

**Collector of Central Excise Vs. Texel Plastic**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Apr-03-1998

**Reported in :** (1998)(102)ELT286TriDel

**Appellant :** Collector of Central Excise

**Respondent :** Texel Plastic

**Judgement :**

1. The Id. Collector (Appeals) in his Order held that the contention of the Asstt. Collector in classifying the product in question under Chapter sub-heading 3920.38 is not acceptable since the product is appropriately classifiable under Chapter sub-heading 3926.90 as other articles of plastic. Being aggrieved by this Order, Revenue has filed the present appeal before us.

2. The facts of the case leading to the present appeal are that the Appellants are engaged in the manufacture of double side coated/laminated man-made fabrics (HDPE fabrics coated with LDPE on both sides) as well as articles of such material commonly known and marketed as Tarpaulins, falling under Chapter 39 of the Schedule to CETA 1985. The Appellant filed Classification lists effective from 25-7-1992 and another classification list effective from 29-9-1992 and claimed classification of the above product under Chapter subheading 3926.90 with NIL rate of duty under Notification No. 53/88, dated 11-3-1988. The Asstt. Collector classified HDPE fabric coated with LDPE on both sides under sub-heading 3920.38 chargeable to duty @ 35% ad valorem. The Appellants submitted that their case was covered by the decision of the Collector (Appeals) Ahmedabad who

had decided the issue in favour of the Assessee and claimed that the Asstt. Commissioner was bound by the orders of the Id. Commissioner (Appeals). The Id. Commissioner (Appeals) in appeal, relied on the decision of the Hon'ble M.P. High Court in the case of Raj Packwell Industries Limited 1990 (50) E.L.T. 201 and held that the product of the Appellants was correctly classifiable under Chapter sub-heading 3926.90.

3. Arguing the Appeal, Shri H.K. Jain, the Id. SDR, submitted that the product in question is nothing but sheets of plastic. He submitted that the Assessee cited the Order of the Id. Commissioner (Appeals) in the case of Duck Lamiplast and M/s. Shree Rama Packaging; that these orders did not indicate the exact nature of the product manufactured by the Assessee and as such the ratio of the decision of those orders was not applicable to the facts of the present case on all fours. The Id. SDR also submitted that the product in question was in the form of sheets and not articles of plastics and, therefore, the Id. Asstt.

Commissioner had correctly classified them under Chapter sub-heading 3920.38 and had correctly applied the relevant rate of duty of 35% ad valorem.

4. Shri V.K. Lakshmikumar, the Id. Advocate, accompanied by Shri R.Nambirajan, Advocate, submitted that their case was fully covered by the decision of the Hon'ble M.P. High Court in the case of Raj Packwell Industries v. Union of India cited above. He submitted that the Hon'ble High Court observed - "the process of manufacture of HDPE tapes, the earlier judgments of the CEGAT approved by the Supreme Court and accepted by the Department, all clearly go to show that 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 strip 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". The Id. Counsel submitted that the products have been observed to be goods of plastic. He submits that the product was never in the form of sheets/but was actually in the form of articles or goods of plastic.

The Id. Counsel submitted that their product is other articles of plastic and was correctly classifiable under Chapter sub-heading 3926.90.

5. Heard the submissions of both sides. There is no dispute that the product falls under Chapter 39. The only dispute is whether the product is classifiable under Chapter sub-heading 3920.38 as held by the Asstt.

Commissioner or under Chapter sub-heading 3926.90 as claimed by the Assessee. For purposes of clarity, the two sub-heads viz. sub-heading 3920.38 and subheading 3926.90 are reproduced below :39.20 Other plates, sheets, film, foil and strip, of plastics, non- cellular, whether lacquered or metallised or laminated, supported or similarly combined with other materials or not - Of Polymers of Vinyl Chloride39.26 Other articles of plastics and articles of other materials of Heading Nos. 39.01 to 39.14.

6. From the Tariff Entry as reproduced above, we find that Chapter Heading 3920 covers other plates, sheets, film, foil and strip, of plastics, non-cellular, whether lacquered or metallised or laminated, supported or similarly combined with other materials or not; (a) Of polymers of Vinyl Chloride; (b) Of re-generated cellulose and (c) Of other plastics, whereas entry under Chapter Heading 39.26 reads Other articles of plastics and articles of other materials of Heading Nos.

39.01 to 39.14. Therefore, the short point for determination that arises in this appeal is whether the product in dispute is plates, sheets, film, strip etc. or it is an article of plastic. The Hon'ble M.P. High Court examined this aspect and observed in Para 16 that "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." Thus, the line of demarcation has clearly been spelt out in this observation that the product in dispute are articles of plastics. It does not leave any scope for doubt now. Following respectfully the ratio of the decision of the Hon'ble M.P. High Court, we hold that the Id. Commissioner (Appeals) in the impugned order had correctly held that the product in question is appropriately classifiable under Chapter sub-heading 3926.90. In the result, the impugned order is upheld and the Appeal is rejected.

