

OD-5 & 6

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/1467/2023
M/S. HARSH POLYFABRIC PRIVATE LIMITED
VERSUS
UNION OF INDIA & ORS.

WPO/145/2025
M/S. HARSH PLYFABRIC PRIVATE LIMITED
VERSUS
UNION OF INDIA & ORS.

BEFORE :
THE HON'BLE JUSTICE RAJA BASU CHOWDHURY
Date: 6th May, 2025

Appearance :
Mr. Rahul Tangri , Adv.
Ns. Adita Saraf, Adv.
...for the petitioner
Mr. Tilak Mitra, Adv.
Mr. Amit Sharma, Adv.
...for the UoI
Ms. Manasi Mukherjee, Adv.
Mr. Bijitesh Mukherjee, Adv.
...for the CGST
Mr. Anirban Ray, AAG
Md. T. M. Siddiqui, Adv.
Mr. Ranoy Chakraborty, Adv.
Mr. Saptak Sanyal, Adv.
....for the State

The Court :- 1. The issues raised in the orders passed by the Appellate Authority under Section 107 of the WBGST/CGST Act, 2017, which form subject matter of challenge in the instant writ petitions, are common.

2. Record would reveal that being aggrieved with the order passed by the proper officer rejecting the refund application in form RFD 06, individual appeals were filed. Mr. Tangri, learned Advocate appearing in support of the writ petitions would submit that the only issue that falls for consideration is with regard to the classification of the PPSB bed sheets. According to him, it is the petitioner's case that the above bed sheets are produced in a finished state by processing the non-woven fabric, which are manufactured by the petitioners and that the petitioners do not consume PP granules

directly into the manufacturing of bed sheets, instead non-woven fabric manufactured from PP granules is used in the manufacture of PPSB bed sheets. The non-woven fabric so manufactured is then cut, sealed/stitched on four sides to give it different shape, size and quality of the bed sheets. Accordingly, the petitioner had declared the said product to be classified in Chapter 63 and HSN code 63041930 and had, accordingly, submitted the return charging 5% GST on its sales value (2.5% SGST and 2.5% CGST).

3. The Appellate Authority did not accept the same as it held that in the Customs and Central Excise Tariff Act, the articles made of Chapter 56 to 62 do not cover in Chapter 63 and, therefore, the Appellate Authority held that PPSB bed sheets should be considered in Chapter 5603 at par with non-woven fabric to be taxed at the rate of 12% instead of 5% and accordingly, the order rejecting the refund was modified. Mr. Tangri would, however, submit that the aforesaid issue is no longer *res integra* and the same has been finally adjudicated by the Division Bench of this Court in the case of ***M/s. Harsh Polyfabric Private Limited v. Union of India*** (APO/114/2024 & APO/115/2024). Having regard thereto, this Hon'ble Court may afford the petitioner with adequate relief.

4. Mr. Chakraborty, learned Advocates appears on behalf of the respondents. He would acknowledge the fact that aforesaid issue has already been decided in the case of ***M/s. Harsh Polyfabric Private Limited*** (*supra*) by the judgment delivered on 22nd January, 2025.

5. Having heard learned Advocates appearing for the respective parties and noting that the Division Bench of this Court by the aforesaid order while noting that the Appellate Authority had misread the second note in Chapter 63 of the Tariff Act, while proceeding to determine the appeal by using the word "articles made of Chapter 56 to 62" by wrongly substituting the word "made" which is not contained in the note under the aforesaid chapter, the Appellate Authority has arrived at a finding that the bed sheets in question have to be taxed at 12%.

6. It appears that that the Hon'ble Division Bench had observed that the Appellate Authority failed to take note that the word "made" is not found in sub-para 2 of the notes under Chapter 63. Proceeding on such premise and by noting that neither the authorities nor the Court can add words or substitute words in a statute and has to read the statute as it is and the plain meaning should be gathered from the statute, had concluded that the error by misreading the statute led to wrong finding that the bed sheets in question have to be taxed at 12% instead of 5%. It also appears that the Division Bench has taken note of the fact that Chapter heading 6304 which deals with other furnishing articles excluding those of heading 9404, there is a separate heading for bed sheets. Under the said heading in the tariff item 63041930 bed sheets and bed covers of manmade fibres have been specifically mentioned.

7. This apart the Division Bench also noted that the Appellate Authority has misread paragraph 2(a) of the Notes of Chapter 63 by substituting the words "goods of Chapter 56 to 62" by "articles made of Chapter 56 to 62". This has led to an inherent wrong decision in holding that the PPSB Bed Sheets is to be considered in Chapter 5603 and to be taxed at 12% instead of 5% as claimed by the appellant.

8. In the instant case, considering that in identical set of facts, similar mistake has been committed by the Appellate Authority, I am of the view that the orders of the Appellate Authority dated 02.09.21, 17.09.2021, 05.10.2021, 30.11.2021, 13.01.2022, 18.02.2022, 11.03.2022, 19.07.2022, 07.06.2022, 16.06.2022, 10.05.2022, 09.06.2022, 13.06.2022, 27.07.2022, 10.08.2022, 27.07.2022, 14.09.2022, 25.11.2022, 22.08.2022, 15.12.2022 and 19.05.2023 to the extent the same deals with the classification of PPSB Bed Sheets cannot be sustained and the same are accordingly modified.

9. The refund applications filed by the petitioner to the extent the same treats the non-woven fabric to be taxed at 12% instead of 5% also stands modified in terms of the observation made herein.

10. The respondents are directed to process the refund applications of the petitioner on the basis of the observations made herein along with the statutory interest as may be applicable under section 56 of the said Act within a period of 12 weeks from the date of communication of this order.

11. With the above observations and direction, these writ petitions stand disposed of.

(RAJA BASU CHOWDHURY, J.)

akg/R. Bose