COLLECTOR OF CENTRAL EXCISE, HYDERABAD

v.

FENOPLAST (P) LTD. (II)

JUNE 27, 1994

[M.M. PUNCHHI, S.C. AGRAWAL AND B.P. JEEVAN REDDY, JJ.]

Central Excises and Salt Act, 1944—Tariff Item 19—'Cotton Fabric'—Held, would include coated fabrics like rexine cloth produced by coating 100% cotton cloth with P.V.C. resin and other plasticizers.

Interpretation of Statutes—Taxing statutes—Commercial parlance or common parlance meaning, held applicable only when word not defined in statute—Interpretation by Government, an authority under the Act, held not binding on Court.

The respondent-Company manufacturers rexine cloth by coating 100% 'cotton cloth' with P.V.C. resin and other plasticizers. The composition by weight of rexine cloth so manufactured includes cotton fabrics, PVC Resin, Plasticizers and other fillers to the extent of 8%, 24.5%, 13.0% and 54.5% respectively. The respondent contended that rexine cloth could not be treated as "Cotton fabric" under Tariff Item 19 as it obtained at the relevant time since cotton cloth represented a mere 8% of the final product by weight whereas the remaining 92% is represented by coating material. The original Authority rejected the contention of the Company and held that it fell within Tariff Item 19 (III) but the Collector (Appeals) held to the contrary. The order of the Collector (Appeals) was upheld by a majority of the Customs, Excise and Gold (Control) Appellate Tribunal.

The Revenue appealed to the Supreme Court. Initially the appeal was heard by a Bench of two hon'ble Judges (B.P Jeevan Reddy and B.L. Hansaria JJ.) but was subsequently referred to the present larger Bench of three Hon'ble Judges since the Bench originally hearing the matter entertained a doubt regarding the correctness of the decision of the Court in *Collector of Central Excise, Calcutta* v. *Multiple Fabrics Pvt. Ltd.*, [1987] 2 SCC 636 on which the Respondents relied.

Allowing the appeal, this Court

A **HELD : 1. Tariff item 19 deals with 'cotton fabrics', whether made wholly or partially from cotton. It includes several other goods within the ambit of the expression 'cotton fabrics'. The proviso as well as Explanation 1 to the Tariff Item it clear beyond doubt that the predominance and percentages referred to in clause (i) and (ii) shall be in relation to the base fabric which are impregnated, coated or laminated as the case may be. The proviso excludes any room for argument that the predominance or percentages referred to in the aforesaid clause (i) and (ii) should be applied to the impregnated, coated or laminated fabrics. It must follow therefrom that the question of predominance of percentages is irrelevant in the case of the respondent's product inasmuch as the base fabric in the respondent's product is 100% cotton. [274-H; 275-A; F-G; 278-C-D]**

2. When the Parliament has chosen to include the coated/laminated fabrics within the ambit and purview of 'cotton fabrics' and when Parliament's power to do so is not questioned, it cannot be argued that the cotton fabric after coating no longer retains its identity as cotton fabric and that a new distinct commodity emerges. The fact remains that to start with, it is a cotton cloth upon which certain coating material is applied. [278-A-B]

3. The proposition that the meaning assigned to the words in a taxing statute by the trade and the popular meaning should be accepted is correct, but it applies only when the words in question are not defined. This is not so in the present case. [277-B-C]

4. The view of the Government of India acting as the revising authority under the Act that if the end product has lost its identity as a cotton fabric it cannot be said to fall within the expression 'cotton fabrics' under Tariff Item 19 cannot bind the court. The Supreme Court is the final authority to interpret the Tariff Item and cannot be bound by the interpretation placed by an authority under the Act. [277-F-G]

Collector of Central Excise, Calcutta **v.** *Multiple Fabrics Pvt. Ltd.* **[1987] 2 SCC 636, distinguished.**

Indo International Industries **v.** *CST, UP*, **[1981] 2 SCC 528, relied on.**

Dunlop India Ltd. **Re. [1982] 10 ELT 634, distinguished.**

Encyclopaedia Americana **Vol. 22 (1988) Edn.) P. 375, 217, referred to,** *McGraw-Hill Encyclopaedia of Science and Technology,* **Vol. 14, p. 170**

(1987 Edn) referred to and *Chemicals and Fibres Ltd. v. Union of India,* **(1982) 10 ELT 917 (Bom) referred to.**

CIVIL APPALLATE JURISDICTION : Civil Appeal Nos. 3094-95 of 1989.

From the Judgment and Order dated 9.3.1989 passed by the Customs, Excise 'Gold (Control) Appellate Tribunal in Order Nos. 26-87/89-D.

Joseph Vellapally, V.K. Verma, M.Gourishankar Murthy, P. Parmeswaran and Dalip Tandon for the Appellants.

Soli. J. Sorabjee, V. Sridharan, A.R. Madhava Rao, V. Balachandran and S. Aravindh for the respondent.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. The respondent-company manufactures coated fabrics, popularly known as "rexine cloth" in the market. The question in issue in this appeal is whether the said product falls within Tariff Item 19(III) of the Schedule to the Central Excise and Salt Act, as it obtained at the relevant time. The Original Authority held that it does but the Collector (Appeals) held to the contrary. The Revenue's appeal before the Customs Excise and Gold (Control) Appellate Tribunal (CEGAT) was heard by a Bench of three Members. By majority, the Tribunal affirmed the judgment of the Collector (Appeals). The appeal preferred by the Revenue in this Court was heard in the first instance by a Bench comprising one of us (B.P. Jeevan Reddy, J.) and B.L. Hansaria, J. Inasmuch as the Bench entertained a doubt as to the correctness of an earlier decision of this Court in *Collector of Central Excise, Calcutta* v. *M/s. Multiple Fabrics Pvt. Ltd. & Ors.*, [1987] 2 S.C.C. 636, [a judgment rendered by a Bench comprising Ranganath Misra, J. (as he then was) and G.L. Oza, J.] which constituted the sheet anchor of the respondent's case, the matter was referred to a larger Bench. That is how the appeal is before this Bench.

The respondent purchases 100% cotton cloth and coats it with P.V.C. resin and other plasticizers. The product is popularly known in the market as "rexine cloth". The composition of the rexine cloth manufactured by the respondent is to the following effect :

A	"(1)	Cotton Fabrics	8.0%
	(2)	PVC resin	24.5%
	(3)	Plasticizers (DIP/DIOP/BBP)	13.0%
B	(4)	Other [Fillers, (Calcium Carbonate) Secondary Plasticizers, pigments, solvents, thinners, Foaming agents]	54.5%

The above composition is by weight."

C The main contention of the respondent which found favour both with the Collector (Appeals) and the majority of the Members of the C.E.G.A.T. is that the rexine cloth manufactured by the respondent cannot be called a 'cotton fabric' in view of the fact that cotton fabric represents a mere 8% of the final product (by weight) whereas the remaining 92% is D represented by coating material. The respondent's case which has been reiterated before us by its learned counsel, Sri Soli Sorabjee is that in commercial or in common parlance, rexine cloth is not understood or dealt with as a cotton fabric but as a distinct commodity. It cannot, therefore, be called a cotton fabric and even if it is treated as one by virtue of Tariff Item-19, the predominance or percentage referred to in the said Tariff Item E should be applied in relation to the final product and not with reference to the cotton cloth which represents a very minor portion of the final product. The contention of the Revenue, on the other hand, is that coated fabric (in the case of the respondent, rexine cloth) is expressly placed within the purview of the cotton fabric by the Parliament. In the face of such express inclusion, there is no room for arguing that the rexine cloth F or coated fabric is not cotton fabric. May be that rexine cloth is not called or dealt with as a cotton fabric in the commercial world or in common parlance but that does not prevent the Parliament from treating it as a cotton fabric for the purposes of the Act and indeed the Parliament has chosen to include it within the ambit of cotton fabrics for the purposes of G levying excise duty. Since the power of the Parliament to do so is unquestioned, the respondent's product is bound to be treated as 'cotton fabrics' within the purview of Tariff Item-19 and subjected to duty prescribed under sub-item (III) thereof. So far as the predominance or percentages referred to at the end of the first para of the Tariff Item is concerned, they are wholly irrelevant in the case of the respondent's product inasmuch as H the said predominance or percentage are applicable in relation to the 'base

fabric' and the base fabric in the case of respondent's product is 100% cotton. A

For resolving the above controversy, it is necessary to turn to the Tariff Item itself. It reads thus:

19. COTTON FABRICS B

Tariff Item No.	Description of goods	Rate of Duty Basic	Special Excise
19. *COTTON FABRICS* –			
	"Cotton fabrics" means all varieties of fabrics manufactured either wholly or partly from cotton and includes dhoties, sarees, chaddars, bedsheet, bed spreads, counterpanes, Tablecloths, embroidery in the piece, in strips and in motifs, fabric impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials and fabrics covered articially or fully with textile flocks or with preparations containing textile flocks, if (i) in such fabric cotton predominates in weight, or (ii) such fabrics contain more than 40 per cent, by weight of cotton and 50 per cent, or more by weight of non-cellulosic fibres or yarn or both :		
	Provided that in the case of embroidery in the piece in strips or in motifs, fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials and		

C D E F G H

	fabrics covered partially or fully with textile flocks, such predominance or percentages, as the case may be, shall be in relation to the base fabrics which are embroidered or impregnated, coated or laminated or covered, as the case may be –		
	I. Cotton fabrics, other than (i) embroidery in the piece, in strips or in motifs, (ii) fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials and (iii) fabric covered partially or fully with textile flocks or with preparations containing textile flocks –		
	(a) cotton fabric, not subjected to any process.	Twenty per cent *ad valorem*.	10% of the duty chargeable.
	(b) cotton fabrics, subjected to the process of bleaching, mercerising water-proofing, rubberising, shrink-proofing, organdie processing or any other process or any two or more or these processes.	Twenty per cent *ad valorem*.	10% of the duty chargeable.
	II. Embroidery in the piece, in strips or in motifs, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power.	The duty for the time being leviable on the base fabrics, if not already paid, plus 20% *adv.*	10% of basic duty chargeable.

III.	Cotton fabrics impregnated coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials.	The duty for the time being leviable on the base fabrics, if not already paid, plus 30% *adv.*	—do—
IV.	Cotton fabrics covered partially or fully with textile flocks or with preparations containing textile flocks such as flocks printed fabrics and flocks coated fabrics.	The duty for the time being leviable on the base fabrics, if not already paid, plus 30% *adv.*	—do—

Explanation : I

"Base fabrics" means fabrics falling under sub-item I of this item which are subjected to the process of embroidery or which are impregnated, coated or laminated with preparations or cellulose derivatives or of other plastic materials of which are covered partially or fully with textile flocks or with preparations containing textile flocks.

Explanation : II

Where two or more of the following fibres, that is to say,

(a) man-made fibre of cellulosic origin ;

A (b) cotton

(c) wool;

(d) silk (including solk noil);

B (e) jute (including Bimlipatam jute or mesta fibre);

(f) man-made fibre of non-cellulosic origin;

C (g) flax;

(h) ramie.

in any fabric are equal in weight, then, such one of those fibres the D predominance of which would render such fabric fall under that Item (hereafter in this Explanation referred to as the applicable Item) among the Items Nos. 19, 20, 21, 22, E 22A and 22AA, which, read with the relevant notification, if any, for the time being in force issued under the Central Excise Rules, 1944, involves the highest amount of duty, shall be deemed to be predominant in such F fabric and accordingly such fabric shall be deemed to fall under the applicable item.

Explanation : III.

G This Item does not include floor coverings falling under Item No. 22G."

The Tariff Item deals with *'cotton fabrics', whether made wholly from* H *cotton or partially from cotton.* It includes several other goods within the

ambit of the expression 'cotton fabrics'. The items so included are : (a) dhoties, sarees, chaddars, bed-sheets, bed-speads, counter-panes, and table cloths; (b) embroidery in piece, in strips or in motifs; (c) fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials; and (d) fabrics covered partially or fully with textile flocks or with preparations containing textile flocks. After including the said four categories of goods within the ambit of the expression "cotton fabrics", the Tariff Item proceeds to say that for being called cotton fabrics (i) the cotton must predominate in such fabrics by weight or (ii) such fabrics must contain more than 40% cotton by weight and 50% or more of non-cellulose fibre or yarn or both by weight. Now, if the Tariff Item had stopped here, i.e., with the first para, a doubt could probably have arisen whether the fabrics referred to in clauses (i) and (ii) mentioned above refer to cotton fabrics simpliciter or to the other goods specifically brought within the ambit of the Tariff Item. In short, in the case before us, a doubt could have arisen whether the predominance of cotton or the requirement of 40% cotton by weight etc., is to be applied to the cotton cloth simpliciter upon which coating is done or to the rexine cloth manufactured by the respondent. Precisely, with a view to obviate such doubt, has the Parliament added the proviso as well as Explanation (I) to the Tariff Item. The proviso provides in clear words that in the case *inter alia* of "fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic material..... such predominance or percentages, as the case may be, shall be in relation to the base fabrics which are ..... impregnated, coated or laminated....." indisputably, when the proviso speaks of predominance or percentages, it is referring to clauses (i) and (ii) referred to above (which occur at the end of the first para of the Tariff Item). The proviso makes it clear beyond any doubt that the predominance and percentages referred to in the said clauses shall be in relation to the base fabric which are impregnated, coated or laminated, as the case may be. The proviso excludes any room for the argument that the predominance or percentages referred to in the aforesaid clauses (i) and (ii) should be applied to the impregnated, coated or laminated fabrics. The Parliament did not even stop with this. To make its meaning even more clearer, it appended Explanation (I) defining the expression "base fabrics". The explanation says that" "base fabrics" means fabrics falling under sub-item (I) of this item which are impregnated, coated or laminated with

A B C D E F

A preparations of cellulose derivatives or of other plastic materials....." For a fuller appreciation of the Explanation (I), it would be appropriate to refer to sub-item (I) of the Tariff Item as also sub-items (II), (III) and (IV). Sub-item (I) expressly speaks of" "cotton fabrics" *other than*.....(ii) fabrics impregnated, coated or laminated with preparations of cellulose derivatives
B or of other artificial plastic materials....." The duty on such cotton fabrics is 20% *ad valorem* and the special excise duty is 10% of the basic chargeable duty irrespective of the fact whether such cotton fabrics fall under clause (a) or clause (b) mentioned under the said sub-item. Sub-item (I) may be contrasted with sub-item (III) which pertains to "cotton fabrics impregnated, coated or laminated with preparations of cellulose derivatives
C or of other artificial plastic materials", the rate of duty whereon is the duty for the time being leviable on the base fabric, if not already paid, plus 30% *ad valorem.* (The special excise duty is retained at 10% of the basic duty chargeable.) It may also be seen that sub-item (II) deals with "embroidery in piece, in strips or in motifs in relation to the manufacture of which any
D process is ordinarily carried on with the aid of power" while sub-item (IV) deals with "cotton fabrics covered partially or fully with textile flocks or with preparations containing textile flocks such as flock printed fabrics and flock coated fabrics". Separate rates of duty are prescribed for each of these sub-items. It would thus be clear that the cotton fabrics simpliciter
E including dhoties, sarees, chaddars, bed-sheets, bed-spreads, counterpanes and table cloths fall under sub-item (I), while the other three categories included within the ambit of cotton fabrics fall within sub-items (II), (III) and (IV) respectively.

F Now, coming back to Explanation (I), it says that 'base fabrics', defined by it and referred to in the proviso, means the cotton fabrics falling under sub-item (I) of this Item, i.e., cotton fabrics excluding *inter alia* fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials. We are of the opinion that in view of the clear language of the proviso read with Explanation (I),
G there remains no room for the argument that the predominance and percentages referred to in clauses (i) and (ii) [occurring at the end of the first para of the Tariff Item] must be applied not in relation to the base fabric but in relation to the coated fabric or for that matter impregnated or laminated fabric. Clauses (i) and (ii) were found necessary for the
H reason that "cotton fabrics" mean not only fabrics manufactured wholly of

cotton but also fabrics manufactured partly from cotton. The two clauses clarify what does the cotton fabric manufactured partly of cotton mean. A

Sri Sorabjee cited several decisions of this Court holding that in interpreting the meaning of the words in a taxing statute like the Excise Act, the meaning assigned to the words by the trade and its popular meaning should be accepted and that the test to be applied is to see how the product is identified by the class or section of people who deal in the product or who use the product. There can be no quarrel with the said proposition but it applies only when the words in question are not defined in the Act. This is so held by this Court in *Indo International Industrial* v. *Sales Tax Commissioner, Uttar Pradesh*, [1981] 2 S.C.C. 528. It says: "It is well settled that in interpreting items in statute like the Excise Tax Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances, resort should be had not to the scientific and technical meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. *If any terms or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted*". In this view of the matter, we do not think it necessary to deal with the several decisions cited by Sri Sorabjee regarding the relevance of commercial or common parlance test. B C D E

It is next contended by Sri Sorabjee that the Government of India, acting as the revising authority under the Act has also taken the view that if the end-product has lost its identity as a cotton fabric, it cannot be said to fall within the expression "cotton fabrics" under Tariff Item-19. Reliance is placed upon its decision in *Dunlop India Limited* v. *Government of India*, [1982] 10 E.L.T. 634. We do not think that on a question of interpretation of a Tariff Item, we should be bound by the view taken by the Government of India in a particular case. (The said decision does not also pertain to rexine cloth but to conveyor belt). This Court is the final authority to interpret the Tariff Item and cannot be bound by the interpretation placed by an authority under the Act. F G

It is argued by Sri Sorabjee that after coating, the cotton fabric no longer retains its identity as cotton fabric and that a new distinct com- H

A modity emerges. It is submitted that if the degree and extent of lamination or coating of fabric is such that it ceases to retain its identity as cotton fabric and a new distinct commodity emerges as a result of such coating or lamination, the resultant product cannot be regarded as cotton fabric within the meaning of Tariff Item-19. This argument does not take into account the fact that the Parliament has chosen to include the coated/laminated fabrics within the ambit and purview of "cotton fabrics" - and the Parliament's power to do so is not questioned and probably cannot be questioned. The fact remains that to start with it is a cotton cloth upon which certain coating material is applied.

C We have already held that the predominance or the percentages referred to in clauses (i) and (ii) [occurring at the end of the first para of the Tariff Item] is applicable only in relation to the base fabric as clarified and defined in the Proviso and Explanation (I). It must follow therefrom that the question of predominance or percentages is irrelevant in the case of respondent's product inasmuch as the base fabric in the respondent's D product is 100% cotton. The argument to the contrary is, however, based upon the decision of this Court in *Multiple Fabrics*. The said decision dealt with Tariff Item-22 and the product concerned was P.V.C. conveyer belting manufactured by the respondent therein. Tariff Item-22 deals with "man-made fabrics" and the Entry is substantially in the same terms as Tariff E Item 19. Tariff Item-22 also contains a Proviso and Explanation (I) corresponding to the Proviso and Explanation (I) in Tariff Item-19. But unfortunately the Proviso was not brought to the notice of the Court. Though Explanation (I) was noticed, its purport was not given effect to while holding that "in view of the higher percentage of P.V.C. compound in commodity, it becomes difficult to treat the ultimate goods as man-made F fabrics for holding that it is covered by Item-22". Indeed, the above reason is the second of the two reasons given for holding in favour of the respondent manufacturer. The first reason is that since the manufacture of fabric and application of P.V.C. compound is simultaneous, there is no pre-existing base fabric for the purposes of and within the meaning of Tariff Item- 22. Be that as it may, since the proviso was not brought to the G notice of this Court and for that reason the significance of Explanation (I) escaped the Court's notice, it is difficult to hold that the said decision lays down the correct interpretation of Tariff Item-22 or that it helps the respondent before us in interpreting Tariff Item-19.

H A look at Tariff Item-19 before its amendment in 1969 confirms the

correctness of our interpretation. Prior to 1969, the only goods included within the expression "cotton fabrics" were, what we called category (a) goods. Goods in categories (b), (c) and (d) were not there. Yet the percentages were there. Tariff Item-19 as it then stood and in so far as is relevant read thus :

A

B

"19. COTTON FABRICS –
"Cotton Fabrics" means all varieties of fabrics manufactured either wholly or partly from cotton and include dhoties, saries, chadars, bed-sheets, bed- spreads, counter-panes and table-cloths, but do not include any such fabric –

C

(a) if it contains 40 per cent, or more by weight of wool;

(b) if it contains 40 per cent, or more by weight of silk; or

(c) if it contains 60 per cent, or more by weight or rayon or artificial silk."

D

It may also be mentioned that the Proviso and Explanation (I) came in along with the inclusion of the new goods, in particular, coated or laminated fabrics within the ambit of "cotton fabrics", by virtue of the Finance Act, 1969, which amended the Tariff Item.

E

Sri Sorabjee lastly contended that the coating material employed by the respondent in his product is not one of the impregnating, coating and laminating materials referred to in Tariff Item-19. In other words, his submission is that the coating material does not represent either "preparations of cellulose derivatives" or "other artificial plastic materials". He submitted that this submission was raised by the respondent both before the Collector (Appeals) as well as before the C.E.G.A.T. but was not pronounced upon specifically in view of the fact that they held in favour of the respondent on other grounds.

F

G

We have seen the grounds of appeal preferred by the respondent before the Collector (Appeals). It does not contain any ground to the above effect. The order of the Collector (Appeal) refers to the argument of the respondent's counsel that "the Assistant Collector has wrongly referred the plasticizers and fillers as materials falling under the then Tariff Item 15-A, i.e., plasticizers without any application of mind" and the further argument

H

A that "in fact plasticizers are chemicals and fillers and other goods which are not covered nor are assessed under Tariff Item 15-A not being plastic materials". On the above basis, it was argued that the predominant material in the rexine cloth is not plasticizers inasmuch as the plastic content is only 24.5%. For appreciating the said argument, one has to turn to Tariff Item B 15-A, which speaks of "artificial or synthetic resins and plastic materials and cellulose esters and ethers, and articles thereof." It may be noticed that the goods referred to under Tariff Item 15-A and the coating material referred to in Tariff Item 19 are not identical. Tariff Item 19 speaks of impregnation, coating and lamination by "preparations of cellulose derivatives or of other artificial plastic materials". So far as the Tribunal is C concerned, only one Member (Sri P.C.Jain), in his dissenting opinion, deals with this aspect in para 16 of his judgment. He rejects the said argument holding that "P.V.C. formulation being used by the respondent-company is certainly governed by the expression 'other artificial plasticizers'". For the said proposition, the learned Member relies upon the decision in *Chemicals and Fibres India Ltd.* v. *Union of India,* 82 E.L.T. 917, a decision of D the Bombay High Court wherein it was held that "whereas synthetic resin is a polymer itself, plastic is polymer plus such additives as fillers, colorant plasticizers etc." Pausing here for a moment, we may say that even according to the respondent the coating material is of three categories, viz., P.V.C. resin - 24.5% plasticizers-13.0% and other fillers, calcium carbonate, E secondary plasticizers, pigments, solvents, thinners and foaming agents - 54.5%. Now, P.V.C. resin is also a plastic as would be evident from the meaning given to it in *Encyclopedia American,* Vol. 22 - P. 375 (1988 Edn.). The following statement occurs therein :

F

> "POLYVINYL CHLORIDE (PVC) is a tough, strong thermoplastic polymer with an excellent combination of physical and electrical properties. One of the leading plastics, *PVC is used in a wide variety of products, including coated fabrics for upholstery and raincoats, garden hoses, pipes, phonograph, records, floor-tiles, food-wrap films, and insulation for wire and cable.* PVC products basically are made G from a powdery PVC resin, which in turn is made from a gas called vinyle chloride (VC). A large number of molecules of vinyle chloride ($CH_2=CHCl$) are linked like beads on a chain to form the PVC polymer ($-CH_2CHCl-$)."

H To the same effect is the statement in *McGraw-Hill Encyclopedia of*

Science and Technology, Vol. 14 - P. 170 (1987 Edn.) : A

> "**Polyvinyle chloride** (PVC) is a tough, strong thermoplastic material which has an excellent combination of physical and electrical properties. The products are usually characterised as plasticised or rigid types. Polyvinyle chloride (and copolymers) is the second most commonly used in polyvinyle resin and one of the most versatile plastics." B

The second category is plasticizers (13%), which is undoubtedly one of the basic materials of the plastics. (See *Encyclopedia Americana,* Vol. 22 at P.217). Even in the third category, there are plasticizers but we do C not know to what extent. It thus appears *ex facie* that the coating material employed by the respondent is predominantly, if not wholly, "other artificial plastic materials".

The majority opinion, of course, does not refer to this aspect at all. D

No reasons are shown and no material is placed before us to show that the said opinion of the Member of the Tribunal (Sri P.C. Jain) is not correct. The only submission has been that the matter be remitted to the Tribunal for a decision on this question. We are not inclined to do so, for if this were the case, the respondent ought to have put forward this E argument at the forefront and not concern itself with the interpretation of the Tariff Item. It could have simply said, 'my coating material is not one contemplated by the Tariff Item', and it it were so, no further question would have arisen. Instead, it concentrated upon the applicability of the clauses relating to predominance and percentages relying upon the decision of this Court in *Multiple Fabrics*. Before the Collector (Appeals) F it relied upon Tariff Item 15-A and submitted that since its coating material is not covered by Tariff Item 15-A, Tariff Item-19 is also not attracted. For all the above reasons, we are not inclined to accede to the request for remand of the matters to the Tribunal for deciding the said question.

G

The appeals are accordingly allowed and the orders of the C.E.G.A.T. and Collector (Appeals) are set aside. The order of the Original Authority is restored. No costs.

R.R. Appeals allowed.