

PETITIONER:
M/S. RELIANCE SILICON (I) PVT. LTD.

Vs.

RESPONDENT:
THE COLLECTOR, CENTRAL EXCISE, THANE

DATE OF JUDGMENT: 06/11/1996

BENCH:
S.P. BHARUCHA, S.B. MAJMUDAR

ACT:

HEADNOTE:

JUDGMENT:

W I T H

[Civil Appeal Nos.2162-70/88; 1942-53/88; 3657-72/90; 3284-85/90; 1507/84; 3105/88; 5929/90; 6263/95; 1768/90]

J U D G M E N T

S.B Majmudar, J.

This group of appeals arising from diverse orders passed by Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as 'CEGAT') can be conveniently classified into three categories of cases. Category (1) consists of Civil Appeals Nos.3105 (NM) of 1988; 1768 (NM) of 1990; 3284-85 (NM) of 1990 5929 (NM) of 1990; and 6263 (NM) of 1995 filed on behalf of Revenue by the Collectors of Central Excises concerned, wherein it is contended that preparations from silicone as manufactured by the respondent-manufacturers at the relevant time were covered by Central Excise Tariff Item 15A(1) and not by Tariff Item 15AA as contended by the respondent-manufacturers and as upheld by the Tribunal. Category (2) consists of Civil Appeals Nos.1942-53 of 1988; 2162-70 (NM) of 1988; and 3657-72 (NM) of 1990 moved by M/s Hico Products Ltd. being aggrieved by the diverse orders of the Tribunal which has taken the view that silicone oil manufactured by them and/or imported by them, as the case may be, was liable to be brought to tax under Central Excise Tariff Item 15A as applicable at the relevant time of manufacture or import, as the case may be, and not under residuary Tariff Item 68 as contended by them for the purpose of determining the appropriate excise duty payable by them and/or countervailing duty payable by them on these goods. Category (3) consists of Civil Appeal No.453 of 1986 moved by M/s Reliance Silicon (I) Pvt. Ltd. and Civil Appeal No.1507 of 1984 moved by M/s Hico Products Ltd. These two appellants are manufacturers of preparations out of silicone. The grievance of the appellant in Civil Appeal No.453 of 1986 is against the Tribunal's order holding that silicone preparations prepared by them are covered by Tariff Item 15A(1) and would not be covered by Tariff Item 68. The grievance of the appellant in Civil Appeal No.1507 of 1984 is of a similar nature, namely, that silicone preparations manufactured by the wrongly held exigible to Central Excise

duty under Tariff Item 15A(1) by the to Tribunal. As common questions arise for our consideration, these matters were heard together and are being disposed of by this common judgment.

Category (1)

For the sake of convenience we will first deal with the grievance voiced on behalf of the Revenue by the Collectors concerned in their appeals against the decisions of the Tribunal. It must be noted at the outset that five Member Bench of the Tribunal in its judgment in the case of Collectors of Central Excise, Bombay III v. Auxichem reported in 1988 (34) E.L.T. 637 has exhaustively gone into the entire factual data dealing with this controversy and has taken the view that silicone preparations are not silicone but only preparations containing silicone for use in textile processing and by their very nature these preparations are akin to surface active preparations, wetting agents, softeners and as such classifiable under Item 15AA of the Central Excise Tariff. As the question for consideration is of a highly technical nature depending for its answer on the chemical characteristics of the products on the anvil of scrutiny, the decisions rendered by the Tribunal which is an expert body on the subject cannot be lightly interfered with in appeals unless it is demonstrated that the findings reached and the conclusions arrived at by the Tribunal are such which no reasonable man well acquainted with the subject could arrive at or are otherwise erroneous in law or based on no evidence. Keeping in view these contours of enquiry in these statutory appeals we may now proceed to deal with the main contentions canvassed by learned counsel for the Revenue in support of its appeals. It was vehemently contended before us that the five member Bench of the Tribunal had erred in taking the view that silicone preparations were covered by Central Excise Tariff Item 15AA and not Tariff Item 15A(1) which held the field at the relevant time when the concerned goods were manufactured and when their exigibility to duty was to be considered. Tariff Item 15A(1) as applicable at the relevant time read as under:

"15A. Artificial or Synthetic resins and plastic materials; and other materials and articles specified below :

(1) Condensation polycondensation and Fifty poly-addition products, whether or percent not modified or Polymerised, and ad whether or not linear (for example, valorem pheno-plasts, amino plasts, alkyds, polyallyl esters and other unsaturated polyesters, silicones); polyethylene and co Polymerisation products (for example; polyethylene, polytetrahaloethylenes, polyethylene, polystyrene, polyvinyl chloride, polyvinyl acetate, polyvinyl chloroacetate and other polyvinyl derivatives, polyacrylic and polymethacrylic derivatives, coumaroneindene resins); regenerated cellulose; cellulose nitrate, cellulose acetate and other cellulose esters, cellulose ethers and other chemical

derivatives of cellulose, plasticised or not (for example, collodions, celluloid); vulcanised fibre; hardened proteins (for example, hardened casein and hardened gelatin); natural resins modified by fusion (run gums); artificial resins obtained by esterification of natural resins or of resinic acids (ester gums); chemical derivatives of natural rubber (for example, chlorinated rubber, rubber hydrochloride, oxidised rubber, cyclised rubber); other high polymers, artificial resins and artificial plastic materials, including alginic acid, its salts and esters; linocyn."

Relevant Explanations to this Tariff Item read as under:

"Explanation II; In sub-item (1), "Condensation, polycondensation, polyaddition, polymerisation and co- polymerisation products" are to be taken to apply only to goods of a kind produced by chemical synthesis answering to one of the following descriptions :-

- (a) artificial plastics, including artificial resins;
- (b) silicones;
- (c) resins liquid polyisobutylene, and similar artificial polycondensation or polymerisation products.

Explanation III: Sub-item (1) is to be taken to apply to materials in the following forms only:-

- (a) liquid or pasty (including emulsions, dispersions and solutions);
- (b) block, lumps, powders (including moulding powders), granules, flakes and similar bulk forms;
- (c) waste and scrap "

Tariff Item 15AA on the other hand reads as under :

"15AA. Organic surface-active agents Twenty (other than soap); surface-active percent preparations and washing preparation, ad whether or not containing soap. valorem

A mere look at the Tariff Item 15A shows that if the commodity manufactured is artificial or synthetic resin or any plastic material it would be covered by the sweep of this Item. But the Item goes further and refers to other materials and articles specified therein. It is of course, true that Item 15A(l) refers to condensation, polycondensation and poly-addition products whether or not modified or polymerised and also refers to esters and other unsaturated polyesters, silicones. The products prepared out of silicones by mixing them with other diluting agents like water etc. are not within the sweep of the said Item. On the other hand if such imported silicone oil is diluted and mixed with water so that the mixture can be utilised as organic surface agent or as surface-active preparations and

washing preparations it would be Tariff Item 15AA which would squarely get attracted. It has, been held by the Tribunal in the judgment under appeal that silicone oil which was imported by the manufacturers was mixed with water and other diluting agents and such silicone preparations prepared by utilising imported silicone oil on which admittedly countervailing duty was paid under Tariff Item 15A(1) itself could not be considered to have remained silicone itself but would be treated to be products almost akin to surface-active preparations, wetting agents, softeners and, therefore liable to be classified under Item 15AA. It has to be kept in view that the silicone oil which was imported by the concerned manufacturers was subsequently diluted and mixed and used in the manufacture of their products, namely silicone softeners 662 and silicone AU 331 etc. They manufactured no goods by the process, condensation and polycondensation etc. Such silicone preparations out of imported silicone oil which underwent process of dilution could not be treated to have remained silicone itself so as to attract Tariff Item 15A(1). The Tribunal was, therefore, justified in placing the diluted silicone oil and other preparations from silicone as classifiable under Tariff Item 15AA. The amendment brought about in 1982 by amending Tariff Item 15A(1), in our view, would not make any difference in favour of the Revenue for the simple reason that before the amended Item 15A(1) as reproduced hereinabove would apply it should be shown that by the process of manufacture undertaken by the concerned respondent-assessees any process of condensation, polycondensation and poly-addition was resorted to qua the concerned silicones. The Tribunal has noted as a matter of fact that the imported silicone oil which had borne the countervailing duty under Tariff Item 15A(1) had not undergone such process of condensation, polycondensation and poly-addition but had only got diluted by addition of water and other dilutants so as to make it a surface active agent. Therefore such a diluted product as manufactured by the concerned respondents cannot be brought to tax under Tariff Item 15A(1) but would if at all be assessed to excise duty only under Tariff Item 15AA as rightly held by the Tribunal. We have carefully gone through the judgment of the five Member Bench of the Tribunal impugned in these appeals by the Revenue. In para (g) of the judgment under appeal the Tribunal has observed at under :

"9. The only silicones that are assessable under Item 15A are the synthetic polymers, the first stage when the silicone product, or if I may call it the undiluted, unmixed silicone polymer is produced by synthesis. Generally speaking the states in which silicone appears are fluids, resins and elastomers. From these three so-called primary silicones a number of derived products like sealants, ring washers, adhesives, surface active preparation, encapsulation cement etc. are obtained. Many of these preparations are in emulsions. All these preparations have other materials, additives, emulsifiers etc. added to aid and help in the use of the preparations in the desired industry application."

We do not find any error of law or any perversity in

the reasoning adopted by the Tribunal on the facts of these cases. On the contrary in our view the decision of the Tribunal is well sustained on the evidence on record and calls for no interference in these appeals moved by the Revenue.

Category (2)

That takes us to the consideration of appeals by the assessee comprised in Category (2). So far as these appeals are concerned the main grievance was voiced by learned counsel for the appellant in Civil Appeal Nos.1942-53 of 1988. The learned counsel submitted that silicone oil imported by the appellant at the relevant time was governed for the purpose of customs duty and countervailing duty not by Tariff Item 15A(1) but by the residuary Item 68 and accordingly it would be covered by Chapter 38 of the Customs Tariff of India 1985-86 which held the field at the relevant time and would be out of Chapter 39 thereof. So far as this contention is concerned a close look at Tariff Item 15A(1) of the Central Excise Tariff which would be relevant for deciding the countervailing duty liability of the appellant-importer would be apposite. It is true as contended by learned counsel for the appellants that the Head Note of Tariff Item 15A talks of artificial or synthetic resins and plastic materials. However it also does talk of other materials and articles specified in the said Item. Therefore, it is not possible to agree with the contention of learned counsel for the appellant-importer that other articles and materials must necessarily partake the character of artificial or synthetic resins or must be resins of any other type, as that contention would make the wide phraseology employed in the very same Item in its second part concerning other materials and articles specified in the said Item otiose and would denude these words of their real meaning and content. Tariff Item 15A(1) as noted earlier covers condensation, polycondensation and poly-addition products whether or not modified or polymerised and also covers esters and other unsaturated polyesters silicones. A bare reading of the aforesaid wordings in Item 15A(1) of the Central Excise Tariff may prima facie suggest that only silicone items not in fluid state may get covered by the sweep of the said Item. However, no doubt in connection with the sweep of the said Item remains once we turn to Explanations II and III as engrafted in the very same Tariff Item 15A(1). To recapitulate Explanation II reads that in sub-item (1) condensation, polycondensation or poly-addition, polymerisation and co-polymerisation products are to be taken to apply only to goods of a kind produced by chemical synthesis answering to one of the descriptions enumerated therein which include silicones. Therefore, any condensation and polycondensation or poly-addition in connection with the silicones would bring the article within the sweep of Tariff Item 15A(1). If any doubt remains in connection with the physical appearance of such products containing silicone it is set at rest by Explanation III which lays down that sub-item (1) of Item 15A is to apply to materials even in the liquid or pasty forms. Consequently silicone liquid also would be covered by Tariff Item 15(1) once it has undergone condensation, polycondensation or poly-addition. Learned counsel for the appellant fairly stated that it is not his case that silicone liquid which the appellant had imported had not undergone a process of chemical synthesis by way of condensation, polycondensation, poly-addition etc. but his submission is that in the historical background of amended Item 15A(1) it should be held that the said Item along with

its Explanations only covered those types of silicone products which resemble resins. In order to support this contention he invited our attention to Chapter 39 of Customs Tariff of India 1985-86 and submitted that Heading 39.01/06 covered only resins and not liquids like silicone oil imported by the appellant. The said Heading reads as under :

Heading No.	Sub-heading No. and description of article	Standard Rate of duty	Central Excise Tariff Item
(1)	(2)	(3)	(4)
39.01/06	Condensation, polycondensation and polyaddition products, whether or not modified or polymerised, and whether or not linear (for example, phenoplasts, aminoplasts, alkyds, polyallyl esters and other unsaturated polyesters, silicones); polymerisation and copolymerisation products (for example, polyethylenes, polytetrahaloethylenes, polyisobutylene, polystyrenes, polyvinyl chloride, polyvinyl acetate, polyvinyl chloroacetate and other polyvinyl derivatives, polyacrylic and polymethacrylic derivatives, coumaroneindene resins); regenerated cellulose; cellulose nitrate cellulose acetate and other cellulose esters, cellulose ethers and other chemical derivatives of cellulose, plasticised or not (for example, collodions; celluloid); vulcanised fibre, hardened proteins for example, hardened casein and hardened gelatin); natural resins modified by fusion (run gums) artificial resins obtained by esterification of natural resins or of resinic acids (ester gums); chemical derivatives of natural rubber (for example, chlorinated rubber, rubber hydrochloride, oxidised rubber, cyclised rubber); other high polymers artificial resins and artificial plastic materials, including alginic acid, its salts and esters; linexyn.	200%	15A. 15B, 16B.

We cannot appreciate how the said Heading would not cover silicone oil. Silicone which has undergone process of condensation, polycondensation and poly-addition is expressly covered by the said Heading. It cannot, therefore, be said that the residuary Heading found in Chapter 38 of the said Customs Tariff which deals with miscellaneous chemical products not elsewhere specified as indicated in Heading No 38 01/19 could be effectively pressed in service

by the appellant. So far as the claim of exigibility to countervailing duty is concerned, as we have shown earlier Central Excise Tariff Item 15A(1) read with Explanations II and III clearly shows that silicone oil imported by the appellant which has undergone the process of condensation, polycondensation and poly-addition would squarely get covered by the sweep of the said Tariff Item 15A(1). The view taken by the Tribunal in this connection cannot be found fault with. Learned counsel for the appellant strongly relied upon a decision of the Tribunal in the case of Tamil Nadu Electricity Board, Madras v. Collector of Customs, Madras 1983 (12) E.L.T. 174. The said decision was rendered in connection with resins classified under Chapter 39 of the Customs Tariff. It was held that if the copolymer resin had a special ability to cause exchange of ions, it could not be regarded as merely artificial resin but as a class of products which had been given characteristics that made their use appropriate only in a particular respect and for a particular purpose, namely ion exchange, rather than as a general purpose resin. On the peculiar facts of the case before the Tribunal it was held that the products concerned could be treated as water treatment chemicals and not as artificial resins so as to attract Chapter 39 of the Customs Tariff. We fail to appreciate how the said decision can be of any avail to the appellant on the facts of the present case. Learned counsel for the appellant next contended that the earlier Tariff Item 15A of the Central Excise Tariff which was earlier pressed in service by the appellants and which contention was accepted by the Revenue was almost identical with the amended Item 15A(1) save and except addition of some further items but for applicability of item 15A(1) it had to be shown that the concerned produce was artificial or synthetic resin or an article made up therefrom. It is not possible to agree. The whole Tariff Item 15A(1) underwent a sea change when it was amended in 1992 and came on the Statute Book. The Explanations II and III to this amended Item were not existing on the Statute Book when earlier Tariff Item 15A(1) held the field. Consequently it cannot be said that the amended Item 15A was almost *pari materia* with the earlier Item 15A as contended by learned counsel for the appellant. It has to be kept in view that for deciding the liability to tax the clear wordings of the Item have to be considered and given effect to when on the express words of the Item the concerned products get squarely covered by the same reference to the past history of the said Item as might have existed in a different form prior to its amendment would lose all its significance and would remain a past event only and cannot be validly pressed in service for deciding the taxability of the product which is covered by the sweep of the amended Item. Learned counsel for the appellant then submitted that artificial resins and plastic materials are the only items which are in the sweep of amended Item 15A(1). We have already shown that the sweep of the Item is more comprehensive and covers materials other than artificial resins and plastic materials. It was lastly contended that a Tariff Advice was issued in 1984 by the Additional Collector of Central Excise, Thane which showed that even after amendment of Tariff Item 15A of the Central Excise Tariff Polyethylene Glycol continued to be classifiable under Item No.68 and not under Item 15A(1). The said Tariff Advice is at page 118 of the Paper Book in Civil Appeal Nos.1942-53 of 1988. We fail to appreciate how this Tariff Advice can advance the case of the appellant any further. Polyethylene Glycol might have been treated to have continued to be

classified under Tariff Item 68 despite amendment of Tariff Item 15A. We are not concerned with such a product. The short question with which we are concerned is whether silicone oil imported by the appellant is covered for the purpose of deciding the countervailing duty payable thereon by Central Excise Tariff Item 15A(1) or not. So far as that question is concerned as the product was imported after the amendment of Tariff Item 15A it is the amended Item which will govern the same. As we have discussed earlier the wide sweep of the said Item especially in the light of the two Explanations engrafted therein, would clearly cover the article in question. Consequently, no fault could be found with the view of the Tribunal that the fluid silicone oil imported by the appellant was a silicone polymer and, therefore, liable to be covered for the purpose of customs duty under Customs Tariff Chapter 39 and also assessable to countervailing duty as per Central Excise Tariff Item 15A(1).

Category (3)

That takes us to the consideration of two appeals comprised in Category (3). So far as the Civil Appeal No.453 of 1986 moved by M/s Reliance Silicon (I) Pvt. Ltd. is concerned, the commodities manufactured by them which are in dispute before us are silicone oil and also other silicone preparations like emulsions. In view of our discussion while disposing of Civil Appeals comprised in Categories (1) and (2) it must be held that silicone oil manufactured by them would squarely be covered by Tariff Item 15A(1) while so far as silicone emulsion and other silicone preparations are concerned as they are made by using silicone oil or other components of silicone they would not be covered by Tariff Item 15A(1) but would be covered by Tariff Item 15AA. But in no case they would be covered by Tariff Item 68 which is a residuary Item. The judgment and order of the Tribunal as challenged by the said appellants will stand modified accordingly by holding that silicone oil simpliciter manufactured by the appellants would be liable to be taxed under Tariff Item 15A(1) while silicone oil emulsions and other preparations containing silicone manufactured by the appellant will be covered by Tariff Item 15AA and in either case residuary Tariff Item 68 would not apply. The respondent authorities are directed to reframe relevant assessments accordingly and recompute the excise payable by the appellant for the relevant period. So far as Civil Appeal No.1507 of 1984 is concerned the disputed item manufactured by the appellant consists of silicone emulsion manufactured from silicone oil. In view of our discussion in connection with cases falling in Categories (1) and (2) and also in the light of our aforesaid findings in appeal of M/s Reliance Silicon (I) Pvt, Ltd. it must be held that the product of silicone emulsion manufactured by the appellant is liable to be taxed under Tariff Item 15AA and not under Tariff Item 15A(1). The judgment and order rendered by the CEGAT dated 2nd December 1983 confirming the order of the Collector of Central Excise (Appeals) dated 11th March 1983 and the order of the Assistant Collector of Central Excise dated 13th July 1982 will be liable to be set aside. The respondent authorities are directed to re-assess the duty liability of the appellant under Tariff Item 15AA for the relevant period.

In the result all the appeals comprised in Categories in Categories (1) and (2) are liable to fail and are dismissed while Civil Appeal No.453 of 1986 comprised in Category (3) is partly allowed as aforesaid. In this case as detention order dated 31st January 1986 was based on the

order of the Tribunal which is partly set aside by us the respondent is directed to re-issue appropriate detention order, it found necessary, in the light of recomputation of excise duty liability during the relevant period as held hereinabove by us. So far as Civil Appeal No.1507 of 1984 is concerned the same is allowed as aforesaid. There will be no order as to costs in all these appeals.

JUDIS