

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 504 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

HONOURABLE MR. JUSTICE NIRAL R. MEHTA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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**MESSRS ANANTA SYNTHETIC INNOVATIONS & ANR.
Versus
STATE OF GUJARAT & ORS.**

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Appearance:

AMAL PARESH DAVE(8961) for the Petitioner(s) No. 1,2

MR PARESH M DAVE(260) for the Petitioner(s) No. 1,2

GOVERNMENT PLEADER for the Respondent(s) No. 1

MS HETVI H SANCHETI(5618) for the Respondent(s) No. 2

NOTICE SERVED for the Respondent(s) No. 4

NOTICE SERVED BY DS for the Respondent(s) No. 3

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**CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA**

Date : 11/07/2024

ORAL JUDGMENT**(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned advocate Mr.Paresh M. Dave for the petitioner and learned advocate Ms.Hetvi Sancheti for the respondent No.2.
2. Rule returnable forthwith. Learned advocate Ms.Hetvi Sancheti waives service of notice of Rule on behalf of respondent No.2.
3. Having regard to the controversy involved which is in a narrow compass, with the consent of both the learned advocates, the matter was taken up for hearing.
4. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for the following reliefs :

“A. That Your Lordships may be pleased to issue a writ of prohibition or any other appropriate writ, order or direction completely and permanently prohibiting the respondents, their servants and agents from recovering GST from the petitioners on Geo Membrane Fabrics under heading/Tariff Code 39269099 of the Tariff;

B. That Your Lordships may be pleased to issue a Writ of Certiorari or a Writ of Mandamus or any other appropriate writ, order or direction quashing and setting aside Advance

Ruling No.GUJ/GAAR/R/107/2020 dated 30.12.2020 (Annexure-D) passed by the Gujarat AAR, thereby holding and declaring that the goods manufactured by the petitioners, namely, Geo Membrane for water proof lining fabrics merit classification under Tariff 59111000 and are chargeable to GST @12% Adv."

5. The brief facts of the case are that the petitioner a partnership firm which has come into effect from 13.10.2019, is manufacturer of Geo Membrane which is a textile fabrics. The petitioner - firm is also registered under the provisions of the Central / Gujarat Goods and Services Tax Act, 2017 (for short 'the GST Act'). According to the petitioner, the product i.e. Geo Membrane which is a textile product, is chargeable to GST as textile fabrics under HSN Code 59111000, whereas as per the Department, it was chargeable as plastic Geo Membrane being an article of plastic to GST under HSN Code 39269090.

6. The petitioner has explained in detail the process of manufacturing of Geo Membrane which is also known in the trade as 'Geo Grid', 'Geo Grid Fabrics' and 'Geo Fabrics' as under :

"a) basic raw materials for manufacturing Geo Membrane is High Density Polythene Granules (HDPE Granules) and Master Batch containing carbon black. These raw materials are melted in Extruder by applying heat and friction, and they are extruded in form of thin sheet, in molten form. Such thin sheet in molten stage is passed

through a quenching tank containing water, to form a solid thin sheet, which is then slit into tapes/strips. Such slit tapes/strips are passed through hot plate for orientation process so as to impart strength. The width of such tapes/strips is below 5 mm, and they are wound on metal pipes for producing bobbins.

b) These tapes/strips are then loaded on circular looms or flat looms for weaving purpose. By employing weft and warp method of weaving, woven fabrics are produced by using the tapes/strips of width below 5 mm. These are uncoated woven fabrics of plastic: and such fabrics in rolls are further processed for producing coated/laminated fabrics on extrusion lamination machine within the applicant's factory.

c) Rolls of uncoated fabrics loaded on extrusion lamination machine are drawn for feeding into the laminating unit. Mix of Low Density Polythene (LDPE), LLDPE and colour/black master batch is fed into the extruder through a Hopper, and melted by applying heat and friction, for forming a thin film in a molten state. Uncoated fabric is thus coated/laminated on one side by this molten mix, and passed over a chill roll containing chilled water. Edges of coated/laminated fabrics are trimmed and then wound on steel pipes on a winder.

d) Same way the other side of the fabric is also coated/laminated to form a waterproof fabric. For increasing thickness of such fabric, one side

coated/laminated fabrics are sandwiched laminated with a film and then laminated again with one more layer of fabric to form a coated/laminated fabric of higher thickness. Trimming of edges is undertaken, and such coated/laminated fabric in rolls is subjected to inspection, where defects, if any are removed and the ends of the fabrics are rejoined by heat sealing. After inspection of such coated/laminated fabric rolls, they are sent for overlap sealing to increase the width of the coated/laminated fabric and then they are cut in required length to obtain the required size of Geo Membranes. These final products, le products or articles of textile fabrics are packed, and are ready for sale and supply.'

7. It is the case of the petitioner that the Geo Membrane / Geo Grid fabrics are used for reinforcement of ponds, canals and such structures. HDPE reinforced Geo Membrane lined aquaculture ponds teamed with Biofloc technology is a highly beneficial bacterial colony based culture which keeps diseases at bay making it an ecologically sustainable symbiotic system. Biofloc technology ensures minimal water exchange and keep the pH levels steady by feeding on the nitrogen produced by the fish & shrimps. In conventional farming where Biofloc technology is not used nitrogen is flushed out through water exchange every 25-30 days to keep the aquatic animals disease free. The Biofloc uses up the nitrogen and converts it into proteins for the animals. For Biofloc technology to be used. Geo Membrane fine ponds are a must Ponds lines with Rainshield Reinforced Geo Membranes insulate the animals from diseases. Biofloc cuts down fish meal giving cost

advantages to the farmers Production per unit area is high in bioflo system. The stocking destiny of animals in Geo Membrane lined biofloc pond is twice the density of an ordinary unlined pond. Aquaculture ponds using Bioflo technology can bring big benefits to aquaculture farmers. The Geo Membranes i.e. Geo fabrics are fabrics of polyester yarns, which are manufactured on weaving machine by weaving process. It is an admitted position of fact in this case that Geo Grid (also known as Geo fabrics or Geo textiles) are fabrics of polyester yarns, which are manufactured by employing simple warp and weft (i.e. woof) weaving process. Geo fabrics are in the nature of coated fabrics. Chapter 59 of the new Tariff covered "Impregnated, Coated, Covered or Laminated Textile Fabrics: and various varieties of such fabrics were specifically covered under Heading Nos. 5901 to 5910. Textile products and articles for technical use were covered under Heading 5911 of the Tariff. Geo fabrics being goods in the nature of coated textile fabrics for technical use, they specifically fall under Heading 5911 of the new Central Excise Tariff.

8. The petitioner has started the commercial production and supply of goods in its factory by the month of August, 2020 which attracted levy of GST and the rate of GST in accordance with the classification of the goods under the tariff which is based on the Customs Tariff framed by the Parliament on the basis of Harmonious System of Nomenclature (HSN). Under Chapter 17 of the GST Act, a Scheme of Advance Ruling is framed by the Parliament. The petitioner, therefore, made an application for Advance Ruling on the question whether Geo Membrane was classifiable

under HSN Code 59039090 or under HSN Code 59119090, on 20.11.2020.

9. The Gujarat Authority for Advance Ruling - respondent No.4, after hearing the application of the petitioner, passed an order dated 23.12.2020 rendering the Advance Ruling No.GUJ/GAAR/R/107/2020 dated 13.12.2020 relying upon the decision of the Hon'ble Madhya Pradesh High Court in case of Raj Packwell Ltd. 1990 (50) ELT 201 (MP) in respect of classification of plastic tapes and bags under the Central Excise Tariff and came to the conclusion that Geo Membrane produced by the petitioners merit classification under heading 39269090 chargeable to GST @ 18% p.a. from 15.11.2017 onwards.

10. It is the case of the petitioner that Geo Membrane is also manufactured by various registered persons all over the country including the State of Gujarat and such manufacturers disputed with the Revenue authorities who were classifying the products under Chapter 39 as articles of plastic and not only under GST tariff but also under the Central Excise Tariff and because such goods were chargeable to excise duty till 30th June, 2017, such manufacturers, namely, CTM Technical Textiles Ltd. filed Special Civil Application No.8332 of 2020 before this Court, challenging the proceedings initiated by the Revenue authorities for levying excise duty on Geo Grid / Geo Membrane / Geo Fabrics under Chapter 39 and also challenged few clarifications issued by the Government during Central Excise regime and also the view of the Revenue that

classification of such products was concluded by virtue of judgment of the Hon'ble Madhya Pradesh High Court in case of Raj Packwell (supra).

11. This Court passed a detail judgment on 24.12.2020 holding that Geo Grid was not a product meriting the classification under Chapter 39 as plastic articles but, it was a fabric being textile product and most appropriately classifiable under Heading 5911 of the Tariff and further directed the Union of India to re-look into the circulars and orders issued by the Board as well as the Ahmedabad Collectorate and take an appropriate decision in accordance with law for arriving at appropriate conclusion in the fresh round of adjudication in the said case.

12. The Review Application filed by the Union of India was also rejected by order dated 2.7.2021.

13. It is the case of the petitioner that Union of India and the Board have not clarified the situation any further and the observations made by this Court in the judgment dated 24.12.2020 rendered in Special Civil Application No.8332 of 2020 are accepted by the Revenue authorities and no further proceedings are conducted against the petitioner of the said petition and the Geo Grid are classified under HSN Code 59111000 under GST regime at the discounted rate of 12% Adv. However, in view of advance ruling in case of the petitioner, the petitioner is subjected to the rate of 18% classified under Chapter 39 of the Tariff.

14. The petitioner, therefore, has preferred this petition challenging the order passed by the Gujarat Advance Ruling Authority i.e. respondent No.4, so that the product being Geo Membrane manufactured by the petitioner is also subjected to the GST rate @ 12% under HSN Code 59111000 under Chapter 59 of the Tariff.

15. Learned advocate Mr.Dave for the petitioner submitted that the petitioner has been suffering a grave prejudice because of the above narrated facts inasmuch as the other similarly situated manufacturers are discharging GST liability at reduced rate of 12%, whereas the petitioner has to pay GST @ 18%, although the goods of all such manufacturers are the same. It was further submitted that the buyers and customers of the product are Government departments and Government corporations, because the work of providing water proof lining in respect of ponds, canals etc. is undertaken by such Government agencies in various States and the suppliers of the goods in question are recognized and registered for supplying these goods and the price fixed by the Government agencies is paid to all the suppliers at a uniform rate. It was submitted that the petitioner is, therefore, continuously suffering loss of 6% on such uniform rate paid by the Government agencies in view of decision of the respondent No.4 classifying the same products under Chapter 39 so far as the petitioner is concerned, as the decision of the respondent No.4 is binding upon the petitioner as per the provision of Section 103 of the GST Act.

16. Learned advocate Mr.Dave further submitted that the

order of respondent No.4 classifying the articles of Geo Membrane under Tariff Item 39269099 chargeable to 18% GST is wholly illegal and without jurisdiction and the order as well as recovery of GST from the petitioner under the classification of Chapter 39 at higher rate of 18% are contrary to the law laid down by the Hon'ble Supreme Court in case of Porritts & Spencer (Asia) Ltd., reported in 1983 (13) ELT 1607 (SC) and also contrary to the law laid down by this Court in case of M/s. CTM Technical Textiles Ltd. rendered in Special Civil Application No.8332 of 2020 decided on 24.12.2020 and the recoveries of GST being made from the petitioner under Chapter 39 at higher rate of 18% is ex-facie discriminatory and in violation of Article 14 of the Constitution of India and hence, the same is *void ab-initio*.

17. It was, therefore, submitted that this Court has conclusively held in case of M/s.Ralli Engine Ltd. v/s. Union of India & Ors., reported in 2004 (62) RLT 607 (Guj.) and other similar cases that the central levy must be levied and collected uniformly throughout the country. It was, therefore, submitted that as held by this Court in case of CTM Textiles Ltd. (supra), the petitioner cannot be saddled with the liability to pay the GST @ 18% as the goods manufactured by the petitioner are admittedly fabrics and this fact is also not disputed by the Revenue and it is an admitted position that the goods, namely, Geo Fabrics and Geo Textiles were woven fabrics produced out of the polyester yarn and in that view of the matter, such fabrics have to be considered as textiles and considered for the classification of textiles fabrics.

18. It was also submitted by learned advocate Mr.Dave that the order passed by the respondent No.4 is contrary to the position settled in law and contrary to well accepted common parlance and, therefore, the order directing for collection of GST on fabrics manufactured by the petitioner under Chapter 39 by treating them as "other goods of plastics" is wholly illegal and without jurisdiction.

19. It was submitted that the Hon'ble Madhya Pradesh High Court in case of M/s. Raj Packwell Ltd. (supra) as relied upon by the respondent No.4 is not in accordance with the facts of the case as the question of fabrics had not fallen for consideration before the Hon'ble Madhya Pradesh High Court and there is no authoritative pronouncement that woven fabrics manufactured out of plastic or synthetic raw materials were to be treated as articles of plastic under the Central Excise Tariff. The only issue was arose before the Hon'ble Madhya Pradesh High Court was in respect of HDPE tape and HDPE sacks and consequently, the judgment is only for those two products and not for woven fabrics. Learned advocate, therefore, submitted that the issue of classification as decided by this Court in case of CTM Textiles Ltd. (supra) is required to be applied in the facts of the case. However, the petitioner was not aware about such judgment in the said case was pronounced on 24.12.2020 after the hearing was concluded by the respondent No.4 on 23.12.2020. It was, therefore, submitted that the petitioner could not refer to the said judgment and being not aware about the law laid down by this Court and the petitioner is suffering adverse consequence of the ruling rendered by the respondent No.4 which was based

on the judgment of the Hon'ble Madhya Pradesh High Court in case of M/s. Raj Packwell Ltd. (supra).

20. On the other hand, learned advocate Ms.Hetvi Sancheti appearing for the respondent submitted that the writ petition is not maintainable as the order passed by the Advance Ruling Authority can be challenged before the appellate authority under the provision of Section 100 of the GST Act. It was, therefore, submitted that the petitioner should be relegated to avail the alternative efficacious remedy under the provision of the GST Act. It was submitted that the products manufactured by the petitioner would fall under Chapter-39 of the Tariff and not under Chapter-59 as the same is an article of plastic and when the details of the product are gone through and the uses are taken into consideration, the classification made by the respondent No.4 authority is just and proper and the product 'Geo Membrane' for water proofing lining fabrics also referred as 'Pond Liners' which is used for waterproof lining of ponds, canals and other water storage places are specific laminated high density polyethylene woven Geo Membrane for water proof lining which is manufactured specifically as per Indian Standard prescribed under IS:15351:2015 and are used primarily for farming water and as liners for water ponds, canals, water pits etc., for storage of water bodies. It was, therefore, submitted that the petitioners themselves have stated that the product manufactured by them is also referred to as a 'Pond Liner', the definition of 'Pond Liner' and the uses clearly show that the same is a plastics product for water proofing lining fabric and manufactured and supplied by the petitioner is covered under Entry No.45 of Schedule-IV of

Notification No.01/2017 dated 28.6.2017 issued by the Board and as such, the classification would fall under Chapter-39. It was further submitted that the decision of the respondent No.4 in case of M/s.Texel Industries Ltd. and M/s.Shree Ambica Geotex Pvt. Ltd. cited by the petitioner, Section 95(a) read with Section 103 of the GST Act would apply to the petitioner and as such, it is clear that the orders of Advance Ruling Authority are binding for the petitioner.

21. It was, therefore, submitted that the petition being devoid of any merits, is liable to be dismissed.

22. Having heard the learned advocates for the respective parties and having considered the facts of the case as emerging from the record, the short question which arises for consideration of this Court is as to whether the product, namely, Geo Membrane manufactured by the petitioner would fall under Chapter 59 or Chapter 39 of the Tariff. This issue is no more *res-integra* in view of the decision of the Coordinate Bench of this Court in case of M/s.CTM Technical Textiles Ltd. v. Union of India rendered on 24.12.2020 in Special Civil Application No.8332 of 2020, wherein the Coordinate Bench after considering the issue of alternative remedy as well as entertainability of the writ petition with regard to merits of the case, has held as under :

“47. In view of the aforesaid discussion, we are convinced that we should quash and set-aside the impugned Order in Original passed by the respondent no.2 dated 30.6.2020 and remit the entire matter to the respondent no.2 for fresh consideration after giving an adequate opportunity of hearing to the writ-applicants and also keeping in mind the prima facie

observations made by this Court in this judgment. We also intend to direct the Union of India to re-examine the CBEC Circular/Order No.8/92 dated 24.9.1992 and also the Ahmedabad Collectorate Trade Notice No.78/94 dated 9.5.1994 in light of the findings recorded by this Court in this judgment.

48. The writ-applicants have prayed to quash and set-aside the CBEC Circular/Order No.8/92 dated 24.9.1992 and also the Ahmedabad Collectorate Trade Notice No.78/94 dated 9.5.1994, as relying on the same, the goods manufactured by the writ-applicants are being classified as the articles of plastics under the Heading 3926 of the Central Excise Tariffs. The challenge to the CBEC Circular/Order and also the Trade Notice referred to above is substantially on the ground that the excise duty is being demanded from the writ-applicant based on such order and trade notice, whereas identical goods are being accepted as textile products in case of several other manufacturers and no duty is being charged. We do not intend to go into the issue as regards the legality and validity of the CBEC Circular/Order dated 24.9.1992 and the Ahmedabad Collectorate Trade Notice No.78/94 dated 9.5.1994 because we have something else in our mind. We intend to remit the entire matter to the respondent no.2 for fresh consideration in accordance with law, more particularly, the prima facie findings which we may record in the present order.

49. Prima facie, it appears from the materials on record that both the products involved in this case are "fabric" and both are produced by a weaving method.

50. The Agro Shade Net is knitted on the Raschel Knitting machine. Knitting is a method of constructing fabric (Fair Child Dictionary - page 146) and it is an alternative method for making fabric (the Standard Hand Book of Textiles - page 154). Fabric is a cloth i.e. woven, knitted, braided, knitted, felted or pleated with any textile fiber, or is a pointed web.

51. The Chemical Examiner of the Department has tested and analyzed a sample of the Agro Shade Net, and for sample No.RCL/31 it is opined by him that the same is a green colored knitted fabric. The Geo Grid fabrics are woven fabrics, and the polyester yarn is used for weaving of this type of fabric. The

manufacturing process of both the products is recorded in the show cause notice and also in the order passed subsequently.

52. Thus, prima facie it appears that both the products are woven fabrics, and they are brought into existence by weaving method.

53. The raw materials used for both the products is High Density Polyethylene (HDPE) strips which is a plastic material. But, plastic is used for producing textile fabrics. Polyester fabrics, terelene fabrics, nylon fabrics, etc. are well known varieties of fabrics, and the raw material for all such fabrics is plastic.

54. The term "textile" is derived from the Latin "texere" which means "to weave", and it means any woven fabric. The Apex Court has observed as under at para 6 of judgment in Porritts & Spencer (Asia) Ltd. (supra) :

"There can, therefore, be no doubt that the word 'textiles' in Item 30 of Schedule 'B' must be interpreted according to its popular sense, meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it". There we are in complete agreement with the Judges who held in favour of the Revenue and against the assessee. But the question is : What result does the application of this test yield ? Are 'dryer felts' not 'textiles' within the ordinary accepted meaning of that word ? The word 'textiles' is derived from the Latin 'texere' which means 'to weave' and it means any woven fabric. When yarn, whether cotton, silk, woollen, rayon, nylon or of any other description or made out of any other material is woven into a fabric, what comes into being is a 'textile' and it is known as such. It may be cotton textile, silk textile, woollen textile, rayon textile, nylon textile or any other kind of textile. The method of weaving adopted may be the warp and woof pattern as is generally the case in most of the textiles, or it may be any other process or technique. There is such phenomenal advance in science and technology, so wondrous is the variety of fabrics manufactured from materials hitherto unknown or unthought of and so many are the new techniques invented for making fabric out of

yarn that it would be most unwise to confine the weaving process to the warp and woof pattern. Whatever be the mode of weaving employed, woven fabric would be 'textiles'. What is necessary is no more than weaving of yarn and weaving would mean binding or putting together by some process so as to form a fabric. Moreover a textile need not be of any particular size or strength or weight. It may be in small pieces or in big rolls; it may be weak or strong, light or heavy, bleached or dyed, according to the requirement of the purchaser. The use to which it may be put is also immaterial and does not bear on its character as a textile. It may be used for making wearing apparel, or it may be used as a covering or bedsheet or it may be used as tapestry or upholstery or as duster for cleaning or as towel for drying the body. A textile may have diverse uses and it is not the use which determines its character as textile. It is, therefore, no argument against the assessee that 'dryer felts' are used only as absorbents of moisture in the process of manufacture in a paper manufacturing unit. That cannot militate against 'dryer felts' falling within the category of 'textiles', if otherwise they satisfy the description of 'textiles'."

55. What is held by the Supreme Court is an answer to what the respondents have argued in this case about what is 'textile', and whether woven fabric of any material is a textile product or not.

56. Prima facie, it appears that the understanding of the word 'textiles' in common parlance has not been considered by the Board as well as by the Ahmedabad Collector while issuing the impugned Order and the Trade Notice respectively. Instead of considering the method of weaving as a relevant factor, the nature of the raw material seems to have been taken into consideration while issuing such Order and Trade Notice. The Board's Circular and the Collector's Trade Notice prima facie appear to be contrary to the law laid down by the Apex Court about what is 'textiles', and cannot be relied upon for classifying woven fabric.

57. Both the goods in question are being manufactured by the writ-applicants by weaving; it being warp knitting in case of the Agro Shade Net and weaving by warp and weft in case of the Geo Grid fabrics. Both these commodities are in the nature

of fabrics, and the respondents have also accepted the fact that the Agro Shade Net are fabrics manufactured on the Raschel knitting machine, whereas the Geo Grid fabrics are woven fabrics manufactured on the weaving machines.

58. The judgment in Raj Pack Well Ltd. (supra) relied upon on behalf of the respondents has nothing to do with the HDPE fabric, but it relates to the HDPE strips/tapes/sacks. The question whether fabric woven out of strips or tapes are textile products or not, was not involved in this judgment. The contention raised by the writ-applicants is that the woven fabric would be 'textile' irrespective of the method of weaving through any technique and the materials used for weaving may also be anything like cotton, silk, rayon, nylon or any other description or made out of any other material; but when any such material is woven into fabric, what comes into existence is a "textile".

59. A specific and categorical submission was raised by the writ-applicants before the authorities that similarly situated manufacturers located elsewhere in the State as well as in the country have classified similar products as textiles, and the Central Excise officers have not initiated any proceedings against them on the basis that the goods are articles of plastics chargeable to excise duty. In the representations made before the Chief Commissioner, the Ministry of Finance and the Principal Chief Commissioner as well as the jurisdictional Commissioner, the writ-applicant has submitted as under :-

"It may be noted sir that more than 100 manufacturers in the country are treating this product as a Textile material and following HSN code under chapter 60. We understand that we are the only company who have the Show cause Notice pending."

60. A list of several manufacturers was also submitted before such authorities.

61. In the order passed by the jurisdictional Commissioner during the pendency of this writ-application also, this submission has been recorded that there are more than 100 manufacturers in the country and all of those have been treating this product as technical textile material, and a

reference has also been made to the evidence like the invoices of other manufacturers. However, no finding has been recorded worth the name in the impugned order about this specific plea of discrimination raised by the writ-applicant. The specific pleading in this writapplication that verification had been caused by the respondents in respect of many manufacturers whose details have been furnished by the writ-applicant has not been disputed, and no material has been brought on record by the respondents to indicate that such submission of the writ-applicant is incorrect.

62. In the context of the specific plea of discrimination referred to above, we may refer to the decision of this Court in the case of M/s.Darshan Boardlams Ltd. (supra), more particularly, the following observations :

“103. We have also noticed that the clarifications in the present case were followed by the Central Excise Officers in charge of the Commissionerate in Uttar Pradesh, Maharashtra, Andhra Pradesh, etc. The communications were issued by the Board to the Chief Commissioner of Patna, Chief Commissioner of Hyderabad and Chief Commissioner of Pune.

104. Under such circumstances, when other Central Excise authorities of equal and higher rank have followed and acted as per the clarifications, the Commissioner, Surat, could not have taken a contrary view on the assumption that the clarifications were only letters and not orders under Section 37B. Therefore, in our view, the action on the part of the respondents in denying the benefit of Notification No.6/2006 being contrary to the Board's circulars can be termed as without jurisdiction.

105. Mr.Dave is quite justified in submitting that the Central Excise is a central levy and, therefore, such a levy has to be collected uniformly from all similarly situated manufacturers located all throughout the country. If Excise authority of a particular Commissionerate or State refuses to allow benefit of exemption to manufacturers located in that Commissionerate or State but other manufacturers located elsewhere are allowed such exemption, then the same would be in violation of Article 14 of the Constitution of India and also of Article 19(1)(g) of the Constitution of India. We may, at this stage, profitably quote judgment delivered by this High Court in

the case of Ralli Engine Ltd. (supra), reported in 2004 (62) RLT 607 (Guj.)

“The petition contains challenge to the discriminatory treatment being given by the Commissionerates in three different States, i.e., Gujarat, Maharashtra and Tamil Nadu in respect of the same product. The petitioner-Company is a manufacturer of agricultural knapsack sprayer engine which is used as a part/component in mechanical appliances for spraying pesticides in fields and farms. The product is being classified under Heading No.84.24 in Maharashtra (manufacturer-High Power Engineering Company Private Limited, Satara) and in Tamil Nadu (manufacturer-Greaves Limited, Chennai) whereas in Gujarat it is classified under Heading No.84.07 in the petitioners' case by the Assistant Commissioner of Central Excise at Valsad under the Commissionerate of Central Excise, Valsad.”

106. We may also quote and rely upon the final judgment between the same parties rendered by a Division Bench of this Court, reported in 2006 (72) RLT 721 (Guj.)

“In the aforesaid set of facts and circumstances which remain uncontroverted, the petitioner succeeds on the limited ground of discrimination and it is not necessary for the Court to enter into any discussion on merits of the issue of classification.”

107. We have also noticed that in Special Civil Application No.3540 of 2008, this Court protected the petitioners by passing an interim order dated 28th February 2008 on the ground that the same products in other States were subjected to nil rate of duty which the petitioner had been pointing out to the department since 2006.”

63. In the result, this writ-application is partly allowed. The impugned Order in Original passed by the respondent no.2 dated 30.6.2020 is hereby quashed and set-aside. The matter is remitted to the respondent no.2 for fresh consideration of all the issues discussed in this judgment. The respondent no.2 shall give an adequate opportunity of hearing to the writ-applicants and decide the matter afresh in accordance with law, more particularly, keeping in mind the observations made by this Court.

64. We also direct the Union of India to re-look into the CBEC Circular/ Order No.8/92 dated 24.9.1992 and the Ahmedabad Collectorate Trade Notice No.78/94 dated 9.5.1994 respectively in light of the observations made by this Court and take an appropriate decision in that regard. It will be in the fitness of things if the Union of India first apply its mind to the CBEC Circular/Order No.8/92 dated 24.9.1992 and the Ahmedabad Collectorate Trade Notice No.78/94 dated 9.5.1994 and take an appropriate decision in accordance with law so as to enable the respondent no.2 to arrive at an appropriate conclusion in the fresh round of hearing. This time we make it explicitly clear that the issue of discrimination raised by the writ-applicants shall be specifically dealt with by the respondent no.2 in an appropriate manner in accordance with law.

65. Let this entire exercise be undertaken at the earliest and be completed within a period of six months from the date of receipt of the writ of this order.

66. It is needless to clarify that any proceedings initiated towards the recovery of the dues on the strength of the impugned Order in Original passed by the respondent no.2 shall also stand terminated."

23. In view of the above discussion and analysis on the subject, we do not think fit to reiterate the same and adopting the same reasoning, we hold that the product manufactured by the petitioner being Geo Membrane is classifiable would fall under Chapter 59 and not under Chapter 39 as held by the respondent No.4 - the Gujarat Advance Ruling Authority relying upon the decision of the Hon'ble Madhya Pradesh High Court in case of Raj Packwell Ltd. The petitioner, therefore, is liable to pay the GST @ 12% from 15.11.2017 onwards and not @ 18%. The respondent authority is, therefore, directed to apply the discounted rate of 12% of the GST on the product manufactured by the petitioner under HSN Code 59111000 of the Tariff. The petitioner is entitled to

claim the refund on the excess GST @ 6% paid pursuant to the order of the respondent No.4 - the Gujarat Advance Ruling Authority, without claiming any interest thereon.

24. The petition is accordingly allowed. Rule is made absolute to the aforesaid extent.

(BHARGAV D. KARIA, J)

(NIRAL R. MEHTA, J)

V.J. SATWARA