Collector of Central Excise Vs. Eastern Chemofarb Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-20-1987

Reported in : (1987)(14)ECC4

Appellant : Collector of Central Excise

Respondent : Eastern Chemofarb Ltd.

Judgement :

1. The question for decision in this' appeal by Collector of Central Excise, Bolpur is whether the respondents product marketed under brand name of CALPOL 40-00, CALPOL 72-23, CALPOL 10-214, CALPOL 72-250 and CALPOL 42-00 are Maleic Resins eligible to benefit of exemption under Notification No. 157/81, dated 29-8-1981.

2. There is no dispute that the respondents manufacture fail under Item 15A of the First Schedule to Central Excises and Salt Act, 1944. the respondents were paying duty in respect of their manufacture under this item till September, 1981 under the description Polyester resin. On 28-8-1981, the respondents filed classification list claiming their manufacture to be Maleic resin fully exempt from duty under Notification No. 157/81, dated 29-8-1981 as amended. Samples of the product were tested at the Customs House Laboratory, Calcutta and the Chemical Examiner in his report stated that the product is Polyester resin. The respondents disputed the correctness of the Chemical Examiner's report communicated to them by the Superintendent of Central Excise under his letter dated 25-11-1981 and requested for retest of the sample as per their request dated 4-12-1981. No action

seems to have been taken on this letter of the respondents. The Assistant Collector of Central Excise, Asansol Division by his order dated 12-8-1982 rejected the claim for classification as Maleic resin and exemption under the notification. The respondents then filed appeal before the Collector (Appeals) Central Excise, Calcutta. The Collector (Appeals) Central Excise, Calcutta by his order dated 3-4-1983 held that the appellants request for retest of samples as per Rule 56(4) of the Central Excise Rules, 1944 should have been granted and then decision for approval of the classification list taken. He held that the Assistant Collector should not have returned the classification list to the respondents. The Collector (Appeals) set aside the order of the Assistant Collector without prejudice to the right of the Assistant Collector concerned to determine the case afresh in accordance with law and after retest of the samples of the said goods as specifically requested by the respondents (appellants before him) in their letter dated 4-12-1981 - both at the Regional Testing Centre at Calcutta and by the Chief Chemist, New Delhi and thereafter to take a decision on classification.

3. After these orders of the Collector (Appeals) were received at the lower levels, the Superintendent of Central Excise, Purulia Range, West Bengal, took steps to obtain fresh samples vide Test Memo. Nos. 1/83 to 6/83. These samples as directed by the Collector (Appeals) Central Excise, were forwarded to the Chief Chemist, Central Revenue, New Delhi and Regional Testing Centre, Eastern Region, Calcutta of the Ministry of Industry to Government of India. The Chief Chemist, Central Revenues by his letter dated 4-8-1983 expressed the following result of test - "Each of the six samples is in the form of colourless viscous liquid with characteristic smell. Each has resulted from polycondensation reaction and in each case the product containing styrene. Each is unsaturated polyester resin." This result was followed by another letter dated 5-9-1983 from the Chief Chemist, Central Revenues Control Laboratory addressed to the Assistant Collector of Central Excise, Asansol Division. (This letter would be referred to at a later stage). From the Paper book filed by the respondents, it is seen that the Regional Testing Centre, Eastern Region, Calcutta addressed a communication dated 25-5-1983 to Prof.

R.N. Mukherjee, Head of the Department of Chemical Engineering, Jadavpur University forwarding him 6 sealed samples of the product in question and requesting him to carry out test on the points desired in the request for test of the ground that they (the Regional Testing Centre) are not adequately equipped to carry out the analysis as requested for. The letter added that necessary testing charges will be paid to him either by the Superintendent of Central Excise and Customs, Purulia Range, West Bengal or by the manufacturer, M/s. Eastern Chemofarb Ltd., Calcutta. Copies of this communication were forwarded both to the Superintendent of Central Excise and Customs, Purulia Range, West Bengal and to the manufacturers (Appendix G in the paper book). This letter was followed by another letter dated 21-6-1983 addressed to the Superintendent of Central Excise and Customs, Purulia Range, West Bengal intimating that the Testing Centre, Eastern Region, Calcutta was advised by Head of Department of Chemical Engineering, Jadavpur University that the testing fee would be Rs. 3,000/- at the rate of Rs. 500/- for each sample and the same may be sent by crossed cheque drawn in favour of the Registrar of the University. Copies of these letters were forwarded to the Assistant Collector of Central Excise and Customs, Asansol, Prof. R.N. Mukherjee, Head of Department of Chemical Engineering, Jadavpur University and the manufacturers M/s.

Eastern Chemofarb Ltd. (Appendix H of the respondents paper book).

There is another letter dated 13-10-1983 from the Assistant Collector of Central Excise and Customs, Asansol Division addressed to the respondents M/s. Eastern Chemofarb Ltd. intimating of the tests conducted by the Regional Testing Centre, Eastern Region, Calcutta and the Chief Chemist, New Delhi and calling upon the manufacturers to re-submit the classification list for approval (Appendix 1 of paper book). There is another letter dated 10-11-1983 (Appendix 3 of paper book) from the Superintendent of Central' Excise, Purulia Range, West Bengal addressed to the respondents M/s. Eastern Chemofarb Ltd. intimating them of the test conducted by Regional Testing Centre, Eastern Region, Calcutta and enclosing photostat copy of the testing report. From the paper book, it is seen that the Regional Testing Centre, Calcutta forwarded to the Assistant Collector of Central Excise, Asansol Division the test report of test conducted by the Head of the

Department of Chemical Engineering, Jadavpur University (the report would be referred to later).

4. The respondents before the Assistant Collector of Central Excise challenged the report of the Chief Chemist, Central Revenues Control Laboratory, New Delhi as being vague and deserving no weight and urged that it should be ignored in considering the classification of the respondents product. It appears that they placed reliance on the test conducted by Head of Department of Chemical Engineering, Jadavpur University which was forwarded by the Regional Testing Centre, Eastern Region, Calcutta. The Assistant Collector of Central Excise, Asansol Division by his order dated 2-2-1984 held that no credence to be given to the test report forwarded by the Regional Testing Centre, Calcutta.

The tests were not conducted by the Testing Centre, Eastern Region, Calcutta itself but by Head of Department of Chemical Engineering, Jadavpur University. According to him, the Collector (Appeals) Central Excise in his order dated 2-4-1983 had ordered testing of samples by Regional Testing Centre, Eastern Region, Calcutta. In terms of this order, it could not be tested by any other outside agency and the Regional Testing Centre, Calcutta had no authority to have the tests conducted by an outside agency and forward the test report as their own. He also held that the test report forwarded by the outside agency exceeded the scope of the test inasmuch as it volunteered opinion in the explicit terms regarding compatibility of the product with the description as given in the Notification No. 157/81-C.E., dated 29-8-1981. He further held that in their request, the respondents had also requested for retest of the samples by Chief Chemist and according to the information, the Collector (Appeals) also ordered retest by the Chief Chemist, Central Revenues Control Laboratory. He also observed that respondents had themselves relied on the report of the Chief Chemist, Central Revenues Control Laboratory and he could not but also rely' on the same report and that it was for him to give credence to the report of the Chief Chemist in terms of the order of the Appellate Authority. Relying on the report of the Chief Chemist, he held that these samples were unsaturated polyester resins and therefore, they could not be termed as maleic resin. He rejected the claim for exemption under the notification.

5. Aggrieved with this order, the respondents filed appeal to the Collector (Appeals) Central Excise, Calcutta. The Collector (Appeals) Central Excise, Calcutta by order dated 13-9-1984 held that there are two conflicting opinions of the product of the manufacturer. One technical opinion says the products are maleic resin whereas another technical opinion feels that the product do not conform to the definition of maleic resin given below exemption Notification No.157/81. He observed that there are two technical opinions - one available to the assessee i.e. Head of Department of Chemical Engineering, Jadavpur University through the Chief Chemist, Regional Testing Centre, Ministry of Industry, Calcutta and the other the test report of Chief Chemist of Central Revenues Control Laboratory.

Following a decision of CEGAT in M/s. Multi Metals Ltd. Kota v.Collector of Central Excise, Jaipur (1983 ELT 822) he held the respondents product to be Maleic resin as per the test report of Head of Department of Chemical Engineering, Jadavpur University. He allowed the appeal and directed classification of the respondents product in terms of exemption Notification No. 157/81, dated 29-8-1981. It is this order which is under challenge before the Tribunal by appellants Collector of Central Excise, Bolpur.

6. On 9-10-1986, the Tribunal finding that there were two contradictory opinions - one of the Chief Chemist, Central Revenues Control Laboratory and other by the Head of Department of Chemical Engineering, Jadavpur University - wanted to know from the parties whether there was any other Chemical Laboratory properly equipped to test the product to give impartial opinion. This query was not to be understood as meaning that the Bench had made up its mind for definitely sending it once again to any such laboratory or authority. On this expression made by the Bench, Shri Sunder Rajan submitted that the samples of the product could be sent for test to (1) National Test House, Calcutta; (2) National Chemical Laboratory, Poona; (3) Central Laboratory for Scientific and Industrial Research, Hyderabad. Shri M. Chandrashekhran, learned Advocate for the respondents, however, on 28-10-1986 stated that his clients were not aggreable to goods being retested and according to him, appeal could be decided without any further test which in his view was wholly unnecessary.

7. At the final hearing on 28-11-1986, Shri Sunder Rajan presented an application stating that during pendency of the appeal in the Tribunal, the Directorate of Anti Evasion of the Ministry of Finance had seized certain documents as a result of raid on the manufacturers factory on 5-5-1986. The seized documents indicated that the brand products named CALPOL are Polyester resin. This is evident from the various correspondence with their customers. These documents numbering in all 9 were filed before the Tribunal. Shri Sunder Rajan stated that in view of this new development, the present master, may also be remanded to the lower authority for decision along with the proceedings consequent to raid on 5-5-1986 on the respondents factory. This prayer was opposed by Shri M. Chandra Shekharan for the respondents. The Bench intimated the parties that the request would be kept in mind when the appeal is disposed of finally by the Bench.

8. We do not think that based on subsequent events, we should remand the present matter to the lower authorities for decision alongwith the proceedings consequent to the seizures made sometime in 1986 if the appeal can otherwise be disposed of on the available material. We reject this prayer of Shri Sunder Rajan for remanding the matter to the lower authorities on the ground of subsequent seizures.

9. The manufacturing process of the appellants product which is not in dispute, is as follows - "Our products are produced by the polycondensation reaction of Maleic Anhydride with polyhydric alcohols like Propylene Glycol and Diethylene Glycol and chemically modified with polybasic acid/ anhydride like phthalic Anhydride or Isophthalic Acid, etc. Finally it is dissolved in unsaturated hydrocarbons like Styrene Monomer (reactive diluent) to get optimum properties of the above resins. No physical blending of any artifical or synthetic resins is done with our above products." The manufacturing process has an annexure. For the purpose of this order, only Item 10 - of the Annexure "Styrene Monomer" is material.

10. Shri Sunder Rajan submitted that according to the order of Collector (Appeals) Central Excise dated 2-4-1983, remanding the matter to the Assistant Collector and directing taking of fresh samples and testing the same, test had to be done by

Regional Testing Centre, Eastern Region, Ministry of Industry, Calcutta and the Chief Chemist, Central Revenues Control Laboratory, New Delhi. The Regional Testing Centre had no authority, even if they were not properly equipped to test the samples, to send the same to Head of Department of Chemical Engineering, Jadavpur Univeristy. The report submitted by the Regional Testing Centre on the basis of tests conducted by Head of Department of Chemical Engineering should for this reason alone be ignored from consideration. The prayer was opposed by Shri M. Chandra Shekharan who submitted that all this was done with full knowledge of the Department and it is not open to Revenue to urge that the opinion expressed by Head of Department of Chemical Engineering, Jadavpur University should be excluded from consideration.

11. In our view, the contention of Shri M. Chandra Shekharan on the point must be accepted. We have referred above to letters dated 5-5-1983 from the Regional Testing Centre, Eastern Region to Prof. R.N.Mukherjee of Head of Department of Chemical Engineering, Jadavpur University dated 25-5-1983 (Appendix G) in the respondents paper book.

Letter dated 21-6-1983 of the Regional Testing Centre, Eastern Region to Superintendent of Central Excise (Appendix H) ibid and letters dated 13-10-1983 and 10-11-1983 from the Assistant Collector of Central Excise, Asansol Division and Superintendent of Central Excise, Purulia Range, West Bengal to the respondents, (Appendix I & 3) ibid. All this correspondence would indicate that the Revenue was fully aware that Regional Testing Centre was not properly equipped to conduct the tests and the tests were carried out by Head of Department of Chemical Engineering, Jadavpur University with knowledge and acquiescence of Revenue. Now that the information is adverse to Revenue, Revenue cannot turn around and urge that the opinion should be excluded from consideration only for that reason.

We must however, observe that we are infact surprised when we find that the Head of Department of Chemical Engineering, Jadavpur University, volunteered information in the last para of their opinion - "It may also be concluded that the products conform to the definition of maieic resin as laid down in GOI Notification

No. 157/81-C.E., dated 29-8-1981." The Test Memos as also Regional Testing Centre letter dated 25-5-1983 show that the tests were to be on the following points - (2) What are the ingredients used in the manufacture of the said product?" We do not find any reference to the notification either in the Test Memos or the letter. It is not clear under what circumstances it become necessary for the Head of the Department of Chemical Engineering, Jadavpur University to express this opinion. As to whether they could do so, is a different question which we would deal with when we deal with the opinion of the Chief Chemist. However this portion is separable and if the rest of the test report be acceptable and trustworthy, the same should not be excluded from consideration.

12. Notification No. 157/81, has an explanation setting out the meaning of expressions Maieic resin. This is available in the order of the Collector (Appeals) Central Excise and is reproduced below - "The expression 'maieic resins including fumeric resins' meaning synthetic resins manufactured by reacting maieic acid and/or maieic anhydride and/or fumeric acid with one or more of the following components, namely, polyhydric alcohols, resins, drying oils, terpenes and unsaturated hydrocarbons and includes chemically modified maieic resins but does not include blends of maieic resins with other artificial or synthetic resins." 13. As the notification itself gives meaning of maieic resin what is to be seen is whether the respondents products come within the definition.

If they do, any other consideration like technical or chemical or scientific understanding would not be relevant. If they do not, then even if they be under scientific technical or chemical understanding maieic resin, this would not fit in the meaning of the definition or make any difference [Dunlop (India) Ltd. v. Union of India - AIR 1977 SC 597 -1983 (13) ELT 1566 relied on].

14. Shri Sunder Rajan relying on the information of the Chief Chemist, already reproduced above, and his letter dated 5-8-1983 addressed to the Assistant Collector of Central Excise, Asansol Division, argues that the opinion expressed by Head of the Department of Chemical Engineering, Jadavpur University and the finding given by the Collector (Appeals) Central Excise do not take into consideration the role played by unsaturated hydrocarbons which is added as a

diluent after polycondensation of other ingredients. He submitted that according to this letter styrene is a reactive diluent which is well known in that category of resins known as unsaturated polyesters and not maieic resins or solutions thereof. Proceeding further, relying on the same letter, he submitted that styrene has not been used to react with maieic anhydride/or fumeric acid in the manufacture of the subject goods in question. He added that presence of styrene as a reactive diluent is therefore, significant while examining the goods with reference to definition. He also submitted that in the opinion of the Chief Chemist, the products do not comply with the definition the maieic resin in the notification.

15. Shri M, Chandra Shekharan criticised the' opinion expresed by the Chief Chemist as vague and uncertain and beyond his jurisdiction and submitted that the opinion expressed by Head of the Department of Chemical Engineering, Jadavpur University was preferable to the opinion expressed by the Chief Chemist.

16. At this stage, it would be necessary to reproduce the relevant portions of the opinion of Chief Chemist, Central Revenues Control Laboratory, New Delhi and that of Head of the Department of Chemical Engineering, Jadavpur University. After reciting the explanation in Notification No. 157/81, dated 29-8-1981 as to meaning of expression maleic resins, the Chief Chemist, Central Revenues Control Laboratory, states as under - "Contrary to this definition the book 'outlines of Paint Technology' by Morgan? at page 232 describes maleic resins as those produced by the Reaction between maleic anhydride and resin utilizing the dil Alder Reaction. A number of conjugated unsaturated systems can be used including resin (abietic acid). The product can than be estrified with glycerol or Pentoerythritol." 17. "The unqualified definition for Maleic Resins without mentioning its end use as contained in Notification No. 157/81-C.E., dated 29-8-1981 is very wide to cover reaction products of Maleic Anhydride/Fumeric acid with one or more of the constituents viz.

Polyhydric alcohol etc. under its ambit. Though it is a definition seemingly of generic nature and misleading to designate unsaturated Polyester resins specifically which are defined elsewhere in authentic literature on closer scrutiny it will be seen that it is not aptly applicable to the product in question. Taking into

consideration the raw materials used, specific description of commercially available unsaturated polyester resins (Bran Parkyas book ibid) and presence of Polymerizable styrene monomer, I am inclined to consider the six samples under reference as a type of unsaturated polyester resins in preference to Maleic resins as defined in Notification No. 157/81, dated 29-8-1981. The unsaturated hydrocarbon namely styrene, is present in the sample as a diluent added after the polycondensation of the other ingredients is completed. (This is a reactive diluent which is a well known ingredient in that category of resins known as "unsaturated polyesters" and not in maleic resins or solutions thereof. Evidently, the styrene (unsaturated hydrocarbon) has not been used to react with maleic acid/and anhydride or fumeric acid in the manufacture of the products in question. The presence of styrene as a reactive diluent is therefore, significant, while examining the cases with reference to the definition.

Taking due note of the use of styrene as a reactive diluent and not as a reactant in the earlier stages of the manufacturer, and consider that the products do not comply with the definition of "Maleic resin" in the notification.

18. The opinion of Head of Department of Chemical Engineering, Jadavpur University as contained in the Regional Testing Centre, Eastern Region test report dated 1-9-1983 is in the following words - "A small amount of each of the following samples was weighed, solvent removed under vacuum saponified and then a portion was acidified when the ppt. was separated and washed. In all these above samples presence of Fumeric acid was confirmed by Kappelmeier method. Greenish blue crystals were obtained by adding to the residue, (after saponification) 4 ml. of 10% Cupric sulphate soln. 1 ml of pyridine and 5 ml. water.

The acidified and washed samples (acid mixture) showed the following melting points -CALPOL 40-00 No Residue was obtained and presence of acid could not be confirmed.

Saponification filtrate was neutralised, dried over quick lime and fractionally distilled. High boiler was identified as propylene glycol/ diethylone glycol also from their distinctive smell.

Presence of glycols was also confirmed by periodate method.

It is concluded that all the sample consist of fumeric acid reacted with polyhydric alcohol namely propylene glycol/diethylene glycol chemically modified with a polybasic acid namely isophthalic acid/phthalic acid dissolved in styrene. The sample CALPOL 40-00 appears not to contain any isophthalic/phthalic acid. However maleic anhydride may have been used in place of fumeric acid and this fact will not be discernible in any test, since maleic anhydride rearranges itself into fumeric acid during the chemical reaction of the type mentioned above.

It may also be stated that the sample does not contain any other synthetic resin in blended form.

It may also be concluded that the products conform to the definition of maleic resin as laid down in GOI Notification No. 157/81-C.E., dated 29-8-1981." 19. We may first deal with relevancy of and the weight to be given to the opinion of experts. The Indian Evidence Act, 1872 though not in terms applicable to proceedings before Tribunals, could be taken as a safe guide for evaluating such expert evidence. Under Section 45 of the Act when the Court has to form an opinion upon a point of foreign law, or of science or art or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in these subjects are relevant facts. Further under Section 51 ibid where the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

"The real function of the expert is to put before the court all the materials, together with reasons which induce him to come to the conclusion, so that the court, although not an expert, may form its own judgment by its own observation of those materials. Ordinarily, it is not proper for the court to ask the expert to give his finding upon any of the issues, whether of law or fact, because, strictly speaking such issues are for the court or jury to determine." We do not think that a notification issued under Rule 8 of Central Excise Rules, 1944 - an Indian law could be a subject matter of opinion of an expert as it would not fall under any of the heads set out in Section 45 of the Evidence Act. Its interpretation should be left to the court or Tribunal and would not properly be within the domain of the experts.

20. Applying the aforesaid tests, we do not think either the Chief Chemist, Central Revenues or the Head of Department of Chemical Engineering, Jadavpur University should have expressed any opinion as to the product answering the description in the definition of maleic resin contained in Notification No. 157/81-C.E., dated 29-8-1981. We have already said above how opinion on this point expressed by Head of Department of Chemical Engineering Department, Jadavpur University taking into consideration the points on which tests were required, was not at all called for. However, the rest of the report which is separable from this observation in last part has not been challenged as being factually incorrect by Shri Sunder Rajan and there would appear no reason to exclude the same from consideration.

21. The first opinion dated 4-8-1983 of the Chief Chemist, Central Revenues (reproduced at page 3 of this order) is extremely brief. His main opinion is to be found in his letter dated 5-8-1983 (material portions of the same reproduced at page 13 of this order). Apart from the legal infirmities in these opinions which have already been pointed out above, even this information does not definitely lead to the conclusion that the appellants products would not come within the definition set out in the notification. The very first sentence of the opinion reproduced at page 13 shows that the learned Chief Chemist seeks to contradict the definition set out by placing reliance on a book named "Outlines of Paint Technology" by Morgans. The next para of the opinion also shows that according to the learned Chief Chemist, the definition of maieic resin set out in the notification is very wide. It is probably suggested that the definition would include the appellants product. The definition however, appears misleading to the learned Chief Chemist and he again seeks to dilute and contradict this definition on the basis of some scientific or technical understanding.

We have already said how this is not permissible.

22. In the last portion of his opinion, reference is made to un-saturated hydrocarbon namely styrene. The opinion describes the use of styrene in the product as a reactive diluent and not as a reactant in the earlier stages of the manufacture. Now according to Condensed Chemical Dictionary, Tenth Edition

revised by Gessner G. Hawley, diluent, so far material for the present appeal, has the following meanings - "Diluent - (1) An ingredient used to reduce the concentration of an active material to achieve a desirable and beneficial effect.

Examples are combination of diatomaceous earth with nitroglycerin to form the much less shock-sensitive dynamite; addition of sand to cement mixes to improve workability with no serious loss of strength; addition of an organic liquid having no solvent power to a paint or lacquer to reduce viscosity and achieve suitable application, properties (2) Low-gravity materials used primarily to reduce cost, i.e. blown asphalt, wood flock etc. in rubber and plastic mix'es. In this sense there is no clear distinction between a diluent and an extender." The Dictionary does not give the meaning of reactive diluent or reactant. It would therefore, be safe to assume that the word reactive has been used in a sense ordinarily understood in common dictionaries.

According to Concise Oxford Dictionary, New Seventh Edition, 'react' has, to the extent material for the present appeal, has the following meaning - "React - (i) Produce reciprocal or responsive effect, action upon the agent, be the cause of activity or interaction with another (2) respondent to stimulus, undergo change or show behaviour due to some influence (5) cause to react with another." According to the same Dictionary, the word reactive means showing reaction; pertaining to reactant.

23. The process of manufacture of the appellants products (reproduced at page 8 of the order) shows that they are produced by polycondensation reaction of maleic Anhydride with polyhydric alcohols like Propylene Glycol and Diethylene Glycol. The first requirement thus of the definition is fulfilled. It is nobody's case that the appellants products include blends of maleic resins with other artificial or sythetic resins. The last portion therefore, of the definition is not material and relevant for the purpose of this appeal. The only thing surviving for consideration is the role of unsaturated hydrocarbons, in this case, styrene monomer which according to the appellants process of manufacture, is a reactive diluent and according to the information of the Chief Chemist, at one stage of his information, reproduced at page 13 is a diluent added after polycondensation of other ingredients is

completed. According to this information this styrene is a reactive diluent and a well known ingredient in certain category of resins known as unsaturated polyesters but not in. maleic resins or solutions thereof. According to the Chief Chemist, styrene has not been used to react with maleic acid anhydride or fumeric acid in the manufacture of product. Presumably, at that stage of the information, the Chief Chemist wants to say that it is a simple diluent. But in the last portion of his information, he says that the presence of styrene has a reactive diluent.

24. Now the notification reproduced at page 11 is clear that on the base material, maleic acid, fumeric resins and hydrocarbons, fumeric acid with one or more components need react. There is no dispute that leaving aside hydrocarbons other specified reactants have reacted on the base materials. If added to this, unsaturated hydrocarbons i.e.

styrene can also react as the same. This would not take out from the definition. If it has not reacted and is merely a diluent as per meaning set out above, this would not take out from the definition of maleic resin which has come into existence even before addition of diluent therein.

25. Before we part, we would like to observe that the approach of the learned Collector (Appeals) that because there were two contradictory opinions - one favourable to the assessee has to be preferred in our view, was not the right approach to adopt in the case. The learned Collector should have first evaluated the opinions and it is only when he felt that two reasonable views - one favourable to the assessee and another favourable to the Revenue were possible that he should have adopted the one favourable to the assessee. That was the ratio of the CEGAT decision on which he placed reliance in recording a finding in favour of the respondents. This however, would not affect the present decision.

26. In view of the foregoing, though for reasons slightly different from those which weighed with the Collector (Appeals), we dismiss the appeal.

27. As to seizures from the appellants recently made, it is made clear that this decision will not preclude the Revenue from proceeding against them in accordance with law if the Revenue feel that they can make out a case against the

appellants with respect to the seizures made.