


GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
---	---

ADVANCE RULING(APPEAL) NO. GUJ/GAAAR/APPEAL/2021/15
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/25)

Date: 08.04.2021

Name and address of the appellant	:	M/s. Girish Rathod (Jay Ambey), Opp. Shri Govind Processors, 183-1, Bhagirath Process, Shahwadi, Ranipur, Narol, Ahmedabad-382405.
GSTIN of the appellant	:	24AERPR4612Q1ZS
Advance Ruling No. and Date	:	GUJ/GAAR/R/86/2020 dated 17.09.2020
Date of appeal	:	15.10.2020
Date of Personal Hearing	:	10.11.2020
Present for the appellant	:	Shri Vijaybhai Thakkar, Advocate And Girish Rathod Proprietor.

The appellant M/s. Girish Rathod (Jay Ambey), Opp. Shri Govind Processors, 183-1, Bhagirath Process, Shahwadi, Ranipur, Narol, Ahmedabad-382405 (hereinafter referred to as the appellant) is engaged in the manufacture of various textile materials including Fusible Interlining fabrics of cotton, which is generally used in the market by tailor for stitching purpose and for preparing finished articles of clothing.

2. The appellant has submitted the manufacturing process of Fusible interlining Fabrics of cotton as under:

“100% cotton grey fabrics having construction count of 20”s with read and peak 60x60 (open end yarn of 1400CSP) is subjected to process such as desizing, boiling, mercerizing, bleaching and washing by adding chemicals (desizing agent, caustic flex, caustic lye liquid soap, hydrogen peroxide) with acetic acid with the help of Jigger Machine. Thereafter it is subjected to drying range machine for drying. Subsequent to this dried fabric is by adding starch PVA and binder by padding process on Stenter Machine. After completion of this process this fabric is passed through calendar and zero machine. Thereafter this fabric is partially coated by Polyethylene powder having 25 to 45 grams per sq.meters with the help of engraved dotted cylinder. Thus Final Fabrics produced is having partial and porous coating with Polyethylene powder. The fabric so emerged is known as Fusible Interlining fabrics of cotton. Thus from the manufacturing process it is revealed that coating is not carried out with Films.”

3. The appellant has submitted that air and water can easily pass through this fabric and this fabric is easily tearable and washable by hand; that in common parlance the fabric so manufactured is known as Fusible Cotton interlining fabrics and it is supplied to wholesaler, wholesaler to retailer and retailer to tailor for it is used in the collars and cuff of shirt for garments and it's price is below Rs.100 per sq.metre; that prior to roll out of Goods and Service Tax, the dispute related to classification of the said goods has undergone long litigation; that as of now the said fabrics is classifiable under Chapter 52 of the Central Excise Tariff Act, 1985 as per the decision in the case of Madura Coats pvt.ltd. vs. Commissioner of Central Excise, Tirunelveli reported as 2019(365)ELT345(Tri-Chennai) wherein the Hon'ble Tribunal has held that *Note 2 (c) in Chapter 59 of Central Excise Tariff itself is no longer in existence and requirements laid down in Chapter Note 2(a) to Heading 5903 read with CBE & C Circulars are not satisfied and hence Fusible interlining cloth not to be classified under Heading 59.03. Impugned order cannot sustain and is liable to be set aside.* The appellant has further submitted that the aforementioned decision though pertains to the pre-GST regime

and pertains to Central Excise Tariff, has got relevance for classification in the case of appellant in the GST regime as well because of the facts and circumstances are identical to the case of Madura Coats pvt.ltd.referred above and relied by them.

4. The appellant has submitted that for interpretation of the tariff items in GST as per explanation (iii) and (iv) of the Notification No.1/2017-Central Tax(Rate), the First Schedule of the Customs Tariff Act, 1975, along with section and chapter notes and the general explanatory notes of the First Schedule are to be referred; that on rollout of GST and prior to the decision in the case of Madura Coats pvt.ltd. vs. Commissioner of Central Excise, Tirunvelveli discussed in the above para, they classified their product under Chapter Heading 5903 as per Sr.No.160 of Notification No.1/2017-Central Tax(Rate) and Integrated Tax Rate; that in view of the above decision, the controversy arose whether their product was classifiable under Chapter 52 or 59. The appellant has stated that the comparison of Heading 5903 in the Central Excise Tariff Act, 1985 and the Customs Tariff Act, 1975 are the same and read as:

“Textile Fabrics, impregnated, coated, covered or laminated with plastics, other than those of Heading 5902.”

5. The appellant has submitted that Chapter Note for Heading 5903 of both the First Schedule to the Central Excise Tariff Act, 1985 and the First Schedule to the Customs Tariff Act, 1975 are similar and as under:

Chapter Note for Heading 5903 of First Schedule to the Central Excise Tariff Act, 1985.	Chapter Note for Heading 5903 of the First Schedule to the Customs Tariff Act, 1975
<p>Heading 5903 applies to:</p> <p>(a) textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square metre and whatever the nature of the plastic material (compact or cellular), other than:</p> <p>(1) fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually Chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of colour;</p> <p>(2) products which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15oC and 30oC (usually Chapter 39);</p> <p>(3) products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour (Chapter 39);</p> <p>(4) fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments (usually Chapters 50 to 55, 58 or 60);</p> <p>(5) plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (Chapter 39); or</p> <p>(6) textile products of heading 5811;</p> <p>(b) fabrics made from yarn, strip or the like, impregnated, coated, covered or sheathed with plastics, of heading 5604.</p>	<p>Heading 5903 applies to:</p> <p>(a) textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square metre and whatever the nature of the plastic material (compact or cellular), other than:</p> <p>(1) fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually Chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of colour;</p> <p>(2) products which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15oC and 30oC (usually Chapter 39);</p> <p>(3) products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour (Chapter 39);</p> <p>(4) fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments (usually Chapters 50 to 55, 58 or 60);</p> <p>(5) plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (Chapter 39); or</p> <p>(6) textile products of heading 5811;</p> <p>(b) fabrics made from yarn, strip or the like, impregnated, coated, covered or sheathed with plastics, of heading 5604.</p>

6. The appellant has further submitted that as per the above Note2(a), Heading 5903 applies to the textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square metre and whatever the nature of the plastic material(compact or cellular), other than the fabrics having characteristics listed at 1 to 5 is the case of appellant as per the test result from ATIRA. Therefore the appellant has

reason for relying on the decision in the case of Madura Coats pvt.ltd. vs. Commissioner of Central Excise, Tirunvelveli reported as 2019(365)ELT345(Tri-Chennai). They had therefore, raised the following question seeking Advance Ruling on the same:

“Whether the product Fusible Interlining Fabrics of Cotton is correctly classifiable under Chapter 52 or 59?”

7. The appellant has stated that the had approached the Gujarat Authority for Advance Ruling along with the test results of their products which they had obtained from ATIRA, recognized by the Government of India. The Gujarat Authority for Advance Ruling ruled that their product ‘Fusible Interlining Fabrics of Cotton’ was classifiable under Heading 5903 of the First Schedule to the Customs Tariff Act, 1975(51 of 1975) on the following grounds:

- (i) On comparing the test results of the sample product/fabric ‘fusible interlining fabric of cotton’ of the applicant obtained from ATIRA, with the 3 conditions of the explanatory notes to HSN in respect of Heading 5903, all the 3 conditions for classification under Heading 5903 were found to have been fulfilled.
- (ii) The fabric fusible interlining fabric of cotton’ of the applicant was found to be not classifiable under Heading 5208 to 5212 of Chapter 52 of the Customs Tariff Act, 1975 as none of these headings covered laminated fabrics or fabrics coated with plastics.
- (iii) Reliance was placed on (a) Order No. 33/WBAAR/2019-20 dated 11.11.2019 issued by the West Bengal Advance Ruling Authority in respect of M/s. Sadguru Seva Paridhan Pvt Ltd. (b) Order No.11/2019-20 dated 12.03.2020 issued by the Uttarakhand State Advance Ruling Authority in respect of M/s.The Ruby Mills ltd. (c) Order dated 19.03.2020 of the Appellate Authority for Advance Ruling, West Bengal in the case of Appeal Case No. 15/WBAAAR/APPEAL/2019 filed by M/s. Sadguru Seva Paridhan pvt.ltd. wherein the Order No. 33/WBAAR/2019-20 dated 11.11.2019 issued by the West Bengal Advance Ruling Authority was upheld

8. Aggrieved with the aforesaid ruling, the appellant has filed the present appeal on 14.10.2020. The appellant has submitted the grounds of appeal as under:

- (i) The Ruling of GAAR have not considered the general rules of interpretation of the First Schedule to the Customs Tariff Act, 1975, section and chapter notes and general explanatory notes of the First Schedule. Rule 1 of the General rules for the interpretation for classification of goods in the schedule provides that “The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter notes.
- (ii) In the case of their product ‘Fusible Interlining Fabrics of Cotton’ is classified under Chapter heading No.5903 by the Ruling dated 17.09.2020 by the Hon’ble GAAR, who have mis-read the Chapter Note.No.2(a) of the said heading. They have reproduced the said chapter note as under:

Heading 5903 applies to:

(a) textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square metre and whatever the nature of the plastic material (compact or cellular), other than:

(1) fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually Chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of colour;

(2) products which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15oC and 30oC (usually Chapter 39);

(3) products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating

or covering can be seen with the naked eye with no account being taken of any resulting change of colour (Chapter 39);

(4) fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments (usually Chapters 50 to 55, 58 or 60);

(5) plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (Chapter 39); or (6) textile products of heading 5811;

- (iii) As per the above chapter note, it excludes fabrics having characteristics from Sr.No.1 to 5 above; that it is mentioned the said chapter note as to where the fabrics having characteristics of (1) to (5) will be classified, if not classified under Heading 5903 and that by referring to Explanatory notes to HSN, the GAAR has negated the content of Chapter note 2(a) which is not correct and legal.
- (iv) The test result obtained by appellant from ATIRA is admitted by GAAR in para 22 of the impugned order and according to the test report dated 02.08.2018, characteristics of the products of the appellant are as under:
- (1) The product contains 85% and more cotton.
 - (2) The product is polymer coated on one side. Coating cannot be seen with naked eye, is non-continuous and is different from film coating. Film coating is visible with naked eye.
 - (3) The product can be bent without fracturing around a cylinder of a diameter 7m or more at temperature between 15C to 30C.
 - (4) The fabric is not completely embedded in plastic.
 - (5) The product is coated on one side only.
 - (6) The product is covered with plastic polymer on one side and bears a design like a dot matric design resulting from coating process.
 - (7) The fabric is porous and pervious.
The product is cotton fusible interlining.
- (v) The comparison of Chapter note 2(a) Sr.No.1 to 5 with the test result clearly suggests that the product is excluded from the chapter heading 5903, but GAAR has extrapolated the issue and has referred to the Explanatory notes of HSN for guidance. The appellant has tabulated the test results, chapter note no.2 of heading 5903 in the First Schedule of Customs Tariff Act, 1975 and HSN explanatory note as under:

Test result carried out by ATIRA	Chapter Note 2 for Heading No.5903 in First Schedule of the Customs Tariff Act, 1975	Explanatory note of Heading No.5903 from HSN for guidance.
<p>(1)The product contains 85% and more cotton. (2)The product is polymer coated on one side. Coating cannot be seen with naked eye, is non-continuous and is different from film coating. Film coating is visible with naked eye. (3)The product can be bent without fracturing around a cylinder of a diameter 7m or more at temperature between 15C to 30C. (4)The fabric is not completely embedded in plastic. (5)The product is coated on one side only.</p>	<p>Heading 5903 applies to: (a) textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square metre and whatever the nature of the plastic material (compact or cellular), other than: (1) fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually Chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of colour; (2) products which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15oC and 30oC (usually Chapter 39);</p>	<p>This heading covers textile fabrics which have been impregnated, coated, covered or laminated with plastics (e.g., poly(vinyl chloride)).</p> <p>Such products are classified here whatever their weight per m2 and whatever the nature of the plastic component (compact or cellular), provided:</p> <p>(1)That, in the case of impregnated, coated or covered fabrics, the impregnation, coating or covering can be seen with the naked eye otherwise than by a resulting change in colour.</p> <p>Textile fabrics in which the impregnation, coating or covering cannot be seen with the naked eye or can be seen only by reason of a resulting change in colour usually fall in Chapters 50 to 55, 58 or 60. Examples of such -----</p> <p>(2)That the products are not rigid, i.e. they can, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15 degrees centigrade and 30 degrees centigrade.</p> <p>(3)That the textile fabric is not completely embedded in, nor coated or covered on both sides with, plastics.</p>

<p>(6)The product is covered with plastic polymer on one side and bears a design like a dot matrix design resulting from coating process. (7)The fabric is porous and pervious. The product is cotton fusible interlining.</p>	<p>(3) products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour (Chapter 39); (4) fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments (usually Chapters 50 to 55, 58 or 60); (5) plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (Chapter 39); or (6) textile products of heading 5811;</p>	<p>Products not meeting the requirements of subparagraph(2) or (3) above usually fall in Chapter 39. However, textile fabric coated or covered on both sides with plastics where the coating or covering cannot be seen with the naked eye, or can be seen only by reason of a resulting change in colour, usually falls in Chapter 50 to 55, 58 or 60. Except in the case of textile products of heading 58.11, textile fabrics combined with plates, sheets or strip of cellular plastics, where the textile fabric is present merely for reinforcing purposes, are also classified in Chapter 39(see General Explanatory Note to Chapter 39, part entitled “Plastics and textile combinations”, penultimate paragraph).</p> <p>The laminated fabrics of this heading should not be confused with fabrics which are simply assembled in layers by means of a plastic adhesive. These fabrics, which have no plastics showing in cross-section, generally fall in Chapter 50 to 55.</p> <p>In many of the textile fabrics classified here, the plastic material, usually coloured, forms a surface layer which may be smooth or be embossed to simulate e.g. the grain of leather (“leather cloth”).</p> <p>This heading also covers dipped fabrics (other than those of heading 59.02), impregnated to improve their adhesion to rubber, and textile fabrics which are spattered by spraying with visible particles of thermoplastic material and are capable of providing a bond to other fabrics or materials on the application of heat and pressure.</p>
--	---	--

- (vi) While examining the test results of the sample, GAAR compared the Explanatory Notes of HSN with samples and not with the chapter Note 2(a) of Chapter 59 provided for Heading 5903 which is erroneous. Assuming without admitting, they contend that the analysis of conditions no.1 to 3 and conclusion based on the said analysis, GAAR have wrongly classified their product under Chapter 59. The conditions analyzed by GAAR and contention of the appellant are as under:

Sr. No.	Conditions to be fulfilled as per explanatory notes to HSN	Corresponding test results as per ATIRA’s test report
01.	<i>In the case of impregnated, coated or covered fabrics, the impregnation, coating or covering can be seen with the naked eye otherwise than by a resulting change in colour.</i>	<i>The product is polymer coated on one side. Coating cannot be seen with the naked eye. Coating is non-continuous. This coating is different than film coating. Film coating is visible with naked eye.</i>
02.	<i>The products are not rigid, i.e. they can, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15 degrees centigrade and 30 degrees centigrade.</i>	<i>The product can be bent without fracturing around a cylinder of a diameter 7m or more at temperature between 15C to 30C.</i>
03.	<i>The textile fabric is not completely embedded in, nor coated or covered on both sides with, plastics.</i>	<i>The fabric is not completely embedded in plastic. It is covered with plastic polymer on one side and bears a design like a dot matrix design resulting from coating process.</i>

Condition 1 (Para-23 of Ruling): As per explanatory note referred in column no.2, if the product complies this condition then it will be classified under heading No.5903. As against the test result clearly states that the product is polymer coated on one side. Coating cannot be seen with the naked eye. Coating is non-continuous. This coating is different from film coating. Film coating is visible with naked eye. In this regard, GAAR has mentioned in Ruling that:

*“We find that film coating also involves coating with natural or synthetic polymeric substance (plastic). Even otherwise, the condition only stipulates that **coating** must be visible with the naked eye but does not mention polymer coating or film coating, hence this condition is fulfilled.”*

The appellant states that the above findings of GAAR are totally erroneous, that the GAAR is reading explanatory note in choose and pick manner and the conditions which the GAAR has put in the table are only a portion and without continuity of what are stated in early part of the explanatory note. The same is reproduced below:

“This heading covers textile fabrics which have been impregnated, coated, covered or laminated with plastics (e.g., poly(vinyl chloride)).

Such products are classified here whatever their weight per m² and whatever the nature of the plastic component (compact or cellular), provided:

(1)That, in the case of impregnated, coated or covered fabrics, the impregnation, coating or covering can be seen with the naked eye otherwise than by a resulting change in colour.

Textile fabrics in which the impregnation, coating or covering cannot be seen with the naked eye or can be seen only by reason of a resulting change in colour usually fall in Chapters 50 to 55, 58 or 60. Examples of such ----”

The appellant states that the above explanatory note also excludes Textile fabrics in which the impregnation, coating or covering which cannot be seen with the naked eye or can be seen only by reason of a resulting change in colour usually fall in Chapters 50 to 55, 58 or 60 which is also excluded at Sr.No.1 of Chapter Note 2(a); that the coating referred in this exclusion is plastic, but the GAAR have not read the explanatory note in totality. Therefore, the finding of GAAR that *“We find that film coating also involves coating with natural or synthetic polymeric substance (plastic). Even otherwise, the condition only stipulates that **coating** must be visible with the naked eye but does not mention polymer coating or film coating, hence this condition is fulfilled”* is totally erroneous and reading of the explanatory note is out of context.

Condition 2: It is mentioned here that *“is fulfilled as the product can be bent without fracturing around a cylinder of a diameter 7m or more at temperature between 15 degrees C to 30 degrees C.”* The appellant has stated that GAAR have ignored that the product having these characteristics is excluded at Sr.No.2 of Chapter 2(a).

Condition 3: It is mentioned here that *“is fulfilled as the fabric is not completely embedded in plastic but is covered with plastic polymer on one side and bears a design like a dot matrix design resulting from coating process.”* The appellant has stated that the condition no.3 available in explanatory note is-

“(3)That the textile fabric is not completely embedded in, nor coated or covered on both sides with, plastics.

Products not meeting the requirements of subparagraph(2) or (3) above usually fall in Chapter 39. However, textile fabric coated or covered on both sides with plastics where the coating or covering cannot be seen with the naked eye, or can be seen only by reason of a resulting change in colour, usually falls in Chapter 50 to 55, 58 or 60. Except in the case of textile products of heading 58.11, textile fabrics combined with plates, sheets or strip of cellular plastics, where the textile fabric is present merely for reinforcing purposes, are also classified in Chapter 39(see General Explanatory Note to Chapter 39, part entitled “Plastics and textile combinations”, penultimate paragraph).”

- (vii) The appellant has stated that against the above, in the Chapter Note 2(a), it is mentioned that *“products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour (Chapter 39)”* is excluded from heading 5903; that perusal of both explanatory note of HSN and Chapter note 2(a) excludes the fabric from chapter 5903 if such coating cannot be seen with naked eye; that in case appellant’s product is coated on one side and such coating is not seen with naked eye, it falls under excluded category as per chapter note 2(a); that the findings of the GAAR are based on partial reading of explanatory note and ignoring the content of Chapter 2(a), hence classification of the fabrics of the

appellant based on such finding is not acceptable and not correct and legal as well; thus harmonious reading of above three column reveals that the samples comply with three exclusions as stipulated in Explanatory notes to HSN and is admitted facts by GAAR, but they have not considered the word other than 1 to 5 mentioned in the Chapter Note 2(a) for Heading 5903; that in para 23 of the Ruling, GAAR has compared test result with the explanatory note of HSN instead of Chapter Note 2(a); that Chapter Note 2(a) clearly states that fabric confirming to 1 to 3 are not classifiable under Heading No.5903 notwithstanding anything contained in the explanatory note.

- (viii) The appellant has invited reference to CBEC's Circular No.254/88/96-CX dated 18.10.1996 wherein at para 5, it is clearly stated and clarified rightly as well that Chapter Note will prevail over HSN explanatory note. The appellant's view gets support in the case of CCE & Cus, Aurangabad vs.Ratan Tarpaulin Water Proof Indus reported as 2000(126) ELT.782(Tribunal). They have reproduced the full text of the Circular referred above as under:

Circular No. 254/88/96-CX dated 18/10/96

[From F.No. 59/3/93-CX.1]

Government of India
Ministry of Finance
Department of Revenue, New Delhi

Subject: Classification of Tarpaulin/ Processed waterproofing canvas cloth- Clarification regarding.

I am directed to draw your attention to Board's Circular No. 6/91 dated 11.4.91 wherein it was clarified that wax coated canvas cloth would merit classification under heading 59.06 of the Central Excise Tariff if there is formation of visible layer on the surface of the fabric and not merely a change of colour or some residue. If, on the other hand, there is no visible layer formation, then the said wax proofed/ tarpaulin cloth would be classifiable in Chapter 52 of the Central Excise Tariff as water proofed cloth, provided that base fabrics are cotton fabrics. It also clarified therein that a "layer" should be distinguished from mere presence of residues in uneven patches.

2. *It has been represented that the criteria of visible layer formation on the fabric has posed problems in deciding the classification of tarpaulin cloth/ wax coated canvas cloth leading to divergence in practice of classification of the subject goods. It is reiterated that a visible layer is different from uneven residues and patches, and it should be a uniform coating visible by the naked eye otherwise than through a change of colour.*

3. *The criteria of visible layer formation prescribed in the aforesaid Board's Circular was based on Chapter Note 5(a) of Chapter 59 of the CET which sets out that Heading 59.07 would not apply to fabrics in which impregnation, coating or covering cannot be seen with the naked eye (no account being taken of resulting change in the colour of the fabrics).*

4. *The Chief Chemist who was consulted has advised and it is also seen from the available samples in the file that there is no visible layer formation and hence most of these fabrics would prima facie be classifiable under Chapter 52.*

5. *Moreover the reference to tarpaulin fabrics under Chapter 59 is only in the Explanatory Notes to HSN and not in the Chapter Notes or Section Notes of CETA. As against this, water proofed fabrics are specifically mentioned under Chapter 52 of CETA- unlike the HSN. Hence this entry would prevail over the entry in the Explanatory Notes to HSN.*

6. *Further it is seen from I.S. Standard IS : 2089 - 1977 for water proofed fabrics and paulines, that for manufacture of tarpaulin, firstly canvas/ duck fabrics are water proofed (which are covered by Chapter 52); and later these are converted into tarpaulins by stitching and putting eye lets.*

7. *In the circumstances, it is hereby clarified that the classification of the subject goods may therefore be decided on the basis of facts and circumstances of each goods keeping in view the visibility criteria discussed in Board's aforesaid Circular and the position explained above in Paras 4, 5 & 6. In case of doubt, the samples can be got*

tested by Dy. Chief Chemist. All pending show cause notice(s) may please be finalized early on these lines.

- (ix) The appellant has submitted that their samples of fabrics confirms to the characteristics mentioned at 1 to 3 of Chapter note 2(a), which excludes the classification of the subject goods under 5903 as such their product will be classifiable under Chapter 50 to 55 as mentioned in the chapter note No.2(a) itself. As they have used cotton fabric which contains 100% of cotton, their product will be classified in Chapter 52 of the First Schedule to the Customs Tariff Act, 1975.
- (x) Based on the explanatory note of HSN for Chapter 52 and ignoring the Chapter Note 2(a) of Chapter 59, the GAAR has drawn conclusion in para 24.3, 24.4 and 24.5 that the subject fabrics is not classifiable under Chapter 52 but under Chapter Heading 5903 which is not correct; that as discussed in above para, the Chapter note prevails over the Explanatory notes to HSN, accordingly, the decision of GAAR is in contradiction to what is clarified in para 5 by CBEC in the above referred Circular No. 254/88/96-CX dated 18.10.1996; that not only is it also against the General Interpretative Rules which state that ‘for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions.’”
- (xi) In the instant case, Chapter Note 2(a) for heading 5903 specifically excludes the fabrics mentioned at Sr.No.1 to 5 of the note where the appellant’s fabric falls under Sr.No.2 along with other exclusion clauses; that in exclusion at Sr.No.2, it is specifically mentioned that such fabrics is classifiable under Chapter 50 to 55; therefore the appellant contends that their fabrics can be classified as per Rule 1 of General Rule of Interpretation and there is no need to refer to other Rules and Explanatory Notes to HSN; that under the circumstances, the careful analysis of CBEC’s Circular and Rule 1 of the General Rule of interpretation, it can be clearly derived beyond iota of doubt that it does not include or consider explanatory note to HSN for the interpretation of classification; that the conclusion drawn by GAAR based on explanatory note to Chapter 52 instead of considering Chapter note 2(a) of Chapter 59 meant for classification under Heading 5903 is erroneous and legally not correct and is contrary to Rule 1 of General Rules for Interpretation of the Customs Tariff Act, 1975.
- (xii) GAAR has relied on Ruling by Authority of Advance Ruling of West Bengal reported as 2020(38)GSTL(App.AAR-GST)WB) in the case of Sadguru Seva Paridhan pvt.ltd. wherein it was held that :

Fabric-Fusible interlining cloth-Fabric coated with plastic by dot printing process not classifiable under Headings 5208, 5209 and 5212 of Customs Tariff Act, 1975, no process of weaving or interlacing being involved in its manufacture-Pattern of dots that form on the surface of the product is due to the very process of dot printing and visible on the entire surface of the cloth-Exclusion clause(4) of Chapter Note 2(a) of Chapter 59 ibid which is essential for being excluded from Chapter 59 not applicable to fusible interlining cloth manufactured by the appellant-Classification under Heading 5903 ibid appropriate in view of Explanatory Notes to the HSN Code and CBE & C Circular No.433/66/98-CX-6, dated 27.11.1998.[paras 8,9,10,11]

Precedent-Decision of Goodswear Fashion pvt.ltd.[2019(23)GSTL.154(AAR-GST)] not taken into account the relevant circulars of CBE & C relating to classification of fusible interlining cloth and hence cannot be said to reflect the true legal position on this issue.

- (xiii) The appellant has stated that the aforesaid decisions are based on CBEC’s Circular No. 433/66/98-CX-6, dated 27.11.1998 which was struck down by the High Court of Madras in the case of Madura Coats pvt. ltd. vs. CBEC, New Delhi and relying on the said decision of the Madras High Court, the Hon’ble Tribunal in the case of Madura Coats pvt.ltd. vs. Commissioner of Central

Excise, Tirunelveli reported at 2019(365)ELT345(Tri-Chennai) has held that:

Cloth-Fusible interlining cloth, Classification of-Note2(c) in Chapter 59 of Central Excise Tariff itself no longer in existence and requirements laid down in Chapter Note 2(a) to Heading 5903 ibid read with CBE & C Circulars not satisfied-Impugned goods not to be classified under Heading 59.03 ibid-Impugned order cannot sustain and liable to be set aside.

Thus the appellant have relied upon the above decision which is clearly distinguishable from the decisions relied by the GAAR; that the GAAR has not commented or given its findings in their Ruling with regard to the case of M/s.Madura Coats pvt.ltd. vs. CBEC, New Delhi for not considering the appellant's claim.

- (xiv) Another case which is relied upon by the GAAR is the Ruling of Uttarakhand State Authority for Advance Ruling Order No.11/2019-20 dated 12.03.2020 and the perusal of the order of AAR, Uttarakhand reveals that they have not examined the decision of Madura Coats pvt. ltd. vs. CBEC, New Delhi mentioned above; that the ratio of the two decisions relied upon by the GAAR are not applicable to the appellant's case as in both the cases viz. Sadguru Paridhan pvt.ltd. and Ruby Mills ltd. have not referred or analyzed the decision of Madura Coats pvt.ltd. vs. Commissioner of Central Excise, Tirunelveli (mentioned in (xiii) above, on which the appellant has relied for the purpose of getting Ruling from GAAR. Thus the appellant distinguished the decisions relied upon by the GAAR.
- (xv) In addition to the above, the appellant also rely on the Ruling No.16/2018-19 dated 30.01.2019 in the case of Goodswear Fashions pvt.ltd. delivered by the Authority of Advance Ruling of Uttarakhand wherein classification of interlining fabrics under Chapter 52-53 was considered instead of Chapter 59.
- (xvi) The appellant has concluded their submission by stating that based on the aforementioned grounds and existing Chapter Note 2(a), CBEC's Circular No. 433/66/98-CX-6, dated 27.11.1998 struck down by the Hon'ble High Court of Madras in the case of Madura coats pvt.ltd.which is relied upon by the Hon'ble Tribunal, Chennai and though the said decisions pertain to pre-GST, are relevant after Roll out of GST as well. The appellant contend that the Ruling of the GAAR is not legal and correct and have therefore approached the Hon'ble Gujarat Appellate Authority for Advance Ruling with request to set aside the Ruling of Hon'ble GAAR and give ruling in appellant's favour or pass any other order as deemed fit.

FINDINGS :-

9. We have considered the submissions made by the appellant in the appeal filed by them, their contentions during the course of personal hearing as well as evidences available on record. We have also gone through the Ruling given by the GAAR.

10. The Advance Ruling was sought for by the appellant for appropriate classification of their fabric 'fusible interlining fabrics of cotton'. GAAR vide Advance Ruling No.GUJ/GAAR/R/86/2020 dated 17.09.2020 ruled that the said fabric is classifiable under Heading '5903' of the Customs Tariff Act, 1975(51 of 1975). The appellant has challenged the aforementioned order of the Advance Ruling authority. Therefore, the issue involved in this case is the proper classification of the product/fabric 'fusible interlining fabrics of cotton'.

11. The appellant in their submission have contended that: (i) GAAR have not considered the general rules of interpretation of the First Schedule to the Customs Tariff Act, 1975, section and chapter notes and general explanatory notes of the First Schedule; that Rule 1 of the General rules for the interpretation for classification of goods in the schedule provides that "The titles of sections, chapters and sub-chapters

are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter notes.(ii) GAAR has classified their product 'Fusible Interlining Fabrics of Cotton' under Chapter heading No.5903 by mis-reading the Chapter Note.No.2(a) of the said heading. (iii) Chapter note 2(a) of Chapter 59 excludes fabrics having characteristics from Sr.No.1 to 5 of the note from heading 5903 and that by referring to Explanatory notes to HSN, the GAAR has negated the content of Chapter note 2(a).(iv)Comparison of Chapter Note 2(a), Sr.No.1 to 5 with the test result of their product(obtained from ATIRA) clearly suggests that the product is excluded from the chapter heading 5903, but GAAR has extrapolated the issue and has referred to the Explanatory notes of HSN for guidance. (v) The appellant has also submitted a comparative chart of the test results, chapter note no.2 of heading 5903 in the First Schedule of Customs Tariff Act, 1975 and HSN explanatory notes of Heading 5903 in a tabular form.(vi)the appellant have referred to para-5 of Circular No.254/88/ 96-CX dated 18.10.1996 of the Board which specifically states that Chapter Note will prevail over the HSN explanatory notes. They have also referred to the case of CCE & Cus., Aurangabad vs. Ratan Tarpaulin Water Proof Indus reported as 2000(126)ELT.782(Tribunal) to support their contention.(vii)the conclusion drawn by the GAAR based on Explanatory note to Chapter 59 instead of considering Chapter Note 2 of Chapter 59 meant for classification under Heading 5903 is erroneous and legally not correct and is contrary to Rule 1 of General Rules for Interpretation of the Customs Tariff Act, 1975

11.1 In this regard, we find that the GAAR has considered the general rules of interpretation of the First Schedule to the Customs Tariff Act, 1975, section and chapter notes and general explanatory notes of the First Schedule (including Chapter Note 2(a) of Chapter 59) as well as the explanatory notes to HSN in respect of Heading 5903 which have been described in detail in the finding portion of the order of GAAR. Further, as per explanation (iii) and (iv) of Notification No.1/2017-Central Tax (Rate) dated 28.06.2017, "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the Customs Tariff Act, 1975(51 of 1975). It has also been provided therein that the rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

11.2 We also find that the GAAR has neither misread the Chapter Note 2(a) nor negated the content of Chapter Note 2(a) by referring to explanatory notes to HSN in respect of Heading 5903, because the criteria/conditions mentioned in the explanatory notes to HSN (in respect of Heading 5903) are not in any way different to the corresponding criteria/conditions mentioned in Note 2(a) but are in fact, similar to the conditions mentioned in Chapter Note 2(a) of Chapter 59. The only difference here is that the criteria mentioned in Chapter Note 2(a) [column(1) below] helps to identify those fabrics that are excluded from Heading 5903 whereas the criteria mentioned in the explanatory notes to the HSN [marked in bold letters in column(2) below] lays down the conditions which helps in classifying the product under Heading 5903. A comparative chart of the same, which is given below, will help clarify the issue:

Chapter Note 2(a) for Heading No.5903 in First Schedule of the Customs Tariff Act, 1975	Explanatory note of Heading No.5903 from HSN for guidance.
(1)	(2)
Heading 5903 applies to: (a) textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square metre and whatever the nature of the plastic material (compact or cellular), other than: (1) fabrics in which the impregnation, coating or	This heading covers textile fabrics which have been impregnated, coated, covered or laminated with plastics (e.g., poly(vinyl chloride)). Such products are classified here whatever their weight per m2 and whatever the nature of the plastic component (compact or cellular), provided: (1)That, in the case of impregnated, coated or covered fabrics, the impregnation, coating or covering can be seen with the naked eye otherwise than by a resulting change in colour.

<p>covering cannot be seen with the naked eye (usually Chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of colour;</p> <p>(2) products which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15oC and 30oC (usually Chapter 39);</p> <p>(3) products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour (Chapter 39);</p> <p>(4) fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments (usually Chapters 50 to 55, 58 or 60);</p> <p>(5) plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (Chapter 39); or (6) textile products of heading 5811;</p>	<p>Textile fabrics in which the impregnation, coating or covering cannot be seen with the naked eye or can be seen only by reason of a resulting change in colour usually fall in Chapters 50 to 55, 58 or 60. Examples of such fabrics are those impregnated with substances designed solely to render them crease-proof, moth-proof, unshrinkable or waterproof (e.g., waterproof gabardines and poplins), Textile fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments are also classified in Chapter 50 to 55, 58 or 60.</p> <p>(2) That the products are not rigid, i.e. they can, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15 degrees centigrade and 30 degrees centigrade.</p> <p>(3) That the textile fabric is not completely embedded in, nor coated or covered on both sides with, plastics.</p> <p>Products not meeting the requirements of subparagraph(2) or (3) above usually fall in Chapter 39. However, textile fabric coated or covered on both sides with plastics where the coating or covering cannot be seen with the naked eye, or can be seen only by reason of a resulting change in colour, usually falls in Chapter 50 to 55, 58 or 60. Except in the case of textile products of heading 58.11, textile fabrics combined with plates, sheets or strip of cellular plastics, where the textile fabric is present merely for reinforcing purposes, are also classified in Chapter 39(see General Explanatory Note to Chapter 39, part entitled "Plastics and textile combinations", penultimate paragraph).</p> <p>The laminated fabrics of this heading should not be confused with fabrics which are simply assembled in layers by means of a plastic adhesive. These fabrics, which have no plastics showing in cross-section, generally fall in Chapter 50 to 55.</p> <p>In many of the textile fabrics classified here, the plastic material, usually coloured, forms a surface layer which may be smooth or be embossed to simulate e.g. the grain of leather ("leather cloth").</p> <p>This heading also covers dipped fabrics (other than those of heading 59.02), impregnated to improve their adhesion to rubber, and textile fabrics which are spattered by spraying with visible particles of thermoplastic material and are capable of providing a bond to other fabrics or materials on the application of heat and pressure.</p>
--	---

11.3 The appellant has also stated that while examining the test results of their sample product (which they have obtained from ATIRA, Ahmedabad), GAAR compared the Explanatory Notes of HSN with samples and not with the chapter Note 2(a) of Chapter 59 provided for Heading 5903 which is erroneous, not legally correct and is contrary to Rule 1 of General Rules for Interpretation of the Customs Tariff Act, 1975. Although we do not agree with the contention of the appellant that GAAR has erred in comparing the test results with the explanatory notes of HSN and not with the Chapter Note 2(a) of Chapter 59, we will proceed to compare the test results of the sample product (obtained by the appellant from ATIRA, Ahmedabad) with that of Chapter Note 2(a) of Chapter 59 in order to find out whether their product fulfills the criteria/condition of classification under Heading 5903 or otherwise. But before doing that, we find it necessary to refer to (i) Heading 5903 as appearing in the Customs Tariff Act, 1975(51 of 1975) which covers textile fabrics which are impregnated, coated, covered or laminated with plastics, other than those of heading 5902 (ii) the relevant Chapter Note 2(a) of Chapter 59 as well as (iii) the test result of the sample product of the appellant obtained from ATIRA. Heading 5903 of the Customs Tariff Act, 1975 reads as under:

5903 TEXTILE FABRICS, IMPREGNATED, COATED, COVERED OR LAMINATED WITH PLASTICS, OTHER THAN THOSE OF HEADING 5902

5903 10 - With polyvinyl chloride :

5903 10 10 --- Imitation leather fabrics of cotton

5903 10 90 --- Other

5903 20 - With polyurethane :

5903 20 10 --- Imitation leather fabrics, of cotton

5903 20 90 --- Other

5903 90 - Other:

5903 90 10 --- Of cotton

5903 90 20 --- Polyethylene laminated jute fabrics

5903 90 90 --- Other

Chapter Note 2(a) of Chapter 59 reads as under:

Heading 5903 applies to:

(a) textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square metre and whatever the nature of the plastic material (compact or cellular), other than: (1) fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually Chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of colour;

(2) products which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15oC and 30oC (usually Chapter 39);

(3) products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour (Chapter 39);

(4) fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments (usually Chapters 50 to 55, 58 or 60);

(5) plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (Chapter 39); or (6) textile products of heading 5811;

11.4 Also, as per data available online, we find that Ahmedabad Textile Industry's Research Association (commonly known as **ATIRA**) is an autonomous non-profit association for [textile research](#) located in Ahmedabad and is the largest association for textile research & allied industries in India which was established on 13 December 1947 and was recognized by the Council of Scientific and Industrial Research under the Ministry of Science and Technology, [Government of India](#). In view of the above, we are of the opinion that we can rely upon the test results issued by ATIRA vide their report dated 02.08.2018. The test result obtained by appellant from ATIRA, in respect of their sample product, is as under:

- (1) The product contains 85% and more cotton.
- (2) The product is polymer coated on one side. Coating cannot be seen with naked eye, is non-continuous and is different from film coating. Film coating is visible with naked eye.
- (3) The product can be bent without fracturing around a cylinder of a diameter 7m or more at temperature between 15C to 30C.
- (4) The fabric is not completely embedded in plastic.
- (5) The product is coated on one side only.
- (6) The product is covered with plastic polymer on one side and bears a design like a dot matrix design resulting from coating process.
- (7) The fabric is porous and pervious.
The product is cotton fusible interlining.

11.5 Since the Chapter Note 2(a) of Chapter 59 stipulates that fabrics/products as detailed/described under Column(2) below, corresponding to Sr.Nos.(1) to (5) of the said note under Column(1) below, will not be covered under Heading 59.03/will be excluded from Heading 59.03, we find it prudent to compare the same to the test results mentioned above in order to find out whether the said product is covered under Heading 5903 or otherwise. If the test results in column(3) below contradict the respective criteria mentioned in column(2), it can be concluded that the sample product/fabric of the appellant will invariably fall under Heading 5903 of the Customs Tariff Act, 1975(51 of 1975). The comparison of the same are as under:

Sr. No.	Type of Fabrics that are excluded from Heading 5903 as per criteria (1) to (6) of Chapter Note 2(a) of Chapter 59 of the Customs Tariff Act, 1975(51 of 1975)	Corresponding test results as per ATIRA's test report.	Whether condition for being classified under Heading 5903 is fulfilled:
(1)	(2)	(3)	(4)
1.	fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually Chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of colour;	The product is polymer coated on one side. Coating cannot be seen with the naked eye. Coating is non-continuous. This coating is different than film coating. Film coating is visible with naked eye.	Yes
2.	products which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15oC and 30oC (usually Chapter 39);	The product can be bent without fracturing around a cylinder of a diameter 7m or more at temperature between 15C to 30C.	Yes
3.	products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour (Chapter 39);	The fabric is not completely embedded in plastic.	Yes
4.	fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments (usually Chapters 50 to 55, 58 or 60);	It is covered with plastic polymer on one side and bears a design like a dot matrix design resulting from coating process.	Yes
5.	plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (Chapter 39); or	The product contains 85% and more cotton.	Yes

On going through the above details, we find that the product/fabric 'fusible interlining fabric of cotton' of the appellant fulfills all the aforementioned criteria/conditions for being classified under Heading 5903 of the Customs Tariff Act, 1975(51 of 1975) for the reasons discussed hereunder:

Criteria 1: As per this criteria, fabrics in which the impregnation, coating or covering cannot be seen with the naked eye would usually fall under Chapters 50 to 55, 58 or 60. As per the test results, polymer coating cannot be seen with the naked eye **but film coating is visible with the naked eye**. We find that film coating also involves coating with natural or synthetic polymeric substance (plastic). Even otherwise, the criteria only stipulates that **coating** must not be visible with the naked eye but does not mention polymer coating or film coating, hence the product/fabric fulfills this criteria/condition also for being classified under Heading 5903.

Criteria 2:As per this criteria, products which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15oC and 30oC would fall under Chapter 39. As per the test result, the product can be bent without fracturing around a cylinder of a diameter 7m or more at temperature between 15 degrees C to 30 degrees C, hence the product/fabric fulfills this criteria/condition also for being classified under Heading 5903.

Criteria 3: As per this criteria, products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour would fall under Chapter 39. As per the test result, the fabric is not completely embedded in plastic but is covered with plastic polymer on one side, hence the product/fabric fulfills this criteria/condition also for being classified under Heading 5903.

Criteria 4: As per this criteria, fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments are covered under Chapter 50 to 55, 58 or 60. In other words, fabrics which are not partially coated or not partially covered with plastics and bearing designs resulting from these treatments are not

covered under Chapter 50 to 55, 58 or 60, but under heading 5903. As per the corresponding test result of ATIRA, the fabric of the appellant is covered with plastic polymer on one side and bears a design like a dot matrix design resulting from coating process i.e. it does not mention that the fabric is partially coated or partially covered with plastics and bears designs resulting from these treatments. The test result also mentions that the said fabric is coated only on one side. On plain reading of the same, we can assume that the said fabric is completely covered or completely coated on one side with plastic polymer and the other side is uncoated. Thus, even when one side of the fabric is completely coated with plastic polymers, it cannot be said to be partially coated or partially covered with plastic polymers. To clarify the issue, we will be required to refer to the meaning of 'partially' as appearing in the dictionaries. The meaning of 'partially' as per various dictionaries is mentioned below:

- (i) As per Vocabulary.com, meaning of 'partially' is – ***in part, partly, in some degree.***
- (ii) As per Thesaurus.com, meaning of 'partially' is – ***partly, somewhat, fractionally, in some measure,***

On going through the aforementioned meanings of 'partially' appearing in various dictionaries, it can be derived that it stands for 'a small part' of the whole OR 'a small fraction' of the whole OR 'a small measure' of the whole. In the present case, the fabric of the appellant i.e. 'fusible interlining fabric of cotton' is the 'whole' and only when a small fraction of the fabric OR a small part of the fabric OR a small measure of the fabric is coated with plastic polymer, can it be called as 'partially coated' or 'partially covered'. Here, we find, that out of the two sides of the fabric, one side is completely coated with plastic polymer but the other side is uncoated. Such type of coating cannot be termed as 'partially' coated OR 'partially' covered with plastic polymer i.e. it would rather be considered as half-coated or half-covered with plastic polymers. Thus, since one of the two sides of the fabric is completely covered with plastic polymer as per the aforementioned test result, it cannot be considered to be partially covered or partially coated with plastics by any stretch of imagination. In view of the above, we conclude that the product/fabric fulfills this criteria/condition also for being classified under Heading 5903.

Criteria 5: As per this criteria, plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes would fall under Chapter 39. As per the test results, the fabric is not merely present for reinforcing purposes of plates, sheets or strip of cellular plastics since it contains 85% and more of cotton, hence the product/fabric fulfills this criteria/condition also for being classified under Heading 5903.

12. In view of the above, we find that all the five criteria/condition required for the product of the appellant for being classified under the Heading 5903, have been fulfilled. We therefore, find, that based on the test results of the sample product/fabric (obtained by the appellant from ATIRA, Ahmedabad), the said product 'Fusible interlining fabric of cotton' is undoubtedly classifiable under Heading 5903 of the Customs Tariff Act, 1975(51 of 1975).

13. Although we have decided the classification of fusible interlining fabrics of cotton manufactured by the appellant, we feel the need to refer to the relevant headings of Chapter 52 of the First Schedule of the Customs Tariff Act, 1975(51 of 1975) also, since, the appellant is of the view that the subject goods should be classifiable under Chapter 52 of the said Tariff Act. As per the test results of ATIRA, the product of the appellant is a fabric containing more than 85% cotton. Also, on going through the various headings covered under Chapter 52 and relying on the theory of elimination, we find that the product of the appellant would not fall under Heading 5201 to 5207 as they do not cover cotton fabric but cover either cotton, cotton waste, cotton sewing thread or cotton yarn. The said product would also not fall under Heading 5210 or 5211 (which covers Woven fabrics of cotton containing less than 85% by weight of cotton). Therefore, the only headings under which the product of the appellant are likely to be covered in Chapter 52 are Headings 5208 and 5209 (which covers Woven fabrics of cotton containing more

than 85% by weight of cotton) and Heading 5212 (which covers other woven fabrics of cotton).

13.1 Headings 5208, 5209 and 5212 of Chapter 52 of the Customs Tariff Act, 1975(51 of 1975) read as under:

5208 WOVEN FABRICS OF COTTON, CONTAINING 85% OR MORE BY WEIGHT OF COTTON, WEIGHING NOT MORE THAN 200 G/M2

- *Unbleached :*

5208 11 -- Plain weave, weighing not more than 100 g/m2 :

5208 12 -- Plain weave, weighing more than 100 g/m2:

5208 13 -- 3-thread or 4-thread twill, including cross twill :

5208 19 -- Other fabrics :

Bleached :

5208 21 -- Plain weave, weighing not more than 100 g/m2:

5208 22 -- Plain weave, weighing more than 100 g/m2:

5208 23 -- 3-thread or 4-thread twill, including cross twill :

5208 29 -- Other fabrics :

- *Dyed :*

5208 31 -- Plain weave, weighing not more than 100 g/m2:

5208 32 -- Plain weave, weighing more than 100 g/m2:

5208 33 -- 3-thread or 4- thread twill, including cross twill :

5208 39 -- Other fabrics :

5208 41 -- Plain weave, weighing not more than 100 g/m2:

5208 42 -- Plain weave, weighing more than 100 g/m2:

5208 43 -- 3-thread or 4- thread twill, including cross twill :

5208 49 -- Other fabrics :

- *Printed :*

5208 51 -- Plain weave, weighing not more than 100 g/m2 :

5208 52 -- Plain weave, weighing more than 100 g/m2 :

5208 59 -- Other fabrics :

5209 WOVEN FABRICS OF COTTON, CONTAINING 85%OR MORE BY WEIGHT OF COTTON, WEIGHING MORE THAN 200 G/M2

- *Unbleached :*

5209 11 -- Plain weave :

5209 12 -- 3-thread or 4-thread twill, including cross twill :

5209 19 00 -- Other fabrics

- *Bleached :*

5209 21 -- Plain weave :

5209 22 -- 3-thread or 4-thread twill, including cross twill :

5209 29 -- Other fabrics :

5209 31 -- Plain weave :

5209 32 -- 3-thread or 4-thread twill, including cross twill :

5209 39 -- Other fabrics :

5209 41 -- Plain weave :

5209 42 00 -- Denim

5209 43 -- Other fabrics of 3-thread or 4-thread twill, including cross twill :

5209 49 -- Other fabrics :

5209 51 -- Plain weave Lungis

5209 52 -- 3-thread or 4-thread twill, including cross twill :

5209 59 -- Other fabrics :

5212 OTHER WOVEN FABRICS OF COTTON

- *Weighing not more than 200 g/m2 :*

5212 11 00 -- Unbleached

5212 12 00 -- Bleached

5212 13 00 -- Dyed

5212 14 00 -- Of yarns of different colours

5212 15 00 -- Printed

- *Weighing more than 200 g/m2 :*

5212 21 00 -- Unbleached m2
 5212 22 00 -- Bleached m2
 5212 23 00 -- Dyed
 5212 24 00 -- Of yarns of different colours
 5212 25 00 -- Printed

13.2 Chapter notes of Chapter 52 read as under:

SUB-HEADING NOTE:

For the purposes of sub-headings 5209 42 and 5211 42, the expression “denim” means fabrics of yarns of different colours, of 3 – thread or 4 – thread twill, including broken twill, warp faced, the warp yarns of which are of one and the same colour and the weft yarns of which are unbleached, bleached, dyed, grey or coloured a lighter shade of the colour of the warp yarns.

13.3 Since chapter notes of Heading 5208 and 5209 are not available, reference is being made to explanatory notes to HSN with respect to Headings 5208 and 5209 which read as under:

Cotton fabrics are produced in great variety and are used, according to their characteristics, for making clothing, household linen, bedspreads, curtains, other furnishing articles etc.

The heading does not include:

- (a) Bandages, medicated or put up for retail sale (heading 30.05)
- (b) Fabrics of heading 58.01.
- (c) Terry toweling and similar terry fabrics(heading 58.02).
- (d) Gauze(heading 58.03).
- (e) Woven fabrics for technical uses of heading 59.11.

13.4 Since chapter notes of Heading 5212 are not available, reference is being made to explanatory notes to HSN with respect to Headings 5212 which reads as under:

This heading covers woven fabrics (as defined in Part(I)(C)of the General Explanatory Note to Section XI) made of cotton yarns. However, it should be noted that it covers only mixed woven fabrics, other than those of the preceding headings of this Chapter or specified or included in the second part of this Section (Chapter 58 or 59, usually).

Bandages, medicated or put up for retail sale, are excluded (heading 30.05).

13.5 On going through the aforementioned headings, chapter note of Chapter 52 as well as the explanatory notes to HSN with respect of the headings 5208, 5209 and 5212, we find that it does not cover laminated fabrics or fabrics coated with plastics. Hence, it can be concluded that ‘Fusible Interlining fabrics of cotton’ will not be covered under Chapter 52 of the First Schedule to the Customs Tariff Act, 1975(51 of 1975).

14. We also do not agree with the contention of the appellant when they state that their product/fabric falls under Sr.No.2 along with other exclusion clauses as mentioned at Sr.No.(1) to (5) of Chapter Note 2(a) of Chapter 59, that it is therefore classifiable under Chapter 50 to 55 and therefore there is no need to refer to other Rules and Explanatory Notes to HSN, since, as discussed earlier, the test results obtained by the appellant from ATIRA in respect of their fabric ‘fusible interlining fabrics of cotton’ has already been compared with the criteria/exclusion clauses of Sr.No. 1 to 5 of Chapter Note 2(a) of Chapter 59 (which has been elaborated in detail in para 11.5) and it has been proved beyond doubt that the product of the appellant is specifically covered under Heading 5903 of the Customs Tariff Act, 1975.

15. The appellant has also stated that the GAAR has not commented or given its findings in their Ruling with regard to the case of Madura Coats pvt. ltd. vs. CBEC, New Delhi for not considering the appellant’s claim. In this regard, we find that the Appellate Tribunal of Chennai, in the case of Madura Coats pvt. ltd. has discussed the issue of fusible interlining fabrics as under and ruled in favour of the appellant M/s. Madura Coats pvt. ltd. on the following grounds:

- (a) fusible interlining fabrics were initially classified under various chapters from chapter 50 to 55 of the tariff depending upon the nature of the fabrics under

the erstwhile Central Excise regime.

- (b) The Board had vide Circular dated 02.09.1988 clarified that fusible interlining cloth, to merit classification as coated fabrics under CETH 5903, should meet the following requirements:
- (i) It should have a continuous and adherent film or layer of plastic on one side of the fabric surface.
 - (ii) The fabric should be impervious.
 - (iii) It should satisfy the conditions prescribed in Note 2 of Chapter 59.
- (c) Chapter Note 2(c) was introduced with effect from 01.03.1989 by virtue of which, fusible interlining fabrics became classifiable under Heading 5903 and which read as "*Textile fabrics, partially or discretely coated with plastic (heading no.59.03]*",
- (d) Chapter Note 2(c) was deleted from Chapter 59 with effect from 16.03.1995.
- (e) The Board vide Circular No.433/66/98-CX.6 dated 27.11.1998 expressed that the omission of the note was neither intended to nor resulted in changing the classification of fusible interlining cloth under Heading 5903 because as per the HSN Explanatory Notes (1996, 2nd edition, page 894) textile fabrics which are spattered by spraying with visible particles of thermoplastic material and are capable of providing a bond to other fabrics or materials up the application of heat and pressure are covered under Chapter Heading 59.03. Classification of such fabrics under Chapter Heading 59.03 may thus be considered as an exception to Chapter Note 2(a) (4) of Chapter 59 according to which fabrics partially coated or partially covered with plastics and bearing designs resulting from those treatments are excluded from the scope of Chapter Heading 59.03.
- (f) The Hon'ble High Court of Madras while deciding a Writ Petition against the aforementioned Circular dated 27.11.1998 stated that, it was clear that only by virtue of introduction of Chapter Note 2(c) of Chapter 59 did such fusible interlining, which was earlier coming within Chapters 50 to 55, come within the scope of Chapter 59.03 and once such Chapter Note 2(c) of Chapter 59 was omitted under the Finance Act, 1995, it is obvious that the position which was available prior to introduction of such Chapter Note 2(c) revived, that in such background, issuance of Circular would be clearly against the statutory provisions. The High Court of Madras vide it's order dated 30.09.2003 quashed the aforementioned Circular of the Board holding it to be invalid and illegal and also noting that the circular was also against the provision of Section 37B of the Central Excise Act as the Board could not shut down the quasi-judicial power of the authorities
- (g) The said order of the Single Judge of the Madras High Court was challenged by the Department before the Division Bench of the Madras High Court under W.A.No.507 of 2005 wherein vide order and judgement dated 05.01.2009, the Hon'ble Division Bench of the Madras High Court dismissed the Writ Appeal and upheld the judgement of the Single Judge as regards the quashing of the circular in view of Section 37B of the Central Excise Act, however no opinion was rendered on the merit of the case and the assessing officer was directed to adjudicate the matter on its own merits.
- (h) Upon adjudication of the case by the assessing authorities, the issue was held against M/s. Madura Coats pvt.ltd. which became a subject matter of appeal being Appeal No.E/31/2012-DB before the Appellate Tribunal, Chennai.
- (i) The Appellate Tribunal, Chennai, by Order No.41941/2018 dated 19.06.2018 in the case of M/s.Madura Coats pvt.ltd. vs. Commissioner of Central Excise in Appeal No.E/31/2012 had held that the product 'Fusible Interlining Fabrics of Cotton' were not classifiable under Chapter 5903 but was correctly classifiable under Chapter 52 of the erstwhile Tariff stating that the very basis

for changing the classification i.e. Note 2(c), which was introduced in Chapter 59, has thereafter been deleted w.e.f. 16.03.1995 and therefore, the position as existed prior to introduction of the said note would be restored. They have also based their decision on the basis of the retest reports of the fabrics of the appellant which clearly indicate that the samples of the impugned fabric have characteristics which would fall within the exclusion (i) to (v) of Chapter Note 2(a) to CETH 59.03 and also the requirement of 'impervious' for the purpose of Board's telex Circular 30.9.88 and Circular No.5/89 will not be satisfied.

16. We, therefore, find, that the Appellate Tribunal of Chennai has decided in favour of M/s. Madura Coats pvt. ltd. on the following main grounds i.e. (i) Chapter Note 2(c) introduced in Chapter 59 w.e.f. 01.03.1989, by virtue of which fusible interlining fabrics came to be classified under Heading 5903 has been omitted w.e.f. 16.03.1995 (ii) Circular No. 433/66/98-CX.6 dated 27.11.1998 which expressed that the omission of the note 2(c) was neither intended to nor resulted in changing the classification of fusible interlining cloth under Heading 5903 was quashed by the High Court of Madras. (iii) 'Fusible Interlining Fabrics of Cotton' were not classifiable under Chapter 5903 but was correctly classifiable under Chapter 52 of the erstwhile Tariff stating that the very basis for changing the classification i.e. Note 2(c), which was introduced in Chapter 59, has thereafter been deleted w.e.f. 16.03.1995 and therefore, the position as existed prior to introduction of the said note would be restored. (iv) the retest reports of the fabrics of the appellant clearly indicate that the samples of the impugned fabric have characteristics which would fall within the exclusion (i) to (v) of Chapter Note 2(a) to CETH 59.03 and also the requirement of 'impervious' for the purpose of Board's telex Circular 30.9.88 and Circular No.5/89 is not be satisfied. In this context, we would like to draw reference to the decision of the Appellate Authority for Advance Ruling, West Bengal in order dated 19.03.2020 in the case of Appeal Case No.15/WBAAAR/APPEAL/2019 filed by M/s. Sadguru Seva Paridhan pvt.ltd. which stated as under in respect of Circular No.433/66/98-CX.6 dated 27.11.1998 in Para-3(v) to (vii) of the said order:

“(v) While striking down the above mentioned Circular No. 433/66/98-CX-6 dated 27/11/1998 as ultra vires and contrary to Section 37B of the Central Excise Act, 1944, the Ld. Single Bench of Madras High Court in the case of Madura coats reported in 2004(163) ELT 164(Mad.), took no notice of the applicability of the Explanatory Notes to the HSN Code in deciding a classification issue under the Excise Tariff. Although not stated explicitly, the court held the interpretation of the law, as made in Circular No. 5/89 dated 15/06/1989, a binding legal provision, and the contrary view is illegal and ultra vires.

(vi) Upon appeal, the division Bench of the Madras High Court, in its order dated 05/01/2009 in WA No. 507 of 2005, refrained from expressing any view on the legality of the said Circular so that the assessing officer could apply his judgment without any bias. The court however, set aside the impugned Circular that the assessing officer had quoted in a show cause notice in violation of the provisions of Section 37B of the CEA'44. Such setting aside of the impugned Circular restored the SCN. The Division Bench however, categorically stated that it was not done on the ground that the circular is ultra vires.

(vii) It therefore, appears that reference to the Single Bench judgment in the above mentioned case does not help in deciding the classification of the applicant's. The fact that CBEC appealed against the Single Bench judgment in 2005 also indicates that it continues defending Circular No. 433/66/98-CX-6 dated 27/11/1998 and has not made any further course correction. Circular No. 433/66/98-CX-6 dated 27/11/1998, therefore, reflects CBEC's view on the classification of fusible interlining cloth as on date.”

16.1 In view of the above, we find that CBEC Circular No. 433/66/98-CX-6 dated 27/11/1998 is relevant even today and has got persuasive value as on date. Further, Chapter Note 2(a)(4) to Chapter 59 says that fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments are excluded from Heading 5903 and are usually covered in Chapter 50 to 55, 58 or 60, depending on the materials used. At the same time, according to the Explanatory notes to the HSN of

Heading 5903 (detailed in para 11.1 above), textile fabrics which are spattered by spraying with visible particles of thermoplastic material and are capable of providing a bond to other fabrics or materials on the application of heat and pressure are classifiable

under heading 5903. Also, the process of manufacture of the fusible interlining of fabrics of cotton as submitted by the appellant appears to be similar to the one mentioned hereinabove. Further, according to Circular No.433/66/98-CX-6 dated 27/11/1998, such classification should be treated as an exception to Chapter Note 2(a)(4) to Chapter 59. Even otherwise, the test results of the fabric 'fusible interlining fabric of cotton' of the appellant as compared to the exclusion clauses(1) to (5) of Chapter 2(a) has been discussed in detail in para-11.5 above which proves that the appellant's fabric satisfies all the conditions/criteria for being classified under Heading 5903. However, there appears to be an anomaly here (with regard to Chapter Note2(a)(4) of Chapter 59) because the appellant in his submission (along with appeal) has stated that their fabric is having partial and porous coating with polyethylene powder which contradicts the test report of ATIRA which states that their fabric is not partially coated or partially covered but is covered with plastic polymer on one side. Assuming that the fabric of the appellant is partially coated or partially covered with plastic polymer as submitted by them, it would not fulfill the exclusion clause of Chapter Note 2(a)(4) of Chapter 59 and would therefore not fall under the Heading 5903 for falling under the exclusion clause of Chapter Note 2(a)(4) of Chapter 59 under these circumstances. However, since, according to Circular No.433/66/98-CX-6 dated 27/11/1998, such classification should be treated as an exception to Chapter Note 2(a)(4) to Chapter 59, the fabric of the appellant would be covered under Heading 5903 only in view of the provisions of the said circular.

16.2 Further, it is also seen that the appellant has, nowhere in their grounds of appeal or in their written or oral submissions, taken the view that Circular No.433/66/98-CX-6 dated 27/11/1998 has erred in treating fusible interlining cloth as a category of textile fabric that is spattered by spraying with visible particles of thermoplastic material and is capable of providing a bond to other fabrics or materials on the application of heat and pressure. In the absence of any such submission, it is reasonable to agree with the views expressed by CBEC in Circular No. 433/66/98-CX-6 dated 27/11/1998 that fusible interlining cloth is classifiable under Heading 5903. We, therefore, find that irrespective of the fact as to whether the fabric of the appellant fulfills the criteria for classification under Heading 5903 or otherwise as per exclusion clauses (1) to (5) of Chapter Note 2(a) of Chapter 59, it would still be classified under Heading 5903 only, on account of the Explanatory notes to the HSN, which states that '*textile fabrics which are spattered by spraying with visible particles of thermoplastic material and are capable of providing a bond to other fabrics or materials on the application of heat and pressure are classifiable under heading 5903*' read with the grounds mentioned in Circular No. 433/66/98-CX-6 dated 27/11/1998. In view of the above, we find that the product 'fusible interlining fabric of cotton' of the appellant would undoubtedly be classifiable under Heading 5903 of the Customs Tariff Act, 1975 only.

17. We also find that the appellant has relied upon the decision of the order of the Authority of Advance Ruling of Uttarakhand in the case of M/s. Goodswear Fashion pvt.ltd. The ruling in the above case has been based on the testing of the samples of specimen of fabric of the said applicant from NITRA, Uttar Pradesh. The same is not applicable to the instant case of the appellant as the test results obtained therein are different from that of the test result obtained by the appellant in respect of their sample of fabric from ATIRA and cannot, therefore, be relied upon by the appellant.

17.1 Regarding the contention of the appellant that the GAAR has placed reliance on the Ruling by Authority of Advance Ruling of West Bengal reported as 2020(38)GSTL (App.AAR-GST)WB) in the case of Sadguru Seva Paridhan pvt.ltd. which has been upheld by the Appellate Authority of Advance Ruling, West Bengal and that the aforesaid decisions are based on CBEC's Circular No. 433/66/98-CX-6, dated 27.11.1998 which was struck down by the High Court of Madras in the case of Madura Coats pvt. ltd. vs. CBEC, New Delhi, it is to state that the very fact, that CBEC appealed against the Single Bench judgment in 2005 also indicates that it continues defending Circular No. 433/66/98-CX-6 dated 27/11/1998 and has not made any further course correction. Circular No. 433/66/98-CX-6 dated 27/11/1998, therefore, reflects CBEC's view on the classification of fusible interlining cloth as on date. We, therefore, find that the GAAR has rightly relied on the aforementioned judgements as they endorse the view that fusible interlining fabrics are classifiable under Heading 5903.

17.2 Regarding the contention of the appellant that another case which is relied upon by the GAAR is the Ruling of Uttarakhand State Authority for Advance Ruling Order No.11/2019-20 dated 12.03.2020, that the perusal of the order of AAR, Uttarakhand reveals that they have not examined the decision of Madura Coats pvt.ltd. vs. CBEC, New Delhi mentioned above and that the ratio of the two decisions relied upon by the GAAR are not applicable to the appellant's case as in both the cases viz. Sadguru Paridhan pvt.ltd. and Ruby Mills ltd., they have not referred or analyzed the decision of Madura Coats pvt.ltd. vs. Commissioner of Central Excise, Tirunelveli on which the appellant has relied for the purpose of getting Ruling from GAAR, we have to state that all the aforementioned orders have been issued by the Authorities of Advance Ruling/Appellate Authorities of Advance Ruling after the issuance of the order dated 19.06.2018 of the Appellate Tribunal of Chennai in the case of Madura Coats pvt.ltd. We also find that the quashing of CBEC's Circular No.433/66/98-CX.6 dated 27.11.1998 by the High Court of Madras is one of the major grounds on which the Appellate Tribunal has decided the case in favour of Madura Coats pvt.ltd. by ruling that the impugned goods would not be classified under CETH 59.03. Further, the view and stand of CBEC in respect of Circular No.433/66/98-CX.6 dated 27.11.1998 has been clearly discussed and clarified in detail in the orders of Authority of Advance Ruling, West Bengal as well as that of the Appellate Authority of Advance Ruling, West Bengal in respect of Sadguru Paridhan pvt.ltd. (referred to in para above). We, therefore, find that the GAAR has rightly relied on the aforementioned judgements as they support our contention and endorse the view that fusible interlining fabrics of cotton are classifiable under Heading 5903 of the First Schedule of the Customs Tariff Act, 1975.

18. Having decided the classification of the product 'Fusible interlining fabrics of cotton' of the appellant, we would also like to rely on the following decisions/judgements which support our view. The same are mentioned hereunder:

- (1) Order No. 33/WBAAR/2019-20 dated 11.11.2019 issued by the West Bengal Advance Ruling Authority in respect of M/s. Sadguru Seva Paridhan Pvt Ltd. wherein it was held that fusible interlining fabric of cotton is classifiable under Heading 5903 in Chapter 59 of the First Schedule to the Customs Tariff Act, 1975.
- (2) Order No.11/2019-20 dated 12.03.2020 issued by the Uttarakhand State Advance Ruling Authority in respect of M/s. The Ruby Mills ltd. wherein it was held that fusible interlining fabric of cotton is classifiable under Heading 5903 of the GST Tariff Act, 2017.
- (3) Order dated 19.03.2020 of the Appellate Authority for Advance Ruling, West Bengal in the case of Appeal Case No. 15/WBAAAR/APPEAL/2019 filed by M/s. Sadguru Seva Paridhan pvt.ltd. wherein the Order No. 33/WBAAR/2019-20 dated 11.11.2019 issued by the West Bengal Advance Ruling Authority was upheld.

19. In view of foregoing, we confirm the Advance Ruling No. GUJ/GAAR/R/86/2020 dated 17.09.2020 to the extent it has been appealed before us and hold that –

The product 'Fusible Interlining Fabrics of Cotton' of the appellant M/s Girish Rathod(Jay Ambey), Ahmedabad is correctly classifiable under Heading 5903 of Chapter 59 of the First Schedule to the Customs Tariff Act, 1975(51 of 1975).

20. The appeal filed by M/s.Girish Rathod(Jay Ambey),Opp. Shri Govind Processors, 183-1, Bhagirath Process, Shahwadi, Ranipur, Narol, Ahmedabad-382405, is rejected.

(J. P. Gupta)

Member

(Seema Arora)

Member

Place : Ahmedabad

Date : 08.04.2021.