Dunlop India Ltd. & Madras Rubber ... vs Union Of India (Uoi) And Ors. on 6 October, 1975

Equivalent citations: AIR1977SC597A, 2003(90)ECC483, 1983(13)ELT1566(SC), (1976)2SCC241, [1976]2SCR98

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Bench: N.L. Untwalia, P.K. Goswami

JUDGMENT

P.K. Goswami, J.

1. In these appeals by special leave the only question that is raised is whether the substance known as Pyratax-Vinyl Pyridine Latex (for short, V.P. Latex) is not rubber raw classifiable under item No. 39 of the Indian Tariff Act, 1934 (hereinafter referred to as I.C.T.).

2. The appellants are manufacturers of automotive tyres. V.P. Latex is required in the process of manufacturing of tyres. V.P. Latex is required is the process of manufacturing of tyres V.P. Latex is not manufactured in India and has to be imported from outside the country. The tyre industry uses V.P. Latex as one of the essential ingredients in the course of manufacture of automotive tyres.

3. The appellant in Civil Appeal No. 1446 of 1972 imported sometime in April 1969, 3 consignments of V.P. Latex. In appeal from the proceedings before the Assistant Collector of Customs for appraisement of the said consignments for the purpose of imposition of customs duty and/or countervailing duty, the Appellate Collector of Customs, Calcutta upheld the appellant's contention and classified V.P. Latex under item 39 of the I.C.T. as raw rubber. The classification made by the Appellate Collector was revised by the Central Government in a proceeding initiated, suo motu, under Section 131(2) of the Customs Act, 1962. The Central Government held by the impugned order, that the said V.P. Latex was "an aqueous dispersion of synthetic resin", and hence classifiable under item 87 of the I.C.T. prior to 1st March, 1970, and thereafter under the new item No. 82(3) I.C.T. The Central Government by the same order further held that the said goods were liable to countervailing duty under item No. 15A, C.E.T. both before and after 1st March, 1970. It is apparent that if V.P. Latex were to be classified under Item No. 87, higher duty will be leviable and that is the reason for the controversy in these appeals.

4. In Civil Appeal No. 2746 of 1972, the appeal is directed against the order of August 17, 1972, of the Appellate Collector of Customs, Madras, dismissing a batch of 18 appeals of the Company. The Appellate Collector confirmed the order of the Assistant Collector of Customs Appraising, Madras,

rejecting the appellant's claim for refund of duty on the basis that V.P. Latex should be classified under item 39 I.C.T. and not under item 82(3) of the I.C.T. The appellant did not go in revision before the Central Government as already similar claims had been rejected by the Central Government.

5. There are several interveners in the appeals and the entire tyre industry is interested in the matter.

6. Prior to the 1st March, 1970, the First Schedule to the Indian Tariff Act, 1934, contained, inter alia, the following dutiable items :

> Item No. 39-Ruber, raw, Item No. 87-All other articles, not otherwise specified.
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> In addition to the above, the following item was introduced in the Tariff Act by the Finance Act, 1970 :
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> Item No. 82(3)(a).-Artificial or synthetic resins and plastic materials in any form, whether solid, liquid or pasty, or as powder, granules or flakes, or in the form of moulding powders.

7. Under Section 2A of the Tariff Act any article which is imported into India shall be liable to customs duty equal to the excise duty for the time being leviable on a like article if produced or manufactured in India. Such customs duty in addition to the duty under the Tariff Act is known as countervailing duty.

8. Item 15A of the First Schedule to the Central Excises and Salt Act, 1944 (briefly C.E.T.) reads as follows :

> 15A. Artificial or synthetic resins and plastic materials and articles thereof (1) Artificial or synthetic resins and plastic materials in any form, whether solid, liquid or pasty, or as powder, granules or flakes, or in the form of moulding powders, the following, namely

9. An additional item being item No. 16AA was introduced in the C.E.T. for the first time by the Finance Act, 1970, which reads as follows :

> Item No. 16AA.-Synthetic rubber, including butadiene acrylonitrile rubber, styrene butadiene rubber and butyl rubber, synthetic rubber latex, including prevulcanised synthetic rubber latex.
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> The quantity of V.P. Latex consumed by the tyre industry in India as a whole is said to be about 1000 tonnes per year and the value thereof is Rs. 40,33,000/- approximately. The appellant, Dunlop India Limited, consumes about 300 tonnes per year. The controversy between the parties centers round the real meaning of V.P.

> Latex, while the appellants submit that V.P. Latex is synthetic rubber in the latex form, according to the respondents it is not so, but on the other hand, it is what may be described as 'resin'.

10. In order that the Court is able to appreciate the rival contentions, both sides addressed us referring to several standard authorities and treatises.

11. Before we proceed further it may be appropriate to see how rubber is described in the Encyclopaedia Britannica, Volume 19, 1965 Edition :

> Rubber is the substance caoutchouc (q.v.), a milk like fluid that is obtained from certain tropical shrubs or tyres and then subjected to various processes of manufacture; or it may be a product of chemical synthesis.
>
> * * * * The uniqueness of rubber lies in its physical properties of extensibility and toughness. In its natural state, it is greatly affected by temperature, becoming harder when cooled (at 0°-10°C it is opaque) and softer when heated (above 50°C, it becomes tackier and less elastic, decomposing into liquid form at 190°-200°C). When vulcanized (i.e. heated with sulphur at 120°-160°C.) it loses its thermoplasticity and becomes stronger and more elastic ....
>
> Chemically, rubber is a polymer of isoprene....
>
> * * * * The term synthetic rubber is used to describe an ever growing number of elastic materials, some of which closely resemble natural rubber while others have completely different physical properties, Since World War II, precise terminology has not kept pace with the rapid developments in the synthetic and plastics industries.
>
> The copolymerization of the butadiene and the styrene takes place in an emulsion in the presence of an active initiator, such as cumene hydroperoxide and p-menthane hydroperoxide, which allows the conversion to occur at a low temperature (5°C). SBR is usually prepared with 75% butadiene and 25% styrene; the proportion will, however, vary according to the desired degree of elasticity....

12. Let us consider the appellants' case to treat the V.P. Latex as rubber raw. In this attempt the appellants rely upon several authorities from the rubber world pronouncing upon the chemical properties as well as various uses and potentialities. Their contention is that V.P. Latex is a synthetic rubber Latex and can never be taken for synthetic resin. The principal point to distinguish V.P. Latex from synthetic resin is, while synthetic resin cannot be vulcanised, V.P. Latex, being rubber can be vulcanised. According to the American Standard for Testing Material, (A.S.T.M.) raw rubber is defined as crude or uncompounded rubber, either natural or synthetic. Indian Standards Institution (I.S.I.) defines rubber as follows :

> Rubber in its modified state free of all diluents, retracts within one minute to less than 1.5 times its original length after being stretched at normal room temperature to twice its length and held for one minute before release.

13. It also defines raw rubber as 'vulcanised rubber'. According to H.J. Stern in his book "Rubber-Natural and Synthetic", V.P. Latex is composed of butadiene styrene and vinyl pyridine in the ratio of 70 : 15 : 15 respectively. A synthetic latex is produced as the first stage in the manufacture of most synthetic rubbers. V.P. Latex is one such synthetic rubber latex. An affidavit sworn by Mr. Mayer, Manager, Technical Services, Chemical Division, Goodyear International Corporation, states that V.P. Latex is a terpolyer rubber as defined in A.S.T.M. Specification DI-566-60T and that there is no measurable resin content in this product. It is claimed by the appellants that pyratex which is the commercial name for V.P. Latex, imported by them, is exactly similar to the V.P. Latex referred to in Mr. Mayer's affidavit, since it also contains butadiene styrene and vinyl pyridine in the same proportion of 70 : 15 : 15 with no measurable resin content. It is claimed that V.P. Latex is an emulsion of synthetic rubber and it is borne out by its chemical composition and by the physical properties. In the case of V.P. Latex when coagulated, the coagulum answers fully the A.S.T.M. standards and tests prescribed for rubber. Its use in liquid state is commercially more expedient than its use in dry state. V.P. Latex has been designed as a special synthetic rubber latex to be suitable for its use at the fabric cross-linking stage with rubber compound. It is claimed that in its application it is in no way different from any other natural rubber or synthetic rubber latices. The advantage gained in the case of V.P. Latex is that it is more stable and is not whimsical with reference to manufacturing conditions. According to G.S. Whitby, the additions of vinyl pyridine in such terpolymers of butadiene, styrene and vinyl pyridine have been found to improve the characteristics and properties with the increase of vinyl pyridine content and it is known to reach optimum at about 15 parts i.e. at a charge of 75 : 10 : 15. It is further said that vinyl pyridine copolymers suffer from the drawback of extremely high rate of cure, scorching and incompatibility with other rubbers and hence do not find use in the dry state in spite of their certain superior properties. According to the appellants, V.P. Latex, when coagulated just like any other rubber latex satisfies the elongation tests prescribed for rubber. It is also claimed that in the international field of rubber manufacture, all over the world, V.P. Latex is fully recognised as a synthetic rubber latex and not as a synthetic resin.

14. The Condensed Chemical Dictionary, 8th edition, 1971, defines latex as a white free-flowing liquid obtained from some species of shrubs or trees in which microscopically small particles or globules of natural rubber are suspended in a watery serum. Natural rubber latex, obtained from the tree Heve a Braziliensis, contains about 60% water, 35% rubber hydrocarbon, and 5% proteins and other substances. Coagulation is prevented by protective colloids, but can be induced by addition of acetic or formic acid. Synthetic latices include polystyrene, SBR rubber, neoprene, polyvinyl chloride etc. Both natural and synthetic latices are available in vulcanised form. It describes their uses for thin rubber products (surgeons' gloves, drug, sundries); girdles, pillows, etc.; emulsion paints; adhesives; tire cord coating; rubber, natural.

15. In the same Dictionary, rubber synthetic is described as follows :

Any of a group of manmade elastomers which approximate one or more of the properties of natural rubber. Some of these are : sodium polysulfide ('Thiokol'); polychloroprene (neoprene); butadiene-styrene copolymers (SBR) ; acrylonitrile-butadiene copolymers (nitrile rubber); ethylene-propylene-diene (EPDM) rubbers; synthetic polyisoprene ('Coral', 'Natsyn'); butyl rubber (copolymer of isobutylene and isoprene); poly acryloni-trile ('Hycar'); silicone (polysiloxane); epichlorohydrin; polyurethane ('Vulkollan').

Styrene-butadiene rubber (SBR, s. type elastomer)-is the most common type of synthetic rubber. Manufacture involves copolymerization of about 3 parts butadiene with 1 part styrene. Its uses are for tires, footwear, mechanical goods coatings; adhesives; etc.

16. The appellants have also produced the Import Trade Control Policy, Volume I, for the year 1975-76 described during the arguments as the 'Red Book' of the Commerce Ministry of the Government of India. It may be useful to quote the entire entry 150 at page 58 :

Section II : Policy for individual items and the detailed policy for Actual Users :

Part & SI. No.	Description	Established IMPORT POLICY of I.T.C. Importers	Actual User Schedule
(1)	(2)	(3)	(4)
150	Rubber, raw and	Nil (1) A.U. for import of Gutta gutta percha, raw. percha, raw. (2) Requirements of actual users for the following items will be met by imports through public-sector agency : (i) Synthetic rubber namely, Butyl rubber Acrylonitrile Butadiene Copolymer, Poly Chloroprene, Thikol, Polyisoprene, Poly butadiene, Hypalon, Viton Polyarcylic EPDM, Chlonobutyl and Bromobutyl Silicone rubber and Silicone rubber master batches and Silicone rubber master batches and Synthetic latex including Vinyl pyridine latex and copolyme of 'styrene butadiene latex, Nitrilre latex and poly chloroprene latex. (ii) Hot type special grades of SBR for manufacture of high impact polystyrene only. Please see Section III to this Red Book. (3) Import of SBR and/or Alkyl substituted Styrene Butadiene Elastometric Copolymers will not be allowed. (4) Import of natural rubber and reclaimed rubber will not be allowed.	

(emphasis added)

17. In the earlier Volume of the Import Trade Control Policy, for the year 1969-70, this item 150-Rubber, raw-shows under the fourth column "Actual Users for Synthetic rubber", the following :

(i) Import of natural rubber will normally be arranged through STC for meeting the requirements of actual users.

(ii) A.U. for Synthetic Rubber, namely, Butyl rubber, Acrylonitrile Butadiene Copolymer, Poly chloroprene, Thikol, Poly isoprene and Polybutadiene and Synthetic latex.

* * * * In the Import Trade Control Policy in Volume No. I for the year 1970-71 against Serial No. 150, rubber, raw, under column 4 Actual Users for Synthetic rubber", actual users are shown as (ii) "A.U. (Actual User) for Synthetic Rubber, namely, Butyl Rubber, Acrylon-trile Butadiene Copolymer, Poly Chloroprene, Thikol, Poly Isoprene and Poly-butadiene Hypalon, Silicone rubber and Synthetic latex including Vinyl Pyridine latexand copolymer of styrene butadiene latex" (emphasis added). Again the Condensed Chemical Dictionary at page 741 describes "Pyratex" the trade name under which V.P. Latex has been imported as follows :

Pyratex, 248 Trademark for a vinylpyridine Latex.

Properties : Total solids 40-42% PH 10, 5-11, 5 : sp. gr. 0.96.

Uses : To promote adhesion between rayon or nylon fibres and rubber, as in tire cord, belting, hose, etc.

18. The British Standard specification is as follows :

The British Standards Institution gives the specification of PSBR 41 latex as "(Vinyl) pyridine-styrene-butadiene rubber latex with a nominal total solids content within the range 40.0% to 49.9% and a nominal bound styrene content of less than 20.0% of the total polymer". In the Elastomers Manual, under Table XI, the International Institute of Synthetic Rubber Producers, Inc. enumerates "GENTAC" and "PYRATEX" as Emulsion Styrene-Butadiene and Butadiene Rubber Latices of Section 41 P Class. The classification "Section 41 P" properly decoded means as belonging to the Chemical Family of Styrene-Butadiene Rubber (SBR) having total solid contents of 40 to 49% and Styrene Co-monomer content of less than 20% wherein Vinyl Pyridine is present in the Polymer.

19. Although the controversy between the parties was placed before us in an exhaustively enlarged form going into the Chemistry of V.P. Latex, it is not necessary to go into all the complexities of chemical formulate and properties. The impugned order itself takes note of all the contentions raised before the Government and also pressed before us.

20. This approach is also convenient and unobjectionable, since it is urged on behalf of the respondents that we should not entertain fresh materials which were not available before the authority. We may, therefore, briefly note the claim of the appellants to V.P. Latex being classified as raw rubber under item 39, I.C.T. on the grounds advanced before the Government which the authority took note of:

(1) V.P. Latex is a synthetic rubber latex which satisfies wholly each and every test prescribed by the authority in India as well as abroad for classification of rubber.

(2) According to the A.S.T.M. definition, rubber means "an elastomer that can be or already is vulcanised. Collectively the rubber constitutes the definite raw material of the rubber industry. They may be of vegetable origin or synthetic". Synthetic resin cannot be vulcanised whereas V.P. Latex, being rubber, can be vulcanised.

(3) A.S.T.M. further defines raw rubber as crude or uncompounded rubber, either natural or synthetic.

(4) According to I.S.I. definition, rubber is defined as follows :

Rubber in its modified state free of all diluents, retracts within one minute to less than 1.5 times its original length after being stretched at normal room temperature to twice its length and held for one minute before release.

I.S.I, also defines raw rubber as unvulcanised rubber.

(5) V.P. Latex is composed of butadiene styrene and vinyl pyridine in the ratio of 70 : 15 : 15 respectively. According to H.J. Stern (author of 'Rubber-Natural and Synthetic'), a synthetic latex is produced at the first stage in the manufacture of most synthetic rubbers V.P. Latex is one such synthetic rubber latex.

(6) V.P. Latex is very much similar to other synthetic rubber latices. V.P. Latex cannot be regarded as an aqueous dispersion of synthetic resin since it has no measurable resin at all. On the contrary the proper description of V.P. Latex would be to call it an emulsion of synthetic rubber and this is borne out by its chemical composition and by its physical properties.

(7) The question of classifying a substance rests primarily on its chemical properties as borne out by technical tests. In the case of V.P. Latex, when coagulated, the coagulum answers fully the A.S.T.M. standards and tests prescribed for rubber. Its use in liquid state is commercially more expedient than its use in dry state but this should not be factor in classifying a product according to its technical and chemical composition.

(8) V.P. Latex has been designed as a special synthetic rubber latex to be suitable for its use at the fabric cross-linking stage with rubber compound. In its application it is in no way different from any other natural rubber or synthetic rubber latices. V.P. Latex should, therefore, properly be regarded as a synthetic rubber latex.

(9) It is not correct to say that all rubber latices when coagulated should have an absolute commercial dry rubber usage in order to be classified under raw rubber.

> Quoting from G.S. Whitby "the addition of vinyl pyridine in such terpolymers of butadiene, styrene and vinyl pyridine has been found to improve the characteristics and properties with the increase of vinyl pyridine content and it is known to reach optimum at about 15 parts, i.e. at a charge of 75 : 10 : 15 (Synthetic rubber by Whitby). It was admitted that vinyl pyridine copolymers do not find use in the dry state as they suffer from the drawback of extremely high rate of cure, scorching and incompatibility with other rubbers.
>
> (10) V.P. Latex has to be assessed in the form in which it is imported. In this view, V.P. Latex is nothing but a synthetic rubber latex.
>
> (11) In the International field of rubber manufacture all over the world V.P. Latex is fully recognised as a synthetic rubber latex and not as a synthetic resin. While V.P. Latex can be coagulated and vulcanised, a synthetic rubber cannot be vulcanised.

21. The appellants submitted before the revisional authority letter dated 26th November, 1970, written by Dunlop Products Chemical Division on V.P. Latex; extracts from Elastomers Manual published by the International Institute of Synthetic Rubber Producers; Articles written by W.F. Brucksch, Jr. of Metal Halides in Vinylpyridine Rubber (PBR) published Rubber Chemistry and Technology; A.S.T.M. Glossary of Terms relating to Rubber and Rubber like materials; and the books by G.S. Whitby and H.J. Stern. It was pointed out before the authority by the appellants that rubber was always obtained first in a latex form and latex was nothing but an aqueous state of rubber, that V.P. Latex is a liquid rubber designed for use in tyre manufacture as a bonding agent by cross linking with fabrics. It was also pointed out with reference to the classification of synthetic rubber latices that the Central Board itself had ruled in several cases that these were to be regarded as coming under I.C.T. 39.

22. The conclusion of the revisional authority, after considering the above submissions, may be quoted in its own words :

> V.P. Latex is a synthetic latex designed to be used in the manufacture of tyres as a bonding agent by cross linking with fabric. It has bee admitted by the importers that the product is not used in the dry state V.P. Latex is a liquid latex used as such and the question boils down to consider whether synthetic rubber latex could be classified as 'raw rubber' assessable under item 39 I.C.T. irrespective of its usage known commercially or in the industry.

23. Then after nothing the definition of latex in the Chemical Dictionary and in the "Materials Hand Book" by Brady, the authority observed as follows :

> These definitions imply that latex is a material from which rubber is obtained and not rubber itself.

> Latex, according to the authority, is milk juice of the rubber tree which is source of rubber and is in common parlance referred to as rubber. The authority then refers to Chapter 40 of the Brussels Tariff Nomenclature (B.T.N.) dealing with natural rubber latex (40.01) and synthetic rubber latex (40.02).
>
> 40.1. : "Natural rubber latex, whether or not with added synthetic rubber latex; pre-vulcanised natural rubber latex; natural rubber; balata, gutta-percha and similar natural gums.
>
> 40.2. "Synthetic rubber latex; pre-vulcanised synthetic rubber latex; synthetic rubber; factice derived from oils.

The authority then observed as follows :

> Chapter 40 of the B.T.N. covers raw rubber, Heading No. 40.01 refers to 'natural Rubber Latex whether or not with added synthetic rubber latex, pre-vulcanised natural rubber latex, natural rubber but natural rubber latex has been defined under 40.01 as containing in suspension 30% to 40% of rubber. Rubber Latex therefore appears to fall under 40.01 by specific inclusion only. So also synthetic rubber latex is specifically mentioned in heading 40.02. Had they not been so specified, latex may have been excluded from the scope of the heading 'rubber'.

24. To say the least, it is difficult to appreciate the strained meaning given by the authority in the above extract. At any rate the authority concludes "hence it appears that rubber latex is not rubber as such but merely a source of rubber.... In this view, latex and rubber will have to be distinguished from each other.

25. It appears from the order itself that the Government of India was not treating rubber latex as raw rubber assessable under item 39 I.C.T. till 1935, and a decision was taken in that year to accord the same tariff treatment to rubber latex as to rubber raw, because it was found that latex had to be imported for various specific uses which required a liquid form. According to the authority, the use of rubber latex was as rubber and therefore on the same principle, synthetic rubber latex was also treated as synthetic rubber for assessment purposes. Then comes the crucial conclusion of the authority.

If V.P. Latex was designed for or intended to be used as rubber, there would have been no difficulty in classifying it under item 39 I.C.T. In fact synthetic rubber itself has been classified as raw rubber only because synthetic rubber serves exactly the same purpose as crude rubber in all its industrial uses and has no practical difference from the latter. Pyratex V.P. Latex is designed for use as an adhesive in the manufacture of tyres. It is seldom put to any of the other uses to which rubber, natural or synthetic is ordinarily put. In composition, it is similar to rubber latex and it may also well answer the tests for rubber such as elongation etc. When reduced to dry state but its use is not the same as that of rubber. It could theoretically be converted into a substance which is akin to rubber but it has been admitted that due to high rate of cure, scorching and incompatibility with

other rubbers. It does not find use in a dry state. In fact it does not replace rubber in use though it has similar properties.

[Emphasis added]

26. The last point considered by the authority was with regard to the resin content in V.P. Latex. The appellants claimed that V.P. Latex had no resin content. The authority repelled the contention in the following words :

> It appears that there is no accepted definition of the term 'resin' in trade usage or technical literature and resins are identified by their use as resins and in this view V.P. Latex may well be considered as a resin latex.

27. Mr. Sanghi for the respondents has made a strenuous plea that V.P. Latex is not rubber raw and is synthetic resin. If it is correct that V.P. Latex is synthetic resin, it would come under item 87 I.C.T. the residuary entry covering "all other articles not otherwise specified".

28. To revert to the order of the authority, it is clear that the authority would be have found no difficulty in coming to the conclusion that V.P. Latex in view of chemical composition and physical properties is rubber raw, if the same were commercially used as rubber. The authority, therefore, was principally influenced to come to its decision on the sole basis of the ultimate use of the imported article in the trade.

29. Section 12 of the Customs Act, 1962, is the charging section. That section reads (1) "Except as otherwise provided in this Act or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Indian Tariff Act, 1934, or any other law for the time being in force, on goods imported into, or exported from, India.

30. The relevant taxing event is the importing into or exporting from India. Condition of the article at the time of importing is a material factor for the purpose of classification as to under what head, duty will be leviable. The reason given by the authority that V.P. Latex when coagulated as solid rubber cannot be commercially used as an economic proposition, as even admitted by the appellants, is an extraneous consideration in dealing with the matter. We are, therefore, not required to consider the history and chemistry of synthetic rubber and V.P. Latex as a component of SBR with regard to which extensive arguments were addressed by both sides by quoting from different texts and authorities.

31. It is well established that in interpreting the meaning of words in a taxing statute, the acceptation of a particular word by the Trade and its popular meaning should commend itself to the authority.

32. Dealing with the meaning of the term "vegetables" in the Excise Tax Act in King v. Planters Nut and Chocolate Company Limited, 1951 CLR 122, the Exchequer Court observed as follows :

> Now the statute affects nearly everyone, the producer or manufacturer, the importer, wholesaler and retailer, and finally the consumer who, in the last analysis, pays the tax. Parliament would not suppose in an Act of this character that manufacturers, producers, importers, consumers, and others who would be effected by the Act, would be botanists. The object of Excise Tax Act is to raise revenue, and for this purpose to class substances according to the general usage and known denominations of trade. In my view, therefore, it is not the botanist's conception as to what constitutes a 'fruit' or 'vegetable' which must govern the interpretation to be placed on the words, but, rather what would ordinarily in matters of commerce in Canada be included therein. Botanically, oranges, and lemons are berries, but otherwise no one would consider them as such.
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> The Exchequer Court also referred to a pithy sentence from "200 chests of Tea", per story, J (1824) 9 Wheaton (US) 435 that "the Legislature does not suppose our merchants to be naturalists, or geologists, or botanists".

33. The above Planters Nut case (supra) was referred to with approval by this Court in Ramavatar Budhaiprasad v. Assistant Sales Tax Officer, (. In Ramavatar's case, this Court was concerned with the meaning of the word 'vegetables' occurring in C.P. and Berar Sales Tax Act, 1947. This Court held as follows :

> But this word must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been defined in the Act and being a word of every day use it must be construed in its popular sense meaning 'that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it'. It is to be construed as understood in common language.

34. Again in the Commissioner of Sales Tax, Madhya Pradesh, Indore v. Jaswant Singh Charan Singh, , this Court had to deal with the word 'charcoal' used in Madhya Pradesh General Sales Tax Act. It was contended in that case that 'charcoal' would be covered under Entry I of Part III of Schedule II to that Act. This Court while holding that charcoal would be included in coal, observed as follows :

> Now, there can be no dispute that while coal is technically understood as a mineral product, charcoal is manufactured by human agency from products like wood and other things. But it is now well settled that while interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or the technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense.
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> This Court again referred with approval to the decision in Planters Nut case (supra) and followed the principle laid down in Ramavatar's case (supra). In South Bihar Sugar Mills Ltd., etc. v. Union of India, the question that was raised related to item

> 14-H in the Schedule I to the Central Excises and Salt Act, 1944, which contained compressed, liquefied or solidified gases, inter alia. Carbon acid (carbon dioxide). This Court observed as follows :
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> It is also not correct to say that because the sugar manufacturer wants carbon dioxide for carbonation purpose and sets up a kiln for it that he produces carbon dioxide and not kiln gas. In fact what he produces is a mixture known both to trade and science as kiln gas, one of the constituents of which is, no doubt, carbon dioxide.
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> This Court finally observed :
>
> The Kiln gas in question therefore is neither carbon dioxide nor compressed carbon dioxide known as such to the commercial community and therefore cannot attract Item 14-H in the First Schedule.
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> Similarly in Minerals & Metal Trading Corporation of India Ltd. v. Union of India, this Court dealing with the meaning of the word 'Wolfram ore' again approvingly referred "not to the scientific or technical meaning but to the meaning attached to them by those dealing in them in their commercial sense".

35. Mr. Sanghi draws our attention to several authorities to impress upon us that butadiene styrene latices are compatible with many resins and modifiers. He also submits that the term vinyl pyridine has been used to include a variety of resins, plastics, elastomers, etc. and that V.P. Latex exhibits outstanding adhesive properties. His main object is to show that V.P. Latex is resin which is "an omnibus term for a variety of hard brittle, solid or semisolid organic substances". It is however, seen from an extract from the Dictionary of Rubber Technology, 1969 edition, by Alexander S. Craig, produced by Mr. Sanghi that "vinyl pyridine is one component of terpolymer of butadiene, styrene and vinyl pyridine used in latex form to promote good adhesion between rubber and textiles, particularly rayon and nylon". We find the same description reiterate in a book "Latex Natural and Synthetic" by Cook (a Reinhold Pilot Book) where at page 145 it is stated that 'there is one type of speciality rubber latex that deserves special notice. This is terpolymer of butadiene, styrene, and 2-vinyl pyridine. Under the trade names of "Gentac" and "Pyratex" it is extensively used in nylon tire cord saturation because it gives better adhesion between the cord and the rubber in which the cord is imbedded than do other latices'. Mr. Sanghi, however, emphasises that V.P. Latex is merely an adhesive and so is akin to resin and not to rubber.

36. We are however, unable to accept the submission. It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of the classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry.

37. It is good fiscal policy not to put people in doubt and quandary about their liability to duty, when a particular product like V.P. Latex known to trade and commerce in this country and abroad is imported, it would have been better if the article is eonomine, put under a proper classification to avoid controversy over the residuary clause. As a matter of fact in the Red Book (Import Trade Control Policy of the Ministry of Commerce) under Item 150, in Section II, which relates to "rubber, raw and gutta percha, raw", synthetic latex including vinyl pyridine latex and copolymer of styrene butadiene latex are specifically included under the sub-head "Synthetic Rubber". We do not see any reason why the same policy could not have been followed in the I.C.T. book being complementary to each other. When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause. The question of competition between two rival classifications will, however, stand on a different footing.

38. It is not for the Court to determine for itself under article 136 of the Constitution under which item a particular artical falls. It is best left to the authorities entrusted with the subject. But where the very basis of the reason for including the article under a residuary head in order to charge higher duty is foreign to a proper determination of this kind, this Court will be loath to say that it will not interefere.

39. In this case there is rather voluminous evidence from the standard authorities in favour of V. P. Latex being a component of SBR which is admittedly classified under rubber raw. But assuming, and only assuming, that evidence is balanced, the best course in a fiscal measure is to decide and fix the entry under which the article comes, otherwise it will give rise to adoption of varying standards where uniformity should be the rule.

40. At one stage Mr. Sanghi pointed out that in certain Bills of Entry of Dunlop India Limited, their Agents, Messrs, Mackinnon, Mackenzie & Co., Private Ltd., gave the I.C.T. Item No. 87 with regard to the imported V.P. Laitex. This, according to Mr. Sanghi, clearly shows how the appellants them selves have understood the matter. There is, however, no estoppel in law against a party in a taxation matter. In order to clear the goods for the customs, the appellants Agents may have given the classification in accordance with the wishes of the authorities or they may even be under some misapprehension. But when law allows them the right to ask for refund on a proper appraisement and which they actually applied for. we do not attach any significance to this aspect of the matter pointed out by counsel. The question is of general importance and must be decided on its merits.

41. Mr. Sanghi drew our attention to two decisions of this Court in V. V. Iyer of Bombay v. Jasjit Singh, Collector of Customs, and the Collector of Customs, Madras v. K. Ganga Setty, and submitted that this Court should not interfere with the decision of the authority under Article 136 of the Constitution. These decisions are clearly distinguish able, as, in the view we have taken, the order is ex facie based on an irrelevant factor. Even in the Commissioner of Sales Tax, U.P. v. S.N. Brothers, Kanpur, , this Court refused to interfere only because it could not be persuaded to hold that the view taken by the High Court was so grossly erroneous as to call for interference under Article 136 of the Constitution. The present is not such a case.

42. We are clearly of opinion that in the state of the evidence before the revisional authority no reasonable person could come to the conclusion that V.P. Latex would not come under rubber raw. The basis of the reason with regard to the end-use of the article is absolutely irrelevant in the context of the entry where there is no reference to the use or adaptation of the article. The orders of the authority are, therefore, set aside. In the result the appeals are allowed with costs.

43. We should observe that we express no opinion with regard to the question relating to countervailing duty under Section 16AA of the First Schedule to the Central Excises and Salt Act, 1944, in these appeals.