

**SUPREME COURT OF INDIA**

Commissioner of Central Excise, Mumbai-III

Vs.

Convertor Adhe. and Chemicals Private Limited

C.A.Nos.3678-3687 of 2000

(Tarun Chatterjee, S. N. Variava and C. K. Thakker JJ.)

31.08.2005

**ORDER**

The Order of the Court is as follows:-

1. These Appeals are against the Judgment of the Customs, Excise and Gold (Control) Appellate Tribunal (in short "CEGAT") dated 19th August, 1999.

2. Briefly stated the facts are as follows:-

“The Respondent manufactures adhesives based on plastics. They clear the adhesives in two sets, which after purchase have to be mixed together in order to form an adhesive. They filed classification list classifying the product under T.I. No. 35.06. The classification list was approved.”

3. It appears that in 1992, the Respondent exported some products. While exporting the products they classified the two items separately. The Department then issued 10 show cause notices claiming that the correct classification should be under T.I. No. 3909.60. The show cause notices were for a period of July, 1988 to March, 1995. In respect of the first show cause notice dated 4th August, 1993 which was for the period July, 1988 to April, 1992, the question also arose as to whether the extended period under Section 11A could be invoked.

4. The Commissioner by his order dated 12th December 1996 held that the product was classifiable under T.I. No. 3909.60 and confirmed the demand for duty as well imposed penalty and interest. The Appeal filed by the Respondent before CEGAT has been allowed by the impugned Judgment. It has been held that the product is correctly classifiable under T.I. No. 35.06.

5. We have heard the parties at length. Even though we do not completely agree with the reasoning given by the Tribunal, we find that by virtue of Section Note (2) of Section VI and Section Note (1) of Section VII of *Central Excise Tariff Act, 1985*, the product would be correctly classifiable under T.I. No. 35.06. If a good is sold in two sets consisting of two or

more separate constituents, some or all of which fall in Sections VI or VII and the goods are intended to be mixed together to obtain a product falling under Sections VI or VII, then that product has to be classified in the appropriate heading of that product. In this case, admittedly the goods are sold in two sets one set being a polyurethanes resins and the other set being polyisocyanate. The polyurethane resin falls under T.I. No. 3909.60. When the above products are mixed together they become adhesives which is a product falling in T.I. No. 35.06. Therefore, as per these notes it has to be classified as adhesives.

6. In this view of the matter, we see no reason to interfere with the impugned Judgment. The Appeals stand dismissed. There will be no order as to costs.