Supreme Court of India
Collector Of Central Excise, ... vs Fenoplast (P) Ltd.(1) on 22 February, 1994
Equivalent citations: 1994 SCC, Supl. (2) 671 JT 1994 (2) 57
Author: B Jeevan Reddy
Bench: Jeevan Reddy, B.P. (J)

PETITIONER:
COLLECTOR OF CENTRAL EXCISE, HYDERABAD

Vs.

RESPONDENT:
FENOPLAST (P) LTD.(1)

DATE OF JUDGMENT22/02/1994

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
HANSARIA B.L. (J)

CITATION:
1994 SCC Supl. (2) 671 JT 1994 (2) 57
1994 SCALE (1)729

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1.The question in this appeal is whether 'rexine cloth' produced by the respondent falls under Tariff Item 19-111 of the Schedule to the Central Excise Act, as it obtained at the relevant time. The Tribunal has held, by a majority of 2:1, that it does not. The Revenue is assailing the majority opinion in this appeal.

2.Initially, the respondent had applied for classification of the said product under T.I. 19-111 but later by their letter dated 3-3-1981 they contended that their product does not fall within the said tariff item. When the department did not agree with their contention, they submitted a classification list under T.I. 19-111 under protest. In pursuance of certain orders passed by the High Court in the writ petition filed by the respondent, a proper show-cause notice was issued to the respondent and after hearing it, the Assistant Collector affirmed the classification of the said product under T.I.

19-111. On appeal, the Collector (Appeals) allowed the respondent's appeal. He held that the said product does not fall under T.I. 19-111 but he did not say under which item does it fall. The department appealed to the Tribunal, which agreed, by a majority that T.I. 19-111 is not applicable.

3.The respondent purchases 100% cotton cloth and impregnates it with PVC resin and other materials. The composition of the ultimate product rexine cloth - is to the following effect:

"(1) Cotton fabrics8.0% (2) PVC resin24.5% (3) Plasticizers (DIP/DIOP/BBP)13.0% (4) Other [fillers, (Calcium Carbonate) secondary plasticizers, pigments, solvents, thinners, foaming agents] 54.5% The above composition is by weight."

4.Shri Gowri Sankaramurty, learned counsel for the Revenue, submits that the said product squarely falls within Tariff Item 19-111. In the alternative, he submits, it would fall under T.I. 22(B). The counsel complains that the Appellate Collector as well as the Tribunal not only erred in not classifying the said product under T.I. 19-111 but erred further in not specifying under which tariff item does it fall if not under T.I. 19-111. Shri Soli J. Sorabjee, learned counsel appearing for the respondent, clarified, in the first instance, that the respondent's product has been classified under T.I. 68 and that he has been paying duty thereunder. Counsel justified the opinion of the majority of the Tribunal holding that the said product does not fall within T.I. 19-III. Shri Sorabjee placed strong reliance upon the decision of this Court in Collector of Central Excise, Calcutta v. Multiple Fabrics (P) Ltd. 1

5. Tariff Items 19, 22 and 22(B) read as follows at the relevant time

---------- Tariff Description of goods

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(1) (2)

19.COTTON FABRICS 'Cotton fabrics' means all varieties of fabrics manufactured either wholly or partly from cotton and includes dhoties, sarees, chaddars, bed-sheets, bedspreads, counter- panes, tablecloths, 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 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 fabrics covered partially or fully with textile flocks or with preparations containing 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-

---------- Rate of duty

Basic Special Excise

---------- nil 1(1987) 2 SCC 636: 1987 SCC (Tax) 228

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---------- 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) fabrics covered partially or fully with textile flocks or with preparations containing textile flocks-

(a)cotton fabric, not subjected to any process.

(b)cotton fabrics, subjected to the process of bleaching, mercerizing dyeing, printing, waterproofing, rubberizing, shrink-proofing, organdies processing or any other process or any two or more of these processes. (Sub-item 11 omitted as unnecessary) Ill. Cotton fabrics impregnated, coated or laminated with preparations of cellulose derivatives of other artificial plastic materials.

(Sub-item IV omitted as unnecessary) Explanation I.-'Base fabrics' means fabrics failing under sub-item 1 of this Item which are subjected to the process of embroidery or which are impregnated, coated or laminated with preparations of cellulose derivatives or of other plastic materials or which are covered partially or fully with textile flocks or with preparations containing textile flocks.

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3 4

20% ad valorem.	10% of the basic chargeable.
- do-	do-
The duty for the time being leviable on the base fabrics, if not already paid,	do-

	plus 30% ad valorem.

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22. MAN-MADE FABRICS 'Man-made fabrics' means all varieties of fabrics manufactured either wholly or partly from man-made fibres or yam and includes 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, in each of which man-made (i) cellulose fibre or yam, or (ii) non-cellulosic fibre or yam, predominates in weight:

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, such predominance shall be in relation to the base fabrics which are embroidered or impregnated, coated or laminated or covered, as the case may be.

[Sub-items (1) & (2) omitted as unnecessary] (3) Fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials. [Sub-item (4) omitted as unnecessary] Explanation I. 'Base fabrics' means fabrics falling under sub-item (1) of this item which are subjected to the process of embroidery or which are impregnated, coated or laminated with preparations of cellulose derivatives or other plastic materials or which are covered partially or fully with textile flocks or with preparations containing textile flocks.

---------- (3) (4)

The duty for the time being leviable on the base fabrics, if not already paid, plus 30% ad valorem.	10% of the basic duty chargeable.

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1 2

22B. TEXTILE FABRICS IMPREGNATED, COATED OR LAMINATED WITH PREPARATIONS OF CELLULOSE DERIVATIVES OR OF OTHER ARTIFICIAL PLASTIC MATERIALS NOT ELSEWHERE SPECIFIED.

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30% ad 10% of the basic valorem duty chargeable."

6. Since the language of Tariff Item-19 is rather involved, it would be appropriate if we read the main limb of the item along with proviso and Explanation 1 omitting unnecessary words. It would read :

> " 'Cotton fabrics' means all varieties of fabrics manufactured either wholly or partly from cotton and includes fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials if (i) in such fabrics 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 fabrics impregnated... etc. such predominance or percentages, as the case may be, shall be in relation to the base fabrics which are impregnated, coated or laminated or covered, as the case may be.
>
> Explanation.-'Base fabrics' means fabrics falling under sub-item (i) of this item which are impregnated, coated or laminated with preparations of cellulose derivatives or of other plastic materials."

7. It would thus appear from the above entry that "cotton fabrics" include fabrics impregnated, coated or laminated with the materials mentioned in the entry provided (i) in such fabrics cotton predominates in weight, or (ii) cotton content in such fabrics is more than 40 per cent by weight and the content of non-cellulosic fibres or yarn or both is more than 50 per cent. The precise question that arises herein is whether the words "such fabrics" occurring in clauses (i) and (ii) refer to the base fabrics or to the final (manufactured) product. The Appellate Collector and the Tribunal have held that the said words refer to the final product and inasmuch as the content of cotton in the final product is far less than 40 per cent, the product does not fall within Tariff Item19. The counsel for the Revenue, however, says that the words "such fabrics" are specifically explained in the proviso and that the proviso places the matter beyond any doubt. The proviso expressly says that is its only purpose that said words refer not to the final product manufactured by the respondent but to the 'base fabric' which expression has in turn been defined in Explanation 1. The learned counsel says that the proviso expressly and exclusively deals with the predominance and percentages referred to

in clauses (i) and (ii), since it says that in the case of fabrics impregnated, coated etc. with the aforesaid materials, such predominance or percentages, as the case may be, shall be in relation to the base fabrics which are impregnated, coated or laminated or covered, as the case may be. The counsel further says that Explanation 1 makes the matter still clearer by defining the basic fabrics to mean fabrics falling under sub-item (i) i.e., plain fabrics which are subjected to the process of impregnation, coating etc.

8. The learned counsel for the Revenue relies upon the language of T.I. 22 which is more or less identically worded to emphasis his submission with the difference that while clauses (i) and (ii) in Tariff Item 19 refer both to predominance and percentages, clauses (i) and (ii) in Tariff Item 22 refer only to predominance.

9. According to Shri Sorabjee, however, what has been mentioned in the proviso cannot override the main provision, which clearly militates against the contention of the Revenue inasmuch as the expression 'such fabrics' cannot refer to cotton fabrics for the simple reason that in that event the question of predominance of cotton, of which reference has been made in clause (i), would apparently be incongruous. It is because of this that the expression 'base fabrics' finding place in the proviso should be understood as the fabric which comes into existence ultimately; otherwise, the proviso would make the main provision nugatory, which would not be the reasonable way of reading the proviso.

10. Shri Sorabjee also contended that 'rexine cloth' would not come either Linder T.I. 19-111 or 22-B as it cannot be said to be of 'fabrics'; whereas the ultimate product to attract any of the aforesaid items must retain the identity and character of fabrics.

11. Shri Sorabjee has placed strong reliance on the decision of this Court in Multiple Fabrics (P) Ltd. I in support of his first submission. The question in that case was whether "PVC conveyor belting" manufactured by the respondents therein fell within T.I. 22 or under the residuary Tariff Item 68. It was found therein that the product in question was "composed of synthetic resin of PVC type, reinforced with textile fabric containing 42.3% by weight of cotton and rest viscose (man-made filament yarns of cellulose origin)" wherein the percentage of textile fabric was 42.3% and PVC Compound 56.7%. The Tribunal had recorded a finding that "PVC Compounding was done simultaneously with the weaving of the fabric from the yarn which clearly indicated that the process of manufacture was conversion from yarn to fabric as also the application of the PVC Compound carried on at the same point of time". Ranganath Misra, J. (as he then was) speaking for the Bench comprising himself and G.L. Oza, J., set out Entry 22 but not the proviso, (which proviso corresponds to the proviso in T.I. 19) and held as follows : (SCC pp. 637-38, paras 4 and 5) "4. It is accepted that yarn is woven into fabric. Item 19 deals with cotton fabrics while Item 22 deals with man-made fabrics. On the footing recorded by the Tribunal, it is claimed that there was no preexisting base fabric and the manufacturing process simultaneously brought into existence the commodity by weaving yarn into fabric and application of PVC Compound.

5. In view of the higher percentage of PVC Compound in commodity, it becomes difficult to treat the ultimate goods as man-made fabrics for holding that it is covered by Item 22. Upon this analysis it

follows that the Tribunal came to the correct conclusion when it held that the goods were not covered by Item 22 and, therefore, the residuary Item 68 applied. All these appeals are without any merit and are dismissed. Each of respondents should be entitled to its costs."

12. A reading of the above paragraphs (4) and (5) indicates that the learned Judge has given two reasons for his conclusion, namely, (1) since the PVC Compounding was done simultaneously with the weaving of the fabric, there was no preexisting base fabric and (2) having regard to the higher percentage of PVC Compound in the ultimate product, it cannot be treated as a man-made fabric within the meaning of T.I. 22. Though the learned counsel for Revenue sought to distinguish the first ground given by the Bench saying that in that case the PVC Compounding was done simultaneously with the weaving of the fabric, the said distinction is, in our opinion, without a difference. It does not matter whether the PVC Compounding is done simultaneously with the weaving or is done on a preexisting fabric. Be that as it may, the more relevant aspect is the second ground given by the Bench wherein they applied the test of predominance to the final product and not to the base fabric. This was evidently done because the attention of the Bench was not invited to the proviso. As indicated hereinabove, while setting out T.I. 22, the proviso is omitted which, however, has material bearing. It is not known what would have been the conclusion if the proviso would have been noted.

13. We would have given our views on the contentions advanced by the learned counsel for both the sides but the aforesaid decision stands in our way, as to which we would say that the correctness of the same is doubtful, because the conclusion therein was arrived at without referring to the proviso which does have a material bearing.

14. In the above circumstances, it is but proper that the matter is placed before a Bench of three Judges. Let the records be, therefore, placed before the Hon'ble Chief Justice for doing the needful.

COLLECTOR OF CENTRAL EXCISE V. FENOPLAST (P) LTD.(II) (Jeevan Reddy, J.) 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 Excises and Salt Act, 1944 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. Multiple Fabrics Pvt. Ltd.1 , [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 case, the matter was referred to a larger Bench. That is how the appeal is before this Bench.

2. The respondent purchases 100% cotton cloth and coats it with PVC 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 :

"(1) Cotton fabrics 8.0% (2) PVC resin 24.5% + 1994 Supp (2) SCC 671 1 (1987) 2 SCC 636: 1987 SCC (Tax) 228 (3) Plasticizers (DIP/DIOP/BBP) 13.0% (4) Others [Fillers, (Calcium Carbonate) 54.5% Secondary Plasticizers, pigments,solvents, thinners, foaming agents)] The above composition is by weight."

3. The main contention of the respondent which found favour both with the Collector (Appeals) and the majority of the Members of the CEGAT 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 represented by coating material. The respondent's case which has been reiterated before us by its learned counsel, Shri Soli J. 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 percentages referred to in the said Tariff Item 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 Parliament. In the face of such express inclusion, there is no room for arguing that the rexine cloth 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 Parliament from treating it as a cotton fabric for the purposes of the Act and indeed Parliament has chosen to include it within the ambit of cotton fabrics for the purposes of levying excise duty. Since the power of Parliament to do so is unquestioned, the respondent's product is bound to be treated as 'cotton fabric' within the purview of Tariff Item 19 and subjected to duty prescribed under subitem (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 the said predominance or percentages are applicable in relation to the 'base fabric' and the base fabric in the case of respondent's product is 100% cotton.

4. For resolving the above controversy, it is necessary to turn to the Tariff Item itself. It reads thus "Tariff Rate of Duty Item Description of goods Basic Special No. Excise

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19. COTTON FABRICS

Cotton fabrics' means all varieties of fabrics' means all varieties offabrics manufactured either wholly or partly from cotton and includes dhoties, sarees, chaddars, bed-sheets, bedspreads, counter-panes, table-cloths, embroidery in the piece, in strips and in motifs, fabrics impregnated, coated or laminated with preparations of cellulose derive tives 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 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 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) fabrics covered partially or fully with textile flocks or with preparations containing textile flocks-		
(a) cotton fabrics, not subjected to 20% ad 10% of any process.	20% ad valorem	10% of the basic duty chargeable
(b) cotton fabrics, subjected process of bleaching merecer valorem deying printing waterproofing, rubberising, shrink-proofing organdie processing or any process or any two or more of these processes.	20% ad valorem	-do-
II. Embroidery in the piece, in strips or in motif, in or in relation to the manufact- ure of which any process in aid of power.	The duty 10% of for the basic duty ordinarily carried on with time chargeable the time being leviable on the base fabrics, if not already paid plus 20% ad valorem.	
III. Cotton fabrics impregnated, coated or laminated with prepar- ations cellulose derivatives or of other artificial plastic materials.	The duty do- for the time being leviable on the base fabrics, if not already paid plus 30% ad valorem.	
IV. Cotton fabrics covered partia- lly or fully textile flocks or with preparations con- containing textile flocks such as flock printed fabrics and flocks coated fabrics.	The duty do- for the time being leviable on the base fabrics, if not already paid, plus 30% ad valorem.	

Explanation 1.- 'Base fabrics' means fabrics failing under sub-item 1 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;

(b) cotton

(c) wool;

(d) silk (including solk noil);

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

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

(g) flax;

(h) ramie.

if any fabrics are equal in weight, then, such one of those fibres the 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, 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 fabric and accordingly such fabric shall be deemed to fall under the applicable item.

Explanation III.- This Item does not include floor coverings, falling under Item No. 22G."

5. The Tariff Item deals with 'cotton fabrics', whether made wholly from 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, bedspreads, counter- panes, and table-cloths; (b) embroidery in the 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 refine cloth manufactured by the respondent. Precisely, with a view to obviate such doubt, has Parliament added the proviso as well as Explanation 1 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. Parliament did not even stop with this. To make its meaning even more clearer, it appended Explanation 1 defining the expression "base fabrics". The Explanation says that " 'base fabrics' means fabrics falling under sub-item (1) of this item which are impregnated, coated or laminated with preparations of cellulose derivatives or of other plastic materials For a fuller appreciation of Explanation 1, it would be appropriate to refer to sub-item (1) of the Tariff Item as also sub-items (11), (111) and (IV). Sub-item (1) expressly speaks of " 'cotton fabrics' other than ... (ii) fabrics impregnated, coated or laminated with preparations of cellulose derivatives 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 (1) may be contrasted with sub-item (III) which pertains to "cotton fabrics impregnated, coated or laminated with preparations of cellulose derivatives 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 (11) deals with "embroidery in piece, in strips or in motifs in relation to the manufacture of which any 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 including dhoties, sarees, chaddars, bed-sheets, bedspreads, counter-panes and table-cloths fall under sub-item (1), while the other three categories included within the ambit of cotton fabrics fall within sub- items (11), (111) and (IV) respectively.

6. Now, coming back to Explanation (1), it says that "base fabrics", defined by it and referred to in the proviso, means the cotton fabrics falling under subitem (1) 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 material; We are of the opinion that in view of the clear language of the proviso read with Explanation 1, 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 reason that "cotton fabrics" means 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.

7. Shri 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 India International Industries v. CST, U.p.2 It says : (SCC p. 530, para 4) "It is well settled that in interpreting items in statutes 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 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."

In this view of the matter, we do not think it necessary to deal with the several decisions cited by Shri Sorabjee regarding the relevance of commercial or common parlance test.

8. It is next contended by Shri 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 Ltd., Re3. 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 refine 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.

9. It is argued by Shri Sorabjee that after coating, the cotton fabric no longer retains its identity as cotton fabric and that a new distinct commodity 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 2 (1981) 2 SCC 528: 1981 SCC (Tax) 130 3 (1982)1O ELT 634

9. 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.

10. 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 1. 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 product is 100% cotton. The argument to the contrary is, however, based upon the decision of this Court in Multiple Fabrics1. The said decision dealt with Tariff Item 22 and the product concerned was PVC conveyor 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 Item 19. Tariff Item 22 also contains a proviso and Explanation 1 corresponding to the proviso and Explanation 1 in Tariff Item 19. But unfortunately the proviso was not brought to the notice of the Court. Though Explanation 1, was noticed, its purport was not given effect to while holding that "in view of the higher percentage of PVC compound in commodity, it becomes difficult to treat the ultimate goods as man-made 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 PVC compound is simultaneous, there is no preexisting 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 notice of this Court and for that reason the significance of Explanation 1 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.

11. 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 insofar as is relevant read thus " 19. COTTON FABRICS 'Cotton fabrics' means all varieties of fabrics manufactured either wholly or partly from cotton and include dhoties, sarees, chaddars, bed-sheets, bedspreads, counter-panes and table-cloths, but do not include any such fabric-

(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 of rayon or artificial silk."

It may also be mentioned that the proviso and Explanation 1 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.

12. Shri 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 wasq raised by the respondent both before the Collector (Appeals) as well as before the CEGAT but was not pronounced upon specifically in view of the fact that they held in favour of the respondent on other grounds.

13. 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 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 refine cloth is not plasticizer inasmuch as the plastic content is only 24.5%. For appreciating the said argument, one has to turn to Tariff Item 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 concerned, only one Member (Shri P.C. Jain), in his dissenting opinion, deals with this aspect in para 16 of his judgment. He rejects the said argument holding that "PVC 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 Fibers India Ltd. v. Union of India4, a decision of 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., PVC resin 24.5%, plasticizers 13.0% and other fillers, calcium carbonate, secondary plasticizers, pigments, solvents, thinners and foaming agents 54.5%. Now, PVC resin is also a plastic as would be evident from the meaning given to it in Encyclopedia Americana, Vol. 22, p. 375 (1988 Edn.). The following statement occurs therein:

> " 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 from a powdery PVC resin, which in turn is made from a gas called vinyl chloride (VC). A large number of molecules of vinyl chloride (CH2-CHCI) are linked like beads on a chain to form the PVC polymer (- CH2CHCI-)."

4 (1982) 10 ELT 917(Bom) To the same effect is the statement in McGraw-Hill Encyclopaedia of Science and Technology, Vol. 14, p. 170 (1987 Edn.) :

> "Polyvinyl 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. Polyvinyl chloride (and copolymers) is the second most commonly used in polyvinyl resin and one of the most versatile plastics."

14. The second category is plasticizers (13%), which is undoubtedly one of the basic materials of the plastics. (See Encyclopaedia Americana, Vol. 22 at p. 217). Even in the third category, there are plasticizers but we do 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".

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

16. No reasons are shown and no material is placed before us to show that the said opinion of the Member of the Tribunal (Shri 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 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 if 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 Fabrics1. Before the Collector (Appeals) 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.

17. The appeals are accordingly allowed and the orders of the CEGAT and Collector (Appeals) are set aside. The order of the Original Authority is restored. No costs.