

BAKELITE HYLAM LTD. ETC.

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v.

COLLECTOR OF CENTRAL EXCISE, HYDERABAD

JULY 14, 1998

[S.C. AGRAWAL AND S. SAGHIR AHMAD, JJ.]

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Central Excises & Salt Act, 1944/Central Excise Tariff: Schedule I/ Items 19(III), 17 (2), 22-F and 68—Laminated sheets and boards—Prepared by resin impregnated cotton fabric sheets (Prepeg-F), paper sheets (Prepeg-P) and glass fibre sheets (Prepeg-G)—Classified under Items 19 (III), 17(2) and 22-F of the Tariff respectively—Classification challenged before the CEGAT—Held to be proper—Appeal preferred—Held—In view of cotton fabric as defined in Item 19, Prepeg-F correctly classified under Item 19 (III)—In view of Tariff Advice No. 2/84 Prepeg-P correctly classified under Item 17(2)—As Prepeg-G manufactured from glass fabrics and not from mineral fibre or yarn, wrongly classified under 22-F—Should be classified under Item 68.

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The appellants are manufacturers of laminated boards and sheets which are paper, cotton fabric and glass fabric based. Paper based laminated sheets are prepared by passing the paper sheet through or immersing it in a resin bath (phenol formaldehyde resin), as a result of which the paper is impregnated with resin. This resin impregnated paper is known as 'Prepeg-P' which after drying and being pressed in a hydraulic press with heat turns into a laminated sheet. The cotton fabric and glass fabric based laminated sheets are prepared in a similar manner and the impregnated sheets made from those are called 'Prepeg-F' or 'Prepeg-C' and 'Prepeg-G' respectively. The two sets of appeals herein are directed against the two judgments dated 25-03-1986 and 03-06-1991 passed by CEGAT. The 1986 judgment classified 'Prepeg-F' under Tariff Item 19(III); 'Prepeg-P' under 17 (2) and 'Prepeg-G' under 22-F whereas majority of the three member Bench in 1991 judgment held Prepeg-F, P and G to be under Tariff Items 19 (III), 17 (1) and 22-F(4) respectively. According to the dissenting member the aforesaid were assessable under Item 68 of the Tariff.

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CEGAT rejected the contention that 'Prepeg-F', impregnated cotton fabric cannot be regarded as cotton fabric falling under item 19(III) of the Tariff as it cannot be proved that the proportion of the impregnated materials has reached such a level that the final product has ceased to contain the characteristics of a fabric so as to take it out of the purview of the cotton

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A fabric set out in Item 19(III). CEGAT also held that phenol formaldehyde resin is covered by the term “artificial plastic materials” in item 19 (III).

The issue involved in these appeals is regarding classification of the above three kinds of impregnated sheets for the purpose of levy of excise duty under the erstwhile Central Excise Tariff contained in the First Schedule to the Central Excises and Salt Act, 1944.

The appellant contended that as ‘Prepeg-F’ has not been defined, in common parlance it cannot be regarded as cotton fabric as a result of which it should be classified under the residual entry in Item 68. It was also contended that as per Trade Advice No. 51/75 dated 31-10-1975, issued by the Central Board of Excise & Customs, treated paper claimed to be an intermediary product in the manufacture of decorative and laminated sheets falling under Tariff Item 15A of Central Excise Tariff is not classifiable under Tariff Item 17 of Central Excise Tariff. The appellant also differentiated impregnated paper from ‘Prepeg-P’ on the basis that impregnated paper does not cease to remain paper while Prepeg-P cannot be regarded as paper. As regards ‘Prepeg-G’ it was contended that it would not fall under Item 22-F as it is neither mineral fibre or yarn nor is it a product manufactured from mineral fibres or yarn.

Partly allowing the appeals, this Court

HELD : 1. In item 19 of the Central Excise Tariff contained in the First Schedule of the Central Excises and Salt Act, 1944 “cotton fabrics” has been defined to include “fabrics impregnated coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials”. In view of the inclusive clause in the definition of “cotton fabrics” contained in Item 19 it cannot be said that ‘Prepeg-F’ which is impregnated cotton fabric cannot be regarded as cotton fabric for the purpose of Item 19(III) of the Tariff. [637-C]

Collector of Central Excise, Hyderabad v. Fenoplast (P)Ltd., [1994] Supp. 2 SCC 678, relied on.

Purewal Associates Ltd. v. Collector of Central Excise, [1996] 10 SCC 752; *Plasmac Machine Mfg. Co.(P) Ltd. v. Collector of Central Excise*, [1991] Supp. 1 SCC 57 and *M/S. Indo International Industries v. Commissioner of Sales Tax, Uttar Pradesh*, [1981] 2 SCC 528, referred to.

2.1. The contention of the appellant based on Trade Advice No. 51/75

dated 31-10-1975 cannot be accepted because shortly thereafter the Central Board of Excise and Customs, in its letter No. 61/13/76-CX 2 dated 13-10-1976, has expressed the view that Resin Impregnated Paper which is marketable would merit classification under Tariff Item 17(2). The same view was repeated by the CBEC Tariff Advice No. 2/84 dated 12.01.1984 wherein it was stated that kraft paper subjected to the process of impregnation with synthetic resins for the manufacture of plastic laminated sheets is classifiable under Tariff Item No. 17(2) as converted paper and eligible for exemption under Notification 63/82-C.E. dated 28-02-1982 subject to the condition stated therein. [639-C-D]

2.2. It is no doubt true that impregnated paper referred to in the said notes is one which is used largely for protective wrapping or as insulating materials. But it does not mean that paper which is impregnated with resin for the purpose of manufacturing laminated sheets cannot be regarded as impregnated paper under Item 17(2). [640-B]

Explanatory Notes (Vol. 2) to the Harmonised Commodity Description and Coding System published by Customs Cooperation Council, Brussels, referred to.

3. 'Prepeg- G' manufactured from glass fabrics would not fall in Item 22-F/22-F(4) as found by the Tribunal; it was assessable to excise duty during the relevant period residuary Item 68 of the Tariff. [642-B]

Mahindra Engineering and Chemical Products Ltd. v. Union of India & Ors., [1992] 1 SCC 727, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2676-2678 of 1992 Etc.

From the Judgment and Order dated 3.6.91 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in A. No. E/814/86-C, E/1462/86-C and E/Cross/442/86-C, E/2505/86-6.

K.N. Bhat, Additional Solicitor General, and (J. Vellapally, Ms. Janaki Ramachandran, Yashank Adhyaru, U.A. Rana, S. Tripathi) for M/S. Gagrath & Co., L. Lakshmikumar, A.R. Madava Rao, V. Balachandran, G.N. Rao, R.N. Verma and V.K. Verma for the appearing parties.

The Judgment of the Court was delivered by

A S.C. AGRAWAL, J. M/s Bakelite Hylam Limited, the appellant in these appeals, [hereinafter referred to as 'the appellant], manufactures laminated boards and sheets. The laminated sheets are paper based, cotton fabric based and glass fabric based. For manufacturing paper based laminated sheet paper is passed through or immersed in a resin bath (phenol formaldehyde resin) and as a result the paper is impregnated with resin. This paper is then dried.

B The paper which is impregnated with resin is known as 'Prepeg-P'. Layers of 'Prepeg-P' are then stacked and the sheets so stacked are then pressed together in a hydraulic press applying pressure and heat to make a laminated sheet. The process of manufacturing cotton fabric and glass fabric based laminated sheets is similar. In case of cotton fabric based laminated sheets

C cotton fabric is impregnated with resin and dried. Such fabric which is so impregnated is known as 'Prepeg-F'. It is also described as 'Prepeg-C'. In glass fabric based laminated sheets glass fabric is impregnated with resin and the impregnated sheet is known as 'Prepeg-G'. The question which falls for consideration in these appeals is with regard to the classification of these products, namely, 'Prepeg-P', 'Prepeg-F' and 'Prepeg-G', for the purpose of

D levy of excise duty under the erstwhile Central Excise Tariff [hereinafter referred to as 'the Tariff'] contained in the First Schedule to the Central Excises & Salt Act, 1944.

E The Central Excise and Gold (Control) Appellate Tribunal [hereinafter referred to as 'the Tribunal'] in its judgment dated March 25, 1986 has held that 'Prepeg-F' (described as 'Prepeg-C') is assessable under Tariff Item 19 (III), 'Prepeg-P' is assessable under Tariff Item 17(2) and 'Prepeg-G' is assessable under Tariff Item 22-F of the Tariff. Civil Appeals Nos. 2448-51 of 1986 have been filed by the appellant against the said judgment of the Tribunal.

F The matter came up for consideration again before a Bench of three Members of the Tribunal and by judgment dated June 3, 1991 the Tribunal by majority [Shri G. Sankaran, President and Shri N.K. Bajpai, Member (Technical)] took the same view as that taken by the Tribunal in the earlier judgment dated March 25, 1986 and held that 'Prepeg-P', 'Prepeg-F' and 'Prepeg-G' fell under Items 17(1), 19(III) and 22-F(4) of the Tariff respectively. Shri S.L. Peeran, Member (Judicial), however, took a different view and held that the said products could not be classified under the aforementioned Items of the Tariff and were assessable under the residual entry in Item 68 of the Tariff. Civil Appeal Nos. 2676-2678 of 1992 have been filed by the appellant against the said judgment of the Tribunal.

H We will first take up 'Prepeg-F' which has been held to fall under Item

19(III) of the Tariff. In the Tariff, as applicable in the year 1977-78 (period relevant for Civil Appeals Nos. 2448-51 of 1986), Item 19(III) read as under:- A

COTTON FABRICS

“Cotton fabrics” means all varieties of manufactured either wholly or partly from cotton and includes dhoties, sarees, chadders, bed-sheets, bed-spreads, counter-panes, table-cloths, embroidery in the piece, in strips or in motifs and fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials but does not include any such fabric if it contains- B

(i) 40 per cent or more by weight of wool; (ii) 40 per cent or more by weight of silk; (iii) 60 per cent or more by weight of rayon or artificial silk; or (iv) 50 per cent or more by weight of jute (including Bilipatam jute or mesta fibre): C

Provided that in the case of embroidery in the piece, in strips or in motifs and fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials, the percentages referred to in (i) and (iv) above shall be in relation to the base fabrics which are embroidered or impregnated or coated, as the case may be. III. D

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

In the year 1984-85 (period relevant for Civil Appeals Nos. 2676-2678 of 1992) there was some change in the main part but the same has no bearing because there was no change in clause III of Item 19. Item 19(III), as amended, was in these terms: F

“COTTON FABRICS

‘Cotton fabrics’ means all varieties of fabrics manufactured either wholly or partly from cotton and includes dhoties, sarees, chadders, bed-sheets, bed-spreads, counter-panes, table-cloths, 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 fabrics covered partially or fully with textile flocks or with preparations containing textile flocks, if (i) in such fabrics cotton predominates in weight, or (ii) such fabrics contain more than 40 per G H

A cent by weight of cotton and 50 per cent or more by weight of non-cellulosic fibres or yarn or both:

B 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 fabrics covered partially or fully with textile flocks or with preparations containing textile flocks, or with preparations containing textile or percentages, as the case may be, shall be in relations to the base fabrics which are embroidered or impregnated, coated or laminated or covered, as the case may be-

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

D Before the Tribunal it was urged on behalf of the appellant that ‘Prepeg-F’, which is impregnated cotton fabric, cannot be regarded as cotton fabric falling under Item 19(III) of the Tariff. It was also urged that Item 19(III) refers to cotton fabrics impregnated, coated or laminated with preparations of cellulose derivations or of other plastic materials and that the materials with which ‘Prepeg-F’ is impregnated are not plastic materials. The Tribunal has rejected the said contention and has held that it could not be proved that the proportion of the impregnated materials had reached such a level in the impregnated fabrics that the final product had ceased to contain the characteristics of a fabric so as to take it out of the purview of the cotton fabric as set out in Item 19(III) of the Tariff. The Tribunal was of the view that the term “cotton fabric” covers a wide range. As regards the submission that phenol formaldehyde resin with which the fabric is impregnated is not a plastic material, the Tribunal held that the expression “artificial plastic materials” in Item 19(III) embraces within itself synthetic resin also since plastic is a generic term and as understood in popular sense it covers resin.

G The said finding recorded by the Tribunal has been assailed by Shri J. Vellapally, the learned senior counsel appearing for the appellant. Shri Vellapally has invoked the ‘common parlance test’ and has submitted that in common parlance ‘Prepeg-F’ cannot be regarded as cotton fabric. The learned counsel has placed reliance on the decision of this Court in *Purewal Associates Ltd. v. Collector of Central Excise*, [1996] 10 SCC 752. We do not find any substance in the said contention of Shri Vellapally. In *Purewal Associates Ltd.*, [supra] this Court has taken note of the earlier decision in *Plasmac Machine Mfg. Co. (P) Ltd. v. Collector of Central Excise*, [1991] Supp. 1 SCC

57, wherein it was held that 'where definition of a word has not been given, it must be construed in its popular sense'. So also in *M/s Indo International Industries v. Commissioner of Sales Tax, Uttar Pradesh*, [1981] 2 SCC 528, it has been held that "if any term 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". [p. 530] In term 19 the expression "cotton fabrics" has been defined to include "fabrics impregnated coated or laminated with preparations of cellulose derivatives or of other artificial plastic material". In view of the inclusive clause in the definition of "cotton fabrics" contained in Item 19 it cannot be said that 'Prepeg-F' which is impregnated cotton fabric cannot be regarded as cotton fabric for the purpose of Item 19(III) of the Tariff.

Item 19(III) came up for consideration before a Bench of three Judges of this Court in *Collector of Central Excise, Hyderabad v. Fenoplast (P) Ltd.*, [1994] Supp. 2 SCC 678. In that case, the question was whether rexine cloth which was manufactured by coating of cotton fabric with PVC resin, plasticizers and other materials could be held to fall under Item 19(III) of the Tariff. One of the contentions urged on behalf of the manufacturer was 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 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. The said contention was rejected by the Court on the view that the said proposition is applied only when the words in question are not defined in the Act and reliance was placed on the observations aforementioned in the case of *M/s Indo International Industries* [supra]. The contention that after coating the cotton fabrics no longer retains its identity as cotton fabric and that a new distinct commodity emerges as a result of coating and the resulting product cannot be regarded as cotton fabric was rejected and it was observed:-

"This argument does not take into account the fact that Parliament has chosen to include the coated/laminated fabrics within the ambit and purview of 'cotton fabrics' and 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." [p. 687]

In *Fenoplast (P) Ltd.* [supra] this Court also considered the question whether PVC resin that was used for coating the cotton fabric could be

A regarded as plastic material for the purpose of Item 19(III) and it was held that PVC resin is also a plastic since synthetic resin is a polymer itself while plastic is polymer plus such additives as fillers, coloured plasticizers, etc. Insofar as 'Prepeg-F' is concerned the matter is covered by the decision in *Fenoplast (P) Ltd.* [supra] and we do not find any infirmity in the view of the Tribunal that Prepeg-F is assessable under Item 19(III) of the Tariff.

B We may now come to 'Prepeg-P' which has been held to fall under Item 17 of the Tariff. In 1977-78 [period relevant for Civil Appeal Nos. 2448-2451 of 1986] Item 17(2) of the Tariff was in these terms:-

C "*Paper and Paper Board, All sorts* (including pasteboard, millboard, straw-board, cardboard and corrugated board,) in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power-

xxx x x x x x x x x x x x x

D (2) Paper board and all other kinds of paper (including paper or paper boards which have been subjected to various treatments such as coating, impregnating, corrugation, creeping and design printing), not elsewhere specified."

E In 1984-85 [period relevant for Civil Appeal Nos. 2676-2678/92] Item 17 of the Tariff read as under:-

"*Paper and Paper Board, all Sorts* (including paste-board, mill-board, straw-board, cardboard and corrugated board) and articles thereof specified below, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power

F (1) Paper and paper board, (including paper or paper boards which have been subjected to various treatments such as coating, impregnating, corrugation, creeping and design printing), not elsewhere specified.

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H Before the Tribunal it was urged that 'Prepeg-P' is not known as paper in the industry and as such it is not assessable under Item 17 of the Tariff. Rejecting the said contention the Tribunal held that Item 17(2)/17(1) covers all categories of impregnated paper and that 'impregnated paper' has been expressly included in Item 17(2)/(1) by the word "including".

Shri Vellapally has assailed the said view of the Tribunal and has placed reliance on the minority judgment of the Judicial Member of the Tribunal wherein reference has been made to the Trade Advice No. 51/75 dated October 31, 1975 issued by the Central Board of Excise and Customs, to the effect that "treated paper which is claimed to be an intermediary product in the manufacture of decorative and laminated sheets falling under Tariff Item 15A of Central Excise Tariff is not classifiable under Tariff Item 17 of Central Excise Tariff". We are unable to the contention of the appellant based on the said Trade Advice No. 51/75 cannot be accepted because shortly thereafter the Central Board of Excise and Customs, in its letter No. 61/13/76-C 2, dated October 13, 1976, has expressed the view that Resin Impregnated paper which is marketable would merit classification under Tariff Item 17(2). The same view was repeated by the Central Board of Excise and Customs, Tariff Advice No. 2/84 dated January 12, 1984 wherein it was stated that Kraft paper subjected to the process of impregnation with synthetic resins for the manufacture of plastic laminated sheets is classifiable under Tariff Item 17(2) as converted paper and eligible for exemption under Notification 63/82-C.E. dated 28.2.82 subject to the condition stated therein.

Shri Vellapally has also submitted that impregnated paper is different from 'Prepeg-P' because impregnated paper does not cease to remain paper, while 'Prepeg-P' cannot be regarded as paper and has invited our attention to the Explanatory Notes (Vol. 2) to the Harmonised Commodity Description and Coding system published by Customs Co-operation Council, Brussels wherein it is stated:-

"Impregnated Paper and Paperboard

Most of these papers and paperboards are obtained by treatment with oils, waxes, plastics, etc., in such a manner as to permeate them and give them special qualities (e.g. to render them waterproof, greaseproof, and sometimes translucent or transparent). They are used largely for protective wrapping or as insulating materials.

Impregnated papers and paperboards include, oiled wrapping paper, oiled or waxed manifold paper, stencil paper, indicator papers such as litmus or pole-finding papers, insulating paper and paperboard impregnated, e.g., with plastics, rubberised paper, paper and paperboard merely impregnated with tar or bitumen.

Certain papers such as wallpaper base may be impregnated with

A insecticides or chemicals.” 9pp. 667-668, First Edition (1986)]

B It is no doubt true that impregnated paper referred to in the said notes is one which is used largely for protective wrapping or as insulating materials. But it does not mean that paper which is impregnated with resin for the purpose of manufacturing laminated sheets cannot be regarded as impregnated paper under Item 17(2). In our opinion, therefore, the Tribunal has rightly held ‘Prepeg-P’ as falling under Item 17(2)/17(1) of the Tariff.

C ‘Prepeg-G’ has been held to fall under Item 22F/22-F(4) of the Tariff. In 1977-78 [period relevant for Civil Appeal Nos. 2448-2451/86] Item 22 of the Tariff read as under:-

“Mineral Fibres

D Mineral fibres and yarns, and manufactures therefrom, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power.

Explanation I.- “Mineral fibres and yarns, and manufactures therefrom” shall be deemed to include-

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- (i) glass fibre and yarn including glass tissues and glasswool;
 - (ii) asbestos fibre and yarn;
 - (iii) any other mineral fibre of yarn, whether continuous or otherwise such as slag-wool and rock-wool; and
 - (iv) manufactures in which mineral fibres or yarn or both predominate or predominates in weight.

F *Explanation II.-* This item does not include asbestos cement products.”

In 1984-85 [period relevant for Civil Appeal Nos. 2676-2678/92] Item 22F(4) was in these terms:-

“Mineral Fibres

G Mineral fibres and yarn and other manufactures therefrom, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power, the following, namely:-

x x x

x x x

x x x

x x x

H (4) Other manufactures in which mineral fibres or yarn or both

predominate or predominates in weight.”

Shri Vellapally has submitted that Item 22-F/22F(4) refers to mineral fibres and yarn and other manufactures therefrom in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power and that glass fabric, which is made out of mineral fibre and yarn would fall under item 22-F of the Tariff, but ‘Prepeg-G which is obtained by impregnation of glass fabrics would not fall within the ambit of Item 22-F because it is neither mineral fibres or yarn nor is it a product manufactured from mineral fibres or yarn. In support of this submission Shri Vellapally has placed reliance on the decision of this Court in *Mahindra Engineering and Chemical Products Ltd. v. Union of India & Ors.*, [1992] 1 SCC 727. In that case the question was whether tubular shaped arc chamber housings which were manufactured from glass fabrics purchased from manufacturers were assessable to duty under Item 22-F(4) or under residuary Item 68 of the First Schedule to the Central Excises and Salt Act, 1944. This Court held that the said product did not fall under Item 22-F(4) and that it would be assessable under residuary Item 68. It was observed:-

The entry is in two parts, one, descriptive and the other explanatory. Both are to be read together to bring out the scope and extent of its applicability fully. The first declares the items which are assessable to duty. But restricts it to only those in relation to the manufacture of which any process is ordinarily carried on with the aid of power. Having thus specified the items and the condition on which it would be covered in the entry it proceeds to amplify it in the second part by using the words ‘following namely’ thus explaining the items that were intended to be covered in this entry. Use of expressions ‘namely’, or ‘that is to say’ followed by description of goods is usually exhaustive unless there are strong indications to the contrary. Language of serial No. 4 is plain and simple. It intends to clarify the expression ‘manufacture therefrom’ by expanding it to include in its ambit even those manufactures in which fibre or yarn predominated in weight. But it did not go beyond it and purported to include manufactures out of manufacture of a commodity in which mineral fibre or yarn predominated. “[pp. 729, 730.]

“Thus glass fabric manufactured out of mineral fibre is assessable to duty under Item 4 but are chamber housing manufactured from glass fabric cannot be placed at par with glass fabric and cannot be considered as ‘other manufacture’ of glass fibre or yarn.” [p.730]

- A In view of the decision of this Court in *Mahindra Engineering and Chemical Products Ltd.* [supra] it must be held that 'Prepeg-G' manufactured from glass fabrics would not fall in Item 22-F/22-F(4) as found by the Tribunal and that 'Prepeg-G' was assessable to excise duty during the relevant period under residuary Item 68 of the Tariff. The impugned judgment of the Tribunal in so far as it held that Prepeg-G fell under Item 22-F/22-F(4) of the Tariff cannot be upheld and has to be set aside.
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- C In the result, the appeals are partly allowed and the impugned judgments of the Tribunal to the extent they hold that 'Prepeg-G' manufactured by the appellant was assessable to excise duty at the relevant time under Item 22-F/22-F(4) of the Tariff are set aside and it is held that 'Prepeg-G' was assessable to duty under residuary Item 68 of the Tariff. No order as to costs.

R.C.K.

Appeals partly allowed.