

Collector of Central Excise Vs. Nuchem Plastics Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-08-1990

Reported in : (1990)(29)ECC44

Appellant : Collector of Central Excise

Respondent : Nuchem Plastics Ltd.

Judgement :

1. This appeal is preferred by the Department against the order-in-appeal No.250-CE/DLH/87 dated 14-9-1987 passed by the Collector of Central Excise (Appeals), whereby, he set aside the order-in-original No. 123/85 dated 8-11-1985 passed by the Assistant Collector of Central Excise, Division III, NH IV, Faridabad. Facts may be briefly summarised as under : 2. The respondents had been manufacturing products known as 'Trescol Glue' manufactured from Urea and Formaldehyde alongwith certain other chemicals in a set ratio. This product is manufactured in different grades, viz., 'G', 'L', PW, 'W' and 'TUL' and according to the respondents, these are preparations which are specifically formulated for use as glue in plywood, paper and textile industries. The respondents had been manufacturing 'Prescol Glue' since 1964-65 and were paying duty on this product under Tariff Item 15-A(1).

3. On 7-8-1978, the respondents, by a letter, contended that their product was not chargeable to duty under the said tariff entry and they challenged the classification. On 10-8-1978, the respondents submitted a classification list in Form-I wherein they described Prescol Glue Grades 'G', 'L', TW and 'W, as the

"other goods" with remarks that they did not attract duty. Another classification list Form-I dated 21-8-1978 was also submitted by the assessee with the same contents, but with addition of Grade 'TUL' to the grades of Prescol Glue mentioned in the earlier classification list. While these were under consideration, the respondents started clearing the goods without payment of duty. Thereafter, some correspondence took place between the department and the respondents and a show cause notice was issued by the jurisdictional Assistant Collector asking the respondents to show cause why their classification lists dated 10-8-1978 and 21-8-1978 should not be rejected. Thereafter, litigation followed and ultimately, the jurisdictional Assistant Collector passed the order dated 8-11-1985 whereby he decided that the prescol glue of different grades should be classified under Tariff Item 15-A. The respondents preferred an appeal and the learned Collector (Appeals) set aside the order of the Assistant Collector and held that the product of the respondents, called 'Prescol Glue' of various grades was appropriately classifiable under Tariff Item 68.

4. As stated in his order, with the new tariff coming into force with effect from 28-2-1986, the respondents had filed classification list under Heading 3501.90 of the Central Excise Tariff Act, 1985 and it was duly approved by the Assistant Collector on 30-9-1986 and was made effective from 1-3-1986.

5. We have heard Shri Sunder Rajan, learned DR for the appellant and Shri M. Chandrasekharan, learned advocate for the respondents.

6. The question that arises for determination is whether the respondents' product is classifiable under Item 15A(1) or Item 68 of the erstwhile Central Excise Tariff as in force upto 27-2-1986. The relevant period is from 18-6-1977, when Tariff Item 15A was amended by the Finance Bill of 1977, upto 27-2-1986. The relevant Tariff Item No.15A, as it stood on 18-6-1977 was as under : "15A. ARTIFICIAL OR SYNTHETIC RESINS AND PLASTIC MATERIALS AND CELLULOSE ESTERS AND ETHERS AND ARTICLES THEREOF - (1) The following artificial or synthetic resins and plastic materials and cellulose esters and ethers, in any form, whether solid, liquid or pasty, or as powder, granules or flakes, or in the form of moulding powders, namely : (i) Condensation, polycondensation and Polyaddition products,

whether or not modified or polymerised, and whether or not linear such as Phenoplasts, Aminoplasts, Alkyds, Polyallyl esters, Polycarbonates, Polyethers, Polyethylene imines, Polyurethanes, Epoxide resins and Silicones; (ii) Polymerisation and Copolymerisation products such as Polyethylene, Polytetrahaloethylenes, Polyisobutylene, Polystyrene, Polyvinyl chloride, Polyvinyl acetate, Polyvinyl chloroacetate and other polyvinyl derivatives, Polyacrylic and Polymethacrylic derivatives and Coumaroneindene Resins; and (iii) Cellulose acetate (including Cellulose diacetate or Cellulose triacetate), Cellulose acetate butyrate and Cellulose propionate, Cellulose acetate propionate Ethylcellulose and Benzylcellulose, whether plasticised or not, and plasticised Cellulose nitrate.

(2) Articles made of plastics, all sorts, including tubes, rods, sheets, foils, sticks, other rectangular or profile shapes, whether laminated or not, and whether rigid or flexible, including layflat tubings and polyvinyl chloride sheets, not otherwise specified.

For the purpose of Sub-item (2) "plastics" means the various artificial or synthetic resins or plastic materials or cellulose esters and ethers included in Sub-item (1)".

"15A. ARTIFICIAL OR SYNTHETIC RESINS AND PLASTIC MATERIAL AND OTHER MATERIALS AND ARTICLES SPECIFIED BELOW : (1) 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 un-saturated polyesters, silicones); polymerisation and co-polymerisation products (for example, polyethylene, polytetrahaloethylene, polyisobutylene, polystyrene, polyvinyl chloride, polyvinyl acetate, polyvinyl chloroacetate 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 (gum resins); artificial resins or of 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.

(2) Articles of materials described in Sub-item (1), the following, namely : Boards, sheeting, sheets and films, whether lacquered or metallised or laminated or not; lay flat tubings not containing any textile materials.

(iii) starches (including dextrin and other forms of modified starches).

EXPLANATION II - In Sub-item (1), "condensation, polycondensation, polyaddition, 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.

EXPLANATION III - Sub-item (1) is to be taken to apply to materials in the following forms only : (a) liquid or pasty (including emulsions, dispersions and solutions); (b) blocks, lumps, powders (including moulding powders), granules, flakes and similar bulk forms; 7. For proper appreciation of the classification, it will be necessary to understand the process by which this product is manufactured by the respondents. As stated in the order-in-original and also in the order-in-appeal, manufacturing process is one kettle process, i.e., all the ingredients in set ratio are poured into the kettle which is heated in set PH condition till the desired condensation is reached and required viscosity is achieved. The mass is then cooled and spray dried to powder form to further slow down the condensation and increase shelf life.

8. In the order-in-appeal, it is also stated that when mixture of Urea and Formaldehyde alongwith other chemicals reaches hydrophilic stage, further condensation is stopped and the resultant product, namely, 'Prescol Glue' has very low molecular weight and is water soluble. It is claimed by the respondents that this hydrophilic stage in the case of this product is irreversible and that the resultant mixture cannot be reprocessed to attain hydrophobic stage or be put to any other use.

In order-in-appeal, it is stated that the respondents had contended before the Assistant Collector that their product in question, was neither artificial resin nor synthetic resin as being of low molecular weight and water soluble and in support thereof, they referred to definitions of 'Resin Synthetic' from Hawley's Condensed Chemical Dictionary and also from Wettington's Dictionary of Plastics wherein it has been defined to be solid or pseudo-solid material often of high molecular weight. It is also stated in the order that the respondents referred to the definition of 'resin synthetic' in Hawley's Condensed Chemical Dictionary, according to which 'resin synthetic' is to be "man-made high polymers" and excluding "modified water soluble polymers".

9. The respondents produced before the Assistant Collector a report prepared by one Dr. A.K. Mukherjee, Assistant Professor, Indian Institute of Technology, Delhi on the nature of their product. In that report, Dr. Mukherjee has drawn the following conclusions : (i) Prescol Glue which is water soluble as not polymeric. Hence it does not belong to either synthetic resin or plastic materials, but belongs to a class known as Oligomers.

(ii) The condensation Oligomeric product thus produced is water-soluble and made into a complex formulation by the addition of essential ingredients which serves the purpose of an adhesive.

(iii) The water soluble urea-formaldehyde condensates used as adhesives are distinct from the products called as artificial resins, synthetic resins and plastics.

10. Gist of the arguments of the learned Departmental Representative are as follows: The respondents' product is a condensation product squarely covered by the description in Item 15A(1) of the erstwhile Central Excise Tariff which was in force prior to 28-2-1986. In the case of Nevichem Synthetic Industries, Bombay v. Collector of Central Excise, Bombay, 1984(17)-ELT-460 (Tribunal), this Tribunal held that glue was correctly assessable under Tariff Item 68. The decision is not applicable to the present case as the product of the respondents is not prepared adhesive or glue as such when it is cleared, but it is a condensation product falling under Item 15A(1). Their product is converted into glue in paste form after clearance from their factory after addition of extender, hardener and water. In

Tariff Item 15A(1) there is no requirement of high molecular and non-solubility in water. A specific item is always preferred to a residual item. Tariff Item 68 comes in the picture when the scope of classification under any of the specific items 1 to 67 is exhausted.

For this argument, reliance is placed on the Supreme Court judgment reported in 1983(13)-ELT-1566(S.C.) in the case of Dunlop India and Madras Rubber Factory Ltd. v. Union of India, and in 1989(40)-ELT-287(SC) in the case of Collector of Central Excise v. Jayant Oil Mills. The Tribunal's earlier decisions reported in 1985(20)-ELT-116(Trib.) and 1985(20)-ELT-124 (Tribunal) are not applicable to the present case.

11. We have considered the records of the case and the arguments of the learned advocate and the learned DR. Our findings and the conclusion on the various points raised are given in the following paragraphs.

12. The trade name of the respondents' product is 'Prescol Glue'. The period for which the classification of the product is in dispute relates to 1978 to 27-2-1986. With effect from 28-2-1986, the new Central Excise Tariff under the Central Excise Tariff Act, 1985 was introduced. The question to be decided is whether the product was correctly classifiable under Item No. 15A(I) of the Central Excise Tariff as it then existed during the relevant period or it fell under the residual Item 68 of the Tariff. The Assistant Collector held that the product was assessable under Tariff Item 15A(1), but the Collector (Appeals) has found the goods classifiable under Item 68. Tariff Item 68 will come into picture if the products do not fall within the purview of Tariff Item 15A(1). The specific entry prevails over the residuary entry as held by the Hon'ble Supreme Court in 1983(13)-ELT-1566(S.C.) - Dunlop India and Madras Rubber Factory Ltd. v. Union of India and Collector of Central Excise v. Jayant Oil Mills.

(i) The basic questions involved in this case are the classification of the goods under the Central Excise Tariff and levy of duty. The onus heavily lies on the Department. The Assistant Collector's order has gone by the presumption that the product is resin, but it does not say what are aminoplasts covered by Tariff Item 15A(1). Low molecular weight and water solubility are the characteristics of the

respondents' product. It does not satisfy the characteristics or properties of artificial or synthetic resin. The product not having high molecular weight, is not resin. He relied on the decisions of the Tribunal reported in 1985(20)-ELT-116(Tribunal), 3rd Head Note thereof, in the case of Collector of Customs, Bombay v. Swastik Rubber Products Ltd. and 1985(20)-ELT-124(Tribunal) in the case of Collector of Customs, Cochin v. Premier Tyres Ltd. (ii) On functional test also, the product should be classified as "glue" under Tariff Item 68 as it can be used as "glue". Functional test should be applied. In appropriate cases, classification depends on functional use. He relied on the decision reported in 1986(25)-ELT-473(S.C.) in the case of Atul Glass Industries Ltd. and Ors. v. Collector of Central Excise and Ors..

(iii) Tariff Item 15A(1) is highly technical and scientific in character and hence the classification under this item should be governed by the technical and scientific meaning as held in the decisions reported in 1982(10)-ELT-917(Bombay) in the case of Chemicals and Fibres India Ltd. v. Union of India and Ors. and 1986(26)-ELT-1050 (Tribunal) in the case of Collector of Central Excise and Customs, Pune v. General Pharmaceutical Pvt. Ltd., Pune.

Following the technical meaning, the product should not be classified under Tariff Item 15A(1). The Assistant Collector has held that technical and dictionary meanings of synthetic resin should not be given to Tariff Item 15A(1), but popular meaning should be given. But the Assistant Collector has himself relied on the BTN and has also considered the report of Dr. A.K. Mukherjee, Assistant Professor of Indian Institute of Technology, Delhi, a copy of which is at pages 62 to 70 of the paper-book. The Assistant Collector's conclusion is not linked with reasons.

(iv) The test report of the Department should not be followed in this case as the molecular weight was not determined in the test.

(v) Under the new Central Excise Tariff, effective from 28-2-1986, the product is classified as "glue" under Heading 3506.00.

14. Tariff Item 15A, as it stood during the period from 18-6-1977 to 28-2-1982, read as "Artificial or synthetic resins and plastic materials, and cellulose esters and ethers, and articles thereof. Entry (i) below Sub-item (1) of Item 15A specifically mentioned "condensation products, whether or not modified or polymerised, and whether or not linear, such as Phenoplast, Aminoplast, esters and ethers" etc. Entry (ii) mentioned polymerisation and co-polymerisation products. Entry (iii) specified various cellulose products including plasticised cellulose nitrate, as mentioned therein. Entry (i) of the Tariff Item 15A(1) did not stipulate that the condensation products must be of any specified molecular weight or that the condensation process must attain the final stage. Therefore, the fact that the condensation stopped at hydrophilic stage, will not take the respondents' product outside the purview of this Tariff Entry, if it has reached 'A' stage resin. 'A' stage resin is similar to Resol or polyisobutylene and in terms of Explanation II (C) below Tariff Item 15A, such resin is covered by this tariff Item. The condensation products, whether or not polymerised, are included in this tariff entry. This shows that the condensation products, which are not polymerised, do fall under this Entry.

According to the description of this Entry, modified condensation products are included therein. In the circumstances, the argument that only the polymerised products are covered by Tariff Item 15A(1) is not correct. The Tariff Entry also specifically mentions Aminoplast without any condition or qualification.

15. The description of Tariff Entry 15A during the period from 1-3-1982 to 27-2-1986 was "Artificial or synthetic resins and plastic materials and other materials and articles specified below:" Sub-item (1) of this Tariff Item during this period specifically mentioned "condensation products, whether or not modified or polymerised, and whether or not linear (for example phenoplasts, aminoplast, etc.)". During this period also, condensation products were not restricted to any degree of condensation or molecular weight, nor was this sub-item restricted to polymerised condensation products only. Condensation products which have not attained the stage of polymerisation are specifically covered by this sub-item of the tariff. Modified condensation products are also specifically covered by this sub-item. As in the earlier period, aminoplast is also specifically included in this sub-

item without any condition or qualification.

16. Clause (C) of Explanation II below Tariff Item 15A(1) as in force during the period from 1-3-1982 to 27-2-1986 clarifies that in Sub-item (1) of Tariff Item 15A, condensation products are to be taken to apply only to goods of a kind produced by chemical synthesis answering, inter alia, to "Resols, liquid polyisobutylene, and similar artificial polycondensation or polymerisation products". Resols are pre-polymerisation products. According to this Clause, pre-polymerisation products similar to resols are covered by Tariff Item 15A(1). The products of the respondents are produced by chemical synthesis of urea and formaldehyde.

17. At page 26 of the copy of order-in-original filed before us, the Assistant Collector has stated that "the assessees in their submission, made under reference No. NPL-201 dated 9-7-1985, briefing manufacturing process, submitted that the goods in question were and are manufactured by condensation process and in support thereof they quoted relevant lines from page 71 of Thorpes Dictionary of Applied Chemistry' to further reveal that the process of condensation was interrupted at an early stage". Again at the bottom of the said page, the Assistant Collector has observed that "the assessees, in their submission dated 9-9-1985, inter alia, mentioned, Note - It may kindly be noted that our products are a thermosetting resins". At page 27 of the copy of order-in-original, the Assistant Collector has stated as follows : "On going through the balance sheet of the assessee I find that upto the period 1977-78 the goods in question had been described therein to be U.F./M.F. synthetic resins and after that year they come to be described by their trade name "Prescol". In the assessee's literature on the subject called Technical Bulletins E-21 and G-01, the goods have been described as "Prescol U.F. Synthetic resin and Prescol PW. Cationic paper resin".

18. The report of Dr. A.K. Mukherjee, Assistant Professor of Indian Institute of Technology, Delhi, on which reliance has been placed by the lower authorities as also by the respondents, mentions, in so many places, that the products of the respondents fall within the group synthetic resin although in the concluding paragraph he has held that it is not a synthetic resin. To that extent the report of Dr. Mukherjee is self-contradictory. In this context, the following extracts from Dr.

Mukherjee's report are reproduced : "M/s. Nuchem Plastics Ltd., Faridabad, Haryana, manufactures an adhesive having trade name 'prescol glue' of various grades. The products are paste like when dissolved in water and find application in bonding veneers so as to make plywood, as textile finish and for paper lamination. The material is derived from the reaction between urea and formaldehyde. This reaction product is then spray dried to powder form final product, i.e. 'prescol glue' which are water soluble." Whether the products can be termed as artificial resins, synthetic resins, adhesives or plastics".

"...the product derived from urea and formaldehyde can only fall in the group of synthetic resin. In fact, it belongs to the class called as amino resins. These resins are formed by reaction between urea, melamine or similar compounds and aldehyde usually formaldehyde. The term amino resin is usually applied to the broad class of materials regardless of application." "A resin has been described as "High molecular weight material often of variable but controlled molecular weight which soften at high temperature. Synthetic resins are formed by polymerisation." The above references clearly indicate that the major raw-material in question is a resin and not a plastic. This becomes absolutely clear from the following, "the term aminoplast or sometimes aminoplastic is more commonly applied to thermosetting moulding compounds based on amino resin.

So, the major ingredient, viz., urea-formaldehyde resin synthesized in the present case is amino resins.

The present manufacturer use this condensation product as one of the ingredients in the final product, i.e. "prescol glue".

"Adhesive based on amino resins can be reaction products of urea with formaldehyde or they can be complex formulated products that include plasticizers, extenders, stabilizers, curing agents, hardeners, etc. The product in question belongs to the second category." "Another question arises, i.e. whether the said synthetic resin is a polymer and the product is the result of polycondensation (condensation polymerisation)." "Again most amino resins used commercially for finishing textile fabrics are methylolated derivatives of urea or melamine. Although these products are usually monomeric, they may contain

some polymer by-product." "Prescol glue is also used for finishing textile fabrics and thus contains monomeric and not polymeric urea - formaldehyde resin." 19. The foregoing extracts from the report of Dr. Mukherjee show that he has described the respondents' products as synthetic resin in so many places. Of course, he has stated that it is a monomeric urea - formaldehyde resin and not polymeric urea - formaldehyde resin. The Tariff Entry does not restrict its scope to polymeric resin only. In the first paragraph at page 3 of his report, Dr. Mukherjee has clearly stated that the product derived from urea and formaldehyde can only fall in the group of synthetic resin. He has also clearly stated that in fact it belongs to the class called amino resin. Again at page 4, vide second para, of the Report, he has stated that the urea formaldehyde resin synthesized in the present case is amino resin.

Aminoplast is specifically mentioned in the Tariff Entry. In the third paragraph of the said page 4 he has stated that the respondents' product is condensation product. Condensation product, without any qualification as to the molecular weight or stage of condensation, is mentioned in the Tariff Entry 15A(1)(i). It is also an admitted fact that the respondents themselves classified the product as artificial or synthetic resin since 1964 to July, 1978. It was only in August, 1978 that they gave a trade name "Prescol Glue" to the said synthetic resin and wanted to change the classification from Item 15A(1) to Item 68 of the Central Excise Tariff. A change in the trade name does not alter the nature of the product, nor can it change the classification under the Tariff. Thus, it is observed that the respondents themselves and also Dr. Mukherjee understood the respondents' product as synthetic resin and they described the same as such in the documents. Even if it is considered to be modified condensation product, the same is also covered by the Tariff Entry 15A(1).

20. Apart from the fact that Dr. Mukherjee has called the respondents' products as amino resin, the Assistant Collector, at pages 33 to 37 of the copy of order-in-original, has discussed, quoting authorities, to show that their products are amino resins covered by Tariff Entry 15A(1). At page 33 of his order, he has quoted the definition of "amino plastics" and "amino resin" from the "six language of plastic and Rubber Dictionary" as under : "Amino Resins - (Amino Plastics) - A synthetic

resin derived from the reaction of urea, thionrea, melamine or allied compounds with aldehydes, particularly formaldehyde." At page 34 of the copy of order-in-original he has quoted from the Book titled "Plastics Technology" written by Robert V. Milby, and Elizabeth Ross's Condensed Chemical Dictionary. In the Chapter 'amino-plastic' of the said "Plastics Technology", it has been stated that the "Thermosetting resins derived from amino compounds are referred to generally as Aminoplasts." In Elizabeth Ross's Condensed Chemical Dictionary, Aminoplasts (Aminoplastics) have been defined as "Resin's products produced by the interaction of an aldehyde (i.e. formaldehyde) with an amino compound such as auilino". At page 35 of his order, the Assistant Collector has given extracts of definition of "aminoplast resin" from Hawley's Condensed Chemical Dictionary, 10th Edition, as under : "Aminoplast resin (amino resin) A class of thermosetting resin made by reaction of an amino with an aldehyde. The only aldehyde in commercial use is formaldehyde and the most important aminos are urea and melamine." At page 37 of the order, the Assistant Collector has also quoted from the Brussel's Tariff Nomenclature, Chapter 39.01, which is in the following terms : "(B) Aminoplasts : These are formed by the condensation of amines or amides with aldehydes (formaldehyde, furfuraldehyde, etc.). The most important are urea formaldehyde and thionrea formaldehyde (Urea resins), melamine formaldehyde, (melamine resins), auiline formaldehyde, (aminoplasts)" It is also stated therein that this material is used as glues and textile dressings etc. The Assistant Collector has observed that the respondents' product is based on urea and formaldehyde and it falls within the definition of aminoplast resin. During the hearing before us, the learned Counsel for the respondents has argued that the Assistant Collector has not discussed which amino resins are covered by Tariff Entry 15A(1). In this connection, it should be observed that in the tariff, "Aminoplast" has been included by its generic name without any qualification whatsoever. In the circumstances, the tariff includes aminoplast as a class and it is not restricted to any particular type of aminoplast. The object of the learned Counsel is, therefore, not a valid one.

21. One of the points argued by the learned advocate is that on the basis of functional test, the product should be classified as "glue" under Tariff Item 68 as it can be used as "glue". He has relied on Supreme Court judgment 'in Atul Glass

Industries - 1986 (25)-ELT-473 (S.C.). In the said judgment, vide paragraph-8 thereof, the Hon'ble Supreme Court has observed that this test is attracted whenever the statute does not contain any definition. The learned advocate has argued that Tariff Item 15A(1) is highly technical and scientific in character and the classification under this tariff item should be governed by the technical and scientific meaning. In the case of Chemicals and Fibres India Ltd., v. Union of India and Ors. [1982 (10) ELT 917], on which the learned advocate has also relied on, the Hon'ble Bombay High Court has held that the rule that the word should be construed in a popular sense is not a rule which will be applicable in all cases and cannot be said to be all pervasive. This rule is a qualified rule and could apply only if the statute contains language which is capable of being construed in a popular sense. It has been further observed by the Hon'ble High Court that if a word in a statute is of technical and scientific character, then it must be construed according to that which is its primary meaning, namely, its technical or scientific meaning. (Refers paragraph-24 of the judgment). In paragraph-25 of the judgment, the Hon'ble High Court has then held that the nature of the products specified in Item 15A(1) is highly technical and scientific in character and therefore the words used therein will have to be given only their technical or scientific meaning. Adopting any other method of construction will amount to wholly defeating the very purpose of making Item No. 15A a comprehensive one. Following the aforesaid judgment of Bombay High Court, this Tribunal held in the case of Collector of Central Excise and Customs, Pune v. General Pharmaceutical Pvt. Ltd., Pune 1986 (26) ELT 1050 (Tribunal) that Tariff Item 15A(1) is highly technical and scientific in character and hence it should be construed likewise. In the present case, the goods are condensation products and are aminoplast. Aminoplast, without any qualification, is specifically mentioned in the Tariff Entry 15A(1).

The Tariff is also specific for condensation products. The products are covered by the description of the Tariff. Their classification should, therefore, be governed by the technical and scientific meaning. In this view of the matter, the affidavits from the various parties regarding use of the final products filed by the respondents cannot be a determining factor for classification of the respondents' products.

22. The claim of the respondents is that their products are used as 'glue' and it should appropriately be classified under Item 68 of the erstwhile Central Excise Tariff. The Assistant Collector has observed that at the time of clearance of the products from the respondents' factory, those were not glues, but were converted into glues later on after clearance from the factory. On this point he has based his observation on the respondent's literature which are intended for the guidance of the customers as to the application of the products. He has stated that according to the literature, "25 Kgs of resin is mixed with extenders, hardeners and water in the given definite quantity to produce 75Kgs of glue and that the mixing is quite technical involving a many phase addition and mixing, with control on PH and time. Thus these resins are converted into glues and are not glues by themselves." The Collector (Appeals) has rejected the Assistant Collector's reasoning on the ground that by addition of water or extenders etc. the molecular weight of the respondents' products is not increased. The Assistant Collector's finding has got considerable force. The products of the respondents at the time of clearance is in powder form and the same cannot be used as glue in that form. The products, as cleared from the respondents' factory, cannot, therefore, be termed as glues. They attain the character as glue and can be used as glue only after other ingredients like water, extender or hardener are added and proper mixing is done in the manner stated by the Asstt. Collr. Classification of a product is to be determined on the basis of the condition in which it is removed from the factory. Subsequent processing and the resultant product consequent on such processing after clearance from the assessee's factory cannot play any role in determining the classification of the product at the time of clearance from his factory. In the circumstances, the Collector (Appeals) has erred in ignoring the fact that at the time of clearance from the respondents' factory the products were not glues and hence they could not be classified as such.

23. The learned advocate has relied on this Tribunal's decision reported in 1984(17) ELT 460 (Tribunal) in the case of Nevichem Synthetic Industries (supra). In the said case, the goods in dispute were adhesive prepared by mechanical mixing of duty-paid synthetic resin, viz., polyvinyl acetate dispersion with water solution of imported polyvinyl alcohol on which appropriate countervailing duty was paid at the time of import. In that case, the raw-materials were two types of resin

on which duty under Tariff Item 15A(1) was already paid.

The adhesive in that case was not the result of condensation process or chemical synthesis, but it was the result of mechanical mixing of two resins on which duty was already paid as resin. In the present case, the respondents' resin is the result of condensation process and no duty was paid thereon earlier under Tariff Item 15A(1). The facts of the earlier case being completely different, the said decision is not applicable to the present case.

24. The main contention of the respondents is that their products were not classifiable under Tariff Item 15A(1) as these were of low molecular weight and water soluble. In support of this contention, they have relied on dictionary meaning, according to which synthetic resins are often of high molecular weight and are not water soluble. In this regard, they relied on the definition of resin/synthetic resin given in A.S.T.M., and Hawley's Condensed Chemical Dictionary. According to A.S.T.M., resin is "a solid or pseudosolid organic material often of high molecular weight, which exhibits a tendency to flow when subjected to stress, usually has a softening or melting range, and usually fractures conchordally". In Hawley's Condensed Chemical Dictionary, Synthetic resin has been described as a man-made high polymer resulting from a chemical reaction between two or more substances, usually with heat or a catalyst. This definition includes synthetic rubbers, siloxanes, and silicones, but excludes modified, water-soluble polymers (often called resins). The definition in the A.S.T.M. says that the resin is often . of high molecular weight; it does not say that it should always be and should invariably be of high molecular weight.

McGraw Hill's Dictionary of Science and Technical Terms, Second Edition, defines resin as "any of a class of solid or semisolid organic products of natural or synthetic origin with no definite melting point, generally of high molecular weight; most resins are polymers." But it does not say that a resin should always be of high molecular weight or that without high molecular weight there can never be any resin. It says that most resins are polymers. It does not say that all the resins are polymers. The definition given in Hawley's Condensed Chemical Dictionary specifically excludes modified and water-soluble polymers.

This definition, if applied, will be directly in conflict with the Tariff Entry 15A(1) inasmuch as this Tariff Item covers modified condensation product. If this definition is applied then none of the modified condensation and polycondensation products can be classified under this Tariff Item. Further, this Tariff Item covers condensation products, whether or not polymerised. It is not correct to say that all synthetic resins are insoluble in water. In the Hand-Book of Water-Soluble Gums and Resins, Edited by Robert L. Davidson, various water-soluble Resins have been discussed. Chapter 20 of the said compilation deals with polyvinyl alcohol. General paragraph of the said Chapter reads, inter alia, as under : "Polyvinyl alcohol is a white, powdered synthetic resin which is manufactured by the hydrolysis of polyvinyl acetate. It is the only linear polyhydroxy polymer that is readily soluble in water.

Polyvinyl alcohol is used in adhesives, in the manufacture of automotive safety glass, in textile sizes and finishes, in paper sizes and coatings, and as a binder for ceramics, foundry cores, nonwoven fabric, and various pigments. Polyvinyl alcohol is cast into films from water solutions, made into fibres, and moulded or extruded into various sheets, tubes, etc., that are used where oil and solvent resistance is required. It may also be used in photosensitive coatings, steel quenching, protective coatings, cementitious products, production of emulsions, materials stabilization, cosmetics, oil-well drilling, and many other miscellaneous applications.

Worldwide demand for polyvinyl alcohol exceeded 295 metric tons (650 million pounds) in 1978. The United States market is comprised chiefly of textile, adhesive, and paper applications.

Polyvinyl alcohols are water-soluble synthetic polymers with excellent film-forming, adhesives, and emulsifying properties and outstanding resistance to oil, grease, and solvents.

The first polyvinyl alcohol produced in the United States was by the Du Pont Co. in 1939. Du Pont and other producers have developed products of excellent quality and uniformity to meet industrial needs." It cannot, therefore, be said that synthetic resins can never be water-soluble. Solubility in water should not disqualify the

respondents' products from being categorised as synthetic resin.

25. Indian Standard Glossary of Terms Used In the Plastics Industry, i.e., IS:2828-1964, has defined "A-Stage Resin" as "An early stage in the reaction of certain thermosetting resins in which the material is still soluble in certain liquids and fusible. Sometimes referred to as 'Resol' (See also 'B-Stage' and 'C-Stage')".

"B-Stage - An intermediate stage in the reaction of certain thermosetting resins in which the material swells when in contact with certain liquids and softens when heated, but may not entirely dissolve or fuse. The resin in an uncured thermosetting moulding compound is usually in this stage. Sometimes referred to as 'Resitol' (See also 'A-Stage' and 'C-Stage')." "C-Stage - The final stage in the reaction of certain thermosetting resins in which the material is relatively insoluble and infusible.

The resin in a fully cured thermoset moulding is in this stage.

Sometimes referred to as 'Resite' (See also 'A-Stage' and 'B-Stage')". Atul Glass Industries Ltd. and Ors. v. Collector of Central Excise & others, reported in 1986 (25) ELT 473 (S.C.), Glossary of Terms prepared by the Indian Standard Institution can be regarded as a supportive material in the classification of goods, although it was held therein that the classification of goods under Central Excise Tariff was not dependent on the classification under BTN. In the aforesaid Glossary of Terms, A-Stage resin has been treated as resin.

26. The Collector (Appeals) has followed the Explanatory Notes in the BTN, CCCN (Customs Co-operation Council Nomenclature) and HSN (Harmonised Commodity Description and Coding System) to exclude the respondents' products from the scope of Tariff Item 15A(1). His view is that the respondents' products are "glues" and the "glues" are excluded from the Tariff Item by virtue of these Explanatory Notes. He has discussed the Notes of Page 571 of the Explanatory Notes to BTN (June 1967 edition), Page 571 of the Explanatory Notes to CCCN (1966 edition) and Page 555 of the Explanatory Notes to HSN in this connection. The relevant period in dispute in this case is prior to 1-3-1986. During the said period, for classification as "glues" there was a condition of packing in packages not

exceeding net weight of 1 Kg for sale in retail as glues. There is no material before us to show that the disputed products were for retail sale packed in packages not exceeding 1 Kg.

Further, in the case of *Atul Glass Industries Ltd. and Ors. v. Collector of Central Excise and Ors.* (supra), the Hon'ble Supreme Court held that the classification of goods under Central Excise Tariff Act was not dependent on classification under BTN. In paragraph-10 of the judgment, Supreme Court observed as follows : "Our attention has been drawn on behalf of the Revenue to the circumstances that glass mirrors have been classified as 'Glass and Glassware' in Chapter 70 of the Brussels Tariff Nomenclature. It seems to us that this can hardly advance the case of the Revenue, because the First Schedule to the Central Excises and Salt Act does not appear to have been modelled on the Brussels Tariff Nomenclature. There is nothing to show that the Tariff Items were classified in the Schedule on the basis of the Brussels Tariff Nomenclature. It was when the Customs Tariff Act, 1975 was enacted that the First Schedule to that Act was framed in accordance with the Brussels Tariff Nomenclature, evidently because the progress made in industrial growth and economic development, and the substantial changes in the composition and pattern of India's external trade called for the need to modernise and rationalise the nomenclature of India's Tariff in line with contemporary condition (Introductory comments on the Customs Tariff Act, 1975). The glass mirrors were still not specifically mentioned under the Customs Tariff Act, 1975. They are now being brought in as such by the Customs Tariff Bill, 1985." 27. In support of the contention that the products of high molecular weight only were classifiable under Tariff Item 15A(1), the respondents relied on two decisions of the Tribunal, viz., those reported in 1985 (20) ELT 116 (Tribunal) in the case of *Collector of Customs, Bombay v. Swastik Rubber Products Ltd.* and 1985 (20) ELT 124 (Tribunal) in the case of *Collector of Customs, Cochin v. Premier Tyres Ltd.* In the first mentioned case, the Assistant Collector classified the imported Hycar 4021, which was described in the bill of entry as polyacrylic synthetic rubber, under heading 39.01/06 of the Customs Tariff Act, 1975. The Appellate Collector of Customs, vide his order dated 3-10-1979, classified the goods under Heading 40.01/06 of the Customs Tariff Act, 1975 as synthetic rubber. While disposing of the review show cause notice issued under Section 131(3) of the Customs Act,

this Tribunal set aside the Appellate Collector's order and directed reassessment of the goods under Heading 39.01/06 of the Customs Tariff Act, 1975. While examining the classification of those imported goods, the Tribunal has observed that synthetic resins are nothing but synthetic high polymers, i.e. an organic macromolecule compound of a large number of monomers, the molecular weight ranging from 5000 into the millions, the dividing line between low and high polymers being between 5000 and 6000 molecular weight.

In the case of Premier Tyres Ltd [1985 (20) ELT 124], the Tribunal was considering the classification of imported polyethylene glycol 300 and polypropylene glycol 1010 and 2020, and whether these were similar to Resols and liquid polyisobutylene classifiable under heading 39.01/06 according to Note 2(c) to Chapter 39 or alternatively under heading 38.01/19(1) of the Customs Tariff Act, 1975. In the said case, the Tribunal held that the said Note 2(c) required that the condensation product should be resin polymerised to a particular stage or it should be capable of producing by further polymerisation.

28. For the purpose of classification under Tariff Item 15A(1), it is sufficient if a resin has reached 'A'- Stage resin. From page 11 of the copy of the Assistant Collector's order, it is observed that he had enquired from the respondents whether their products had reached 'A'-Stage resin. In reply, the respondents stated "A' stage resin is a very scientific and technical term and applies to Phenol Formaldehyde resin only." On page 11 of the order-in-appeal, the Collector (Appeals) has observed that "I also considered whether the appellants' product can claim classification under Tariff Item 15A(1) on the basis that the product is one that can be considered as having initial polymers of molecular weight but which are intended to be converted into high molecular weight at the stage of application. It may be so, but the same would not make any difference as far as classification of the appellants' product is concerned. It is the form in which the goods are cleared that is relevant for classification and not what it becomes or how it reacts at the time of application". The reply given by the respondents to the query of the Assistant Collector is evasive. If this product has not reached the first stage or 'A' -stage resin, then they could categorically say so. By reclassification of the product under Tariff Item 68 in place of T.1.15A(1) done from 1964 till August,

1978 they wanted assessment at lower rate of duty. It was for them to give a categorical reply stating "yes" or "no" and furnish material if the reply was negative. They have not done so. The discussions made by us in paragraph 14 onward of this order clearly show that the product of the respondents is a condensation product falling under Tariff Item 15A(1). The Assistant Collector has discharged the burden of classifying it under this Tariff Item. The respondents have not been able to make out a case that their product does not fall under Item 15A(1) and hence it should go to the residuary Item 68 of the Tariff.

Tariff Item 68 would come into picture if the possibility of classification under any of the Tariff Items 1 to 67 was ruled out.

29. In view of the foregoing discussions, we hold that the classification decided by the Assistant Collector is correct and Collector (Appeals)'s classification is erroneous. In the result, we set aside the impugned order and allow the appeal filed by the Revenue.

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