

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.1

Excise Appeal No.77221 of 2018
Cross Objection No.E/Cross/75028/2019

(Arising out of Order-in-Original No.42-52/Commr/CGST & CX/Kol/North/2017-18 dated 30.01.2018 passed by Commissioner of CGST & Central Excise, Kolkata North)

Commissioner of CGST & Central Excise, Kolkata North
(180, Shantipally, Rajdanga Main Road, Kolkata-700107)

Appellant

VERSUS

M/s Sika India Pvt.Ltd.

[1B-20 & 21, New Industrial Estate, Block-D, Kalyani, Dist.-Nadia, Pin-741235]

Respondent

APPEARANCE :

Shri S.K.Dikshit, Authorised Representative for the Respondent
Ms.Taniya Ray, Advocate for the Appellant

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.76022/2026

DATE OF HEARING : 03 AUGUST 2026

DATE OF DECISION : 03 AUGUST 2026

Per Ashok Jindal :

The Revenue is in appeal against the impugned Order dated 30.01.2018 passed by the Commissioner of CGST & Central Excise, Kolkata North Commissionerate.

2. The facts of the case are that the respondent is *inter alia* engaged in the sale of various products that are classifiable under Chapters 32,38,39 and 40 of the Central Excise Tariff Act,1985 (CETA).

2.1 The respondent *inter alia* purchased duty paid "Styrofan ID 604" and "Apcotex TSN 400", which are Styrene Butadiene Latex falling under Chapter Heading 40.02 of the CETA, from M/s BASF India Limited and Apcotex Industries Ltd., respectively.

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2.2 Apart from the above, the respondent also purchased duty paid "Navdeecide-91" which is an Organic Bromine Biocide (preservative) falling under the Chapter Heading 38.08 of the CETA, from M/s. Navdeep Chemicals Ltd.

2.3 In the instant case, the respondent merely diluted the Styrene Butadiene Latex with water and added preservative and thereafter repackaged the resultant product under the brand names "Sika Latex" and "Sika Latex Power" and cleared it for sale.

2.4 It is pertinent to mention that Sika Latex is a mortar and slurry modifier cum bonding aid & Sika Latex Power is a SBR based multipurpose polymer for waterproofing and repair.

2.5 During the investigation on the above-described process undertaken by the respondent by the anti-evasion unit of the department, it was stated by the Department that the activity undertaken by the respondent tantamount to a manufacturing activity and thus, the respondent is liable to discharge duty on the resultant products.

2.6 The investigation resulted in issuance of a Show Cause Notice dated 08.06.2007 for the period June 2002 to March 2007 involving a demand of duty amounting to Rs.1,93,22,348/- wherein the department sought to classify the resultant products under Chapter 38.2 of CETA on the premise that the process undertaken by the respondent amounted to manufacture and accordingly the same ought to have suffered excise duty, when cleared by the respondent.

2.7 A detailed reply was filed challenging the Show-Cause Notice (SCN) dated 08.06.2007. The said SCN was adjudicated vide Order-in-

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Original dated 14.02.2008 wherein the proceedings initiated by the department were dropped by holding that the process undertaken by the respondent is only dilution and addition of preservatives, with branding of the product and the same shall not amount to manufacture.

2.8 Thereafter, the Department issued 11 SCNs covering the underlying period of April 2007 to September 2015 seeking demand of excise duty amounting to Rs.10,81,44,684/-under Section 11A of the Central Excise Act, 1944 along with interest under Section 11AB of the said Act and penalty under Rule 25 of the Central Excise Rules,2002 on the ground that the dilution and subsequent addition of preservatives to styrene butadiene latex and thereafter packaging the same in small containers amounts to manufacture in terms of Chapter Note 9 of Chapter 38 of CETA. It was also alleged that final products were classifiable under tariff heading 3824 4010 and not 4002 1100.

2.9 The Respondent filed a detailed reply against the underlying SCNs contesting the allegations raised by the Department.

2.10 After considering the replies filed by the respondent, the Ld. Commissioner, CGST&CX, North Kolkata adjudicated the 11 SCNs vide a common Order-in-Original dated 31.01.2018 thereby dropping the proceedings initiated by the Department. The Ld. Commissioner *inter alia* placed reliance upon the earlier Order-in-Original dated 14.02.2008 and held that the process of dilution of inputs does not result in emergence of a new product to qualify as manufacturing, thus, the classification adopted by the respondent is correct.

2.11 Aggrieved by the aforesaid order, the Revenue is before us.

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3. At the outset, the Id.Counsel for the respondent points out that the said issue has already been settled by this Tribunal in the respondent's own case for the prior period as well as for its own unit. She, therefore, submits that this Tribunal for the preceding period (viz. June 2002 to March 2007) has already decided the issues of manufacture and the classification of the impugned goods in favour of the respondent, wherein this Tribunal held that no new product emerged from the process undertaken by the assessee and the chemical composition of the impugned product remains same, thus, there is no manufacture involved and the goods cleared by the respondent merits classification under 40.02 of the CETA. Therefore, she submits that by relying upon the case of Commissioner of Central Excise, Kolkata Versus M/s. Sika India Pvt. Ltd., 2017 (7) TMI 715 - CESTAT KOLKATA, the present appeal of the department is not maintainable. She further submits that similar view was also taken by the Mumbai Bench of this Tribunal in the case of M/s Sika India Pvt. Ltd. Versus Commissioner of Central Excise, Goa, 2019 (5) TMI 935 - CESTAT MUMBAI.

3.1 She further submits that the department has not filed any appeal against the aforesaid orders passed by this Tribunal as well as the Mumbai Tribunal. She, therefore, submits that due to the absence of any challenge, the aforementioned orders have attained finality. It is a settled law that the once the department accepts a particular legal position in an assessee's case, then, for the same issue for another period, it cannot take a contrary view. In support of her contention, she also relies on the following case laws:

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- (i) Commissioner of Central Excise, Pune II v. SS Engineers, 2023-VIL-68 SC-CE.
- (ii) Eicher Motors Ltd. v. Commissioner of C. Ex., Indore, 2001 (129) ELT 734 (Tri.-Del) maintained in 2007 (216) E.L.T. A133 (SC)
- (iii) Raman Boards v. Commissioner of Central Excise, Gurgaon, 2019 (365) E.L.T. 605 (Tri.-Chan.)

She, therefore, prays for dismissing the Revenue's Appeal by upholding the impugned order.

4. The Id. A.R. for the Appellant-Revenue has reiterated the grounds of appeal.

5. Heard both the parties and considered the submissions.

6. We find that the issues under consideration are whether the process of adding water and preservatives to the inputs classifiable under tariff heading 40.02 and thereafter, packaging the same and marketing it as 'Sika Latex' and 'Sika Latex Power' will amount to 'manufacture' under Section 2(f) of the Central Excise Act, 1944 or not? And whether the department can take a contrary view for the subsequent periods, when it has already accepted that the process of adding water and preservative to inputs does not amount to manufacture, for the prior period or not ?

7. We find that the said issues have been settled by this Tribunal in the respondent's own case (cited supra) for the prior period as well as for its other unit, wherein the Tribunal has held as under :

"8. The only point of dispute is whether or not the respondent carried out activities which will amount to manufacture in terms of provisions of Central Excise Act, 1944. The main emphasis by the Revenue in the present

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appeal is the products cleared by the respondent are having different name, identity and use. In this connection we note that the Hon'ble Supreme Court laid down the principle to understand the scope of term manufacture for the Central Excise purpose in the case of Union of India v. Delhi Cloth and General Mills Co.Ltd. [1977 (1) E.L.T. (J 199) (S.C.)]. The Apex Court held that there must be a transformation, a new and different article must emerge having a distinctive name, character or use. Applying the principle to the facts of the present case, we note that different tests conducted by the Revenue clearly indicated that the raw material as well as the impugned goods are having same chemical characters. This is not disputed. In such a situation the tests laid down by the Hon'ble Supreme Court will fail in the present case.

9. Further examining the impugned order we note that the Commissioner analyzed all the relevant issues in great detail. The relevant portion of her finding is as follows:-

"The test report of the NATIONAL TEST HOUSE Govt. of India was considered to be crucial for decision of the issue in question. But the Report of the said authority as above, received by the Anti Evasion Unit on 2.11.2007, has not advanced the department's case either. With detailed compositional analysis of the samples sent for test, it has been reported that the samples of Styrofan, Sika Latex and Sika Latex Power- all the three appear to be identical. Further, perusal of product literatures of Sika Latex and Sika Latex Power show that the same have various uses, including use as a waterproofing / damp proofing substance in cement concrete applications. Similar use is available with the purchased items and this has featured in the Notice also. Thus as regards use of the goods, the inputs and the diluted repacked materials were akin subject to difference in application

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because of dilution factor under Sika branded items. Investigation did not go into the detailed past events that have come into surface now from clarifications and evidence advanced in the defence submissions. The test report of the NATIONAL TEST HOUSE is another confirmatory verdict that goes to prove that there is virtually no emergence of a new product at the hands of the Noticee. Considering the facts discussed above, alongwith other evidences of earlier test reports and records of due intimations made by the assessee/ Noticee to the department from time to time on the goods in question- I find the facts on record go to justify the defence stand as fully acceptable. It is not the revenue's case that the Noticee purchased the goods viz., Styrofan & Apcotex without payment of duty or, they in any manner failed to account for any manufactured dutiable final products because of this activity in question, nor it is department's case that the so diluted and marketed items affected duty paid character of any other goods the assessee manufactured and cleared from the factory in its usual practice during any time of the material period under demand. Obviously, in case the products Styrofan and Apcotex were of CET CH. 38, the process undertaken at SIPL would render the Noticee liable for duty. but that isnt the case here. Thus, the facts converge to the position that duty- paid bought out goods of CET. Hd. 40.02, after the process undertaken by the Noticee retained the same characteristics without emergence of any new entity and the process of repacking or re-labeling of such goods does not render the assessee liable for duty again under the Ch. 40 when already duty has been paid at the time of purchase of the same."

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10. On perusal of the grounds of appeal, we are not able to discern any substantial point or evidence so as to interfere with the said finding of the original authority. Accordingly we hold that the present appeal filed by the Revenue is without merit. The same is dismissed. Cross Objection also gets disposed of"

8. Similar view was also taken by the Mumbai Bench of this Tribunal for the assessee's another unit in the case of M/s Sika India Pvt. Ltd. Versus Commissioner of Central Excise, Goa, 2019 (5) TMI 935 - CESTAT MUMBAI, wherein this Tribunal has held as under :

"9. In view of the aforesaid judgment, it can safely be inferred that the process of dilution of the raw materials "STYROFAN D 623 AP" and "APCOTEX TSN 100" cannot be called as a process of manufacture. Consequently, the product Sika Latex and Sika Latex Power also not chargeable to excise duty. Similar view has been expressed by the co-ordinate Bench at Kolkata analyzing the test reports of the National Test House, Govt. of India. Following the judgment of the Tribunal, on the proceedings initiated subsequently by the Kolkata Commissionerate for the period from April, 2007 to September, 2015 have been dropped."

9. We also find that the Department has not filed by appeal against the above orders passed by this Tribunal. Therefore, we hold that the above-mentioned orders have attained finality. It is a settled law that the once the Department accepts a particular legal position in an assessee's case, then, for the same issue for another period, it cannot be taken a contrary view.

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10. In view of the above, we do not find any interference with the findings of the original authority. Accordingly, we hold that the present appeal filed by the Revenue is without merit. Accordingly, the same is dismissed. Cross Objection also gets disposed of.

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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