

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 52337 of 2014

[Arising out of Order-in-Original No. CHD-CEX-001-COM-46-50-2013 dated 03.01.2014 passed by the Commissioner of Central Excise, Chandigarh]

M/s G N Laminates

Village Kalu Jhinda, Kalrawali,
PO Mandhala, Teh. Baddi, Solan,
Himachal Pradesh-173205

.....Appellant

VERSUS

**Commissioner of Central Goods
and Service Tax, Shimla**

Ground & First Floor, Commercial Parking
Complex, Chotta Shimla-171002

.....Respondent

APPEARANCE:

Shri Ajay Jain, Advocate for the Appellant

Shri Narinder Singh, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.60472/2025

DATE OF HEARING: 27.03.2025

DATE OF DECISION: 27.03.2025

S. S. GARG:

The present appeal is directed against the impugned order dated 03.01.2014 passed by the Commissioner of Central Excise & Service Tax, Chandigarh whereby the Commissioner has confirmed the demand of Rs.67,73,814/- towards central excise duty along with equal penalty under Section 11AC.

2. Briefly the facts of the present case are that the appellant set up a unit for manufacturing of Paper Base Decorative Laminates falling under Heading 48-23. The appellant opted for area based exemption Notification 50/2003-CE dated 10-06-2003 which provides exemption to all goods except those specified in Annexure-1 ('Negative List'). In terms of the aforesaid notification, the appellant filed the Declaration on 27-08-2007 with their jurisdictional Assistant Commissioner duly containing the details of finished goods as well as raw materials including Melamine & Formaldehyde & phenol etc. The mixture of said material is used as glue/adhesive in the manufacture of aforesaid laminated sheets. The jurisdictional authorities after thorough scrutiny and verification of the unit as well as declaration, allowed to avail the benefit under the aforesaid notification. Then suddenly, after a period of almost 4 years, the department raised an objection that the mixture of Melamine & Formaldehyde, and Phenol & Formaldehyde which are used captively for the manufacture of Laminates falls under Chapter 3909 which is specified in the Annexure of Negative list at S.No. 20 of the Notification No. 50/2003-CE, therefore, the same is not entitled for exemption and accordingly demanded the duty on the same by invoking the extended period of limitation and confirmed the demand.

3. Heard both sides and perused the material on record.

4. Learned Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without

properly appreciating the facts, the law and the binding judicial precedents. He further submits that the Department raised the issue and confirmed the demands against the whole of Industry who set up the units for the manufacture of Laminates located in the state of Himachal Pradesh & Uttaranchal availing the exemption under Notification 50/2003-CE. He further submits that the impugned order is in violation of the principles of natural justice as the adjudicating authority failed to follow the principles of natural justice by not allowing the cross-examination of witnesses whose statements have been referred and relied upon in the show cause notice. He further submits that the impugned order has been passed in violation of CBEC Circular No.464/30/99-CX dated 30.06.1999. He also submits that the impugned order is contrary to the law laid down by the Hon'ble Supreme Court in the case of Moti Laminates (P) Ltd V/s CCE reported as 1995 (76) ELT 241 (SC). -2013 (291) ELT 91. He also submits that otherwise also the mixture of Melamine and Formaldehyde which is in liquid form, by no stretch of imagination can be treated to be either 'Plastic' or 'article of plastics'.

5. Learned Counsel also submits that the mixture of Melamine and Formaldehyde is not complete product rather the same remains as incomplete / semi-finished product especially when the same does not contain any additives / retarder such as Hydrochloric Acid (HCL), DEG, Caprolactam, Sulphonic Acid / other hardeners. He also submits that the mixture of Melamine & Formaldehyde is undertaken

as per the requirement for use in manufacture of laminates. No chemical preservatives/ retarder is added. He further submits that the addition of additives/ retarders adds to the cost of the product and is not economically viable and the same is not marketable. He also submits that no market enquiry was conducted with reference to the goods in question to establish as to whether the mixture is capable of being bought and sold and merely because the shelf life of the product is 5-7 days does not mean that the same is marketable and normally all the manufacturers of laminated sheets are undertaking the solution of their own/in-house. He further submits that the marketability is an essential ingredient and criterion to hold that a product is dutiable/ excisable and that the onus is upon the Revenue to prove that the product is marketable or capable of being marketed as held in the following cases:

- 989(40)ELT 280(SC), -2008(225)ELT 403(SC), 1989(43)ELT 214,
- 1986(24)ELT 169 (SC), 1978(2)ELT J336(SC), 2007(208)ELT 408

6. Learned Counsel also submits that the Negative items in Notification No. 50/2003-CE does not specifically contain the products melamine formaldehyde resin rather contains the items as 'Plastics and articles thereof. He further submits that major part of demand is hit by the bar of limitation specially when the fact of use of Melamine and Formaldehyde was already in the knowledge of the department on 27-08-2007 and the allegation of suppression with intent to evade payment of duty cannot be alleged against the

appellant as the issue involved is purely technical in nature. He further submits that the issue has been settled that the mixture of Melamine and Formaldehyde used as glue/ adhesive in the manufacture of laminates is held to be classifiable under Chapter Heading 35-06 by the Chandigarh Bench of the Tribunal as well as Principal Bench at New Delhi in the following cases:

- Final Order No. 60367/2024 dated 26-06-2024 in the case of Samrat Plywood Ltd v/s CCE, Shimla)
- 2020(371) ELT 781 (Tri. Chan.) (Virgo Industries v/s CCE).
- 2018(359)ELT 513 (Tri-Del.) (Shirdi Industries Ltd v/s CCE).
- Final order No. 62026/2017 dated 24-07-2017 (Greenlam Inds. v/s CCE)
- 2016(332)ELT 367 (Tri-Del.) (Balaji Action Buildwell v/s CCE).

7. After considering the submissions of both the parties and perusal of the material on record, we find that this issue is no more res integra and has been considered by the Tribunal in various decisions, including the decision of this Tribunal in the case of Samrat Plywood Ltd. Vs CCE, Shimla vide Final Order No.60367/2024 dated 26.06.2024 wherein the Tribunal considered the identical issue and after considering the various decisions of the Tribunal has finally come to the conclusion that the mixture of the aforesaid items is classifiable under the Chapter Heading 35-06 and not under Chapter Heading 35-09. Here it is pertinent to reproduce the said findings which are reproduced herein below:

8. After considering the submissions, we find that the appellant were manufacturing paper based decorative laminates and opted for area based exemption under Notification No. 50/03-CE dated 10.06.2006 giving details of finished goods as well as raw material including Melamine Formaldehyde Resin (MFR) and Cardanol Phenolic Formaldehyde etc and the jurisdictional authorities after thorough scrutiny and verification of the unit as well as the declaration allowed the exemption. After the expiry of four years, the department raised the objection that the mixture of Melamine Formaldehyde Resin and Cardanol Phenolic Formaldehyde which are used captively for manufacture of laminates falls under Chapter 3909 which is specified in the Annexure of Negative List at S.No. 20 of the Notification No. 50/2003-CE and hence the appellant is not entitled for exemption and accordingly issued the show cause notice and confirmed the demand by invoking the extended period of limitation.

9. Further, we find that the only issue involved in the present case is as to whether the mixture of Melamine Formaldehyde Resin and Cardanol Phenolic Formaldehyde used as Adhesive/Glue/Resin for the manufacture of final product, namely, laminates are classifiable under Chapter 35-06 as claimed by the appellant or under Chapter 39-09 as alleged by the Department. Further, we find that this issue has been examined and considered in various decisions relied upon by the appellant cited (Supra) wherein the identical issue was involved and the Tribunal has held that the mixture of aforesaid items used as Glue/Resin/Adhesive in the manufacture of laminates are classifiable under chapter heading 35-06. In this regard, it is pertinent to mention the decisions in the case of Virgo Industries Vs. Commissioner of Central Excise, Chandigarh reported in 2020 (371) E.L.T. 781 (Tri.-Chan.) wherein the identical issue was involved and the Tribunal after considering the submissions of both the parties has held as under:

6. On hearing both the sides, we find that of Controversy is that whether the resins captively consumed by the appellants namely Phenol Formaldehyde (PF), Urea Formaldehyde (UF), Melamine Formaldehyde (MF) used to manufacture plain and pre-laminated particle boards or laminates are classifiable under Tariff Heading 3909 or 3506 of the Central Excise Tariff Act or not?

7. As it has been clarified by Ministry of Chemicals & Fertilizers, the Ad resins do qualify under Tariff Heading 3506 of the Central Excise Tariff Act; therefore, we hold that the resins in question, which are captively manufactured by the appellants having merit classification under Tariff Heading 3506. The items classified under Tariff Heading 3506 are entitled for benefit of exemption Notification No. 50/2003-C.E., dated 10-6-2003; therefore, we hold that the appellants are entitled to exemption under Notification No. 50/2003-C.E., dated 10-6-2003 for the items in question which have been captively consumed by the appellants to manufacture laminates, plywood, boards etc. Therefore, no duty is payable by the appellants.

8. In view of the above, we do not find any merit in the impugned orders, the same are set aside.

10. Further, we find that the Delhi Tribunal in the case of Shirdi Industries Ltd. Vs. Commissioner of C.Ex. Meerut reported in 2018 (359) E.L.T. 513 (Tri.-Del.) wherein the same issue was involved and the Tribunal relied upon the earlier decisions in the case of Shirdi Industries vide Final Order No. 70520/2017 dated 19.05.2017 CESTAT, Allahabad and held as under :

4. We have heard both the sides and perused the appeal record. We note that the Tribunal, Allahabad Bench have dealt with the very same issue for the earlier period in the appellant's own case. Vide the Final Order dated 19-5-2017, the Tribunal recorded the following findings :-

10. Having considered the rival contentions and on perusal of the records, we find that the impugned order is vitiated on the issue of marketability. The learned Commissioner has relied on unsubstantiated Data from the website, which is also vague in its nature. There is no evidence brought on record that the products and the Companies/Manufacturers listed by the learned Commissioner for reliance in the impugned order, are same or similar to the product manufactured by the appellant in respect of quality and specifications. The learned Commissioner has erred in observing that the characteristics of the product of the appellant are same with that of the various manufacturers from the website without any evidence. Similarly, referring to the manufacturer M/s. Akolite Synthetic Resins, Mangalore, the learned Commissioner have erred in observing that in view of this license granted to them by BIS who are

manufacturers and sellers of various resins in the market. Accordingly, the resins manufactured by the appellant are also marketable. We also find that the learned Commissioner have erred in observing that as similar goods have been advertised on the web- site by various manufacturers, then market must exist there. As the goods have been advertised then they are capable of being bought and sold. We find that learned Commissioner have erred in holding that the appellant's goods are also capable of being bought and sold without any chemical composition comparison along with competitive shelf life study. Further, reliance placed by the learned Commissioner on the Ruling of *GM Laminates Pot. Lid. v. CCE* reported in 1996 (87) E.L.T. 197, wherein this Tribunal had observed we also find that under the new Central Excise Tariff, the product can merit classification under sub-heading 3909, in view of note 3(e) of Chapter 39. Once it is established that paper is quoted with certain resins which have the essential characteristics of meriting classification under Chapter 39 and which according to Note-1 of Chapter 39 are to be called plastics. We find that learned Commissioner erred in relying on the said ruling in absence of comparison of chemical composition. We further find that the learned Commissioner have erred in ignoring the clarification given by the Government of India in OM No. 56016/41/2012/PC-II, dated 1st June, 2012, issued by the Ministry of Chemicals and Fertilizers as noticed hereinabove. We further observe that the said clarificatory circular is binding on the officers of the Government, including the respondent Commissioner. We further find that admittedly wax is used by the appellant in manufacturing of glue, which is clear from the chart reproduced at para 5.1 of the SCN and para 5 of the impugned Order-in-Original. Admittedly, such glue is based on PF, UF and MF. Thus, in view of the aforesaid admitted facts, as per HSN explanatory notes to Chapter 39, glue manufactured by appellant for use as adhesive is outside the preview of Chapter 39. Admittedly, the glue in question is curried glue to which hardener and other substances are added and therefore, glue manufactured by the appellant is not covered by clause 1 to note 6 of Chapter 39, such glue being not in the form of block, lump or powder. We further find that the preceding decision of this Tribunal in the case of *Balaji Action Viltwell v. CCE, Merrut* reported in 2016 (332) ELT. 367 (Tri-Delhi) is squarely applicable in the facts of the present case. Similar issue

was considered by this Tribunal and after considering the scope of heading 3909 with Chapter Note 6 to Chapter 39 and HSN, it has been held that glue is not in primary form and therefore not classifiable under Heading 39.09. We further find that the assessee in Balaji Action Vilwell (supra) was also manufacturing the same final product as that of the appellant, hence the manufacturing process and the product considered in the said case is identical to that of the appellant. We also find that in the said case, Department had relied upon the information obtained from website of one Akolite Synthetic Resins, Mangalore, and some other manufacturers. This Tribunal observed that the process undertaken by such manufacturers have not been examined and therefore the correctness of comparison cannot be upheld. Accordingly, we find that the impugned order is bad and fit to be set aside".

5. Following the above decision of the Coordinate Bench in the appellant's own case, we set aside the impugned order and allow the appeal. The miscellaneous applications connected to this appeal are also disposed of.

11. Further, in the case of Greenlam Industries Vs. CCE & S.T. Chandigarh I in appeal No. E/52016/2014 vide Final Order No. 62026/2017 dated 24.07.2017 considered the identical issue and relied upon the ratio in the case of Shirdi Industries Ltd. Vs. Commissioner of C.Ex. Meerut and by following the judgments of the Coordinate Bench held that the main goods are outside the purview of Chapter 39. Further, in the case of Balaji Action Buildwell Vs. Commissioner of C.Ex. Meerut-II reported in 2016 (332) E.L.T. 367 (Tri.-Del.), the Tribunal has observed as under:

"14. On examining scope of CETH 3909 read with Chapter Note 6 and HSN explanation the product in dispute being not in Primary Form of such nature mentioned therein (requiring curing, etc.) is not to be classified under such heading. The exclusion note made in HSN adds support to the same. The Revenue's assertion that addition of hardening agent does not take away the basic property of the product being a resin is not sustainable in the present dispute. Addition of NH,CL. as hardening agent in the reactor/kettle before the resultant product is sent to glue kitchen for use in binding purpose has relevance to decide the issue. Prepared glue as it emerges is put into use in the binding section along with other inputs like wax, NH,CL

and water for final binding. Chapter 35 covers glues. CETH covers "Prepared glues and other prepared adhesives, not elsewhere specified or included. CETH Item No. 3506 99 91 covers synthetic glue with phenol urea or cresol (with formaldehyde) as the main component - Prepared glues and other prepared adhesives.

15. Based on the above criteria for classification, we find that the appellant had made out strong case for classifying the product "as prepared glue". This is based on the which is the processes adopted and emerging product from the reactors/kettles, sent directly to kitchen nor direct use in bonding of final product along with inputs.

16. The reliance placed by the Revenue on the test reports has been strongly contested by the appellants on various grounds. The test report was given to them after almost 3 months which deprived the chance for them to go for re-test Further, the methodology followed by testing is not as per IS Standards relevant for synthetic resin additives. The test report of IPIRTI did not mention the pH value which is very relevant to arrive at the correct report. The appellant produced copies of different test reports done in 2011 as well as 2012 by the same Institute where pH values were indicated whereas in respect of their samples, no pH value has been indicated. They have also contested the findings in the test as they were not allowed cross-examination by the Original Authority The denial was on the reason that the test report is a document and it is not required to be accepted only after cross-examination. The appellant's plea, that in such circumstances, the reliance placed on the test report is not legally tenable. merits consideration. We are in agreement on such plea on the reasons cited above.

17. Regarding purchase of resin reactor from Alex Engineering Works, it is seen that Revenue placed reliance on purchase order which mentioned the product as "MF Resin Reactor". The appellants have contended that there are various types of equipments and machineries available for use in their type of industry. The suppliers of machinery made visits and had detailed discussions. thereafter the decision was to supply equipments of description appearing in their invoices of March, April, August and September, 2009. The details of description in these invoices were also relied upon in the show cause notice and it is apparent

that the description of equipments supplied by Alex Engineering Works were different in name and nomenclature from the purchase order. We find that the support cannot be drawn by the Revenue on the basis of description in the purchase order when the supply invoices indicate the nature of goods supplied.

18. We find that the appellant have been consistently taking the plea that they are engaged in the manufacture of Prepared Glue containing Ammonium Chloride/Formic Acid, etc., in the Kettle installed in Shed-B and the glue prepared is transferred to other Sheds-C, D and E where it is used for bonding of their final products. Preparation of glue in Shed-B is a one stage process. They have also contended that the show cause notice itself admits that addition of hardener to the resin reduces the shelf life and brings into existence the glue with reduced shelf life. It is also admitted that use of hardener brings the quick bonding properties to serve as a glue.

19. As stated earlier before comparing the impugned product with the product of other manufacturers and also before applying case laws to the present facts, it is necessary that Original Authority should have examined the processes undertaken and the comparability of the goods in chemical nature. No such analysis or finding to that effect is available in the impugned order. The appellant have categorically submitted that the impugned goods are prepared for specific need and requirement of bonding of wood fibers/wood particles/coating of papers during the manufacture of final product like MDF Board, Particle Board, etc. The fact is that the preparation of impugned goods is in one stage process under controlled temperature and pH and addition of Ammonium Gloride Formic Acid in the processes, the enderging product being transferred to glue kitchen area for final use in bonding. We find that the classification of the product as primary resin is not sustainable. This is supported by Note-6 of Chapter 39 and HSN Explanation of such note. As such denial of exemption is not sustainable. Considering the above discussion and finding, we allow the appeal by setting aside the impugned relief.

12. Further, We find that the Department has accepted the classification of the main items under Chapter 3506 as no appeal against any of the four judgments cited (Supra) has been filed by the Department before any Higher Court which means that

the issue has attained finality. Further, we note that in the instant case, identical question arises for consideration as was involved in the above decisions cited (Supra). We cannot permit the Revenue to take a different stand in this case. Once, the Department has accepted the classification of the main item under Chapter 3506 and no appeal has been filed against the aforesaid judgments before any higher Court. In this regard, we may refer to the decision of the Hon'ble Apex court in the case of Birla Corporation Limitation Vs. Commissioner of Central Excise, reported in 2005 (186) E.L.T. 266 (S.C.) wherein the Hon'ble Apex Court has observed in para 5 as under :

"5. In the instant case the same question arises for consideration and the facts are almost identical. We cannot permit the Revenue to take a different stand in this case. The earlier appeal involving identical issue was not pressed and was therefore, dismissed. The respondent having taken a conscious decision to accept the principles laid down in Pepsico India Holdings Ltd. (supra) cannot be permitted to take the opposite stand in this case. If we were to permit them to do so, the law will be in a state of confusion and will place the authorities as well as the assesseees in a quandary."

13. Further, we find that the impugned order is contrary to CBEC Circular No. 464/30/99-CX., dated 30-6-1999 and the said circular is reproduced herein below:

"This is with reference to manufacture of particle boards (plain and prelaminated) made from sugar cane bagasse and other agricultural wastes. During the process of manufacture specially developed binders and mixed with the agricultural residues like dried sugar cane bagasse. These binder/resin/glues are specifically developed and made by the industry only for captive consumption and not for external sale. These binders have a very short self life of a few hours only and can neither be bottled nor transported nor stored for long.

2. A doubt has been raised regarding excisability of such binder/resin/glues.

3. In this context your attention is drawn to the Supreme Court judgment in the case of Moti Laminates Pvt. Ltd. v. Collector of Central Excise, Ahmedabad (1995 (76) ELT 241 (SC)) wherein it was held that intermediate goods produced and used for captive

consumption were not liable to duty, if not marketable, notwithstanding the fact of their being specified in Tariff Schedule. 4. The matter has been examined. In view of the above judgment it appears that these intermediate products viz, binder/resin/glues which are captively consumed, are not chargeable to excise duty, owing to their short shelf life provided that they are not marketed or sold commercially as such.

5. All pending disputes/assessments on the issue may be settled in the light of these guidelines.

6. Field formations and Trade may suitably be informed

7. Receipt of this Circular may please be acknowledged.

8. Hindi version will follow.”

14. We also find that the impugned order is bad in law being violative of the principle of natural justice as the same has been passed on the basis of preliminary hearing wherein the Ld. Counsel for the appellant has requested the Department to provide them the copy of test report and also allowed them to cross examine the witnesses whose statements have been relied upon in the show cause notices but the same was not done and even the copy of the test report was not given to the appellant and was produced before the Bench only at the time of arguments by the Department.

15. Further, we find that no market inquiry was conducted with reference to the goods in question in order to establish as to whether the mixture is capable of being bought and sold. Further, we find that Revenue has not been able to establish in the case that the appellant has been either purchasing or selling the main items in the market. The Marketability of the product is an essential ingredients and criteria to hold that a product is dutiable/excisable and thus onus is on the Revenue to prove that the product is marketable or captatively being consumed. In this regard, we may refer to the decisions of the Supreme court in the case of Moti Laminates Pvt. Ltd. Vs. Collector of Central Ex. Ahmedabad reported in 1995 (76) E.L.T. 241 (S.C.) wherein the Hon'ble Apex Court in para 7 has held as under :

“7. The duty of excise being on production and manufacture which means bringing out a new

commodity, it is implicit that such goods must be useable, moveable, saleable and marketable. The duty is on manufacture or production but the production or manufacture is carried on for taking such goods to the market for sale. The obvious rationale for levying excise duty linking it with production or manufacture is that the goods so produced must be a distinct commodity known as such in common parlance or to the commercial community for purposes of buying and selling. Since the solution that was produced could not be used as such without any further processing or application of heat or pressure, it could not be considered as goods on which any excise duty could be levied."

16. Further, we find that the decision relied upon by the Ld. DR cited (Supra) are not directly applicable in the facts and circumstances of the present case and the decisions relied upon by the Ld. Counsel for the appellant cited (Supra) are squarely applicable in the facts and circumstances of the present case.

17. As regards the issue of limitation, we find that substantial demand upto December, 2010 is beyond limitation specially the fact of

used of Melamine & Formaldehyde was already in the knowledge of Department on 24.11.2006 the show cause notice was issued after the expiry of normal period of limitation when all the facts were in the knowledge of Department in 2006, the declaration was filed on 24.01.2006 containing the details of finished goods as well as raw materials including Melamine & Formaldehyde & Phenol etc., as well as verification of units in the year 2006 itself. Further, the Department duly accepted the said declaration and never raised any objection till January, 2012, rather allowed the appellant to avail the exemption under Notification No. 50/03-CE. Further, it has been consistently held by various High Courts and Supreme Court, there is no question of suppression when the activity has been duly reflected in the statutory/provide records and the activity has been done after duly intimating the Department. In this regard, the decisions relied upon by the appellant cited (Supra) are squarely applicable and hence we hold that substantial part of the demand upto December, 2010 is barred by limitation.

18. Keeping in view of our discussion above, we are of the considered view that the issue involved is no more *res integra* as held in the decisions relied upon by the appellant cited (Supra) and

by following the ratio of the said decisions, we are of the considered opinion that the impugned order is not sustainable in law and therefore we set aside the same by allowing the appeal of the appellant, with consequential relief, if any, as per law.

8. By following the ratio of the above said decision on identical issue, we hereby allow the appeal of the appellant with consequential relief, if any, as per law.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)