been clearly specified that this Chapter does not cover the articles of Section XI (textiles and textile articles) and Note No.10 of Chapter 39 wherein it has been clearly specified that "in Heading Nos. 39.20 and 39.21, the expression "plates, sheets, film, foil and strip" applies only to plates, sheets, film, foil and strip (other than those of Chapter 54) and to blocks of regular geometric shape, whether or not...". Similarly in Note No. 2(D) of Section XI it has been specified that throughout this Schedule, "man-made fibres" means staple fibres and filaments of organic polymers produced by manufacturing process, either - (i) By polymerisation of organic monomers, such as polyamides, polyesters, polyurethanes or polyvinyl derivatives; or (ii) By chemical transformation of natural organic polymers (for example, cellulose, casein, proteins or algae) such as viscose, rayon, cellulose acetate, cuporo or alginates. It has further been stated that the term man-made synthetic used in relation to fibre means synthetic fibres as defined at (i) artificial fibres as defined at (ii) and the terms man-made, synthetic and artificial shall have the same meanings when used in relation to textile material.

18. Now in view of the aforesaid tariff entries and the finding that basically the HDPE tapes and the sacks are goods of plastic, it has to be seen whether the HDPE will fall under sub-heading 5406.90 because of the aforesaid provisions in the Tariff Act. Now first of all let us examine Note I(c) of Section XI. This proviso excludes the monofilament of 1 mm strip and like, the apparent width of which is 5 mm of plastic and which is covered under Chapter 39 of the Tariff Act. Similarly Note No.10 of Chapter 39 of the Tariff Act clearly says that under the Headings 39.20 and 39.21 only those strips are covered which are not covered by Chapter 54. Note 2(k) of Chapter 39 also says that this Chapter does not cover the articles of Section XI - textiles and textile articles. As such a combined reading of all these provisions contained in the aforesaid Section XI and Chapter 39 shows

that those items which are covered under Chapter 39 exclusively shall be classified under that Chapter, but the items which are to be classified under the Chapters falling under S. XI would not be covered by Chapter 39 and it has also specifically been mentioned that the tapes which are of the width of more than 5 mm shall not be covered under Chapter 54. Shri Neema has very ably built up an argument in view of the aforesaid notes that the HDPE strips, the width of which is more than 5 mm are, by virtue of the aforesaid provisions are taken out, clearly from the ambit of Chapter 39 and placed under Chapter 54. Although the aforesaid argument appears to have great force if the notes are read in isolation to the actual entries in the tariff, but if we examine tariff as a whole we find that width is not the sole criterion for putting the strips in a particular entry. The relevant entry in respect of the strips is 54.06, which reads as under :

"54.06 Synthetic monofilament of 60 deniers or more and of which no cross-sectional dimension exceeds 1 mm; strip and the like (for example, artificial straw) of synthetic textile materials of an apparent width not exceeding 5 mm."

Therefore, a synthetic monofilament of 60 deniers or more and of which no cross-sectional dimension exceeds 1 mm, strip and the like, should be of synthetic textile material, the width of which may not exceed 5 mm. So for bringing the strips of the width of 5 mm or less under this entry they should be of synthetic textile material. As such, the crucial question for decision will be, whether the HDPE tapes are synthetic textile material?

19. Now, textile material has not been defined in the Tariff Act. However, in the Textiles Committee Act, 1963 (Act 41 of 63) the word "fibre" has been defined in Section 2(a) as under:

"fibre" means man-made fibre including regenerated cellulose rayon, nylon and the like."

"Textiles" has been defined in Section 2(g) as under :

"textiles" means any fabric or cloth or yarn or garment or any other article made wholly or in part of -

(i) cotton; or

(ii) wool; or

(iii) silk; or

(iv) artificial silk or other fibre, and includes fibre;"

Therefore, according to the above definition, any fabric or cloth or yarn or garment if made wholly or in part of cotton, wool, silk, artificial silk or other fibre shall be called textiles. The definition of "fibre" includes the regenerated cellulose, rayon, nylon and the like. Nowhere in the aforesaid definition of "fibre" or "textiles" plastic has been mentioned as a commodity to be included in the definition of "fibre" or "textiles". Now in the Shree Radhe Industries case (supra)

and the Shellya Industries case (supra) irrespective of the entries in the tariff as prevailing then, it has been held that the HDPE sacks are articles made of plastic; they are made of high density polyethylene which is a plastic raw material and it has further been held that they are not man-made filament yarn but are articles of plastic. The Circular of the Central Board of Direct Taxes dated 20-11-1985 also clearly says that the Board has decided that so long as the finished articles of plastic is made out of plastic material falling under Tariff Item No. 15A(i), even if at the intermediate stage articles classifiable under Item No. 15A(ii) if any tariff item emerges, the said product would be considered to have been produced out of the plastic material falling under Tariff Item No. 15A(i) and, therefore, the HDPE woven sacks should be considered as articles of plastic and that the Tribunal's decision be accepted. In common parlance also the HDPE woven sacks are known as plastic woven sacks industry as is apparent from the annexures filed with the petition and the authenticity of which has not been disputed. The Dy. Director of the Ministry of Textile, Office of Textile Commissioner has, vide letter dated 2-3-1989 informed one of the petitioners that the HDPE/PP weaving activity on regular looms as well as circular looms manufacturing fall under the purview of DGTD and no installation permission or registration of circular looms is required under Textile (Control) Order, 1986. Therefore, the petitioner was advised to approach DGTD. The D.G.T.D. certificate is Annexure P-18 which has registered the Company of one of the petitioners for weaving HDPE woven sacks. As such the woven sacks are not treated as an item of textile by the Commissioner of Textiles and the DGTD (Plastic and Polymer Directorates) has registered it as an Industry producing HDPE woven sacks. The raw material used for the production of the HDPE strips is covered under Chapter 39 and in absence of anything on the record to show that the HDPE strips are synthetic textile material the only fact that their width is less than 5 mm would not automatically put that item under entry No. 54.06 of Chapter 54 of the Central Excise Tariff of India. What the learned Asst. Collector, C. Excise and the Collector Appeals, Central Excise have done is that they have considered only the width of the strip and have come to the conclusion that since the strip is of less than 5 mm, therefore, it falls within 54.06 ignoring the fact that in addition to this there should be something to arrive at a conclusion that the aforesaid strip is of synthetic textile material. If the strip is a strip of plastic only and not a synthetic textile material and is also known in the common parlance as a commodity of plastic, and the finished goods i.e. the HDPE woven sacks are also known in the common parlance as plastic woven sacks, then it cannot be held that the strips with which such bags are woven are the strips of synthetic textile material.

20. Thus, the view of the Textile Commissioner as discussed above, the registration by the DGTD of the factory of the petitioner, the definition of "textile" and "fibre" as discussed above, 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 they, 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.

21. In the result we hold that HDPE strips or tapes fall under the Head. 39.20, sub-heading 3920.32 of the Central Excise Tariff Act and not under Head. 54.06, subheading 5406.90. Similarly the HDPE sacks fall into Heading 39.23, sub-heading 3923.90. Consequently the petition filed by the petitioners are allowed. The order impugned passed by the Assistant Collector Central Excise, Indore Division and that of the Collector (CE) Appeals, New Delhi are quashed. The respondents are directed to classify the goods accordingly. No other points pertaining to other issues were raised before us during the course of the arguments. There shall be no order as to costs.