Collector of Central Excise Vs. Bakelite Hylam

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SooperKanoon Citation : sooperkanoon.com/6479

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-03-1991

Reported in : (1994)(51)LC436Tri(Delhi)

Judge : G Sankaran, S Peeran, B T N.K.

Appellant : Collector of Central Excise

Respondent : Bakelite Hylam

Judgement :

1. These three appeals and the Cross Objection were heard together because they involve a common question viz., Classification of prepregs P, F & G under the erstwhile Central Excise Tariff during the period 1984 onwards. While the first two appeals viz., E/814/86-C and E/1462/86-C have been filed by the department against the order-in-appeal passed by the Collector (Appeals) deciding the Classification in favour of M/s. Banlite Hylam (BH for short), the third appeal has been filed by M/s. BH against the order-in-appeal passed subsequently taking a different view from that in the first two appeals. Collector (Appeals) did so because, by the time the third appeal came to be decided, the Tribunal had taken a decision classifying Prepregs 'P' under tariff item 17(2), Prepreg 'F' under 19-III and Prepreg 'G' under item 22F in their own case Bakelite Hylam v. Collector of Central Excise decided on 25.3.1986.

The three appeals are, therefore, being disposed of by us by a common order.

2. It is necessary to state the background in some detail. The relevant facts are that M/s. BH are manufacturers of laminated boards and sheets called Deco-lam and Hylam etc., which were classified under Tariff Item 15A(2) till early 1984. They filed Classification List No. 9/84 on April 28, 1984, seeking approval of laminates boards and sheets under item 68. By another Classification List No. 10/84 filed on June 22, 1984, they sought approval of Pre-preg 'P' i.e., synthetic resin impregnated paper; Pre-preg 'F' i.e., synthetic resin impregnated cotton fabrics; and Pre-preg G' i.e., synthetic resin impregnated glass fabric under Tariff Item 68. The decision to seek revision of the classification was the pronouncement of the Supreme Court in the case of Geep Flashlight Industries v. Union of India and Ors. that Tariff Item 15A(2) covers only articles made wholly of commodity commercially known as plastics and not articles made from plastics along with other materials.

3. The Assistant Collector Central Excise, Hyderabad-II Division issued a Show Cause Notice to BH on 28 July, 1984 asking them to show cause why the classification of laminated boards and sheets should not be made under item 15A(2) and of Pre-pregs 'P' 'F' and 'G' should not be done respectively under items 17(1) as converted or impregnated paper, under Item 19(111) as impregnated cotton fabrics and under item 22(B) as impregnated textiles fabrics. M/s. BH contested the proceedings and submitted that the classification claimed by them in the two Classification Lists viz., 9/84 and 10/84 should be approved. The following paragraphs from their reply dated 6 February, 1984 are relevant: As far as Laminates are concerned they are composites consisting of paper/fabric and synthetic resins. Paper/Fabric predominated by weight as well as by volume in the Laminate. The Laminate is a product in which neither the identity of paper/fabric or synthetic resin is distinguishable. The Laminate is neither paper/fabric nor plastic but 'laminate' as commonly known. In fact in the trade with customers, the product is better known as Decolam and Hylam Laminates. It is not known either technically or in common parlance as plastic. The product does not fall under Tariff Item I5A which deals with Artificial or Synthetic resins and Plastic materials etc.

The various articles referred to in Tariff Item 15A all have the specific properties attributes to plastic. Therefore, Decolam and Hylam Laminates cannot be

considered as falling under Tariff Item 15A. As regards Classification of Prepregs we submit that the burden of the submissions made under Laminate hold good for Pre-pregs also.

The test to determine the correct classification for the product has been laid down in the Supreme Court Judgment in the case of Geep Flashlight Industries on Special Leave Petition No. 654/1983 : 1986 (6) ECr 430 (SC) : ECR C 753 SC. The Customs Excise Gold Control Appellate Tribunal, Special Bench 'D', has recently considered the classification of product analogous to Pre-pregs in the case of Multiple Fabric Co. Pvt. Ltd. v. Collector of Central Excise, Calcutta, reported in ELT 301 (1984) : 1984 ECR 0812 (Cegat SB-D).

The Tribunal held that the product that emerges after the course of impregnation should still be capable of being called "fabric". We submit that the ratio of the decision is that the process of impregnation must be such as to leave the basic characteristics of the primary materials intact, whether the primary materials be paper, cotton fabric or glass fabric. In the case of Pre-pregs 'P', 'F' and 'G' classified by us under Tariff Item 68, the process of impregnation and the material used for impregnation i.e., paper, cotton fabric or glass fabric are lost. The Pre-pregs 'P', 'F' and 'G' made by us as an intermediary product in the manufacture of our Laminate is capable of being put to only one use, namely for making Laminate and cannot be put to any other use. Pre-preg 'P' for instance cannot be used for writing, wrapping or any such use to which paper is ordinarily used. The same holds good for Pre-preg 'F' and 'G' also.

Under the circumstances, we submit the question of classifying them under Tariff Item 17, 19 or 22B does not arise.

4. After hearing them, the Assistant Collector passed an order on 29 September, 1984 rejecting the contention of M/s BH and holding that in view of the specific wording of Item 15A(2) covering boards, sheeting, sheets and films whether lacquered, or metallised or laminated or not of materials described in sub-item (1) of item 15A, laminated sheets are classifiable under tariff item 15A(2) and the pre-pregs are classifiable under items 17(1), 19-111 and 22B. When the matter went up in appeal to Collector of Central Excise (Appeals), Madras, he allowed the

appeals by orders dated 31 October, 1985 and 6 December, 1985 and set aside the orders of the Assistant Collector mainly on the ground that, after the judgment of Supreme Court in Geep Flashlight Company's case, it had become clear that item 15A(2) covers only articles made wholly of commodities commercially known as plastics and not articles made from plastics along with other materials. He observed that in the absence of any specific mention of decorative laminated sheets made out of materials such as paper, cotton fabrics and glass fabrics in Tariff Item 15A(2), the correct classification would be under Tariff Item 68.

So far as the three pre-pregs are concerned, Collector (Appeals) held that since they do not answer the description of Tariff Item 17(2), 19-III and 22B, they were correctly classifiable under Tariff Item 68 not being specifically covered by the other items.

5. It is against these two orders that the department has filed two appeals. The grounds taken are as under: (a) The assessees themselves call their laminates as Plastic laminated goods in their Classification List which satisfies the description of Tariff Item 15A(2).

(b) The laminates are manufactured by thermo-setting, by using raw-materials including plastic resin/paper/fabric etc. Such articles become homogeneous products and ingredients like paper, fabrics cannot be separated once they are thermoset because of their treatment with plastic material. The end product namely laminated sheets is a completely fused plastic.

(c) The interpretation of the word 'plastic' given by the Supreme Court in the case of Geep Flashlight Industries, regarding classification of plastic torches for which there is no specific entry in the Central Excise Tariff cannot be applied to the classification of laminated sheets for which there is a specific entry in Tariff Item 15A(2).

(d) Notification Nos. 100/83-CE and 101/83-CE dated 1.3.1983 entitle set off of duty-paid on paper, cotton, fabrics, cellophoane, adhesives and copper foils when used in the manufacture of rigid plastic laminated boards, sheetings and films whether lacquered, or metallised or laminated or not. The assessees have all

along been availing the credit of duty paid on paper/cotton fabric used in the manufacture of laminated sheets under the Proforma Credit Procedure prescribed under Rule 56A.Formica India v. Collector of Central Excise, Bombay about classification of treated paper under Tariff Item 17(2), of treated glass fabrics under tariff item 22F (or 68 depending upon the classification) and of treated cotton fabrics under Tariff Item 19-III has settled the issue.

(f) The reasoning adopted by Collector (Appeals) about the usage or marketability of the products being the criterion for its classification is not correct. It is well settled that the classification would depend upon the true nature and characteristics of the product with the relevant tariff description to which it conforms.Bakelite Hylam v. Collector of Central Excise, Hyderabad about the classification of the three pre-pregs under items 17(2), 19-111 and 22F was binding on the authorities and overrules and the decision of Collector (Appeals).

6. The following grounds have been taken in the appeal filed by M/s BH (E/2505/86-C). These are also the grounds in the Cross Objection filed by them in the two appeals of the department (E/Cross/442/86-C): (a) Pre-pregs emanating in the continuous process of manufacture of laminates as intermediate in-process materials as a mere technological necessity being by their very inherent character unstable and reactivenecessitating storage under controlled conditionsand being in the crude and elementary form not capable of being brought and sold are not "goods".

(b) The excisability aspect of the goods was not considered by the Tribunal in the case of Bakelite Hylam v. Collector of Central Excise, and while taking a view different from what he had taken while deciding the earlier appeals-vide order No. 167/85 (H) dated 31.10.1985 and 164/85 (H) dated 6.12.1985.

(c) On 25th March, 1986 when the Tribunal decided the matter , it did not have the benefit of Supreme Court's decision in Union Carbide's case given on 4th April, 1986 (d) The Tribunal's order does not take into account the evidence led by the appellantsas it refused the appellants' application for leading such evidencevide Annexure I to their order .

(e) Prepregs do not have any of the characteristics of paper, fabric or glass fabric and for technical reasons they are not recognized as paper, fabric or glass fabric by the trade; nor are they marketable as paper/fabric/glass fabric and following the ratio of the decisions of the Tribunal in the case of Multiple Fabrics Ltd. v. Collector of Central Excise, Calcutta 1984 ELT 301 : 1984 ECR 812 (Cegat SB-D), Sirpur Paper Mills Ltd. 1983 ECR 1179 D in terms of which the determining factor for classification of goods under the Central Excise Tariff is the commercial parlance or trade opinion.

8. Arguing for the Department, Shri S. Chakraborty, the learned Departmental Representative, relied upon the decision of the Tribunal in the case of Formica India (Supra) in which the classification of the three Prepregs was decided to be under Tariff Item 17 for prepreg 'P'; under Tariff Item 22F (or 68 depending upon the composition) for prepreg 'G' (glass fabric); under Tariff Item 19III for Prepreg 'F' (cotton fabrics). The Tribunal had also decided in another case Bakelite Hylam v. CCE, Hyderabad that laminated plastic sheets having electrically insulating properties are correctly classifiable as insulators under Tariff Item 68. In view of these decisions of the Tribunal, contended Shri Chakraborty, the learned Collector (Appeals) had wrongly decided the classification of the three prepregs under Item 68. Referring to the Cross Objection dated 9 June, 1986 filed in department's appeal E/814/86, the learned Departmental Representative stated that no Cross Objection lies when the order of Collector (Appeals) was fully in favour of M/s BHthe respondents. He, therefore, pleaded for rejection of the Cross Objection.

9. As regards the appeal of M/s BH (E/2505/86-C), Collector (Appeals) had taken a completely different stand for the same goods because of the decision dated 25.3.1986 of the Tribunal. Shri Chakraborty pleaded that the decision of Collector (Appeals) in the previous appeals (E/814/86-C & E/1462/86-C) should be set aside on this count alone.

10. Shri B. Shankar, the Vice-President of M/s BH invited attention to the two decisions of the Tribunal in Formica's case (Supra) and Bakelite Hylam's case (Supra) and raised a question whether the earlier decision of the Tribunal (Formica's case decided on 9.3.1984) could operate as res judicata where the

decision was in party's favour. He contended that where fresh evidence is on record and conclusions are reached on that basis, Tribunal's decision in earlier proceedings shall not operate as Res Judicata and cited the judgment of the Supreme Court in Brij Lal Lohia v. Commissioner of Income Tax and read out the following observations from it: The fact that in the earlier proceedings, the Tribunal took a different view of those deeds is not a conclusive circumstance. The decision of the Tribunal reached during those proceedings does not operate as res judicata. As seen earlier there was a great deal more evidence before the Tribunal during the present proceedings relating to those gift deeds.

11. Shri Shankar also relied upon the judgment of the Rajasthan High Court in Commissioner of Wealth Tax v. Smt. Kusum Bader cited the following portions from it: In Karnani Properties Ltd. v. CIT (1971) 82 ITR 574, 554, it was observed by the Supreme Court: Generally speaking the rule of res judicata does not apply to taxation proceedings.

12. Continuing his arguments on the question of res judicata, Shri Shankar cited the decision of the Tribunal in the case of Collector of Central Excise, Meerut v. Modi Xerox Ltd. Order No. 344 & 345/89-A dated 31 July, 1989 and placed reliance on the following paragraph: Taking up the second issue first for consideration, it is settled by the Supreme Court as well as by various High Courts, that decisions rendered in earlier assessment proceedings do not operate as res judkata in connection with subsequent assessment years nor the question of estoppel arises. When any additional evidence or fresh material comes before the taxing authorities, then they can proceed to take into consideration all the fresh material and thereafter arrive at a finding of fact. Therefore, the earlier orders of this Tribunal in Order No. 35/89-A does not stand in our way to arrive at a different finding of fact with regard to the dealer's margin provided there is a fresh material which was not placed before this Tribunal during the previous proceedings.

13. Shri Shankar stated that in view of these judgements, it is evident that the previous decision of the Tribunal does not act as res judkata in subsequent proceedings and the Tribunal is competent to go into the whole matter on the basis of the fresh evidence and record a finding of fact. In this connection, he

referred to the affidavits of their Research and Development Manager which were brought to the notice of the Assistant Collector soon after the personal hearing of the matter before him. He also referred to certain other affidavits which were submitted subsequently. They had led evidence through these affidavits to show that for technical reasons Prepregs can only be used for further processing into Laminates and the like. Further, evidence was brought on record to show that decorative or industrial laminates manufactured from these prepregs are also not stocked or dealt in by dealers of paper, but are dealt in by plywood dealers and, dealers dealing in electrical insulation materials. He contended that the evidence brought on record through these affidavits had not been controverted by the department and contested the following findings of the Assistant Collector: The assessee has also given affidavits of various traders stating that the impregnated paper or impregnated cotton fabric or impregnated glass fabric cannot be sold in the market as paper, cotton fabric or glass fabric. But this is to be noted that if the intention of the Legislature were to classify the impregnated paper, cotton fabric or glass fabric under Tariff Item 68 considering their different applications than the plain paper, cotton fabric or glass fabric, then the words, coating, impregnation, etc., would not have been there in specific Tariff Items. Therefore, there is no doubt that the impregnated paper is fully covered under Tariff Item 17(1).

14. Shri Shankar, thereafter formulated the following questions the answers to which would enable the Bench to arrive at a correct decision. These were: (a) Whether the process of impregnating glass, paper or fabrics amounts to manufacture (b) If yes, what emerges out of such manufacture and whether it is capable of being bought and sold in the market as 'goods'.

15. Shri Shankar started dealing with the first question by referring to the judgment of the Supreme Court in Laminated Packing 1990 (30) ECC 36 SC : 1990 (30) ECR 166 (SC) : ECR C 1664 SC in which it was held by the Court that lamination of duty paid Kraft paper with polyethylene resulting in production of polyethylene laminated Kraft paper amounts to 'manufacture'. Shri Shankar pleaded that the prepregs were intermediate in-process materials which are nothing but composites of mixture of phenolformaldehyde or melamine-formaldehyde epoxy resin solution and paper/fabric/glass fabric. These are not 'Goods'. The onus to establish that

they are so is on the department and the submissions of M/s. BH and the evidence led by them have remained uncontroverted.

Referring to the observations of Collector (Appeals) that a part of the pre-pregs are sold by the appellants and that these are utilised for manufacture of different profiles which can be utilised in the textile industry. Shri Shankar claimed that what they sell is impregnated paper and not prepregs.

16. Coming to the second question about the test of marketability, Shri Shankar again referred to the affidavits of various persons and stated that trade observation of this matter would really determine whether the product was capable of being bought and sold in the market as 'goods'. In this connection, he also invited our attention to letter C.No. V/15A/8/1/75-MP dated 4.3.1976 from the Collector of Central Excise, Hyderabad addressed to M/s. BH and a subsequent letter C.No.V/15A/8/1/76-MP dated 9. November, 1976 (annexed at pp 10 and 11 of the bound Paper Book). Although initially Collector had issued a show cause notice to M/s. BH asking them to show cause why paper manufactured by impregnating with synthetic resins should not be classified under Tariff Item 68 and duty should not be demanded @ 1% ad valorem, the Board had subsequently decided that the impregnated paper which is marketable would merit classification under tariff item 17(2). He also invited attention to the definition of 'paper and paper products' in the New Encyclopaedia Britannica - Vol. VIII according to which it is a substance commonly used for writing, printing or for wrapping. In other words, paper did not have other uses. When questioned by the Bench about the logic in the light of the Supreme Court judgment in the case of Krishna Carbon 1989 (37) ELT 480 : 1989 (20) ECR 273 (SC) : ECR C 1257 SC following the decision of the Tribunal in Koreas (India) case . Shri Shankar proceeded to distinguish Kores India's case and listed the following four distinguishing features: (a) The judgment was rendered prior to Supreme Court's expounding of the legal position that Entry per se cannot pre-suppose marketability and/or market parlance.

(b) Unlike in the case of Carton Paper even the trade does not understand Prepregs as Paper/Fabric/Glass Fabric at all.

(c) Unlike in the case of Kores where "no authority has been placed...to the effect that carbon paper - coated paper - would not fall under T I 17(2)(Page 633/Para 2) in the instant case there is plethora of evidence which remains uncontroverted till date.

(d) Understanding by ISI (per IS 4661 - 1968) adopted as the very criteria to ascertain trade understanding (Page 633/Para 14).

Without prejudice to the Respondent's submission that there is no evidence that ISI recognises Prepregs as Paper and accordingly the ratio of Kores has no application to the facts of the case, the Supreme Court in Atul Glass Industries Ltd. and Ors. v. Collector of Central Excise and Ors.

Co. Ltd. v. Assistant Collector 1978 ELT 180 held that the descriptions set forth in the publications of ISI can only be regarded as a piece of evidence only as to the manner in which the product has been treated for the purpose of the specifications laid down by the ISI and that only the basic or fundamental character shall determine the classification. The Supreme Court judgement supports the Respondent's submissions - with regard to the classification of Prepregs - in all fours.

17. Shri Shankar went on to say that even the technical understanding of prepregs was in their favour and cited the affidavit of the paper technologist submitted to the Assistant Collector in which he had stated that the prepregs do not have any of the characteristics of paper and for technical reasons they are not recognised as paper. He also placed reliance on various text books which support the claim that prepregs are not paper. He referred to the following: (a) Encyclopaedia of Polymer Science & Technology by Herman Merk (Vol. 9) Interscience Publishers (1968 edition) The earliest use of paper was for writing, and one of the major uses is still as a carrier for printing or other forms of communication.

Special grades of paper are used for newspapers, books, magazines, business and personal stationery currency, charts and maps, adding machine types, computer printout and various other types of office reproduction systems. Heavier types are used for file folders, index cards, and book covers.

Sanitary and absorbent grades are used for facial and toilet tissues, towelling, napkins, and blotting papers. Others papers are used for filters, cigarettes, electrical insulation, wall paper and as a base for abrasives. Special impregnations with resins and latexes yield products no longer recognizable as paper but which may be used as gaskets, panels, shoe inner soles, or note book covers.

Modification of the paper making process yield dress material, acoustical tile, and hardboard panels. (pp. 746-747).

(b) Encyclopaedia of Chemical TechnologyThird Edition (Vol.

6)Kirk-Othmer.

Strong natural fibres such as plant fibres (see fibres, vegetable) silk (qv), and asbestos (qv) have long been known to have been used to make some of the first commercial high performance composites; varnish and lacquer-impregnated fabrics were used to cover early aircraft; cotton reinforcement of rubber was first used in the making of pneumatic tires; and phenol-formaldehyde impregnated cloth was used for automotive timing gears during the same era. However, the events that led to the rapid development of high performance composites as a new class of engineering materials were :(1) the emergence of thermosettingand thermoplastic-synthetic polymer technologies, (2) the commercial availability of high-strength glass fibre in the late 1930s, and (3) the accelerated development of composites for military uses during World War II. To a considerable extent, the success of composites is inextricably linked to the development and availability of cost-effective, strong, stiff fibres.

(c) Whittington's Dictionary of Plastics by Lloyd R. Whittington (Technic publication).

The process of thoroughly soaking a material of a porous nature with a resin. When webs or shapes of reinforcing fibres are impregnated with a thermosetting resin advanced to the B-stage, or with a thermo plastic, and such webs are intended for subsequent shaping or laminating, the masses are called PREPREGS....

(d) Handbook of Fibreglass and Advanced Plastics Composites Edited by George Lubin (Van Nostrand Reinhold Co.) Prepregs may be defined as pre-engineered, ready-to-old combinations of resin and reinforcement. Available forms include resin impregnated woven fabric non-woven mat, roving and paper. These, in turn, can be supplied as full width rolls, tapes, sheets chopped or macerated materialsadapted to the demands of available processing equipment and product performance. These prepreg forms are manufactured by impregnating continuous webs of fabric or liber with synthetic resins under closely controlled conditions. Then, these resin-impregnated materials are advanced to the partly polymerized B-stage.... As such, prepreg materials can normally be stored under controlled conditions up to 90 days, remaining stable with proper tack and drape properties for future patterning and lay-up. They can be subsequently molded to complete the cure and shape the end product in permanent form.

Practically every reinforcing material has found some application in prepregs. The most important reinforcements in use today are fibre-glass, asbestos, paper, cotton and such specially reinforcements as high silica, nylon, boron, graphite and carbon.

Paper is the leading reinforcement for high-pressure laminates. But it is also finding use as a low pressure reinforcement because it is inexpensive, prints well, and has adequate strength for its applications. Primary uses include circuit boards and surfacing in such products as countertops, furniture, and wall board. In addition, it is widely used for honeycomb structures. Phenolics and melamines are the principal resins used with paper reinforced prepregs.

18. Relying on the decision of the Tribunal in Formica's case (Supra), Shri Shankar stated that the prepregs were different from paper, cotton fabrics or glass and cited the following portion from the decision in support of his argument: The treatment should result in an article different from the untreated paper and it must have characteristics and uses different from the untreated paper. [Para 20 p. 602 Formica 1984 (17) ELT 590].

19. Continuing his arguments, Shri Shankar stated that whereas Tariff Item 19 or 23 indicate the materials for impregnation, such is not the case with Item 17(2). He

also made an alternative submission for Prepregs 'F' and 'G' on the ground that these are not understood as fabrics or glass in the normal trade parlance and even the tariff entries do not cover these articles.

20. Shri Shankar contested the classification of Prepreg 'F' under Tariff Item 19-III by analysing it, the wordings of the item being.

III Cotton fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials.

21. Prepreg 'F' were not cellulose derivatives. Examining the use of the word 'other', Shri Shankar stated that it was a case of 'esjudem generis' or noscitur a sociis' i.e., a question of interpretation of the word 'of other artificial plastic materials' in the context in which the expression is used. In other words, he submitted that a distinction between 'artificial' and 'synthetic' plastic material with reference to the wordings in Tariff Item 15A had to be made. Prepreg 'F' not being a cellulose derivative, it could also not be an artificial plastic material, if the principle of 'noscitur a sociis' was applied or the analogy of 'esjudem generis'. He relied, for this purpose, on the Supreme Court judgment in the case of Rohit Pulp & Paper Mills Ltd. v. Collector of Central Excise in which the words 'coated paper' were given a restricted meaning because the context in which they were used was examined by the Court. He also cited the judgment of the Kerala High Court in the case of M.K. Gabriel Balen and Anr. v. Assistant Director of Income Tax in which it was held that It is a well-established canon of construction that words and phrases occurring in a statute are not to be taken in an isolated or detached manner dissociated from the context in which they are used.

In other words, the meaning of words and phrases should take their colour from the context in which they appear. It is also a fundamental concept that, if a word occurs in association with other words which are well defined and understood, then that word takes colour from the words with which that word is associated.

22. Looked at from this angle, the word 'other' in Tariff Item 19-III has to be read with the expression 'cellulose derivative' and would rule out the possibility of Prepreg 'F' falling under Tariff Item 19-III because it is evident that these are not

Cellulose derivatives.

In this connection, he also referred to the affidavit of Dr. Potnis, Professor of Polymer Technology, in the Bombay University and placed reliance on his averment that synthetic resins actually differ from artificial resins which are obtained from basic natural product which are then chemically modified.

23. Turning once again to the decision of the Tribunal in Formica's case (supra), Shri Shankar submitted that this was decided on the basis of the judgment in the case of Uma Laminated Products 1984 (17) ELT 187 : 1984 ECR 2028 (Cegat SB-C). He distinguished it on the ground that the question before the Tribunal at that time related to: (a) Whether treated paper (emphasis supplied) falling under the same Tariff Entry as the paper before such treatment would be liable to excise duty once again.

(b) Whether the process of treatment of paperby coating, laminating or sandwiching with polyethyleneamount to 'manufacture'.

24. The Tribunal answered both the questions in the affirmativein favour of the Revenue. This was done on the admitted position about the trade nomenclature of the products viz., 'Polyethylene Coated Paper', 'Polyethylene Sandwiched Paper'. Shri Shankar, contended that in contrast, in the present appeals, it is nobody's case that the impugned goods are recognized as 'paper' etc. In fact, according to Shri Shankar, there is on record: (a) An exposition of contemporaneous authorities relying on the principles per Supreme Court decision in KP Vergheese's case 131 ITR 597 as to the commercial and trade understanding of the impugned goods; (b) Plethora of evidence led by the respondents as to the trade understanding (page 64-66,184-194 of the compilation) and technical understanding (pages 57-61, 97-98 of the compilation) which have not been controverted at any point of time considering the legal position regarding the criterion for classification of goods.

25. In view of this, argued Shri Shankar, the decision in the case of Uma Laminated Products is totally extraneous to the facts of the case under consideration and, at any rate, the questions which arose for consideration in that case are not relevant at all to the facts of the present case.

26. Without prejudice to the other submissions made by him, Shri Shankar made an alternative submission for Prepreg 'P' and stated that if it was classifiable as paper, they were entitled to exemption as converted paper under Notification No. 63/82 dated 1.3.1982. In this connection, he also referred to the order-in-appeal No. 190/84 (H) dated 15.8.1984 passed by the Collector of Central Excise (Appeals), in the case of M/s. BH about classification of Prepregs in which he had directed the Assistant Collector to make market enquiries and record clear cut findings that Prepreg 'P', after impregnation, was still known in the market as Kraft Paper. He made the point that no market enquiries had been made in the present case. He also placed reliance on the judgment of the Tribunal in the case of Collector of Central Excise v. Perfect Electric Corporation (P)Ltd. 27. His argument was that for the limited purpose, Tariff Advice can be relied upon for understanding the Trade parlance to see whether Prepreg 'P' could be considered as converted paper and the observation of the Tribunal that the Tariff Advice is a useful pointer to the classification of goods was relevant.

28. Shri Shankar went on to argue that pursuant to amendment to Rules 9 and 49 by the introduction of Sub-rule (4) there would be no chargeability to duty with effect from 9.7.1983. He placed reliance, for this purpose, again on the decision of the Tribunal in the case of Collector of Central Excise v. Aruna Straw Boards (P) Ltd. 1988 (17) ECR 423. The Tribunal has decided in this case that if excisable goods fall under the same sub-heading, there could be duty at only one single stage as in the case of multiple-ply straw-board made from single-ply straw-boards because no new commodity emerges. This conclusion was reached on the ground that Sub-rule (4) of Rule 49 which had been inserted from 9.7.1983 specifically stipulated that payment of duty shall not be required in respect of excisable goods made in a factory, if they are consumed or utilised in the same factory either as raw material or as component parts for the manufacture of any other commodity, which (a) is excisable goods specified by the Central Government by notification under Sub-rule (1) of Rule 56 A; (b) is classifiable under heading No. or sub-heading No. of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as may be specified in the Notification issued under Sub-rule (1) of Rule 56A; and (c) is neither exempt from the whole of the duty of excise leviable thereon nor is chargeable to nil rate of duty.

29. Replying on behalf of the Department, Shri L.N. Murthy, the learned Departmental Representative, stated that Shri Shankar who had referred to the decision of the Supreme Court in the case of Laminated Packagings (supra), had not pressed the point, which, according to him, was in the Department's favour. Referring to the observations of Collector (Appeals) in his order-in-appeal No. 167/85 (H) that a part of the Prepregs are sold by the appellants, Shri Murthy stated that the claim now made before the Tribunal during the hearing is that what they sold was only one-sided paper. Shri Murthy contested this claim and stated that no evidence had been laid by M/s. BH to show what was actually sold.30. As regards the test of market parlance, Shri Murthy accepted that the Department had gone by the Tariff Entry and it is true that no market enquiries were made. On the other hand, M/s. BH had produced only affidavits of certain persons in support of their contention. He stated that all aspects of the matter had been considered in the earlier decisions of the Tribunal and he did not think that there was any justification for taking a contrary view.

31. The points that arise for our consideration in these three appeals are about the classification of Prepregs 'P', 'F' & G ". The question of classification of treated paper of different kinds had been decided in the following decisions of the Tribunal: (a) CCE, Hyderabad v. Uma Laminated Products (P) Ltd. dated 20.2.1984 : 1984 ECR 2028 (Cegat SB-C).

It was held that the polyethylene coated/sandwiched paper made from base paper constitutes manufacture and results in production of a new product, different and known differently from the base paper in the market. It is distinguishable from base paper by its different nomenclature apart from its composition and value.Formica India v. Collector of Central Excise It was held that entry 17(2)(as it existed prior to its amendment in 1983 Budget) covers paper all sorts including papers which have been subjected to treatments to a few examples of treatments have been specified in the entry. The Tariff Item would, therefore, take within its sweep treated papers and the Tribunal held that Prepreg 'P' fell for classification and was chargeable to duty under Item 17(2). As far treated glass fabrics Prepregs 'G' - are concerned, the Tribunal held that in the assence of information about the composition of the material in that case, they could leave it to the lower authorities to decide between

Items 22F, 15A and 68 after ascertaining the composition.

Treated Cotton FabricsPrepreg 'Fwere held to be classifiable under Item 19(III).Bakelite Hylam Ltd. v. Collector of Central Excise, Hyderabad dated 25.3.1986 : 1986 (7) ECR 446 (Cegat The Tribunal decided that Prepreg 'P' was classifiable under Item 17(2), Prepreg 'F' under Item 19(III) and Prepreg 'G' under Item 22F.While deciding the classification, the earlier decision of Tribunal in Formica's case was also considered.

32. The request of M/s. Bakelite Hylam for adducing additional evidence was rejected although there was no objection to either side relying on quotations from authoritative works of reference.

33. Shri Shankar has submitted a compilation of case law relied upon by him in the hearing before us. The broad propositions listed by him in this compilation are as under: (a) Where fresh evidence is on record, the conclusions reached by the Tribunal in earlier proceedings shall not operate as Res judicata.

(b) Decisions in earlier proceedings are not to operate as Res judicata where the conclusion has been reached independently on the basis of extensive evidence.

(c) Binding precedent of previous decisions is only applicable if facts were identical.

(d) Burden of proving excisability, i.e., occurrence of taxable event and emergence of 'goods' lies on the Department and this has not been discharged in the present appeals.

(e) Without prejudice to the submission that the Department has not discharged the burden of establishing the occurrence of taxable event, the process of impregnation does not amount to 'manufacture'.

(f) Marketability is the sole criteria for determining excisabilitycoming into existence of 'goods'.

(g) Dutiability only at marketable stageunderstanding of the correct legal position by contemporaneous authorities.

(h) Trade understanding is the sole criteria for classification of goods.

(i) Even when recognised in commercial parlance as 'paper', if Prepreg is not used as 'paper', the product does not merit for classification as 'paper'.

(j) Trade understanding as expounded by contemporaneous authorities is relevant in deciding the issue.

(k) Fundamental function and essential character is to be fully reckoned within a classificatory process.

(l) Principle for classification of composite goods in the absence of Interpretative Rules.

(m) Litmus test for classification whether after impregnation the paper/fabric/glass fabric is still capable of being called a paper/fabric/glass fabric.

34. These propositions can be broadly examined under the following heads: (b) Question of determining excisability of the goods Marketability as the sole criterion for determining excisability.

(c) Trade understanding of the goods as the sole criterion for classification of the goods.

35. As regards (a) above, Shri Shankar has argued the matter at length and the position is well settled that the decisions of the Tribunal in earlier proceedings do not, ipso facto, operate as Res judicata in these taxation matters. We shall, therefore, take into account the evidence brought on record through affidavits submitted before the lower-authorities. For examining the question of excisability of the Pre-pregs we shall, therefore, examine the additional evidence to see to what extent, if any, such evidence leads to a conclusion different from the one reached in the earlier decisions of the Tribunal.

36. Although numerous judgments have been cited on the question of proving excisability and the fact that the burden for this purpose is on the department, it would be enough if we examine the present appeals in the light of the observations of the Supreme Court in Bhor Industries case 1989 (40) ELT 280 :

1989 (21) ECR 273 (SC) : ECR C 1349 SC and Ambalal Sarabhai's case 1989 (43) ELT 214 : 1989 (24) ECR 433 (SC) : ECR C 1489 SC which are the latest on the subject having been decided in 1989. What was decided in Bhor Industries case, after a full consideration of the entire case law on the issue, is best summarised in the following lines: 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 Tariff Act, 1985.

37. It was decided by the Supreme Court in that case that the crude PVC films which were manufactured by the appellants and were used in the manufacture of some other end product were not marketable intermediate product and were therefore correctly held by the Appellate Collector to be not liable to duty. The latter had held that the crude PVC sheets were not known in the market as PVC sheets; nor were they marketable PVC sheets.

38. We have carefully seen the affidavits of numerous dealers submitted by M/s. BH before Collector (Appeals). The affidavit of Shri K.C.Virmani, Superintendent (R & D), Ballarpur Industries merely states that the pre-preg 'P' do not have the characteristics of paper, are for technical reasons (emphasis added) not recognised as paper, can only be moulded further into laminates. In the affidavit of Shri Arun Kumar Trivedi, a dealer in coated paper, it has been affirmed that pre-preg of type number K 1896 manufactured by BH are not stocked or dealt in by them or by other dealers in paper market. The General Electric Company have, in a note dated 11th September, 1984, stated as under: We are using Pre-pregs as per enclosed sample for manufacturing 11 KV Bushings for switchgears. The manufacturing process is by heated roller under pressure.

These pre-pregs are procured by us from Bakelite Hylam Ltd, who manufacture pre-pregs, decorative laminates and industrial laminates.

39. Similar affidavits have been submitted from M/s. Karam Chand Thapar and Brothers Ltd., Calcutta, M/s. Sardar Singh & Sons, Morinda (Punjab) and M/s. Jalala Industries, Hyderabad certifying that they have been procuring pre-pregs from M/s. Bakelite Hylam and have been using them for different purposes.

40. These affidavits do not leave scope for doubt that the Pre-pregs were being marketed by M/s. BH themselves and were marketable commodity. They, therefore, satisfy the tests of marketability prescribed by the Supreme Court in Bhor Industries case (supra) as a necessary stage for determining excisability of these goods. We need not, therefore, go into the other pleas taken by M/s. BH. on this aspect and the....case law cited on this aspect of the matter need not be discussed. It would also not be necessary to go into questions of captive consumption and applicability of Rules 9 and 49.

41. We would now consider the third broad proposition the trade understanding of the goods as the sole criterion for determining the classification of the goods in question. The position is well-settled in the judgment cited by Shri Shankar beginnings with the judgment of the Supreme Court in the case of Dunlop India Ltd. AIR 1977 S.C. 597 : 1975 Dec. Cen-Cus 150 (SC) : ECr C 476 SC in which the Apex Court observed as under: It is well established that in interpreting the meaning of words in a taxing statute, the acceptance of a particular word by the Trade and its popular meaning should commend itself to the authority.

(Para 31 p. 285).

It is clear that meaning given to articles in a fiscal statute must be as people in trade and commerce no conversent with the subject generally treat and understand them in the usual course. But once an article is and put under a distinct entry, the basis of the classification is not open to question.... Technical and offer guidance only within limits.

When an article has, by all standards, a classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it to the parentage and consign it it an orphanage of the residuary clause. The question of classification between two rival classifications will, however, stand on different footing.

42. It would be useful to refer to the reasoning adapted by the Assistant Collector for classifying the three Pre-pregs under Items 17(2), 19(III) and 22F in his order dated 29.9.1984: (1) Paper and paper board, (including paper or paper boards

which have been subjected to various treatment such as coating, impregnating, corrugation, creping and design printing), not elsewhere specified.

This item specifically includes papers which has been subjected to various treatments such as coating, impregnating etc. This is also to be noted that the Tariff Item 17(1) reads paper and paper board not elsewhere specified. When there is a specific entry regarding impregnated or coated paper in the tariff there is no question that the impregnated paper, i.e. pre-preg 'P' should fall under Tariff Item 68 which is for goods not elsewhere specified. The assessee had in his reply to the show cause notice and at the time of personal hearing submitted that the pre-preg 'P' or impregnated paper is not paper at all, i.e. to say that according to the assessee, after impregnation, the paper loses its quality as paper and cannot be considered as paper. This contention cannot be accepted as the tariff description to 17(1) covers paper subjected to coating or impregnation. This does not restrict the scope of 17(1) in as much as the amount of impregnation or the resultant product are concerned. That means any paper which has been subjected to any amount of coating or impregnation is liable to be classified under tariff item 17(1). The assessee has also given affidavits or various traders stating that the impregnated paper or impregnated cotton fabric or impregnated glass fabric cannot be sold in the market as paper, cotton fabric or glass fabric. But this is to be noted that if the intention of the Legislature were to classify the impregnated paper, cotton fabric or glass fabric under tariff Item 68 considering their different applications than the plain paper, cotton fabric or glass fabric, then the words, coating, impregnation, etc. would not have been there in specific tariff items. Therefore, there is no doubt that the impregnated paper is fully covered under Tariff Item 17(1).

The same is true regarding the impregnated cotton fabric and glass fabrics.

43. The Tribunal in its decision in Formica case, 1984 (17) ELT 601 Para 17 : 1984 ECR 1284 (Cegat SB-C) after considering the arguments taken before it about common parlance test again placed reliance on the tariff entry and recorded its view: Unlike in the entries which the Allahabad and Orissa High Courts were interpreting in the above decisions, the excise item we are concerned with takes in

paper, ail sorts, including papers which have been subjected to treatments and a few examples of treatments have been specified in the item. The relevant entry reads as follows: 17. Paper and paper board, all sorts (including paste-board, mill-board, straw-board, card-boards and corrugated board, in or in relation to the manufacture of which any process is ordinarily carried on which the aid of power (2) Paper board and all other kinds of paper (including paper or paper boards which have been subjected to various treatments such as coating, impregnating, corrugation, creeping and design printing), not elsewhere specified.

The tariff item, therefore, would take within its sweep treated papers.

The learned consultant.... upon the Tribunal's decision in Golden Paper Udyog (P) Ltd. case1983 ELT 1123 in support of his contention that even if the treated paper was held to fall under tariff Item 1, (2) CET, it could not be subjected to duty again. In this connection, we may observe that we have, in our Order No. 95/84 dated 20.2.1984 in Appeal No. 1452/81-C-CCE Hyderabad v. Uma Laminated (P) Ltd., Hyderabad, (Tribunal, that treated paper (polyethylene coated/laminated/ sandwiched paper in that case) would fall for the classification under Item 17(2) CET and would be charged to duty under the said item subject, of course, to such exemption/set off or proforma credit of the duty paid on the base untreated paper, as may be....

Following the ratio of this decision, we hold that the treated paper herein fell for classification and was chargeable to duty under Item 17(2). CET".

44. We have to remember that the Supreme Court's decision in Dunlop case where, with reference to .under item 39 and 87 of the Indian Customs Tariff and items 15A and 16AA of the Central Excise Tariff, the Court held that although common parlance test should be applied in the classification of goods, when the question to decide was whether the goods were classifiable under a particular entry of the tariff which specifically covers them and the residuary entry, it would be appropriate to first examine whether they arc covered under the specific entry. The reasoning adopted by the Asst. Collector in his order and the one approved by in Formica's case proceeds on the wording of the .after its amendment CET which specifically includes paper which has been subjected to various treatments. The

question for consideration is not whether 'paper' after treatment loses its identity as 'paper', but whether the wording of the entry as such would corer 'paper' which have been subjected to various treatments. In this connection, it would be useful to refer to judgment of the Bombay High Court in the case of Additional Commissioner of Sales Tax, Bombay v.Afsons Industrial Corporation 1990 (78) STC 385 in which the. Court interpreted the use of the word "including" in the tariff entry of the Sales Tax Tariff: M/s. BH have enclosed this judgment in their compilation and placed reliance on it: The normal function of the word "including" in an entry, to out mind, is It) indicate that the items following the word "including" are though of the type of the main item in the entry, there could be some doubt as to whether the main entry covered them or not, and, therefore, the legislature specifically mentioned these items in the entry to remove the scope for any doubt. In other words, the items so included with the prefix "including" would be of the type about which there could be some doubt as to whether they are covered or not by the main entry. The item about which there is no scope for doubt or there is comparatively less scope for doubt would accordingly stand automatically covered by the main item in the entry.

45. If we examine Tariff Item 17(1) with reference to this principle, we notice that 'paper' which have been subjected to various treatments are included in the definition under item 17(2) and this would, therefore, leave no doubt that Pre-preg 'P' would be covered by the entry by virtue of the inclusion clause. The consideration whether Pre-preg 'P' retains its identity as 'paper' or not, therefore, becomes totally irrelevant for the purpose of determining the classification.

What is more, the words "which have been subjected to various treatments" leave no scope also for any interpretation about the nature and degree of treatment and whether the final product retains the original identity as paper. What is material for determining the classification under item 17(1) is that the starting point for treatment should have been 'paper' and it should have been subjected to the treatments such as those mentioned there. There being no dispute on any of these points, Pre-preg 'P' squarely falls under item 17(2). Once this position is clear the question of taking Pre-preg 'P' to the residuary Item 68 by applying the common parlance test would not arise.

In arriving at this conclusion we have taken into consideration the test of common parlance and have interpreted the scope of the tariff entry on the basis of the principles of in the cases cited-by M/s. B.H.themselves. Thus, we see that all the legal propositions listed by Shri Shankar as well as the case law cited by him lead us to the same conclusion. We have also the grounds taken in the appeal of M/s. B.H.and listed in para 6 of this order.

46. In a letter dated 18.8.1984 forwarding the Classification List to the Assistant Collector M/s. B.H. referred to the decision of the Supreme court in the case of Geep Flashlight Industries Ltd. v. Union of India 1985 (22) ELT 3 (S.C.) : 1986 (6) ECR 430 (SC) : ECR C 753 SC for the purpose of claiming classification of all the three Pre-pregs under Item 68 on the ground that composite goods comprising of plastics other materials like paper, cotton fabric, glass fabric shall not qualify for classification under items 172, 19(III) and 22F because, on impregnation the paper/cotton/fabrics/glass fabrics ipso facto cease to be paper/cotton fabrics/glass fabrics. We have seen that the wordings of Tariff Item 17(2) before the budgetary...and of Tariff Item 17(1) after the budgetary...make it clear that treated paper was classifiable under Item 17(2) or 17(1) as was the case at the material of the reasoning of the Supreme Court judgment in Flashlight Industries Ltd. case would not apply to Tariff Item 17 because of a completely different wording of this item which, in its sweep, covers paper which has been subjected to various treatments.

47. This brings us to the question of classification of Pre-preg 'F' and Pre-preg 'G'. Assistant Collector who dealt with the Classification List of these goods referred to specific entry about impregnated cotton fabrics in Item 19(III) of the Central Excise Tariff and recorded the following order: As this entry covers cotton fabrics impregnated with artificial plastic material there is no question as to why it should be classified under Tariff Item 68. In this case also it is to be noted that tariff entry 19(III) does not restrict scope from the point of view of amount of coating or impregnation or end-use of the coated or impregnated cotton fabrics. The tariff entry is clear and simple and no restrictions whatsoever are placed regarding its application to the Legislation. Therefore, any cotton fabric which is subjected to the process of coating or impregnation or with artificial plastic materials, is to be

classified under tariff item 19(III) 48. We observe that in Tribunal's judgment in the case of Bakelite Hylam (supra), the question of classification of Pre-preg 'F' and 'G' has been discussed in considerable detail. The judgment of the Tribunal in the case of Multiple Fabrics 1984 (16) ELT 301 : 1984 ECR 812 (Cegat SB-D) on which reliance has been placed by Shri Shankar in support of his contention has also been discussed there. It has been specifically mentioned in para 17 of Tribunal's judgment that, on examination of the samples it was seen that the impregnated fabrics are flexible and could be bent without tear. This is a finding of fact and, in view of this the question of classification under item 19(III) does not remain a point of debate as to the nature and character of Pre-preg 'F'.

49. Shri Shankar had contested the classification of Pre-preg 'F' under Tariff Item 19(III) on the ground that not being cellulose derivates, they did not fall under this item since, by the application of the principle of 'noscitur a socii' the interpretation of the words "other artificial plastic material" had to be made in the context in which they were used. He had submitted that a distinction between 'artificial' and 'synthetic' plastic material had to be made. We have seen the Explanatory Notes to Collector of Central Excise nomenclature for Chapter 39 which has the heading 'Artificial Resins and Plastic Material' and, in which, it is clearly stated that the artificial resins and plastic materials of Chapter 39 are obtained by the chemical transformation of natural organic substances or by chemical synthesis.

This would cover both natural and, what are commonly called, synthetic resins. It also appears from para 13 of the decision of the Tribunal in Bakelite Hylam's case (supra) that M/s. Bakelite Hylam had stated at that time that the impregnation was done with phenol formal-dehyde resins and this aspect had been fully considered and decided agaisnt their contention that it was not covered by tariff entry 19(III). There is nothing to show that the impregnating material has been changed in the cases under consideration before us. In view of this the contention made before us is unfounded and is rejected.

50. So far as Pre-preg 'G' is concerned, we notice that no new arguments were placed before us and, as would be seen all aspects of the question of classification were fully considered by the Tribunal.

The arguments applicable to Pre-preg 'P' in general are equally applicable to the classification of Pre-preg 'Y' and 'G' by adopting the reasoning expressed in para 28 of the Formica judgement. We agree that Pre-preg 'G' would be classifiable under Tariff Item 22F.51. Thus, having considered all aspects of the master and all questions of fact and law raised in these appeals and during the hearings, we are of the view that Pre-preg 'P' 'F' and 'G' are respectively classifiable under items 17(1), 19(III) and 22F of the erstwhile Central Excise Tariff. The appeals of the Department namely Appeal No. E/814/86-C and E/1462/86-C succeed and are allowed and the corresponding Cross Objection No. E/Cross/442/86-C filed by M/s Bakelite Hylam is accordingly disposed of. Appeal No. E/2505/86-C of M/s. Bakelite Hylam consequently fails and is rejected. Such benefits as are admissible to M/s. Bakelite Hylam from the Notifications applicable to the goods and set off of duty paid on inputs etc. should be granted to them provided they otherwise fulfil the prescribed conditions.Dt. 3.5.1991 Sd/- (N.K. Bajpai) 52. I have gone through the order prepared by my learned brother Shri N.K. Bajpai, Member (Technical) but I am unable to agree to the conclusion on the classification of the goods in question. I am, therefore, recording my separate order.

53. The facts of the case, arguments and citations have been brought out in the main order and the same are relied on by me. The materials placed by the appellants for reconsideration of their claim of classification is discussed in paras 16, 17, 38 and 39 of the main order written by Shri N.K. Bajpai which is also relied upon by me.

54. The Collector (Appeals) has held the classification in favour of assessee in the impugned order by setting aside the orders-in-original dated 29.9.1984. The Revenue is aggrieved by the orders-in-appeal passed by the Collector (Appeals) and hence they have filed these appeals. The assessee has also filed cross objections in so far as the Collector (Appeals) not giving finding on the question raised by them as regards the products not being 'goods' and not excisable. Both the appeals of the Revenue have resulted from the classification list bearing No. 9/84 and 10/84 filed by the assessee on 28.4.1984 and 22.6.1984. The classification list No. 9/84 seeks approval of Laminated board and sheets with the name 'Decolam Hylam' under tariff item 68 of CET earlier approved under TI

15A(1), such as "Boards, sheetings, sheets and films whether lacquered or metallised or laminated or not, by flat tubings not containing any Textile material." 55. The Assistant Collector by his show cause notice dated 28.7.1984 in Appeal No. 814/86 called upon them to explain as to why their classification list should not be rejected and the product classified under tariff item 15A(2) which reads as follows- Articles of materials described in sub-item (1) of the following namely- Boards, sheetings, sheets and films whether lacquered or metallised or laminated or not lay flat tubings not containing any textile materials.

56. The classification list No. 10/84 was filed by the assessee seeking approval of preprcg 'P' i.e. Synthetic resin impregnated paper; Prepreg 'F' i.e. Synthetic Resin impregnated Cotton fabric and prepreg 'G' i.e.

Synthetic Resin impregnated Glass fabric under TI 68 of CET. These products were earlier classified under TI 17(1) as impregnated paper.

The Tariff description 17(1) reads: Paper and paper board (including paper or paper boards which have been subjected to various treatments such as cutting, impregnating, corrugating, creaping and design printing) not elsewhere specified.

57. As regards prepreg 'F', it was classified under TI 19(III) which reads 'Cotton fabrics impregnated, coated or laminated as preparations of cellulose, Decolite or of other synthetic plastic materials. Prepreg 'G' was earlier classified under TI 22(b) which reads "Textile fabrics impregnated coated or laminated with preparation of cellulose or of other artificial plastic materials not elsewhere specified".

58. The Assistant Collector issued the show cause notice dated 28.7.1984 calling for explanation as to why the classification list No.10/84 should not be rejected and classification of the product earlier done be maintained.

59. The assessee filed a reply dated 29th August 1984 to the show cause notice and also filed a subsequent reply on 6.9.1984. In these replies, they have submitted that the Superintended of Central Excise vide his letter No. 965/84 dated 20th June, 1984 directed them to file a classification list classifying Glass

Epoxy laminates under TI 15A(2) in terms of Tariff advice No. 18/84 dated 6.6.1984 (Trade Notice No.78/84). They have submitted in reply to this letter of Superintendent that in terms of the order of the Supreme Court on SLP No. 654/83, the true meaning and scope of articles falling under Tariff Item 15A(2) had been brought out, only articles made wholly of commodity commercially known as plastic, shall be covered by Tariff Item 15.1(2) and not articles made from plastic along with other materials. They submitted that Glass epoxy laminates are composite goods comprising of synthetic epoxy resin and glass fabric and as such, not being articles wholly made of commodity commercially known as plastic shall not merit classification under Tariff Item 15A(2) and shall be rightly classifiable under Tariff Item 68. The Superintendent vide his letter dated 26.6.1984 insisted on their compliance to the direction given to them earlier and directed them to file fresh classification list if they so desired to adopt the ratio of the Supreme Court decision. They have submitted that in response to this letter, they filed the classification list No. 9/84 and 10/84 for which the show cause notice has been issued to them. They have contended that the Supreme Court ratio in the case of Jeep Flashlights Industries (supra) would be applicable to the facts of their case and, therefore, their product Decolite Hylam should be classified under Tariff Item 68 and not Tariff Item 15A(2) as the product was not made wholly of plastic. In reply dated 6.9.1984, they have submitted that the laminates are composites consisting of paper/fibre synthetic resins paper/fibre predominates by weight as well as by film in the laminate. The laminates is a product in which neither the identity of the paper/fibre or synthetic resin is distinguishable. The laminates is neither paper/fibre nor plastic but laminate as commonly known. They have contended that in the Trade and with the customers, the product is better known as Decolam and Hylam laminates. It is not known either technically or in common parlance as plastics and therefore, would not fall under Tariff Item 15A which deals with artificial or synthetic resin and plastic materials etc.

They have contended that the laminated paper does not fall under Tariff Item 15A(1). In order to bring the product under Item 15A(2), the product should have been manufactured from materials falling under Tariff Item 15A(2). As the raw materials from which laminates are manufactured are paper/fibre and synthetic resins which fall respectively under Tariff Item 17, 19 and 15A(1), the resultant

product can neither be considered as falling under Tariff Item 15A(2) nor under 17 or 19 because the entire characteristics of the product are changed.

They have contended that from a common sense point of view, this can be brought out by comparing the quality of the paper which can be easily cut into pieces whereas the laminates does not have any of these characteristics. They have contended that in the same sense, the synthetic resin is a viscous sticky product while the laminated is impregnated product which has no property of stickness and, therefore, on proper understanding of the product Decolite and Hylam, they cannot be classified under Tariff Item 15A. In this connection, they have relied on the Supreme Court ruling of Jeep Flashlight Industries (supra) which had clarified that in order to bring an article under item 15A(2), the commodity should be made wholly from the commodity commercially known as plastics and not raw materials made from plastic along with other materials.

60. As regards classification of prepregs, they have submitted that the same analogy for laminate will hold good for these items also. They had contended that an analogous product came up for consideration before the Tribunal in the case of Multiple Fabric Company (supra) and the Tribunal ruling given was that after impregnation, the product should still be capable of being called 'Fabric' for classifying it under the relevant entry. They have contended that this ratio should be applied for the class of prepregs under Tariff Item 68.

61. The Assistant Collector did not follow the Supreme Court ruling in the case of Jeep Flashlight Industries (supra). Unfortunately, the Assistant Collector has committed a serious error in stating that the Tariff Item 15A(2) requires to be changed by Parliament and has declined to follow the Supreme Court ruling. This interpretation of Assistant Collector has to be seriously viewed as the judgment of Supreme Court is also law under Article 136 of the Constitution of India and by passing the order in the following words (quoted below) has deliberately mis-applied the law on a poor legal understanding: As Tariff Item 15A(2) is specific entry for laminates sheets, Tariff Item 68 cannot be used for decorative laminated sheets. It would be proper to mention again that the Supreme Court judgment on which the assessee has relied heavily has in no way changes any tariff

description. As long as the specific tariff entry of Tariff Item 65A(2) which forms a part of Central Excise and Salt Act, 1944 duly enacted by the Parliament is not changed by the Parliament itself, decorative laminated sheets cannot be classified under Tariff Item As regards the items prepregs 'P', 'F' & 'G', the Assistant Collector has again not relied upon the Supreme Court ruling in the case of Jeep Flashlight Industries case (supra). He has held that the Item 17(1) specifically includes paper which has been subjected to various treatments and therefore, prepreg being an impregnated, has to be classified under Tariff Item 17(1) and not under Item 68. On the same analogy, he has held that prepreg 'P' being impregnated cotton fabric and glass fabric which is impregnated has to be classified under Tariff Item 19(III). On a similar analogy, he has also held that prepreg 'G' being Textile fabric which is impregnated, has to fall under Tariff Item 22(B).

62. The assessee being aggrieved by this order, had appealed to the Collector (Appeals) who has accepted the appellants contention and has classified all the four items under Tariff Item 68. The Collector (Appeals) has relied upon the ruling given by the Supreme Court in the case of Jeep Flashlight Industries (supra). The Collector (Appeals) has also observed that the Assistant Collector in disregarding the order of the Supreme Court, High Court and that of the Tribunal's Special Bench decision, is not correct. Therefore, he has classified Decolite Laminated sheets made out of materials other than plastic, classifiable under Tariff Item 68. The Collector (Appeals) has also considered the submissions of the assessee with regard to 'P', 'F' & 'G'. He has also seen the samples produced by the appellants. He has noted the characteristics of the samples produced and noted that they were thin sheets or paper sheets but unable of being bend as in the process of the act of bending, they break and therefore, they are being of brittle nature. The Collector (Appeals) has taken into consideration the various citations of the Tribunal and also considered the submissions of the assessee with regard to the manner it is bought and sold. On that basis, he has concluded that they are capable of being classified under Tariff Item 68. He has observed that the Assistant Collector has not taken into consideration the tariff advice No. 51/75 dated 31.10.1975 issued by the Board in which it is stated "treated paper which is claimed to be an intermediary product in the manufacture of decorative and

laminated sheets falling under Tariff Item 15A of CET is not classifiable under Tariff Item 17 of CET. The Collector has looked into the rulings of Allahabad High Court and Orissa High Court in the matter of Kilnburn & Co. Ltd. v. Commissioner of Sales-tax, UP, Kores India Ltd., Kanpur v. State of UP and Anr and State of Orissa v.Constanner Duplicators Private Ltd. wherein all the rulings, the meaning of the word 'paper' has been gone into and it has been held that the word paper has to be given the meaning which is in ordinary parlance. He has held that the common parlance paper is used for printing, writing and packaging purposes. For example, Toilet paper which is called paper is not understood as such. It is an article of Toiletory and would be a toilet requisite. He has held that the dictionary meaning of the word paper and also of scientific and technological name cannot be of any help in deciding the question whether a particular product is paper or not. In view of the definition of paper given by the above mentioned qualities of the specific tariff advice of the Board, the Collector has concluded that it is not correct to treat the intermediate product in manufacture of decorative laminated sheets under Tariff Item 17. The correct classification for prepreg will be under Tariff Item 68 as there has been no specific mention of these goods under any of the Tariff Items as is apparent in this case. He has held that prepreg 'F' and 'G' that they are impregnated fabrics, but they are not of use as such as fabrics because of the fact that cannot be put to use for that purpose to which the fabrics are generally being brittle in nature. He has held that since they do not answer the description of the fabric so far the use is concerned and distinct from the use to which the impregnated fabric are put, they will merit classification under Tariff Item 68 not being specifically covered by any item of fabric. He has applied the ruling of the Tribunal as given in the case of M/s. Multiple Fabrics (P) Ltd. (supra).

63. The Revenue is aggrieved with the findings by the Collector (Appeals) and hence they have filed two appeals and they sought for the confirming the order of the Assistant Collector by setting aside the order of Collector (Appeals). The assessee has also filed their cross objections. The grounds urged in these two appeals are that the assessee themselves called their laminated goods as plastic laminated goods in their classification which specifically describes under Tariff Item 15A(2). Therefore, there is no question of levying the duty under Item 68 of the Tariff. The goods manufactured by the assessee are articles made by

thermosta by using raw materials by using plastic resin/paper such articles become impregnated. The ingredients like paper fabric cannot be separated once they are thermostat because of their treatment as plastic material. The Revenue have contended that the end product namely laminated sheet is a completely fused plastic.

They further contended that the argument that the commodity should be known commercially plastic is specified in this case. They contended that the applicability of Tariff Item 68 to plastic laminated sheets does not arise for the same fact that the plastic laminated sheets is a specified item under Tariff Item 15A(2) and only goods elsewhere specified under Tariff Item 1 to 68 will fall under Tariff Item 68. As regards the Supreme Court's ruling rendered under Geep Flashlight Industries (supra), the Revenue contended that the same is not applicable in this case. They contended that there is nothing to suggest that the articles named therein under Item 15A(2) should be manufactured wholly from plastics or artificial resin. They further contended that there is equally no prohibition for the manufacture of articles from material named under Tariff Item 15A(1) in combination with other materials. Hence, the goods manufactured by the assessee viz. plastic laminated sheets out of artificial resin and materials named under Tariff Item 15A(1) with paper/fabric etc. decidedly fall under Tariff Item 15A(2) and attract duty liability under the said items viz. 15A(2). They further contended that the interpretation given by the Supreme Court to the word 'plastic' regarding classification of the plastic torches for which there is no specific entry in CET, cannot be applied to the classification of the laminated sheets for which there is a specific entry in the CET. The Revenue has similarly contended with regard to the classification of resin, impregnated paper cotton fabric and glass fabric and have, therefore, stated that the Supreme Court ruling in Geep Flashlight Industries case is not applicable. The Revenue have therefore, sought for setting aside the ruling given by the Tribunal in the case of Formica India to the facts of this case.

64. The assessee in their cross objections have taken the view that prepreg 'P', 'F' & 'G' which eminate in the process of manufacture of laminate in the crude form merely a technology necessity being not suitable and a reactive and not capable of being bought and sold in the market and not being something which can ordinarily

brought to the market to be brought and sold and not goods and therefore, not classifiable and dutiable. They contended that the prepregs cannot be quoted to those in crude and finished form. Prepregs which are in semi-equated form are in equated and finished state which are sold.They have contended that the Collector has not gone into this question and hence their cross appeal is maintainable. They contend that prepregs being in semi-equated stage, have to be controlled and have a short shelf life due to their inherent quality and are not marketable and do not constitute as 'goods' in the first instance. As regards the classification, they have again relied on the ruling given in the case of Geep Flashlight Industries case.

65. This is the assessee's appeal against the order of Collector (Appeals) dismissing their appeal vide Order-in-Appeal No. 167/85 dated 31.10.1985. The Collector (Appeals) has passed a very brief order. The operative portion is reproduced below: In this action, have to state that the CEGAT Special Bench C New Delhi has given a decision in final Order No. 173 to 176/86-C. I hold that items in question are to classify as per the decision of the CEGAT, New Delhi and the appellants plea that the pertinent goods are to be classified under Tariff Item 68, cannot be accepted.

66. The facts leading to this appeal are that on 18.6.1984, the assessee filed letter seeking classification of prepregs under Tariff Item 68 as they are composites and neither articles of plastics nor paper cotton fabric/glass fabric. The Assistant Collector issued a show cause notice on 28th July, 1984 asking them as to why prepregs 'F' 'G' should not be classified under Items 17, 19 and 22B. They gave a reply which are almost in the nature of those replies which have been submitted by them in response to a show cause notice issued by the Assistant Collector on their filing Classification List No. 9/84 and 10/84. The Assistant Collector after adjudication, passed a separate order rejecting their request for reclassifying prepregs 'P', 'F' & 'G' under Tariff Item 68. In this order dated 3.7.1985, the Assistant Collector gave a brief finding by which he has held that "the commodity Epoxy impregnated, glass fibric is presently being classified under Tariff Item 22(B). However, it is felt that the correct classification or this commodity is under Tariff Item 22F(4). Impregnated glass fabric is made from epoxy resin and glass

fabric. The glass fabric is put into a solution of epoxy resin and it is treated in a heating chamber. The resultant product is impregnated glass fibric called prepreg 'G' and the glass fabric is the main ingredient." The Assistant Collector has quoted 22F and has further held: As this item includes manufacture of mineral fabric in which mineral fabric or yarn or both predominate in weight, impregnated glass fabric fully meets this tariff description.

Impregnated glass fibric is the manufacture of mineral fabric i.e.

glass fabric and in this glass fabric, predominates in weight.

Therefore, it fully means the description to Tariff Item 25F(4).

It is therefore, in the light of the above findings, it is hereby ordered that impregnated glass fabric made by Bakelite Hylam is to be made under Tariff Item 22(F)(4) with immediate effect. The assessee is hereby directed to submit a classification list immediately for endorsement consequent to this order.

67. The appellants have pointed out several irregularities in both the orders of Assistant Collector as well as Collector (Appeals) and have contended that both the orders are not maintainable and not sustainable in law. The Assistant Collector had passed the order under Classification List No. 9/84 and 10/84 dated 29.9.1984 while the order-in-original has been passed on 3.7.1985. This is as a result of budgetary change of 1985. It was the same Assistant Collector who has passed this order but as can be seen, there is no finding given with regard to prepreg 'P' as well as with regard to Decolite laminated sheets. The Collector (Appeals) passed the impugned order on 8.7.1986 by applying the ratio of CE-GAT's order which has no bearing on the product in question. The Collector (Appeals) has also not gone into details regarding the various submissions made by the assessee. The order-in-appeal arising from the Classification List No. 9/84 and 10/84 which was allowed by the same Collector (Appeals) dated 31.10.1985. The Authorities were waiting for the previous order. The Collector (Appeals) had in fact allowed their previous appeal but however, when the matter came up again before him, he has not looked into the findings given by him but applied a different ruling of the Tribunal and confirmed the Assistant Collector's order-in-original which pertained

only to prepregs 'G'. Therefore, prima facie, the appeal of the assessee is maintainable and the lower authorities' order to be set aside on this ground alone. The other reasoning on merits will follow in due course.

68. The Revenue had been represented by Shri S. Chakraborti who argued the case. After first leg of the arguments, it was pointed out by B.Shankar, Vice-President of the assessee company, that the Assistant Collector by his letter dated 25.2.1986, had asked the company to send the samples of impregnated paper, cotton fabric and glass fabric required for examination by the Chief Chemist in connection with classification dispute relating to the 3 products coming up for hearing before CEGAT on 15th and 16th April, 1985. The assessee had submitted the samples under cover of letter dated 1.3.1985 along with a Write up on the manufacturing process. They kept on remaining and the last reminder being July 7.1990. The Assistant Collector replied that despite search, the related correspondence is not traceable. On the submissions made, this Bench by Misc. Order dated 13.11.1990, directed the D.R. to produce the Chief Chemist report on this products on the next date when the arguments were to commence. When the arguments commenced on 11.1.1991, as directed by the Bench the Revenue did not produce the test report and, therefore, the arguments were concluded without the same being on record.

69. Shri B. Shankar produced a report dated 6.5.1986 by the Chemical Examiner alongwith their covering letter dated 20.11.1990 by which they had made a request of report of the Chief Chemist on the samples of prepregs 'F' and 'G' forwarded to them vide their letter dated 1.3.1985 in response to the Department's letter dated 25.2.1985. They have also produced the copy of the reminder dated 18.12.1990, a copy of the said report. The said report dated 6.5.1986 is re-produced: Copy of the report dated 6.5.1986 from the Chemical Examiner Customs House, Madras addressed to the Assistant Collector of Central Excise, Hyderabad-II Division, Hyderabad.

Sub: Central ExciseLaminated sheetsM/s. Bakelite Hylam Ltd.Sample analysis reg.7.

P 105 - Reddish Brown sheet 8. C 1577 - Pale Brown sheet with SI. No. 1 to 5 - These are made of phenol formaldehyde (Synthetic resin) and paper SI. No. 6 & 7 - These are made of Phenol formaldehyde (Synthetic resin) and fabric SI. No. 8 - Is made of Phenol formaldehyde (Synthetic resin) paper and copper foil.

Laminated plastics consist of super imposed layers of a synthetic resin impregnated or resin coated filler which have been bonded together, usually by means of heat and pressure to form a single piece. The filler materials can be paper, cotton mats, cotton fabric, glass fabric or fibre asbestos etc. The Thermosetting resins used are Phenolic melamine polyester, epoxy, sili-cone etc. The products under reference have the characteristic of laminated plastic sheets.

It is not possible to find out the percentage content of raw materials in the laminated plastic sheets and this laboratory is not equipped to test the rigidity of plastics.

In this connection, attention is drawn to the Board's letter in F.No. 95/12/84 dated 2.5.1985 (Tariff advice No. 20/85) wherein it is stated that all laminated sheets irrespective of their mechanical or electrical properties are classified under Tariff Item 15A(2). It is also stated that paper acts merely as a reinforcing agent in the manufacture of the sheets, which losses identity in the final product. The Board has also accepted the conclusion that Decorative laminated sheets are properly classifiable under Tariff Item 16A(2) of CET.The main contention raised by the Revenue and the appellants has been recorded in the main order written by Shri N.K. Bajpai, Member (T).

70. The Revenue in their Appeal No. E/Cross/442/86-C have filed a paper book in which they have filed the Show Cause Notice dated 2.8.1983, reply of assessee dated 18.8.1983 and 6.8.1983, the Order-in-Original dated 14.12.1983, the form EA.1 filed by assessee against the said Order-in-Original and Order-in-Appeal No. 191/84, dated 13.8.1984 by which the Collector (Appeals) has set aside the Order-in-Original and remanded the matter for de novo adjudication. These papers pertain to classification list filed by assessee on 18.3.1983 pertaining to the same products in issue. The Assistant Collector by his Order-in-Original had classified the product prepreg 'P' under Tariff Item 17(1) of CET. On appeal, the Collector

(Appeals) had observed that the Assistant Collector had not examined the matter in depth and has not also examined the decision of the Supreme Court rendered in the case of M/s. Jeep Flashlight Industries as well as that of Multiple Fabrics Co. {supra) rendered by the Tribunal and therefore he remanded for the correct classification and also directed him to decide the issue of exemption Notification.

71. The assessee has also filed the process of manufacture of prepreg on page No. 353 of the paper book which is noted below: Prepregs are intermediate in-process materials emanating in the course of manufacture of Laminates, Prepregs are essentially composites comprising of Paper/Cotton Fabric/Glass Fabric and unstable resin solution (either Phenol Formaldehyde type or Epoxy type) in which such Paper/Cotton Fabric/Glass Fabric is given a bath and thereafter passed through a Dryer oven. Sheets of Prepregs cut to the required sizes when pressed together forms the final produce namely Laminates in the manufacture of which the stage of prepregs is essentially a technological necessity.

Paper/Cotton Fabric/Glass Fabric after they are given a bath in the resin solution and dried in the Dryer oven to form in-process intermediate materials, in the manufacture of Laminates namely Prepregs, do not retain any of the characteristics of Paper Fabric/Glass Fabric or that of the resin solution and as such are discrete in-process intermediate material technically called prepregs.

72. By reading the entire facts, documents, materials like affidavit, produced by the assessee, the test report, process of manufacture and also the previous proceedings, the admitted position in this case is that prepregs are intermediate in-process materials emanating in the course of manufacture. This fact is also supported by the affidavit of Shri Malayappier Krishnan who is an expert and holder of Ph.D. degree in Synthetic Organic Chemistry. The affidavit is appearing at page No.59 of the paper book which is re-produced below: The same is very necessary for just arrival of the decision in this case: I, Malayappier Krishnan son of late P. Malayappier aged 54 years, Indian inhabitant residing at "Venkat Nivas", 7.1.1970/B, Ameerpet, Hyderabad-500 016 do hereby solemnly affirm and state as follows: 1. That I am the holder of a Ph.D. degree in Synthetic Organic Chemistry and have been actively associated with Polymer Development and Technology for

the last twenty five years.

2. That I am presently the research and development Manager of Bakelite Hy-lam Limited.

3. That I have been intimately aquainted with the process of manufacture and the technology connected with Pre Pregs and Industrial and Decorative Laminates and as such I am fully conversant with their manufacturing processes.

4. That the Prepregs which emanate as in-process intermediate materials in the manufacture of Laminated sheets are composites of Paper and Synthetic Resin Solution.

5. That Pre pregs do not have any of the characteristics of cotton fabrics and the properties of Prepregs are discrete.

6. That Pre pregs are for the technical reasons not considered or understood as Cotton Fabrics.

7. That Pre pregs are not capable of being put to any use to which Cotton Fabric is put to.

8. That the Pre pregs are used only for moulding into shuttles, bobbins (for textile machinery for instance) and Laminates.

9. That the Synthetic Resin solution which is used for impregnating the cotton fabric is not a preparation of cellulose derivative.

10. That the Synthetic Resin solution used for impregnating and Cotton Fabric is a pure resin solution and as such is not a preparation of plastic material.

11. That it is acknowledged in the filed of polymer science and chemistry that synthetic resin means a man made high-polymer resulting from chemical reaction between two (or more) substances usually with besat of a catalyst and is understood distinct from a plastic material. In support of this I rely on the condensed chemical dictionary (9th edition by Gessner G. Hawley - page No. 749).

12. That in the field of Polymer science and Technology artificial resins are understood to mean natural resins artificially modified while Synthetic Resins connote man made high-polymer resulting from the synthesis of two or more chemical substances.

The assessee has also pointed out to the affidavit of Shri K.C. Virmani, appearing on page 97 and 98 of the paper book, who is also acquainted with the process of manufacture, the technology and trade connected with all varieties of papers for over 38 years. The affidavit of traders like Shri Arunkumar R. Trivedi on page 64 of the paper book, that of Shri G.R. Agarwal, Shri Niranjanlal Agarwal appearing on page No. 87 and 89 respectively, that of Shri D. Venkataram Dy. Manager/Purchase of Bharat Heavy Electricals Ltd. appearing on page No. 104, Shri Subash Goel appearing on page No. 106, Shri Bharat Thakker on page No. 186, Shri Bhandurawala on page No. 188, letter of G.E.C. dated 11.9.1984 on page No. 190 (referred to by Shri N.K. Bajpai in para No. 38 of the order letter dated 25.9.1984 of M/s. Ram Chand Thapar & Brothers Ltd. at page No. 191, letter dated 12.9.1984 of M/s. Sardar Singh & Sons on page No. 192, letter dated 21.9.1984 of M/s. Thaker Brothers on page No. 193, letter dated 17.9.1984 of M/s. Jadala Industries at page No. 194.

These affidavits and letters have been produced by the assessee for two purposes. The affidavit of Shri Krishnan who is a technical expert has been produced to prove that prepregs are appearing as laminates as in-process intermediate materials in the process of laminated sheets. The affidavits of the Shri K.C. Virmani at page No. 97, an expert in paper industry has also been produced for two purposes:(1) to show that prepregs emanate as in-process intermediate materials in the manufacture of laminates, and (2) to show that prepregs do not have any of the characteristics of paper and that for technical reasons they are not recognized as paper. The affidavit of Shri D. Venkat Ram of B.H.E.L. also states that paper base and fabric base laminates manufactured by assessee are composites of paper/fabric and chemicals such as Phenol, Formaldehyde and Glass Epoxy resin and that because of their very technical composition they are not known or recognised as articles of plastics. The affidavit further states that paper base and fabric base laminates comprise predominantly

of paper and fabric respectively and that the mixture of Phenol-Formaldehyde is used in the processing of such laminates only as a bonding "media. The affidavit further states that glass epoxy laminates comprise pre-dominantly of glass fabric and that epoxy resin is used in the processing of such laminates only as a bonding media. It further states that they have purchased paper base and fabric base laminates and glass epoxy laminates from the assessee. It further states that the industrial laminates namely paper-base, fabric-base and glass epoxy laminates manufactured and marketed by the assessee are not known in he market as plastic sheets as in the market plastic sheet connotes sheets made of thermo-plastic materials such as PVC, acrylic etc. It further states that paper base and fabric base laminates conforming to the IS-2036 of 1974 and glass epoxy laminates manufactured by assessee and purchased by BHEL are used by BHEL for electrical insulation purposes. The affidavits of the large number of traders are to the fact that the decorative laminates are identified in the market by the brand name such as DECOLAM, FORMICA, SUNGLASS, HOLLY WOOD etc., and they are not known in the market as plastic sheet.

73. The technical literature produced by the assessee which are discussed in the main order at para 16 and 17 does not leave any room for any doubt that the prepregs are emanates as in-process intermediate materials in the form of laminated sheets. The Revenue has not contraverted the evidence pertaining to both the aspects of the matter with regard to prepreg emanating as in-process intermediate materials in the manufacture of laminated sheets and also with regard to the understanding in trade circles and in common parlance. It is now well settled that the burden of classification is on the department. It is also well settled that the materials placed by the assessee has to be gone into in great detail. The evidence of marketability, trade understanding and classification is on the department. It is also now well settled that view of ISI in regard to how a particular product is known to Indian Trade should be preferred to the views of foreign authors and experts 1977 ELT J 199 : 1973 April Cen cus 56 (SC) : ECR C 216 SC Union of India v. D. C. & G.M. Mills Co. Ltd. In this matter it is also better to refer to the said rulings before going into the question of deciding the issue in this matter.

74. In the case of Swan Mills Ltd. and Anr. v. H.R. Amarnani and Ors reported in 1982 ELT 445 (Bombay) the Bombay High Court has held that in classification matters, the parties are to be given full opportunities to satisfy the excise authorities regarding the classification. It is also held that the burden of proof in primarily on the excise authorities to establish whether a particular product falls in one tariff item or the other. It is further held that it cannot be just and fair for the excise authorities to decide the classification of a product merely by placing reliance on ruling of Division Bench. It is observed that justice requires that the excise authorities must have material and evidence before them on the basis of which the said authorities may come to a conclusion. It is further observed that the ends of justice require that the excise authorities must give a full-fledged hearing and opportunity to the party and pass an order only thereafter one way or the other on the merits and in accordance with law.

75. In the case of Brammer v. Link Belting India Ltd. and Anr. v. C.L.

Nangia, Appellate Collector of Central Excise, Bombay and Ors. as (Bombay), Bombay High Court has held that intermediate product which is not marketable is not liable to excise duty. It is also held that market enquiry made by excise Inspector are in the nature of opinion and is only hear say and relative on certain information for which there is no basis, therefore, such evidence was not worth credence.Union of India v. Gujarat Woolen Mills reported in 1977 ELT (J. 24) : 1977 Cen-cus 58D (SC) : ECR C 503 SC has held that resort should be had not to the scientific or technical meaning but their popular meaning or the meaning attached to them by those dealing in them, i.e. to say, to their commercial senses.Dunlop India Ltd. v. Union of India reported AIR 1977 SC. 597 : 1975 Dec. Cen-cus 150 (SC) : ECR C 476 SC, it was held by the Hon'ble Supreme Court that the meaning given to the articles in a physical statute must be as people in trade and commerce conversant with the subject generally treat and understand them in usual course with the technical and scientific decisions offer guidance for them within limits and that once articles are in circulation and given to be described and known in common parlance then there is no difficulty for classification under a particular entry. The Supreme Court again in the case of Sales Tax Commissioner, UP v. S.N. Brothers reported has also held that resort should be had to the

meaning given to the words as ordinarily understood and attributed to these words by the people usually conversant with and dealing with such goods and resort should not be made to the meaning given in the dictionary.Union of India v. Delhi Cloths and General Mills Co. Ltd. and Ors. reported 1977 ELT J. 199 : 1973 April Cen-cus 56 (SC) : ECR C 216 SC has held that the view of the ISI in regard to how a particular product is known to Indian Trade should be preferred to the views of Foreign Authors and Experts. It is in this citation that the Supreme Court also laid down the decisions of "goods" and "manufacture". It was held that to become a "goods" an article must be something which has already come to the market and to be bought and sold.Golden Paper Udyog (P) Ltd., Faridabad v. Collector of Central Excise, Delhi reported 1983 ELT 1123 (Cegat) : 1983 ECR 799D (Cegat SB-C) the Tribunal held that double taxing under same sub-heading is not permissible. This was while construing the item under construing the product under Tariff Item 17(2) of CET.80. The Supreme Court has also gone into the question of usability of products emerging in intermediate stage and has now laid down that products emerging in intermediate stage are not dutiable. This view has been expressed by the Supreme Court in the case of Union Carbide India Ltd. v. Union of India and Ors. reported . In this case the articles in crude or elementary form emerged into the form of aluminium cans or torch bodies by extrusion process which were neither sold nor marketed. The Supreme Court held that they were not 'goods' and not dutiable. This principle was again clarified in the case of Geep Industrial Syndicate Ltd. v. Central Government and Ors. reported wherein the production of aluminium cans out of aluminium slugs was not considered as amounting to manufacture and held not dutiable. This view was followed by several High Courts and also Tribunal. The Supreme Court again took up the issue of marketability of intermediate products vis-a-vis mentioned of said intermediate product in the CET and again reiterated its earlier findings. This was in the case of Bhor Industries Ltd. v. Collector of Central Excise as The Hon'ble Supreme Court held at para 7 as follows: It is necessary in this connection to reiterate the basic fundamental principles of excise. The Judicial Committee of the Privy Council in Governor General in Council v. Province of Madras 1978 (2) ELT (J 280) : 1945 F.C.R. 179, this Court observed at page 1287 of the report that excise duty was primarily a duty on the production or manufacture of goods

produced or manufactured within the country. This Court again In Re The Bill to Amend Section 20 of the Sea Customs Act, 1878, and Section 3 of the Central Excises & Salt Act, 1944 of the report referring to the aforesaid observations of the Judicial Committee reiterated that taxable even in the case of duties of excises is the manufacture of goods and the duty is not directly on the goods but on the manufacture thereof. Therefore, the essential ingredient is that there should be manufacture of goods. The goods being articles which are known to those who are dealing in the market having their identity as such. Section 3 of the Act enjoins that there shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or 'manufactured1 in India. 'Excisable goods'' under Section 2(d) of the Act means goods specified in the Schedule to the Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt. Therefore, it is necessary, in a case like this, to find out whether there are goods, that is to say, articles as known in the market as separate distinct identifiable commodities 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 Central Excise Tariff Act, 1985.Collector of Central Excise v. Ambala Sambhai Enterprises as . The Supreme Court in this case considered the question of burden on the department to prove that the goods were marketable and hence liable to duty. It also held that in case the department was to charge excise duty on articles and such levy is disputed by the assessee on the ground that the goods were not marketable, the burden is on the department to prove that the goods were either marketed or marketable and if no evidence has been adduced by the department in spite of opportunities, and the assessee has adduced positive evidence in this regard, the order favourable to the assessee cannot be said to be incorrect. It is in this case that Supreme Court again considered the question of dutiability of intermediate products and held that the duty of excise is on the manufacture of goods and for an article to be ''goods'', there must be known in the market as such or they must be capable of being sold in the market as goods. Actual sale is not necessary. User in the captive consumption is not determinative of that article is capable of

being sold in the market or known in the market as goods. Even transient items of articles can be goods provided that they were known in the market as distinct and separate articles having separate uses, they would still become goods if they were capable of being marketed even during the said short period. The report has held, that thus the goods with unstable character can be theoretically marketable if there was a market of such transient type of articles but one has to take a practical view on the basis of available evidence.

82. The Hon'ble Supreme Court again considered the question of classification of goods on the basis of the description in the tariff items as in the case of Dunlop India Ltd. v. Union of India as reported in AIR 1977 S.C. 597 : 1975 Dec. Cen-cus 150 (SC) : ECR C 476 SC. It has again considered the said issue in the case of Atul Glass Ltd. v.Collector of Central Excise and Ors.

In this case the question was with regard to classification of mirror and whether it could be classified under TI item 23A(4) of CET which pertain to 'other glass and glassware'. The Supreme Court has gone in great detail and held that glass mirror cannot be regarded as glass and cannot be classified as glassware. In this case Supreme Court has also gone into the question of the glossory of terms by ISI and has held that it is regardable as supporting material as to the manner in which the product has been treated for the purpose of the specification laid down by the ISI. The Supreme Court has laid down the basis to be applied with regard to manner in which the product is identified by the class or section of the people dealing with or using the product and has held that to be a which is attractive whenever statute does not contain any definition. It is held that it is a matter of common experience that identifying a article is associated with its primary use. It is only logical that it should be so and on a further analysis has concluded that the item has to be classified according to the common understanding in the absence of any definition in the statute.

83. The above citations and rulings were cited by Shri B. Shankar appearing for the assessee along with a number of judgements which will apply in this decision in respect of classification of goods. The entire issue has to be viewed from this point of view.

84. The assessee had rightly stated that there is no res judicata in tax matters and the view expressed by the Collector of Appeals on the basis of Supreme Court ruling as rendered in the case of Jeep Flashlight Industries (supra) and decision rendered by the Tribunal in the case of Multiple Fabric (supra) is applicable for the classification of the goods in question. Besides this approved of classification done by the Collector (Appeals), they have also filed a cross appeal on the question of dutiability of pre-preg heavily relying on the subsequent ruling of the Supreme Court as rendered in the case of Union Carbide (supra), Bhor Industries (supra) and Ambalal Sarabhai Enterprises (supra). On the other hand the Revenue has relied on the ruling of the Tribunal as rendered in the case of Uma Laminates Products (supra) Formica India (supra) and others of Bakelite Hylam Ltd. as reported in 1986 (24) ELT 643 : 1986 (7) ECR 446 (Cegat SB-C).

85. The assessee has submitted that the rulings cited by the Revenue in these appeals in the case of Uma Laminates, Formica India and Bakelite Hylam as reported in 1986 (24) ELT 643 : 1986 (7) ECR 446 (Cegat SB-C) is not at all applicable to the facts of this case on the ground that these decisions have been taken prior to the law laid down by the Supreme Court and also on the ground that these decisions are not having binding nature as the Tribunal had not considered various well laid down propositions of the Higher Courts. They have also contended that the evidences had not been produced and the one which was produced was also not considered in the case of Bakelite Hylam Ltd. Therefore, they have submitted that on the preponderence of evidence now produced, correct view has got to be taken in the matter. The contention is that product laminated boards and sheets are classifiable under Tariff Item 68 and not under Tariff Item 58(a)(2) as per the decision rendered by the Supreme Court in the case of Jeep Flashlight Industries (supra). As regards the prepreg 'P', 'F' and 'G' their primary contention is that it having emerged in intermediate stage in a continuous process for manufacture of laminated sheets are not marketable and hence was not dutiable and in support of their preposition they have relied upon several rulings of the Supreme Court. Their contention is that if it is held to be dutiable then they are to be classified under Tariff Item 68 and in support of this contention they have relied on the evidence of traders, technical literature and also on the several rulings subsequently rendered by the Tribunal and other High Courts in the

following cases:Bakelite Hylam Ltd. v. Collector of Central Excise as reported wherein resin plastic laminated sheets hylam and electrical grade laminated sheets (hyglass) were held to be classifiable under Tariff Item 68 and not Tariff Item 15A(2) of CET. (ii) Advani-Oerlikon Ltd. v. Union of India and Ors. as reported in 1981 ELT 432 (Bombay). It was held in this case that welding electrodes of all sorts does not include gas welding wires. "All sorts" should be read in conjuction with proceeding words viz.

welding electrodes.Collector of Central Excise v. Bakelite Hylam Ltd. as reported in Order No. 728/90-C, dated 16.7.1990 wherein it has been held that glass epoxy (hyglass)/(hylam), rigid plastic laminated sheets(hylam) and electrical grade plastic laminated sheets are classifiable under Tariff Item 68 by following the ruling rendered in the case of Bakelite Hylam Ltd. v. Collector of Central Excise as and the Bench did not follow the ruling of Bakelite Hylam Ltd. v. Collector of Central Excise is on which the Revenue is basing their reliance in the present appeals.

(iv) Commissioner of Sales Tax, UP v. Macneill and Barry Ltd. as Supreme Court held that Ammonia (v) Mico v. Collector of Customs, Madras as reported in 1985 ECR 1045 (Tribunal). In this case, it was held that ribbon steel reinforced corrugated paper is not classifiable as paper or paper board under Tariff Item 17(i) of CET but under item 87 CET as composite article in the nature of combination of industrial goods.Basan Pran Electric Co., Calcutta v. Collector of Central Excise, Calcutta Tribunal held that to bring an article within the ambit of tariff item 17, that article must belong to the family group of paper/paper board. Merely because a product is known as paper it does not mean that this product comes within the ambit of this entry. In various types of product such as energy paper, ferro and amonia paper, synthetic paper, lipi printing paper, sand paper, though the word 'paper' has been used but they have been excluded from this entry by various circulars of the Board meaning thereby that all the products, though called paper in common parlance, do not come within the ambit of Tariff Item 17 because their usability is not as paper but as product with very different utilities. While considering the classification of electric insulating varnished paper, it was held that it was classifiable as paper under tariff item 17 of CET, it was held that electric insulating varnished paper is manufactured by varnishing the duty paid craft paper

falling under tariff item 17 with an insulating varnish. Its sole use is to serve as electric insulation and none else and further none as electrical insulator.

It was held that authority below has not given any justification in classifying under tariff item 17(4). On the other hand it was held that all the merits are on the side of categorising it as insulating material and not as paper.Collector of Customs, Bombay v. Wash Udyag, Sawantwadi as . The Tribunal held that insulating paperClass 'E' either high temperature insulating paper is classifiable under Heading 39.01/86 of Customs Tariff Act 1975 and not under Chapter 48 of Customs Tariff.Sunrise Electric Corporation, Bombay v. Collector of Customs, Bombay as reported in 1983 ELT 2465 (Cegat) : 1983 ECR 1762D (Cegat SB-D). The Tribunal held that electrical grade insulating paper is classifiable under customs heading No. 3901/06 and not under heading 48.01 /21 of the Customs Tariff Act. The Tribunal further held in this case that the expression 'composite paper or paper board' refers to articles composed of different layers or varieties of papers and/or paper board as mentioned in Explanatory Notes to Heading No. 48.04 of CCCN or BTN, and as such not to articles, composed partly of paper or paper board and partly of other materials. It was held that, it obviously cannot be held that this expression takes within its ambit any composite article containing some paper or paper board without reference to the presence, importance and functions of the other materials present therein.Atul Glass Industries Pvt. Ltd. v. Collector of Central Excise, Delhi in this case that insulating glass units/panels are a composite article in which all the three principals material, namely glass, aluminium tubing and the desiccant are not only present in insignificant quantities but also all the three functionally play an active part. It was held that in the scheme of the CET, the classification of such composite article cannot be decided only on one of the active materials. It was further held that in the absence of specific entry covering such composite article in the Tariff, the goods in question are correctly classifiable under the residuary item of CET.British Physical Laboratories India Pvt. Ltd. v. Collector of Customs, Madras held that special coated tissue for stencils are a composite product both plastic film and paper backing classifiable under tariff item 68 of CET and not under Tariff Item 17(2) of CET.Precious Industries v. Collector of Customs examined the question of classification of insulating paperelectrical grade insulating paper and has held that they are

classifiable under tariff item 68 of CET. This Larger Bench has also considered the ruling of Uma Laminates (supra) relied by the Revenue in this appeal. It clearly follows from the ruling of the larger bench that Uma Laminates case is no longer a good law.Multiple Fabric Co. Pvt. Ltd. v. Collector of Central Excise, Calcutta held that PVC conveyor belt is classifiable under TI 68 of CET and not under item 22.Peico Electronics and Electricals Ltd. v. Collector of Central Excise and Customs, Pune as reported in 1983 ELT 2512 : 1984 ECR 11 (Cegat SB-D), the bench has held that spider cloth cannot be considered as 'impregnated fabric' under TI 49(3) of CET.86. Having considered all the facts, submissions, case law and the material on records, my conclusions on the appeals is as follows: (a) I agree with the finding of learned brother Shri N.K. Bajpai that there is no res judicata in Taxation matters and the Bench can reappreciate the evidence on record to come to correct conclusion regarding dutiability and classification of the product.

(b) Classification of product laminated sheets known as deco-lam/hylam:Learned brother Shri N.K. Bajpai has not given any finding on this product, although he has recorded in para 2 of his order about the issue raised in the appeal. The revenue is aggrieved with the classification of this product under TI 68 by Collector (Appeals) in the impugned order in Excise Appeal No. 814/86-C and E/1462/86-C. They have desired for classification under TI 15A(2) of CET. The finding of the Collector (Appeals) is based on the ruling given by the Hon'ble Supreme Court in the case of M/s Geep Flashlight Industries (Supra). The Assistant Collector has observed that the Parliament alone can change the tariff item and the Supreme Court ruling is not binding on him. It is the highest impunity on the part of the Asstt. Collector to disregard the interpretation given to TI 15A(2) and say that Parliament alone can amend it. I may say that the Assistant Collector has committed gross contempt of the ruling of Supreme Court. The ratio laid down by the Supreme Court in the case of M/s Geep Flashlight Industries (supra) is a binding decision as a law of the land under Article 136 and Article 141 of the Constitution of India. All the Courts are bound by the law pronounced by the Hon'ble Supreme Court. Therefore, the item in question is classifiable under TI 68 of CET based on this riding.

This bench has applied this ratio in several of the subsequent rulings and the ratio rendered in Bakelitc Hylam Ltd. case as reported in 1986 (24) ELT 643 : 1986 (7) ECr 446 (Cegat SB-C) has not been followed in their own subsequent cases as reported in 1985 (22) ELT 879 : 1985 ECR 2334 (Cegat SB-C) as well as in their own case in Order No. 728/90-C, dated 16.7.1990 (wherein myself and Hon'ble President are the Members constituting the Bench). I am unable to differ from this ruling and there is no reason to differ from it either. Therefore, applying the ratio of the Supreme Court ridings in the case of Geep Flashlight Industries (supra) and the ridings in 1985 (22) ELT 879 : 1985 ECR 2334 (Cegat SB-C) and the ruling rendered in the Order No. 728/90-C dated 16.7.1990, I hold that Laminated Sheets known as Decolam/liylam boards and sheets are classifiable under TI 68 of CET and not under TI 15A(2) of CET.There is no dispute that these items are emerging in the intermediate stage in the manufacture of the goods laminated sheets and boards. The assessee had adduced evidence in the form of the affidavits of experts that these are emerging in the intermediate stage. The manufacturing process produced also discloses it. The department was directed to produce the copy of the test report pertaining to the samples drawn from the assessee's factory, during the course of the hearing by a misc. order, but they failed to produce the same. The assessee produced it, of which extract is given supra. The question is as to whether this product emerging in the intermediate stage becomes dutiable, even if it is held to be marketable. The Hon'ble Supreme Court in the case of Bhor Industries (supra) and in Ambalal Sarabhai's (supra) has held that products emerging in intermediate stage are not dutiable, even though they may find a place in tariff entry of CET. These rulings have been followed in several rulings rendered by this Bench and also by High Courts. In the case of Metal Powder Co. Ltd. v. Collector of Central Excise Aluminium paste was captively consumed in the manufacture of pure technical powder. The Asstt. Collector had neither considered the marketability of this intermediate product nor any evidence had been placed by the department regarding its marketability and therefore applying the ratio of the Supreme Court ruling rendered in the case of M/s Bhor Industries (supra) the demands raised under TI 14(1)(2) of CET on Aluminium paste was set aside. In this case also the assessee has asserted that the intermediate products prepreg 'P' 'F' and 'C were captively consumed and it was

not removed for sale from the factory gate. This aspect of the matter is not denied by the department at all.

Therefore, the question of its classification docs not attract at all.

The assessee raised this question before the Collector (Appeals) for the first time, but the Collector (Appeals) has not given any finding regarding its captive consumption and the aspect of dutiability at the intermediate stage, although it is admitted by the revenue that the product is captively consumed for the manufacture of the laminated sheets.

86A. The correct thing for the Collector (Appeals) would have been to go into this question and examine the voluminous materials produced by the assessee with regard to its captive consumption and the contention of the assessee that as shelf life1 is very less the products are not being capable of marketing and hence not being dutiable. There is no examination of this matter. The test report also has not been examined nor the department has adduced any evidence regarding the 'shelf life' and marketability of the products at intermediate stage nor it is asserted by the department that products were removed for sale without captive consumption for manufacture of laminated sheets. The department having failed to adduce the evidence in support of its claim for classification at intermediate stage, the evidence of the assessee in this regard has to be accepted as held by Hon'ble Supreme Court in the case of M/s Ambalal Sarabhai's (supra).

87. Learned brother Shri N.K. Bajpai has relied on the letter issued by General Electric Co. regarding purchase of Prepreg from the assessee.

Shri B. Sankaran, learned representative of the assessee during the course of the hearing explained when pointed out that the intermediate products were not sold but only laminates emerging from these prepregs were sold. In support of this contention he read the affidavit of other purchasers who had stated that Prepreg laminates had been purchased.

There is a serious doubt regarding the sale of intermediate product and hence this letter of M/s G.E.C. alone cannot be the basis to hold that the intermediate

products Prepregs 'p', 'f' and 'g' were having shelf life and were marketable and are goods. This lone evidence alone, on the face of other voluminous evidence, also, cannot be the basis to hold that there has been removal of the entire intermediate products produced in the factory without being taken for manufacture of final product decolam/hylam laminated sheets. Therefore, my findings are that intermediate products Prepreg 'p', 'f' and 'g' which were captively consumed in the manufacture of laminates are not dutiable in view of the rulings of Supreme Court and Tribunal cited by me and also of the various other rulings cited by the assessee.

88. In case it was to be held that there has been removal of intermediate products by way of sale, then its correct classification would arise. The Collector (Appeals) has applied the ruling of the Multiple Fabrics (supra) rendered by the Tribunal. The Revenue have sought in these appeals to follow the ruling of this Tribunal rendered in the case of M/s Uma Laminated Products (supra), in the case of Formica India (supra). With due respect I may have to disagree to apply this ratio. The reason being that both ratios have not followed the principle laid down by the Supreme Court in respect of Trade Parlance and common understanding and usage of the terms and rulings given in case of classifications of composite products by Tribunal. Further in both the rulings, there was no evidence placed as in this case regarding the trade parlance, market understanding, ISI specification and technical literature. Most important aspect of the matter is the full bench of this Tribunal has not considered the classification of the product done in M/s Uma Laminated Products case, while considering the classification of Insulating Paper Electrical Grade in the case of Precious India v. Collector of Customs as . Therefore, the ruling rendered in M/s Uma Laminated Products case no longer holds the field. Also the ratio given in this ruling has not been followed in all subsequent rulings in Mico v.Collector of Customs, Madras (supra) while considering Ribbon Steel reinforced Corrugated Paper, Basant Pran Electric Co. Ltd., Calcutta (supra). The Bench in this case held merely because the product is called paper, it is not sufficient to classify it under TI 17. The Supreme Court rulings in the case of Commissioner of Sales Tax UP v.Macneill and Barry Ltd. (supra) and also Supreme Court ruling in the case of Atul Glass Industries Ltd. (supra) the ruling of Tribunal in Collector of Customs v. Wash Udyog (supra),

Sunrise Electric Corporation (supra), British Physical Laboratories (supra) are all to the effect that to classify a product as paper under TI 17(2) of CET, it has to qualify as paper as understood in the ordinary sense.

Therefore, Pre preg 'P' is not classifiable under TI 17(2) of CET. The same analogy holds good for Pre preg 'F' and 'G' by applying the ratios of Multiple Fabric and Peico Electronics and Electricals (supra) rendered by this Tribunal. The Revenue has relied heavily on the ruling rendered in Bakelite Hylam Ltd.'s case as reported in 1986 (24) ELT 643 : 1986 (7) ECR 446 (Cegat SB-C)for classification of Prepreg 'P', 'F' and 'G'. As can be seen in this ruling the evidence produced by the assesee was not received by the Bench and the Bench has not seen several rulings of the Supreme Court and therefore, on afresh consideration of the matter in the light of the fresh evidence produced now and in the light of the nature of the items; the products would not be classifiable under TI 17(2), 19(III), 22F(4) but would be classifiable under TI 68 of CET.The products, therefore, would be classifiable under TI 68 of CET, if it were to be held that the product is marketable and are goods. There is no infirmity in the finding given by Collector (Appeals) in E/Appeal No. 814/86-C and E/A. No. 1462/86-C in so far as classification of the products are concerned and hence, I order for dismissing the appeals of the Revenue and allow the Crosss appeals of the assessee.

89. This appeal is of the assessee. As brought out by me the Collector (Appeals) had followed the ruling of the Tribunal in a different case without going into the merits of the matter. The Assistant Collector in the order-in-original has confined his order to only one product Prepreg 'G'. As the impugned order is not a speaking order, it required to be set aside, but in view of the department not producing any evidence of dutiability at the intermediate stage, the ruling of the Hon'ble supreme Court in the case of M/s Ambalal Sarabhai would be applicable to the facts of the case. Moreover, my findings in the Excise Appeal Nos. 814/86-C and Excise Appeal No. 1462/86-C would apply in this case also and the assessee's appeal has to be allowed and ordered accordingly.Dated: 30.5.199 Member (Judicial) 90. I have carefully perused the orders written by learned Brothers Shri N.K. Bajpai and Shri S.L. Peeran and I would like to record my view as follows.Geep Flashlight Industries Ltd., Allahabad v. Union of India and Ors. the goods under

consideration were plastic torches.

The Supreme Court approved and upheld the Allahabad High Court's view that plastic torch was covered by residuary Tariff Item 68 of the Central Excise Tariff (as it stood then) and not by Item 15A(2) which covered articles made of plastics. The Court held that articles such as tubes, rods, sheets, foils, sticks, etc. of plastic material (specified in the tariff item) merely described plastic material in different shapes and form and by no canon of construction a plastic torch could be read in conjunction with plastic tubes, rods, sheets, etc. made of plastics. Articles made of plastic meant articles made wholly of the commodity commercially known as plastics and not articles made from plastics along with other materials as in the case of plastic torch.

The goods herein, namely, decorative laminated sheets are not similar to plastic torches. They cannot be said to be not of the same genre or species as sheets which is specified in Item 15A(2). And, the Item covers sheets, laminated or not. For these reasons, in my respectful opinion, the Supreme Court's judgment in Geep Flashlight Industries Ltd. case is not a direct authority or straightaway ruling decorative laminated sheets out of Item 15A(2), CET.However, it is possible, in my view, to record a finding on the classification of decorative laminated sheets on other considerations and I propose to do so without further going in to the question of applicability or otherwise of the Supreme Court's judgment in the Geep Flashlight case to the facts of the present case.In Bakelite Hylam Limited, Hyderabad and Ors. v.Collector of Central Excise, Hyderabad and Ors. the goods were prepreg 'C', 'P' and 'G'. The issues which arose for consideration have been set out in para 15 of the Report and it may be seen therefrom that the question of classification of decorative laminated sheets did not come up before the Tribunal in that case. In Excise Appeal No. 1476/86-C with E/Cross/315/86-C - Collector of Central Excise, Hyderabad v.Bakelite Hylam and Ors. disposed of by Order No. 728/90-C dated 16.7.1990, the goods were layers of epoxy impregnated glass fabrics pressed together in the form of laminates. The Tribunal referred to its decision in Hylam Ltd. v. Collector of Central Excise, Hyderabad wherein it was held that rigid plastic laminated sheets ("Hylam") and Electrical grade plastic laminated sheets ("Hyglas") fell under Item 68 and not 15A(2). It was further noted

in Order No. 728/90-C that it was not a case of a plastic sheet impregnated with other artificial or synthetic resins but a case pf glass fabric (which is not made of resins but of mineral fibre yarn) impregnated with resin. Further, it was not a case of a single impregnated sheet but a composite article consisting of layers of epoxy impregnated glass fabric pressed together to form a laminate. The Tribunal held that such a composite article was more appropriately classifiable under Item 68 and not 15A(2).Bakelite Hylam Ltd., Hyderabad v.Collector of Central Excise, Hyderabad it may be seen that the goods involved were rigid plastic laminated sheets which were manufactured by Bakelite Hylam under the trade names 'Hylam' industrial laminates and 'Hyglas' electrical grade sheets in various thicknesses, sizes and colours. The appellants had claimed classification of the goods under the residuary heading Item 68, CET which was rejected by the lower authorities who classified them as articles of plastics under Item 15A(2), CET. From para 18 of the Report it may be seen that the goods were composite goods comprised of plastic material falling under Item 15A(1) and other materials such as glass, paper. The laminated sheets had electrical insulating properties. The appellants' contention was that the goods did not fall under Item 15A(2) because they were not wholly made of materials specified in Item 15A(1) and further they being insulators or insulating fittings, were excluded from the item by virtue of Explanation II(b) which excluded from the scope of Item 15A electrical insulators or electrical insulating fittings or parts of such insulators or insulating fittings. The Tribunal did not consider it necessary to go into the question of the applicability of the ratio of the Supreme Court's judgment in the Geep Flashlight case (supra) to the facts of the case before it for the reason that if the goods were insulators or insulating fittings, as contended by the appellants, they would be out of the scope of Item 15A by virtue of Explanation II(b).

On considering the material available from this angle, it was concluded that rigid plastic laminated sheets made out of electrically insulating material, namely, plastics, paper, glass, etc. could be said to be insulators, if not insulating fittings and, therefore, were out of the scope of Item 15A and fell under Item 68. This decision again, is not of direct relevance to the facts of the dispute in the present case.

94. I agree with Brother Shri Peeran that the classification of decorative laminated sheets is under. Item 68 and not 15A(2), CET. This is for the reason that the process of manufacture, as seen from the Assistant Collector's order, who has apparently recorded it on the basis of material furnished by Bakelite Hylam is that paper or cotton fabric or glass fabric is impregnated with artificial or synthetic resins and dried. A few of such dried sheets are pressed together under a hydraulic press and made into a laminated sheet. It is clear, therefore, that it is not a plastic sheet which is getting laminated.

For a laminated sheet to fall under Hem 15A(2), there must be basically a plastic sheet and the tariff entry provides for a plastic sheet whether laminated or not. Evidently, it is the plastic sheet which has to be laminated with some laminating material. In the present instance, the base, as noted above, is paper, cotton or glass fabric and resin is the laminating material. The end-product which is the result of compressing under pressure of several thin sheets of paper, glass fabric or cotton fabric laminated with resin, can by no stretch of imagination be equated to a plastic sheet which is impregnated with some laminating material. On the basis of this reasoning alone, I would hold that the goods in question did not fall under Item 15A(2), CET but under Item 68, CET.95. As regards Prepregs 'P', 'F' and 'G', I agree with the view taken by Brother Shri Bajpai. Intermediate products emerging in the course of manufacture of final products are liable to excise duty if they are goods which are capable of being bought and sold and if they fall within the purview of an entry in the tariff schedule. In the present instance, the certificates furnished by the General Electric Company of India Ltd., Karamchand Thapar & Brothers Ltd., Sardar Singh & Sons and ladala Industries (pages 190 to 194 of the paper book filed by Bakelite Hylam which has been referred to earlier) show that they are procuring prepregs from Bakelite Hylam. General Electric use prepregs for manufacturing 11 KV bushings for switchgears. Karamchand Thapar use them for manufacturing insulated spindlers for electrical insulation applications. Sardar Singh & Sons use them for manufacture of automotive electrical parts. Ladala Industries use them for manufacturing tubes and rods for electrical and mechanical applications. All the certificates clearly state that Bakelite Hylam manufactured prepregs decorative laminates and industrial laminates.

Therefore, in my respectful opinion, there is no room to have any doubt as to the correctness of the statements that they procured prepregs from Bakelite Hylam. There is no need for any other proof as to the marketability of prepregs.

96. The view that prepreg 'P' fell under Item 17(1) of the CET, as it stood at the material time, is reinforced by the Supreme Court's judgment in the case of Laminated Packings (P) Ltd. v. Collector of Central Excise Guntur (1990) 30 ECC 36 (SC) : 1990 (30) ECR 166 (SC) : ECR C 1664 SC. Para 4 of the judgment which, in my opinion, is relevant to the present case reads thus: 4. Lamination, indisputably by the well settled principles of excise law, amounts to "manufacture". This question, in our opinion, is settled by the decisions of this Court. Reference may be made to the decision of this Court in Empire Industries Ltd. and Ors. v. Union of India and Ors. . Reference may also be made toCollector of Central Excise, Kanpur v. Krishna Carbon Paper Co.

the opinion that by process of lamination of Kraft paper with polyethylene different goods come into being. Laminated kraft paper is distinct, separate and different goods known in the market as such from the kraft paper.

Support may also be had from the judgment of the Gujarat High Court in Atlas Laminate Industries v. Union of India S.C.A. 743/78 of 7.10.1989 report in (Gujarat) holding that bituminized waterproof kraft paper fell under the tariff entry 'paper, all sorts'.

The above view is further reinforced by the Supreme Court's judgment in Union of India, v. Babubhai 1991 (51) ECT 182 : 1991 (33) ECR 7 (SC) : ECR C 1698 SC.97. I agree with the reasoning of Brother Shri Bajpai that the inclusion clause in Item 17 has expanded the normal scope of the words "paper, all sorts". If the inclusion clause was not there, it could be a matter for debate whether paper which has been subjected to treatments such as coating, impregnation and lamination would fall under that entry. However, the inclusion clause lays down that the entry covers not only all sorts of paper, as the above expression is normally understood, but also paper which has been subjected to treatments such as coating, impregnation or lamination. Having regard to the words used in the inclusion clause, the question to be asked is whether the product under

consideration is paper which has been subjected to one or more of the aforesaid treatments. If the answer is yes, as it is in the present instance, then, the treated paper must, in my opinion, fall within the scope of Item 17 by virtue of the expanded coverage given to it by the inclusion clause. The same considerations would govern the classification of Prepreg 'F' and 'G' under Items 19(III) and 22F. (a) decorative laminated sheets, in the present case, under Item 68 of the erstwhile CET; and (b) prepregs 'P', 'F' and 'G' under Item Nos. 17(1), 19(III) and 22F of the Schedule.

In this view of the matter, I would dismiss the Collector's Appeals Nos. E/814/86-C and E/1462/86-C in so far as laminated sheets are concerned and allow them to so far as prepregs are concerned.

Consequently, I would dismiss Cross Objection No. 442/86-C filed by Bakelite Hylam. Excise Appeal No. 2505/86-C filed by Bakelite Hylam would also, as a consequence, be dismissedDt. 3.6.1991 Sd/- (G.Sankaran) 99. In the light of the majority opinion, it is held that decorative laminated sheets, in the present case fell under Item 68 of the erstwhile Central Excise Tariff Schedule and Prepregs 'P', 'F' and 'G' under Items 17(1), 19(III) and 22F of the Schedule. Accordingly, Collector's Appeals Nos. E/814/86-C and E/1462/86-C are dismissed in so far as laminated sheets are concerned and allowed in so fa1 as Prepregs are concerned. Cross Objection No. 442/86-C and E/Appeal No. 2505/86-C filed by Bakelite Hylam are also disposed of in the same terms.