Collector of Central Excise Vs. Bakelite Hylam Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-16-1989

Reported in : (1991)(32)ECC145

Appellant : Collector of Central Excise

Respondent : Bakelite Hylam Ltd.

Judgement :

The respondents M/s. Bakelite Hylam Ltd., manufacture decorative and industrial laminated sheets classified under T.I. 15A (2) of the 1st schedule to the Central Excises & Salt Act, 1944. In the manufacture of the decorative and industrial laminated sheets, Phenol formaldehyde chemical is used for impregnating the kraft paper/cotton fabric, classified under T.I. 17(1)/19 (iii) of the schedule respectively which further go into the laminated sheets.

Phenol formaldehyde falling under T.I. 15(A) is made by the assessee in its own factory by mixing Phenol and formaldehyde chemicals and sell it in the market. In the course of manufacture of formaldehyde three grades of Phenol formaldehyde resin come into existence: Phenol formaldehyde resin HV 20086; HV 7716; & HR 7523. According to respondents in appeal No E/214/86-C HV 20086 and HV 7716 are highly reactive and unstable and therefore, not marketable whereas HR 7523 resin is less reactive and stable. Therefore, the respondents are not paying any duty on the two products. In respect of third product the respondents are clearing the same on payment of duty.

2. On 9-4-1985 a show cause notice was issued by the Superintendent of Central Excise as to why appropriate amount of duty should not be demanded from the assessee under Section 11A of the Act on the Phenol formaldehyde resins cleared for captive consumption and used in the manufacture of other articles without filing a classification list and price list, and penalty imposed on them.

3. In reply it was submitted amongst other submissions that Phenol formaldehyde stage A Resin is highly reactive and unstable and not marketable, and therefore, not excisable.

4. The Asstt. Collector rejected their plea. On appeal the Collector relying on the Test-reports and also on the orders of the Collectors of Bombay and Delhi held that Phenol formaldehyde 'A' resins, namely HV 20086 & HV 7716 are highly reactive and unstable, and therefore, not excisable. In respect of the resins i.e. HR 7523/40 the Collector held that it is stable, and therefore, less reactive.

(a) The order of the Collector is violative of principles of natural justice as neither the copy of the appeal filed by the respondents is supplied to the Asstt. Collector nor he has allowed to adduce any evidence.

(b) The finding that the two grades of resins viz; HV 20086 and HV 7716 are highly reactive and unstable and not marketable is based on the Test-report of M/s. Sreeram Test House which is not an approved chemical testing agency and the samples were drawn in the absence of the Central Excise officers, and therefore, it is based on evidence collected behind the back of the Asstt. Collector.

(c) Secondly, the orders of the three Collectors were considered by this Tribunal and overruled in their order No. C-142/148/84, dated 9-3-1984 -1984 (17) E.L.T. 590 in the case of Formica India Division, Pune v. Collector of Central Excise, Bombay, in view of which the order of the Collector is liable to be set aside.

(d) The fact that they are unstable and highly reactive, and therefore, not marketable does not in any way alter the nature of the product.

These products, because of their unstable and highly reactive nature do not cease to be goods. As long as they are goods falling within the T.I. of the Schedule to the

Central Excises and Salt Act, 1944 the marketability or otherwise of the product is irrelevant.

Therefore, these products are excisable.

(e) He also submitted that the Collector while holding that the two grade resins are not dutiable ignored the decision of this Tribunal reported in Formica India Division, Pune v. CCE, Bombay [1984 (17) E.L.T. page 590]. In support of this contention that 'A' class resins are dutiable relied upon the orders of this Tribunal in CCE v. Jay Enterprises etc. [1987 (29) E.L.T. p. 288] order No. 26827/89-C dated. 12 January, 89 and Flexoplast Adhesives India v. CCE [1988 (36) E.L.T. 119].

(f) He further submitted that relying on JK Cotton Spinning & Weaving Mills v. UOI [1983 (12) E.L.T. 289 Del.] that in the light of the amended Central Excise Rules 9 and 49, irrespective of the fact whether the process is continuous or not, excisable goods coming into existence at intermediate stage of the manufacturing process and used captively in the manufacture of other goods are chargeable to duty, therefore, he submitted that the orders of the Collector runs counter to all the decided cases.

6. The respondents, as against the above, submitted that the disputed formulations prepared by them can be stored in controlled conditions for 6 hrs. Despite the controlled conditions the shelf life of these formulations cannot last beyond 6 hrs. He submitted that the Asstt.

Collector did not contradict the unstable nature of the formulations.

The Collector gave a finding that there is no controversy about unstable nature of the formulations. No evidence is adduced even before this Tribunal, controverting the findings of the Collector that the formulations are unstable and not marketable, in the absence of which the finding of the Collector stands unrebutted.

6.1. In reply to the submission made by the SDR that Shri Ram Test House is not approved by the Govt. they relied upon two letters one dated 31st October, 1969 from the Indian Standard Institution to the Director, Shri Ram Institute for Industrial

Research and another letter dated 16th August, 1983 by the Government of India, Min. of Agriculture and Plant Protection, Quarantive, and Storage addressed to the Manager, Sri Ram Test House. According to these letters Sri Ram Test House is an approved Chemical Laboratory.

6.2. He brought to our notice the fact that the Asstt. Collector tooK the sample for testing and returned the same without getting them tested.

6.3. He submitted that excisable goods under Section 2(d) of the Act means goods specified in the Schedule to the Central Excises and Salt Act, 1944 as being subject to a duty of excise and includes Salt.

Therefore, it is necessary to see whether the article is known in the market as separate distinct identifiable commodity and whether the Tariff duty levied would be as specified in the schedule. Simply because a certain article falls within the schedule it would not be dutiable under Excise Law, if the said article is not 'goods' known to the market. Marketability, therefore, is an essential ingredient in order to be dutiable under the schedule to the Central Excise Act. He further submitted that it was found that the formulations were not marketable by the Collector and since no evidence was adduced to the contrary, and since the marketability is essential before the goods are brought into the Tax net the order of the Collector should be confirmed. In support of his contention he relied upon the Supreme Court decisions in DCM case [1977 (1) E.L.T. J 199]; South Bihar Sugar Mills case [1978 (2) E.L.T. J 336]; Union Carbide case [1986 (24) E.L.T. 169]; Geep Industrial Syndicate [1987 (31) E.L.T. 865]; Bhor Inds. Ltd. v. CCE [1989 (40) E.L.T. P. 280] and the various judgments of Allahabad, Bombay, Madras & Punjab & Haryana High Courts.

6.4. Referring to the orders of this Tribunal in Formica India Division, Pune v. CCE, Bombay [1984 (17) E.L.T. 590] he submitted that this order is not relevant as there is definite finding about the marketability of the glass fabrics and there is evidence that some of the products are actually sold, whereas in the instant case, such finding and evidence is absent.

He distinguished the order of the Jay Enterprises [1987 (29) E.L.T.288] on the ground that there is a concession made by the counsel that the shelf life of the product is 15 days. He relied on the decision of the Bombay High Court reported in CEAT Tyres of Inds. Ltd. v. U.O.I.[1987 (30) E.L.T. 857] wherein they have distinguished the order in Jay Enterprises.

He also distinguished Flexo Plast Abrasives India v. CCE [1988 (36) E.L.T. 119].

7. In reply Shri Sunder Rajan submitted that 'A' stage resin is known to Polymer Technology and known to the market. Referring to the judgment of the Supreme Court in Bhor Inds. Ltd. he submitted that there is a finding whether on concession or otherwise that the product is marketable. Secondly that the judgment of Bhor Inds. is per incuriam as it is given in ignorance of the earlier decision of the Supreme Court in U.O.I. v. Hindu undivided family business known as Ramlall Mansukhrai, Rewari [1978 (2) E.L.T. (J 389)], according to which once goods are specified in the Tariff the marketability is irrelevant. He distinguished the authority relied upon by the respondents as not applicable to the facts of the case.

(i) Whether mixture of Phenol formaldehyde bearing grade reference HV 20086; and Mixture of Phenol formaldehyde bearing grade reference HV 7716, are stable and marketable.

9. The main thrust of the argument of Shri Sunder Rajan is that the order of this Tribunal in Jay Enterprises conclusively decides the issue as to the stability of the formulation and according to the said order marketability of the product is irrelevant. Therefore, he submits that the issue is almost covered by the order of this Tribunal in Jay Enterprises. Since Mr. Sunder Rajan laid much emphasis on the order of this Tribunal in Jay Enterprises we are examining the said order at length and in detail.

10. The issue that arose for consideration in the said order is whether Phenol formaldehyde reaction mixture manufactured for captive consumption to use in the manufacture of laminated sheets is classifiable under T.I. 15A(1) of the Tariff. It was contended by the JDR in that case that Phenol formaldehyde reaction mixture are resols which are condensation products and are covered under T.I. 15A(1) and

that they are resins as they are synthesised products. Since they are called as resins being polymerised products fall within the ambit of 15A(1) and even though they have short shelf life they are excisable, whereas the respondents contended that without adding a stabilizer the goods cannot be marketed, and to a querry put by the Bench the counsel for the respondents in the said case conceded that the goods can be stored for about 15 days. On a consideration of the material and the standard text-books it was held: "We observe that the-manufacturing process for the manufacture of goods in question is a standardised,fine and the end result of the first reaction stage of the raw material inputs as set out in the earlier part of our order, is the Formal-dehyde resin in the 'A' stage. This 'A' stage resin is also described as resol in the Technical literature and this has certain specified uses including in the manufacture of laminates. We observe, for Phenol formaldehyde resin to be used for the laminate sheets, it is essential that 'A' stage resin should come into existence first and by application of necessary heat and pressure and the use of required catalysts for further polymerisation the necessary B & C stages are reached in different operations. Thus the 'A' stage manufacture of the phenolic formaldehyde resin, which is the case in the present proceedings marks a stage of manufacture of resin.... As pointed out above the product manufactured has a definite character for a specific use and is technically recognised as resol. Nowhere we find in the Technical literature placed before us nor any evidence been produced by the respondents that the product resol is unstable and not capable of storage even for a short time.... In fact it has been pleaded that the product has a short shelf life and has been conceded by the learned advocate for the respondents that it can be kept for as long as 15 days.... Further in the Tariff Entry 15A(1) CET, the framers of the statute have used technical words and described the products covered under this by their chemical nomenclature. Once the product manufactured according to the chemical description of the product under this entry, these have to be assessed under this heading. We find that the goods under reference are recognised, technically as phenol formaldehyde or resol and considered as resin and it is because of the resinous properties of the same that these are used.

The fact that the product in question is stable enough to have a shelf life, atbest a short one, as set out above, clearly shows that these are goods for the purpose of levy of Central Excise duty....

We have held that the product manufactured by respondents falls under 15A(1) and the fact that these are in the case of the respondents are not marketed or sold makes no difference for the purpose of levy of duty as held...." 11. In our view this order in Jay Enterprises cannot be applied to the facts of the present case. The reason being that there is a concession made by the counsel that the goods can be stored for 15 days i.e. that 'A' class resin has a shelf life of 2 weeks and neither any literature was produced nor evidence was adduced that the product resol is unstable and not capable of storage, whereas in the instant case the admitted position is that 'A' stage resin has a shelf life of '6 hrs' under controlled conditions. The Asstt. Collector did not dispute that the formulations are not stable. The finding of the Collector is that: "The Asstt. Collector has not discussed and controverted the fact of unstable nature of the product covered by HV 20086 and HV 7716 though this matter was agitated at the original stage by the appellants." 12. The department did not choose to adduce any evidence to rebut the finding as to the "unstable nature" of the formulations before us.

13. Similarly the order in Flexo Plast Abrasives (India) Ltd. v. CCE., Pune [1988 (36) ELT P. 119), proceeded on the basis of an admission that the product has shelf life for 4-5 days. It is observed, "The appellants have pleaded that the goods are not in marketable form. We observe that it is admitted that the product can be kept and stored and has shelf life of 4-5 days." [Para 7 of the order).

In other words this order also proceeded on the basis of an admission that the product has shelf life for 4-5 days.

14. As regards the order in Dunlop India [Order No. 26 & 27/89-C, dated 12th Jan., 1989] in 1989 (41) E.L.T. 504 (Tribunal) we may point out that this Tribunal relied on Flexo Plast Abrasives and Jay Enterprises.

The Tribunal observed that: "We are of the view that the question of classification of the product under consideration can no longer be considered in dispute in view of the decision of the Tribunal in the cases of (i) Jay Enterprises, (ii) Flexoplast as mentioned earlier. There is enough authoritative material mentioned in the aforesaid, judgments of the Tribunal and also now brought on record that Resorcinol Formaldehyde aqueous solution results into formation of 'A Stage resin (resol)'.

It is apparent from the extracts from the handbook of Adhesive by Irving Skeist that what has been prepared by the appellants is nothing but resorcinol resin and it serves the same purpose as that of precondensed resorcinol resin available in the market. Based on this comparison the marketability of the product under consideration cannot also be doubted." 15. The passages extracted above would clearly show that the Jay Enterprises is based on the concession made by the counsel that the product has shelf life of 15 days, Flexoplast is based on the admission that the product has shelf life of 4-5 days; Dunlop relied on the above two orders. As pointed out in earlier paragraph in the instant case the finding is that the product is 'unstable' which is not controverted by the deptt.

16. Therefore, the orders in Jay Enterprises; Flexoplast; Dunlop India are not applicable to the facts of the present case.

17. The next question is whether the formulations are 'marketable'? In the instant case there is a clear finding by the lower authority, that the product is not marketable. The department did not choose to adduce any evidence to rebut the said finding. Further it is not disputed that the 'shelf life' of the formulations is only 'six hours' under controlled conditions. Under such circumstances it is difficult to imagine for a formulation having a 'shelf life of 6 hours' to have marketability in the absence of specific evidence to that effect.

18. The Main plank of the arguments of Sri Sunder Rajan is that in Jay Enterprises & Flexoplast & Dunlop, this Tribunal held that the formulations are marketable, therefore, these orders conclude the issues.

19. We regret, we cannot acceed to his submission. Firstly, the order in Jay Enterprises is based on a concession that "it can be kept for as long as 15 days. Since it has shelf life for two weeks they proceeded on the assumption that it could be sold to a consumer or a buyer if he required the same. In other words, since it has shelf life for 15 days it can be sold in the market. Secondly, it was held that

"not being brought to market is not a criterion for excisability." Similarly, Flexoplast also proceeded on the admission that it has shelf life for 4-5 days and therefore, the marketability cannot be doubted.

Dunlop India also did not doubt the marketability relying on Jay Enterprises and Flexoplast. These orders in our view are clearly distinguishable from the facts of the present case for the reasons stated above.

In this context we may usefully refer to the observations made under similar circumstances by the Supreme Court in Bhor Industries: "In view of the appellate Collector's order dated 14-1-1974 it was the duty of the Revenue to adduce evidence or proof that the articles in question were goods. No evidence or proof was produced.

The Tribunal went wrong in not applying the proper test. The test of marketability or capable of being marketed was not applied by the Tribunal." Following the above observations since the Revenue has not discharged its duty by adducing evidence that the 'Formulations' in dispute are stable and marketable we accept the findings of the Collector.

20. In the light of the foregoing discussion we hold that 'HV 20086' and 'HV 7716' are unstable and not marketable.

21. Mr. Sunder Rajan emphasised that in view of the order in Jay Enterprises marketability of the formulation is irrelevant. According to him as long as the formulation fall within the Tariff schedule they would be dutiable under the Excise Law. Whereas the respondents contended that the judgment of the Supreme Court in Bhor Industries concludes the issue.

22. At this juncture it is important to refer to the observations of the Supreme Court in Bhor Inudstries case. After reiterating the views expressed in DCM, South Bihar Mills & Union Carbide it was observed by the Supreme Court that "therefore it is necessary in case like this, to find out whether these are goods, that is to say, articles as known in the market as separate distinct identifiable commodities and whether the tariff duties levied would be as specified in the schedule. Simply

because a certain article falls within the schedule it would not be dutiable under Excise Law if the said article is not 'goods' known to the market. Marketability, therefore, is an essential ingredient in order to be dutiable under the schedule to Central Excise Tariff." 23. The above observation answers the contention raised by Shri Sunder Rajan. Therefore, we hold that in the absence of the marketability of the product they cease to be goods, and therefore, not dutiable.

24. The submission of Shri Sunder Rajan that the judgment of the Supreme Court in Bhor Industies is per incuriam as the earlier judgment of the Supreme Court in Ramlall Mansukhrai (1978- E.L.T. 389J) was not brought to its notice is equally without any force.

The facts of Ramlall Mansukhrai in brief are:- The respondents carry on business of manufacturing kansi and brass utensils, for that purpose, they procure Copper, Tin and Zinc. Kansi is prepared as an Alloy of copper and tin, and brass as an alloy of copper & zinc. These alloys are prepared by melting the metals and mixing them together. These alloys are converted into billets. These billets are thus of two kinds viz., of kansi, and of brass. These billets are then sent by the respondents to their agents for rolling the billets into uncut circles.

Excise duty was levied on the 'uncut circles' under T.I. 26A (2).

The contention on behalf of respondents is that 'uncut circles' could not be called as circles in the sense in which it is used in T.I.26A(2) and only trimmed circles can be treated as circles and as finished product for purposes of Item 26A.Repelling the said contention it was held that the T.I. 26A envisages excise duty being levied on "circles in any form or size" (emphasis supplied). It was also held that it cannot be understood, how it can possibly be contended that uncut circles are not circles in any form or size.

25. The judgment is clearly distinguishable in the sense that the T.I.26A clearly mentions "circles in any form or size". Interpreting the said T.I. it was held that circles in any form whether cut or uncut fall within T.I. 26A (2). Secondly the question of marketability was not raised and decided as there was no evidence that uncut circles are not known to the market as such. It is not clear how the

judement is relevant for deciding the case in Bhor Industries. Even otherwise in B.M. Lakhani v. Malkapur Municipality (AIR 1970 SCP.1002) the S. C.while repelling a similar argument as advanced by Shri Sunder Rajan, held "The decision was binding on the H. C. and the High Court could not ignore it because they thought that 'relevant provisions have not brought to the notice of the court." Therefore, the judgment of the S.C. in Bhor Inds. is binding on us.

26. We are not referring to the other decisions cited and arguments advanced by Shri Sunder Rajan and the respondent's representative Shri Shankar, as the judgment of the Supreme Court in Bhor Inds. concludes the issue in dispute.

27. The appeal No. E/1672/86-C filed by the respondents is not pursued as they are paying duty on the product.

28. [Contra per: P.C. Jain, Member (T)]. - I have carefully perused the order prepared by learned sister Ms. S.V. Maruthi and concurred in by learned brother Shri D.C. Mandal but I do not feel persuaded to agree to the conclusion reached therein.

29. The main question involved here in this appeal is whether the two grades of phenol formaldehyde resin namely HV 20086 and HV 7716 are marketable or not. If they are considered to be non-marketable then on the ratio laid down by the Supreme Court in its various judgments the two grades cannot be excisable. The following reasons have been given to conclude that the two grades of resin are marketable:- (ii) The samples which were drawn by the deptt. in Aug.'85 were not got tested and no results thereof were communicated to the respondents herein.

(iii) Sreeram Test House certificate dated 28th Oct. 1985 in respect of the tests carried out by that institution has been relied upon to declare the products as unstable and therefore, not marketable.

(iv) The lower appellate authority has relied upon this test certificate from Sreeram Test House and no evidence to the contrary had been adduced by the department to show that the products are marketable.

30. Marketability of a product which is used captively is not dependent only on the actual product or similar product being actually marketed.

It has been categorically held that it is not the actual evidence of marketing which is material for determining whether a product is goods or not but what is material for the purpose of excisability is that it is capable of being marketed. In the case of commodities/products used purely for captive consumption it becomes somewhat difficult to determine whether the product is capable of being marketed or not. No proper tests to determine the marketability appear to have been laid down in such a case of purely captive consumption of a product. It is perhaps, therefore, desirable to lay down certain tests for this purpose. In this connection, I recall the judgment of Delhi High Court in the case of Delhi Cloth and General Mills Co. Ltd. and another v.Joint Secretary, Government of India [1978 (2) ELT J 121] which was also a case of captive consumption of goods sought to be made excisable by the department. It was the case of calcium carbide produced at an intermediate stage for the production of acetylene. The question arose whether the calcium carbide produced by the DCM was 'goods'. The High Court observed as follows:- "The question has three aspects, material, economic and legal. Goods are matter. The material composition of goods shows whether the goods is in a form in which it has utility, value or exchangeability. Things which are in raw or unfinished or an intermediate stage of formation will have to be examined with a view to see if they have reached a form of the goods as contemplated in the list of goods given in the First Schedule to the Act. What is raw, unfinished, or intermediate as distinguished from a finished product may often be a question of degree, but, as Justice Holmes has said, many distinctions in law are often distinctions or degree.

Considerations of the material aspect of goods will be incomplete unless its economic aspect is examined. It is only if the item mentioned in the First Schedule is in a usable form that it can have economic significance. It will then have utility and exchangeability. In other words, it will have a meaning for the market. In economics market is not a place, but is the quality of goods which make them useful and exhangeable as saleable.

Lastly, the use and exchange of goods is often regulated by law.

Unless the relevant rules are complied with, an article may not be useful or exchangeable and that may be an additional reason why it may not be 'goods'." 31. Applying the above tests there is no doubt that the so-called unstable and reactive resins are in a form in which it has utility value or exchangeability. They are clearly in a usable form and thus have the economic significance. It is for only the resinous character of the products which in technical parlance is known as 'A' stage resin or resol that the phenol formaldehyde reaction mixture is used for the manufacture of plastic laminates. Going by the tests, therefore, laid down by the Hon'ble High Court of Delhi and two products under consideration are clearly goods and being listed in the Central Excise Tariff these are excisable goods. On somewhat similar lines, this Tribunal considering the excisability of resorcinol formaldehyde aqueous solution in the case of Dunlop India [Order No. 26 & 27/89-C, dated 12-6-89 in 1989 (41) E.L.T.504 (Tribunal) observed as follows in which two of us were Members of that Bench of the Tribunal:- "It is apparent... that what has been prepared by the appellants is nothing but resorcinol resin and it serves the same purpose as that of precondensed resorcinol resin available in the market. Based on this comparison the marketability of the product under consideration cannot also be doubted." The above observations in my view would apply with equal force to the facts of the present case.

32. Now let us examine the basis on which the lower appellate authority has found the products are not marketable. The only basis is the certificate from Sreeram Test House. That certificate is reproduced below:- "Issue to: No.13512/510-150-0045-000459 Bakelite Hylam Ltd., Dated: 8-10-85 Sample Particulars: Three samples described as (1) Mixture of Phenol-Formaldehyde, bearing Grade Ref. 1.

Number Average 305 568 1395 Molecular Weight 2.

Viscosity at 32 C on 72 65 28 FC-3 as such Secs.

Remarks:- Stability and Reactivity have been determined on the basis of Viscosity variation at 60 C for 8 hours. On the basis of the tests, the 1. Grade HR-7523/40 is relatively stable and less reactive as compared to Grades HV 20086 and HV-7716, which are unstable and highly reactive.

2. Grades HV 20086 and HV-7716 have relatively very low Molecular weight as compared to H.R. 7523/40.

This certificate, it has to be mentioned at this stage, was not available before the original authority in adjudicating the case. In the normal course, therefore, the matter ought to have been remanded to the original authority for re-adjudication to examine this certificate and arrive at its findings.

33. Apart from the above, perusal of the remarks in the certificate are vague. It has not been spelt out as to in what way the two products under consideration are unstable and highly reactive. It is also to be observed that stability and reactivity have been determined on the basis of viscosity variation at 60C. I am unable to comprehend as to what is the significance of 60C for determination of stability and reactivity whereas the viscosity in the test results in the earlier portion of the certificate has been given at 32C; whether it means that the two products would be relatively stable and less reactive at 32C, is difficult for me to say in the absence of any expert opinion.

33.1 I further find that the test results of the samples drawn in August 1985 by the department were not conveyed simply because the samples were not tested at all. This is apparent from the Superintendent's letter dated. 17-10-85 (at page 59 of the paper book) addressed to the respondents company. It states that on oral instructions from the Deputy Collector of Central Excise (Audit) samples of phenol formaldehyde resins were drawn on 16-8-85 but no official directions were received from Deputy Collector (Audit) to send the samples to the Chemical Examiner. Hence the samples drawn could not be sent for testing and the same were, therefore, returned to the respondent company intact. From non-communication of the results of samples drawn by the department in these circumstances no adverse inference to the department can be drawn.

34. Test report to Sreeram Test House loses much of its force and validity, despite the reputed character of the Test House, because the samples have been drawn in the absence of the departmental representatives. It is, therefore, a fit case, in view of the aforesaid circumstances, to remand the matter to the original adjudicating authority and direct him to draw the samples and get it tested by the

departmental Chemical Examiner/Chief Chemist as the case may be and decide the case afresh in the light of the opinion of the experts.

35. Accordingly, I remand the case for de novo decision in the light of my observations above.

36. In view of the majority decision, Appeal No. E/214/86-C is also dismissed. Appeal No. E/1672/86-C is also dismissed as not pursued.