

Collector of Customs Vs. Premier Tyres Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-20-1984

Reported in : (1985)(20)ELT124TriDel

Appellant : Collector of Customs

Respondent : Premier Tyres Ltd.

Judgement :

1. The captioned proceedings instituted by the Central Government in exercise of the powers conferred on it under Section 131(3) of the Customs Act 1962 (as it stood at the relevant time), have come on transfer to this Tribunal in terms of Section 131 (B) of the said Act, to be disposed of as if they were appeals filed before the Tribunal.

All the appeals involve a common dispute and are, therefore, being disposed of by this common order.

2. The dispute is whether Polyethylene Glycol 300-P (PEG, 300--for short) and Polypropylene Glycol (PPG, for short) imported by the appellants fell for classification under heading No. 38.01/19(1) or 39.01/06 of the First Schedule to the Customs Tariff Act, 1975 (CTA, 1975--for short). The Appellate Collectors of Customs at Madras and Bombay held, by their impugned orders, that the former was the correct heading as claimed by the appellants whereas the show cause notices issued by the Central Government take the tentative view that the latter is the correct heading.

3. The facts relevant to the Premier Tyres cases are that Premier Tyres imported, prior to 1-9-1978, a number of consignments of PEG 300 (300 stands for the molecular weight of the product). They claimed that the goods were assessable to basic Customs duty under heading No.38.01/19(1) of the CTA, 1975, with no additional (countervailing) duty of Customs. The Assistant Collector of Customs, however, did not accept this claim. He classified the goods under heading 39.01/06 of the CTA, 1975. In some of the cases, he charged additional duty under item No.15-A of the First Schedule to the Central Excises & Salt Act, 1944 (CET--for short). On appeal, the Appellate Collector, Madras, by his impugned order, set aside the Assistant Collector's order and held that the goods were classifiable under heading 38.01/19(1) of the CTA, 1975 and that no additional duty was leviable since the goods fell outside the purview of item No. 15-A, CET. On examination of the records, the Central Government formed a tentative view that PEG 300 fell more appropriately under heading 39.01/06 and that the Appellate Collector had erred in holding that the correct heading was 38.01/19(1). The basis for this view, as set forth in the show cause notice, was that the goods were polycondensation or polymerisation products similar to resols and liquid polyisobutylene and, in view of Note 2(c) to Chapter.

39, CFA, 1975, they fell within heading 39.01/06. Commercially available PEGs were usually mixtures of many PEGs. According to "Encyclopaedia of Chemical Technology" by Kirk-Othmer, PEG 300 had an average molecular weight of 285 to 351. It further appeared that it was a mixture of PEGs with an average of 6-7 monomer units. PEGs were of very high molecular weight. Resins could be prepared from them just as from resols and polyisobutylene, after further polymerisation. On this basis, the show cause notice dated 10-9-1981 came to be issued calling upon Premier Tyres to show cause why the impugned Orders-in-Appeal should not be set aside and why the Assistant Collector's orders should not be restored. By their reply dated 6-10-1981, Premier Tyres denied all the allegations. They further stated that if Government considered that PEG 300 could not, for any reason, be classified under heading 34.01/19(1)-though that was the correct heading--they should be classified under heading 34.01/07 since the material was used in the tyre industry as a lubricant.

4. The facts in the matters pertaining to Dai-Ichi-Karkaria are more or less similar. The importation took place in their case after 1-9-1978.

The goods involved are "Polypropylene Glycol, 1010" (PPG 1010) and Polypropylene Glycol 2020" (PPG 2020). (The numerals 1010 and 2020 stand for the molecular weights of the products). These were assessed to basic Customs duty under heading 39.01/06 CTA, 1975 and to additional duty under item No. 68, CET. The Appellate Collector, Bombay, in these cases, upheld the importer's claim for classification of the goods under heading No. 38.01/19(1), CTA, 1975, but rejected their claim that no additional duty was leviable under item No. 68 CET based on the plea that similar goods were not being manufactured in India. In the review show cause notice dated 10-11-1981, the Central Government relied on passages in the CCCN (Customs Co-operation Council Nomenclature) Explanatory Notes and "Encyclopaedia of Chemical Technology" by Kirk-Othmer and took the tentative view that mixtures of lower polyethylene glycol, viz. di-, tri-, and tetra- (ethylene glycols) which are technologically and commercially known were covered as miscellaneous chemical products in Chapter 38, CTA, 1975; mixtures of higher polyethylene glycols, containing more than 4 monomeric units, which were graded according to their average molecular weights, were classified as polycondensation/polyaddition products under Chapter 39, CTA, 1975. These were similar to resols and liquid polyisobutylene and because of Note 2(c) to Chapter 39, were classifiable within Chapter 39 under heading 39.01/06. The Respondent submitted elaborate arguments by their letter dated 10-12-1981 denying all the allegations.' 5. It is relevant to note that in both sets of appeals, the dispute is only regarding the classification under the CTA, 1975 for the levy of basic Customs duty. There is no dispute regarding levy of additional duty--in the Premier Type Company Group of cases, the Central Government's review notice specifically states that the goods may not answer to the description of artificial plastics or resins and, therefore, they do not appear to fall under item No. 15-A, CET. Consequently, additional duty on the goods may not be leviable. The notice does not propose review of the Madras Appellate Collector's order granting relief to Premier Tyres in the matter of additional duty. In the other group of appeals also, there is no proposal in the review show cause notice regarding additional duty, although here the goods were charged to additional duty under item 68

CET.6. We have heard Shri N.V. Raghavan Iyer and Shri A.S. Sundar Rajan, Departmental Representatives, for the Appellant--Collectors, Shri J.B.Koshy, Advocate, for Premier Tyres and Shri B.B Bagalkote, Director (Sales and Technical Services) for Dai-Ichi-Karkaria.

7. Before we set out the rival contentions, it is just as well to set out the undisputed positions. They are that the products under consideration are polymers (i.e. the result of the chemical process of synthesis called polymerisation) and that they do not have resinous or plastic properties. In other words, they do not answer to the description of artificial or synthetic resins or plastic materials.

8. The salient submissions for the appellants by Shri Sundar Rajan may be summarised thus-- (i) The basis for the classification claim put forth by the Department was Note 2(c) to Chapter 39 [Notes 2(a) and 2(b) were not relevant for the present cases] according to which resols, liquid polyisobutylene and similar artificial polycondensation or polymerisation products fall under heading 39.01/06. The contention was that the products PEG 300, PPG 1010 and PPG 2020 were similar to resols and liquid polyisobutylene. The latter two products had no visible or obvious resinous or plastic characteristics. Even so, they fell under heading 39.01/06. The subject goods being similar to resols and liquid polyisobutylene also fell under item 39.01/06.

(ii) The technical opinion (T.O. No. 627/31-7-1981 dated 31-7-1981) furnished by the Deputy Chief Chemist clearly supported the above view.

(At this stage, Shri Koshy, Counsel for Premier Tyres, submitted that a copy of the said T.O. had not been furnished to Premier Tyres and, so, it could not be used against them).

(iii) Though the goods were imported in the Premier Tyre cases prior to 1-9-1978 (on which date, a revised nomenclature for heading 39.01/06 came into force) and the goods in the Dai-Ichi-Karkaria cases were imported after 1-9-1978, Chapter Note 2(c) did not undergo any change and so, the arguments were the same in both sets of cases. The textual change in the nomenclature of the heading did not make any difference to the classification of the subject products.

(iv) Referring to the CCCN Explanatory Notes under heading 39.01 (page 572), it was urged that the heading did not cover condensation products which did not have the character of artificial plastic materials. One of the examples given in the note is mixed polyethylene glycols of very low molecular weight which, according to the notes, fall under heading 38.19. This position was reiterated by the notes under heading 38.19 of the CCCN (page 559) which placed under the said heading mixed polyethylene glycols with very low molecular weight, e.g. mixture of di-, tri-, and tetraethylene glycols. The notes also showed that other polyethylene glycols were, however, excluded; they fell under heading 39.01 or, if having the character of artificial waxes, under item 34.04. The subject goods were similar to polyethers which, according to the CCCN Notes (page 574) fell under item 39.01.

(v) Next, quoting "Handbook of Water--Soluble Gums and Resins" by Robert L. Davidson, it was stated that the highest polymer of ethylene glycol made commercially as a pure compound was tetraethylene glycol. Beyond the tetra-stage, the result was a mixture of no definite composition. This position was supported also by Kirk-Othmer's "Encyclopaedia of Chemical Technology".

(vi) Government of India in its Order-in-Revision dated 22-5-1981 in the case of Ahura Chemical Products (P) Ltd.--1981 E.L.T. 824--had held that polyethylene glycol 400 was covered by heading 39.01/06 of the CTA, 1975.

(vii) Resols and polyisobutylene were not resins nor were the subject products. But they were all similar rubbery materials. For the purpose of classification under heading 39.01/06, CTA, 1975, it was not necessary for silicones and the other substances covered by Chapter notes 2(b) and 2(c) to be resins. Otherwise, these two notes would be redundant; Note 2(a) would have been sufficient. If there was no Note 2(c), the goods would have gone out of Chapter 39 because, as the review notice said, the goods were not resins or plastic materials. Note 2(c) would have to be given effect to in such a way as not to make it redundant.

(In response to a query from the Bench, the Deptl. Representative stated that PEGs could not be polymerised into resins but only into higher polymers).

9. The submissions of Shri J.B. Koshy, Counsel for Premier Tyres, may be summarised thus-- (i) The goods in these cases were imported prior to 1-9-1978 when, for a substance to fall under heading 39.01/06, it had to be a resin or plastic material. Since the show cause notice admitted that PEG 300 had no such properties, it was out of the scope of Chapter 39.

The CCCN notes relied upon by the Department were of no avail, since the entries in the two nomenclatures were different.

(ii) Having ruled out the product from item No. 15A, CET, on the ground that it was not a resin or plastic material, the Department could not take a contradictory stand for the purpose of basic Customs duty. The Tribunal's decision in *Arun Agencies, Madras v. Collector of Customs, Madras--1984 (17) E.L.T. 216=1984 ECR 1746--* was cited in support.

(iii) The scope of heading 39.01/06, CTA, 1975 was examined by this Tribunal in *Tamil Nadu Electricity Board, Madras v. Collector of Customs, Madras--1983 E.L.T. 174*. In that case, the goods were ion exchange resins. Even so, they were held not to fall within Chapter 39, but within Chapter 38. In the present case, the goods were, admittedly, not even resins as seen from the Chemical Examiner's note of 28-8-1976.

(iv) In the case reported in 1981 E.L.T. 824 there was no evidence regarding the low molecular weight of the goods unlike in the present case where the Chemical Examiner had clearly stated that the goods were of low molecular weight. The Government's decision had thus no application here.

(v) The manufacturer's literature (extracts filed would show that PEG could, depending on its molecular weight, be a liquid, solid (wax) or vaseline. There was no reference to any resin application.

The appellants used the goods as mould release agent in the tyre industry.

(vi) PEG 300 was not similar to resols or liquid polyisobutylene.

The latter two could be further polymerised into resins or used as plastics unlike PEG 300. The technical opinion furnished by the appellants' General Technical Manager was relied upon.

(vii) Alternatively, the product, being a lubricating preparation, could be classified under heading 34.01/07(2).

10. The submissions of Shri Bagalkote, on behalf of Dai-Ichi-Karkaria, may be summarised thus-- (i) The classification of PPG had come up before the Tribunal recently in an appeal filed by HICO Products Company, Bombay. The Tribunal had remanded the matter to the Collector (Appeals) for de novo consideration. (Shri Bagalkote could not, however, provide the particulars of the appeal he had in mind.

(ii) Note 2(c) to Chapter 39 meant that a given polycondensation or polymerisation product must be similar to resols or liquid polyisobutylene--not all polycondensation or polymerisation products were covered by the note. The onus to show that PPG 1010 and PPG 2020 were similar to resols or liquid polyisobutylene lay on the Department. The only evidence led by the Department was the technical opinion of the Deputy Chief Chemist who said that resols and polyisobutylene were not resins or plastics by themselves and that the subject products were similar in this respect. If this view was accepted, all polymers, whether of low or high molecular weight, liquid, solid, resinous or not, would come under heading 39.01/06.

Surely, such could not be the intention for, in that case, there was no need to have a separate Note 2(c).

(iii) The proper way to read Note 2(c) would be to construe it harmoniously with the heading 39.01/06. The CCCN notes provided a useful clue. The notes at page 568 clearly said that resols and liquid polyisobutylene were less intensively transformed than the corresponding plastic materials. In other words, they could be made into resins--resols by application of heat without addition of any material. PPG could not be made into a resin by heat. No doubt, it could be converted into polyurethane by reaction with isocyanic acid but this meant that PPG was, for that

purpose, a raw material for conversion into resin. As regards polyisobutylene, it could be used as a sealant, adhesive, viscosity index improver, etc. These uses dependant upon the products' time--dependant Theological property of tackiness. PPG had no such properties : it had a definite viscosity and boiling range.

(iv) Chemically and physically, PEG and PPG were two different substances. The CCCN notes under heading 39.01 talked of PEG and not PPG. The notes had, therefore, no application to PPG. In any event, the CCCN notes had no legal force.

(v) PPGs were polypropylene oxide diols and not polyoxy propylenes.

Similarly, PEGs were polyethylene oxide diols and not polyoxye-thylenes. For this reason, the CCCN Notes at page 574 under heading 39.01 were also not relevant.

(vi) Commercial PPGs were only up to 6000 molecular weight. The threshold molecular weight for calling a polymer a high molecular-weight polymer was 6,000--12,000. The present products were not "high polymers".

11. In his reply arguments, on behalf of the Department, Shri Raghavan Iyer made the following points:-- (i) Note 2(c) to Chapter 39 did not concern itself with "high polymers". Resols and polyisobutylene were polymerised up to a certain stage. The present goods were also polymerised up to a certain stage. This similarity would suffice for application of Note 2(c) and classifying the products under heading 39.01/06. There need not be any similarity in so far as end-use was concerned. It was also not necessary that PEGs and PPGs could be made into resins.

(ii) Shri J.B. Koshy's alternative submission for classification under Chapter 34 was not tenable since PEG 300 was not waxy in character : only PEG 1000 and 1500 were waxes.

12. We have carefully considered the submissions of both sides. As already noted, it is an undisputed position that the products under consideration are the products of chemical synthesis, that they are polymers, i.e. products of the process known as polymerisation and that they do not have resinous or plastic properties. The dispute thus really narrows down to the question whether the products come within

the ambit of Note 2(c) to Chapter 39 or not. If they do, the corollary would be that the correct classification of the goods would be heading 39.01/06. If not, the alternative classification claimed is heading 38.01/19(1). Premier Tyres have made a further claim for classification under heading. 34.01/07(2).

"In Heading No. 39.01/06 'condensation, poly-condensation, poly-addition, polymerisation and co-polymerisation products' are to be taken to apply only to goods of a kind produced by chemical synthesis answering to one of the following descriptions : (c) resols, liquid polyisobutylene and similar artificial polycondensation or polymerisation products." It is common ground that Clauses (a) and (b) are not relevant to the present goods. In the background of the undisputed position set out in the preceding para, the only thing calling for determination, with reference to Note 2(c), is whether the goods PEG 300, PPG 1010 and PPG 2020 are similar to resols and liquid polyisobutylene.

14. We have to necessarily keep in view the changes brought about on 1-9-1978 in the nomenclature of heading 39.01/06.

15. Before 1-9-78--the period relevant to the Premier Tyres group of cases--the heading read as follows :-- "39.01/06.--Artificial resins such as condensation, polycondensation polyaddition, polymerisation and co-polymerisation products; (sic) a plastic materials, silicones; natural resins modified by fusion or esterification such as run gums or ester gutns; regenerated cellulose; vulcanised fibre hardened proteins; chemical derivatives of natural rubber; other high polymers (including alginic acid, its salts and esters); linnoxyn." It is clear from a bare reading of the plain words that for a polycondensation or polymerisation product to fall under heading 39.01/06, it had to be an artificial resin. The words "such as" following the terms "artificial resins" make it clear that "condensation", etc., products are enumerated as illustrative examples of the types of goods sought to be covered within the heading. The essential criterion, however, is that the product must be an artificial resin.

16. The show cause notice in the Premier Tyres group of cases states in express words that PEG 300 may not answer to the description of (sic) plastics or resins and, that being so, it would not appear to fall under item 15-A of the GET. This

statement alone is sufficient to rule out classification of the product under heading 39.01/06. But, the notice invokes Chapter Note 2(c) in support of the proposed classification under heading 39.01/05, on the basis that PEG 300 is similar to resins and liquid polyisobutylene. The notice says that PEG 300 which has an average molecular weight of 285 to 315 is ; mixture of polyethylene glycols with an average of 6-7 monomer units. PEG are of very high molecular weight and resins can also be prepared from them just as resins, polyisobutylene which also form resins after further (sic). Beyond the above statements, no evidence has been led by the Department in support of its stand that PEG 300 is similar to resins or polyisobutylene.

17. The literature of the manufacturer--Nephtachimie, Paris--shows the diverse application of polyethylene glycols. (They are also known as polyoxyethylene glycols). PEGs of molecular weight 600 and below are colourless slightly viscous and hygroscopic liquids miscible with water in all proportions PEG 600 is in the form of unctuous white vaseline, soluble in water. PEG 150(and 4000 are white solid waxes, highly hygroscopic and partly miscible with cold water, but soluble in hot water. Because of their properties-- solubility in water, inertia towards chemical reagents, low hygroscopicity, non-purifying high blending and lubricating ability, ability to dissolve medicaments and dyestuffs, and no toxicity, the PEGs are stated to find wide use in diverse industries. In the plastic industry, PEGs are said to be used as plasticizer for cellulose acetate and as intermediates in the production of certain resins As a substitute for glycerin, they improve the flexibility of alkyd resins. PEGs can react with methacrylic acid to form esters capable of polymerisation. The literature also shows use of PEG, as mould release compounds, the use claimed by Premier Tyres. The literature does not, however, show any application of PEGs as resins or plastic materials.

Use as plasticizer or inter-mediate is not the same thing as use as resin or plastic material. Dr. A.S. Nair, General Technical Manager of Premier Tyres, in a technical write-up dated 19-9-1981 on PEG (submitted along with the reply to the show cause notice), has stated that resins or plastics cannot be prepared from PEGs. By addition of further molecules of ethylene oxide to PEG 300, the result will be only with higher molecular weight, waxy and not resinous in nature. The

Chemical Examiner's note of 28-8-1976 to which Shri Koshy also made a reference does not disclose anything in support of the Departmental stand. It merely says that the sample is of low molecular weight and that it has no resinous properties. The Deputy Chemist's technical note dated 31-7-1981 on PPG 1010 and 2020 of no avail to the Department in so far as Premier Tyres are concerned because the said opinion was not disclosed to the Respondent).

18. The clue to the dispute, in our opinion, can be gathered from the CCN Explanatory Notes themselves. At page 568, the notes states that the chapter (Chapter 39) also includes resols, liquid polyisobutylene and similar certificial products which have been "less intensively transformed" by (sic) or polymerisation than the corresponding artificial plastic (sic)." In other words, the clear implication is that resols and polyisobuty-be could be transformed into resins or plastic materials by further polymerisa-(sic). According to the "Condensed Chemical Dictionary" 10th Edition (pages (sic) and 93) revised by Gessner G. Hawley, resols are "A-stage" or one-step sins. It is "an alkaline catalysed thermo-setting phenol-formaldehyde type sin consisting primarily of partially condensed phenol alcohols. At this stage (sic) product is fully soluble in one or more solvents (alcohols, ketones) and is (sic) at temperatures below 150C. On further heating and without use of (sic), or additive, the resin is eventually converted to the insoluble, infusible (sic)-linked form (C-stage). The A-stage resin is a constituent in most com-(sic) dominating varnishes and is also used in special moulding powders." The C-stage resin (see page 289 of the same book) is "the fully cross-(sic) phenol-formaldehyde type resin which is infusible and insoluble in all (sic)." Similarly, the book has the following to say on polyisobutylene at page 3 and 829-- "Any of several thermoplastic isotactic (stereo-regular) polymers of iso-butene of varying molecular weight; also polymers of butene-1 and butene-2. Butyl rubber (q.v.) is a type of polyisobutene to which has been added about 2% of isoprene, which provides sulfur linkage sites for vulcanisation. Isobutene can be homopolymerized to various degrees to chains containing from 10 to 1000 units, the viscosity increasing with molecular weight. It is combustible and essentially non-toxic.

Uses: Lubricating-oil additive; hot-melt adhesives; sealing tapes; special sealants; cable insulation; polymer modifier, viscosity index improvers; films and coatings."

One of the uses of isobutene (isobutylene) is shown at page 575 of the McGraw-Hill Dictionary as production of polyisobutene resins.

The McGraw-Hill Dictionary of Scientific and Technical Terms (11th ed.--page 1241) says : "Polybutylene--A polymer of one or more butylenes whose consistency ranges from a viscous liquid to a rubbery solid." It is clear from the above quoted passages read with the CCCN explanatory notes (supra) that resols and polyisobutylene are recognised as resins or substances which have polymerised up to a stage and which, on further polymerisation, result in more fully cross-linked resins.

Note 2(c) requires a poly-condensation or polymerisation product should be similar to resols or liquid polyisobutylenes so as to attract its mischief. The similarity required does not stop with the product under consideration being a polycondensation or polymerisation product. In our view, the notes require similarity in characteristics with resols and polyisobutylene, i.e. of either being resins polymerised up to a particular stage or being capable of producing by further polymerisation a more fully polymerised resin. And, on this last point, the Department has failed to lead any evidence. Indeed, Shri Sundar Rajan has stated that PEGs cannot be polymerised into resins but only into higher polymers. Shri Sundar Rajan has argued, relying upon the CCCN Explanatory Notes, that mixed polyethylene glycols of very low molecular weight i.e. mixtures of di-, tri- and tetraethylene glycols alone are excluded from heading 39.01/06 and included in heading 38.19.

Other polyethylene glycols are, however, classified under heading 39.01 (pages 559, 592 of the CCCN Notes). It appears to us that this is an erroneous way of reading the notes. Di-, tri- and tetraethylene glycols are cited only as examples. These ethylene glycols of very low molecular weight do not have the character of artificial plastic materials and hence, the notes indicate that they are excluded from heading 39.01 (and included in heading 38.19) in accordance with the general dictum that: "It should be noted that with certain exceptions (see Chapter Note 2), the heading (39.01) does not cover condensation products which do not have the character of artificial plastic materials." The general rule is that the product should

have plastic character. The exception is what is given in Chapter note 2, i.e.

silicones and resols and liquid polyisobutylene and similar polycondensation or polymerisation products. It is not as though any polyethylene glycol above the tetra-stage glycol is automatically within heading 39.01. It must either have plastic character itself or be similar to resols or liquid polyisobutylene.

19. We are clear in our mind that the above is the way to harmoniously read Clauses (a), (b) and (c) of Note 2 to Chapter 39, CTA, 1975. Shri Sundar Rajan contended that if the clauses are not read in the way he suggests, Clause (c) would be rendered redundant and that Clause (a) would have been sufficient. We do not agree. Clause (a) deal with artificial plastics including artificial resins. Clause (c) deals with products which are not fully polymerised resins or products which could potentially be further polymerised into more fully polymerised resins.

There is no conflict and no redundancy here. If on the other hand, we read the Chapter notes the way the department wants us to read them, any artificial polycondensation or polymerisation product would, because of its being an artificial polycondensation or polymerisation product like resol or liquid polyisobutylene, would be hit by the mischief of Note 2(c) and would be classifiable under heading 39.01/06 even if the similarity begins and ends there. If this were so, there was no need to have Chapter Note 2 (at least in so far as polycondensation and polymerisation products are concerned) with sub-Clause (a), (b) and (c). All polycondensation and polymerisation products would have automatically come within the scope of heading 39.01/06 even without the aid of the note because such products are specially enumerated in the heading itself. We do not think this is the correct way of reading the note.

20. Shri Sundar Rajan has relied upon Government of India's revision order in 1981 E.L.T. 824 classifying PEG 400 under heading 39.01/06.

Apart from the fact that this order has no binding force in so far as this Tribunal (sic) concerned, detailed arguments of the nature advanced before us do not (sic) to have been advanced before the Government. It is seen from the said order that the manufacturers' literature showed that PEGs were high molecular eight

polymers. In the present case, the Chemical Examiner has clearly said that PEG 300 is very low molecular weight. The revision order need not be considered further.

21. Shri Koshy, Counsel for the Premier Tyres, has relied upon this Tribunal's decision in 1984 (17) E.L.T. 216=1984 ECR 1746. In that case, (sic) B.P. was classified as a pharmaceutical chemical under heading (sic)9.01/45(13) for basic duty but was denied such a classification for purpose of duty exemption under item No. 68 CET. It was in this context, the Tribunal (sic) that it was difficult to understand why, if the chemical was a pharmaceuti-(sic) chemical for basic duty, it was not so for additional duty. Here, it is an admitted position that the goods are not resins or plastic materials. What, however, the Department contends is that for heading 39.01/06 it need not be a (sic) or plastic material. This aspect we have dealt with at length.

22. Shri Koshy relied upon the Tribunal's decision in 1983 E.L.T. 174.

(sic) that case, the goods were admittedly ion exchange resins. Because of their (sic) exchange property for which rather than their resinous or plastic property, (sic) were known, the Tribunal said they were correctly classifiable as water (sic) chemicals under heading 38.01/9(9). Here, the goods are not resins, he cited decision is of no direct relevance.

23. Having regard to the foregoing discussion, we hold that PEG 300 as not classifiable under heading 39.01/06 of the CTA 1975. It was appro- (sic) classifiable under heading 38.01/19(1) as a miscellaneous chemical product not elsewhere specified. In this view, it is not necessary to consider (sic) alternative claim put forth, viz. heading 34.01/07(2).

24. "Next, we shall consider PPG 1010 and 2020. These products were reported by Dai-Ichi-Karkaria after 1-9-1978. On 1-9-1978 the nomenclature heading 39.01/06 underwent substantial changes, though Chapter note 2 tained its earlier phraseology. The new heading reads as follows-- "39.01/06. Condensation, Polycondensation and Polyaddition Products, whether or not modified or polymerised, and whether or not linear (for example, Phenoplasts, Aminoplasts,

Alkyds Polyallyl Esters and other unsaturated polysters, silicones), polymerisation and co-polymerisation products (for example, polyisobutylenc, polystyrene, Poly vinyl Chloride, Poly-vinyl Acetate, polyvinyl Chloroace-tate and other polyvinyl Derivatives, Polyacrylic and Polymethacrylic Derivatives, Coumaroneindene Resins); Regenerated Cellulose; Cellulose Nitrate, Cellulose Acetate and other Cellulose Esters, Cellulose Ethers and other Chemical Derivatives of Cellulose, plasticised or not (for example. Collodions, Celluloid); Vulcanised Fibre; Hardened Proteins (for example, Hardened Casein and Hardened Gelatin): Natural Resins modified by Fusion (Run Gums); Artificial Resins obtained by esterification of Natural Resins or of the Resinic Acids (Ester Gums); Chemical Derivatives of Natural Rubber (for example, Chlorinated Rubber, Rubber Hydrochloride, Oxidised Rubber, Cyclised Rubber); Other High Polymers, Artificial Resins and Artificial Plastic Materials, including Alginic Acid, its salts and esters Linoxyn." (sic) the earlier opening words "Artificial resins such as" were (sic).

Therefore, going solely by the revised nomenclatures it would appear, at first sight, that the earlier stipulation that a "condensation", etc., product, to fall under item 39.01/06, must be an artificial resin had been given up. But, the matter is not so simple. The words "Condensation...products" in the heading continued to be still governed by the meaning assigned to them by Chapter Note 2. Therefore, even after the changes brought about on 1-9-1978, Chapter Note 2 continued to play a crucial role in the matter of classification of "condensation", etc., products.

25. We agree with Shri Bagalkote, the representative of Dai-Ichi-Karkaria, that the onus to show that the two products were similar to resols and liquid polyisobutylene so as to attract the mischief of Note 2(c) to Chapter 39 lies on the Department. The Department has heavily relied upon the Deputy Chief Chemist's technical opinion dated 31-7-1981. We have perused the opinion. The effect of the relevant portion is that the purport of Note 2(c) is that low molecular weight polycondensation/polymerisation products which do not possess visually obvious resinous characteristics (e.g. resols, polyisobutylene) are covered by the said note. The two substances are mentioned only by way of illustration. In this respect, PEGs are similar to them. Hence Note 2(c) is attracted, we think this is to miss the real point of Note 2(c). We have already discussed at length this aspect and

concluded that the similarity referred to in Note 2(c) implies that a polycondensation or polymerisation product to be covered by this note should be less intensively transformed than the corresponding plastic material (i.e. polymerised up to a stage, e.g. A stage resin : resols) or capable of being converted into resins by further polymerisation. And, on this aspect, we do not have any help from the Deputy Chief Chemist's note.

26. Shri Bagalkote has argued that PPG cannot be made into a resin by heat unlike resols. It could be converted into polyurethane by reaction with iso-cyanic acid from which it can be seen that PPG is a raw material for conversion into resin. Similarly, Shri Bagalkote has stated, polyisobutylene can be polymerised further, and depending upon the degree of polymerisation, it can give plastic or rubbery material.

This is borne out by the passage from the "Condensed Chemical Dictionary" and "Mc-Graw Hill Dictionary of Scientific and Technical Terms" extracted earlier. PPG, it is stated, does not behave in this way. To this, the Department has not given any satisfactory rebuttal reply. It is seen from the Mc-Graw Hill Dictionary (page 1244) that PPG is used as a solvent for vegetable oils, waxes and remains, in hydraulic fluids and as a chemical intermediate. There is no mention of its use for the purposes for which a resin or plastic material is ordinarily used.

27. Hawleys' "Condensed Chemical Dictionary" says at page 834 that "high polymer" is an organic macromolecule composed of a large number of monomers, the molecular weight ranging from about 5,000 into millions. It adds that the dividing line between low and high polymers is considered to be in the neighbourhood of 5,000 to 6,000 molecular weight. The tariff heading 39.01/06 does not contain any definition of "high polymers". Adopting the general meaning given above, it is clear that the subject products are not "high polymers".

28. Shri Sundar Rajan has said that the subject products are similar to polyethers which fall under heading 39.01/06 and, hence, they also fall under the same heading. While the subject products are polyether glycols (see page 830 of Hawleys' "Condensed Chemical Dictionary"), they do not necessarily, for that reason alone, fall under heading 39.01/06. On page 574 of the C.C.C.N.

explanatory notes are given examples of polyethers classified under heading 39.01. Two examples are polyoxyethylenes and Polyoxypropylenes. The review notices say that PEG and PPG belong to these families of polymers. It need not be doubted that polyethers including polyoxyethylenes and polyoxypropylenes conforming to the stipulations in Chapter note 2 would fall under heading 39.01, C.C.C.N. and 39.01/06 of CIA, 1975. In the case before us, we have seen how PEG and PPG are not hit by the mischief of Chapter 29. The upshot of the foregoing discussion is that PPG 1010 and PPG 2020 are not hit by the mischief of Note 2(c) and are, therefore, outside the scope of Chapter 39. Like PEG 300, they are also appropriately classifiable as miscellaneous chemical products, not elsewhere specified, under heading 38.01/19(1).

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