
 सत्यमेव जयते	केन्द्रीय कर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन सतवी मंजिल पॉलिटेक्निक के पास आम्बावाडी, अहमदाबाद-380015		
079-26305065		टेलिफैक्स: 079-26305136	

क फाइल संख्या : File No : V2/33/RA/GNR/2018-19 / 10236 to 10240

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-181-18-19

दिनांक Date : 13-02-2019 जारी करने की तारीख Date of Issue: 01-05-2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Griffle

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : AHM-CEX-003-ADC-AJS-001-18-19 दिनांक : 15-06-2018 से सृजित

Arising out of Order-in-Original: AHM-CEX-003-ADC-AJS-001-18-19, Date: 15-06-2018
 Issued by: Add. Commissioner, CGST, Div: RRA, HQ, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Dubond Products Pvt Ltd

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.



- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
 (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।
 The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
 Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- षोबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में दूसरा मंजिल, बहुमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be is filed to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.



(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores, Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

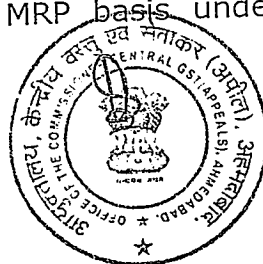
The subject appeal is filed by the department (in short 'appellant') against Order-in-Original No. AHM-CEX-003-adC-AJS-001-18-19 dated 15.06.2018 (in short 'impugned order') passed by the then Additional Commissioner, Central Excise, Ahmedabad-III (in short 'adjudicating authority') in favour of M/s Dubond Products (India) Pvt Ltd., Opp. Mahadev Temple, Narmada Pipe Compound, Santej, Tal.- Kalol, Dist.- Gandhinagar (in short 'respondent').

2. Briefly stated the facts of the case is that the respondent is manufacturing the goods 'Epoxy Grout' under the **brand name 'Dupoxy'** and cleared the same in 1kg and 5g. Audit party of Central Excise Audit-I Commissionerate, Ahmedabad conducted audit for the period from Oct, 2012 to December, 2015. It was observed that the respondent classified their final products viz. Epoxy Grouts under SH-35069190. As per notification No. 49/2008-CE(NT) dated 24.12.2008 (Sr. No. 43 of the Table of said Notification) as amended, the assessment of goods falling under chapter 3506 is to be made on MRP basis under the provisions of Section-4A of Central Excise Act, 1944 with an abatement of 35% on Retail Sale Price. However the respondent has not assessed their products Epoxy Grout on MRP basis under the provisions of Section-4A but assessed it on transaction value under the provisions of Section-4 of the Act.

2.1 To arrive at the correct classification of the product chemical testing was done at Chemical Examiner Grade-I, Central Excise & Customs Laboratory, Vadodara. But the respondent being aggrieved with the test result requested for retest of the sample. The sample was sent to the Chief Chemist, Central Excise Laboratory, New Delhi.

2.2 A statement of Excise Manager and Authorized signatory of the respondent was recorded on 14.03.2017 under Section-14 of the Central Excise Act, 1944 and also the pre-SCN consultation was given to the respondent in this matter. But the respondent did not agree with the audit observation para and requested for the Show Cause Notice.

2.3 Show Cause Notice dated 20.12.2017 was issued to the respondent asking him to show cause as to why the Epoxy Grout cleared and assessed on transaction value under Section-4 of Central Excise Act, 1944 should not be assessed on MRP basis under the provisions of



Section-4A of Central Excise Act, 1944 read with Notification No. 49/2008 C.E. (N.T) and the differential Central Excise duty should not be demanded and interest under provisions of Section 11AA of the Central Excise Act, 1944 and penalty should not be imposed under the provisions of Rule 25 of Central Excise Rules, 2002 read with Section 11Ac of Central Excise Act, 1944.

2.4 During the adjudication procedure, the Test Report awaited from CRCL, New Delhi was received. The above said SCN was adjudicated by the adjudicating authority vide impugned order and same was dropped by him. The review authority directed the appellant vide Review Order No. 22/2018-19 dated 20.09.2018 to file the present appeal wherein, inter alia, stated that:

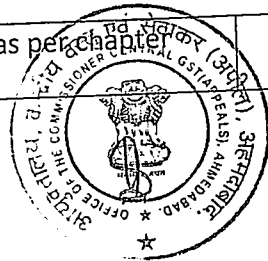
- (a) The adjudicating authority had committed gross error in deciding the classification of the goods as well as in holding that the goods are not covered under Sr. No. 43 of Notification No. 49/2008-CE(NT) dated 24.12.2008 and therefore not to be assessed based on MRP valuation under section 4A of the Central Excise Act, 1944.
- (b) The adjudicating authority has committed gross errors of law by holding that the product Epoxy Grout in 1 Kg is to be classified 35069190 in place of 35061000 and packed in 5 kg. under chapter heading No. 3709 in place of 35069190 and both classification are to be assessed under Section 4 of the CEA, 1944 in place of Section 4A of the CEA, 1944.

3. Personal hearing in the matter was held on 12.12.2018. Shri B. R. Parmar, Consultant and Shri Saurin Shah, Manager (Accounts) authorized signatory of M/S Dubond Products (India) Pvt Ltd appeared on behalf of the respondent before me and made additional submission and reiterated the grounds of appeal.

4. I have carefully gone through the appeal memorandum, submissions made at the time of personal hearing and evidences available on records. I find that the main issue to be decided **classification of goods** cleared by the respondent and also whether the said goods are to be assessed under **Section 4 or Section 4A of Central Excise Act, 1944.**

6. First of all, for the ease of case, I want to describe the relevant part of chapter heading 3506 for the goods "Epoxy Grout".

Chapter Heading/sub	Description of the goods as per chapter heading

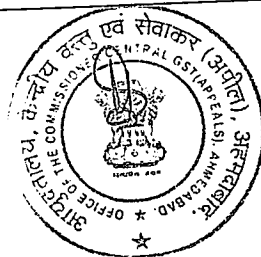


heading		
3506	PREPARED GLUES AND OTHER PREPARED ADHESIVES, NOT ELSEWHERE SPECIFIED OR INCLUDED; PRODUCTS SUITABLE FOR USE AS GLUES OR ADHESIVES, PUT UP FOR RETAIL SALE AS GLUES OR ADHESIVES, NOT EXCEEDING A NET WEIGHT OF 1 KG	
3506 10 00	-Products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg	
	Other	
3506 91	--Adhesives based on polymers of heading 39 01 to 39 13 or on rubber:	
3506 91 10	---Based on latex, Phenol Formaldehyde (PF), Urea Formaldehyde (UF) and Polyvinyl Alcohol (PVA)	
3506 91 90	---Other	(i) Chapter heading decided by <u>Department (appellant)</u> for Epoxy Grout of 1 kg 5 kg (ii) Chapter heading decided by <u>adjudicating authority</u> for Epoxy Grout of 1 kg

- (i) Chapter heading decided by the adjudicating authority for Epoxy Grout of 01 kg - 3506 91 90
- (ii) Chapter heading decided by the adjudicating authority for Epoxy Grout of 05 kg - 3907
- (iii) Chapter heading claimed by the department (appellant) for Epoxy Grout of 01 kg and 05 kg- 3506 91 90

Secondly, for ready reference, the relevant entry i. e, Sr. No. 43 of notification no. 49/2008-CE (NT) supra is reproduced hereunder:

S. No.	Chapter, heading, sub-heading or tariff item	Description of goods	Abatement as percentage of retail sale price
43.	3506	Prepared glues and other prepared adhesives, not elsewhere specified or included	35



5. Accordingly, I proceed to decide the case on merits.

(i) **Classification of Goods "Epoxy Grout":**

Excise duty is always payable on excisable goods. Excise duty payable on excisable goods depends upon rate of duty which is determined on the basis of **Classification of goods** based on CETA (Central Excise And Tariff Act, 1985). Determination of the amount of duty depends on **correct classification of goods** and determining their assessable value of notification no.

Classification of a product means the determination of heading/subheading under which a particular product will fall. Classification means the appropriate classification code which is applicable to the excisable goods in question under the first schedule to the Central Excise Tariff Act, 1985 of notification Act, 1985. There are **section notes and chapter notes in the tariff** which help in classification.

(ii) **The general principles or guidelines for determining the classification of goods as follows:**

Nature of the constituent material used in the manufacture of excisable goods is one of the parameters for determining the correct classification of excisable goods. The test for this is the "predominance of material" test. It is but natural that **excisable goods should be classified in the chapter relevant for the constituent material** since the functional characteristic or use of excisable goods is largely determined on the basis of their constituent input material.

Two major criteria for determining the classification of excisable goods are (i) the scientific or technical meaning and (ii) the trade or commercial parlance. The scientific or technical meaning is the name attached to the goods by experts in the particular fields. Sections, chapter notes and tariff headings have statutory force and resort is made to common or trade parlance only when clear scientific or technical meaning is not available.

6. I have gone through the grounds of appeal submitted by the appellant (Department), wherein it is stated that the product "Dupoxy" are being sold in 2 parts (Part-A and Part-B) together. Part-A consists of mixture **of Epoxy resin**, siliceous aggregates and additives. Part-B



consist mixture of organic catalysts. I have also gone through the test result of CECL, Vadodara and CRCL, New Delhi as described in the impugned order.

Here, I want to describe the goods "Epoxy". It is either any of the basic components or the cured end products of epoxy resins, as well as a colloquial name for the epoxide functional group. Epoxy resins, also known as poly epoxides, are a class of reactive prepolymers and polymers which contain epoxide groups. Epoxy has a wide range of applications, including metal coatings, use in electronics/electrical components/LEDs, high tension electrical insulators, paint brush manufacturing, fiber-reinforced plastic materials and structural adhesives.

I have also gone through the Note (3) of Heading 39.07 of HSN

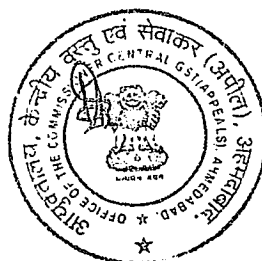
(3) Epoxide resins. Polymers made, for example, by condensing epichlorohydrin (1-chloro-2,3-epoxypropane) with bisphenol A (4,4'-isopropylidenediphenol), novolak (phenolic) resins or other polyhydroxy compounds or by epoxidising unsaturated polymers. Whatever the basic structure of the polymer, these resins are characterised by the presence of reactive epoxide groups which allow them to be readily cross-linked at the time of use, e.g. by the addition of an amino compound, an organic acid or anhydride, a boron trifluoride complex or an organic polymer. 39.07 VII-3907-2 Epoxide resins range from low viscosity liquids to high melting solids; they are used as surface-coatings, as adhesives, as moulding or casting resins, etc.

Epoxidised animal or vegetable oils are classified in heading 15.18.

7. It is very clear from the test reports of both the said laboratories that the product is based on Epoxy Resin and has adhesive/bonding properties. Further CECL, Vadodara has given in their report that such type of product mentioned in CETH 3506.

7.1 Further, I have also gone through explanatory note given in HSN for chapter 39. It is crystal clear that "Heading 3901 to 39.14" covers goods in **primary forms** only. The expression "primary forms" is defined in note 6 to this chapter:

Headings 39.01 to 39.14, the expression "primary forms" applies only to the following forms : (a) Liquids and pastes, including dispersions (emulsions and suspensions) and solutions; (b) Blocks of irregular shape, lumps, powders (including moulding powders), granules, flakes and similar bulk forms.



7.2 Further I have also gone through the exclusion notes under chapter 39:

In addition to the exclusion mentioned in Note 2, the Chapter exclude:

(a).....

(b) *Preparation specially formulated for use as adhesives, consisting of polymer or blends thereof the heading 39.01 to 39.13 which, apart from any permitted additions to the products of this Chapter (fillers, plasticisers, solvents, pigment etc.), contain other added substances not falling in this chapter (e.g. waxes) and products of heading 39.01 to 39.13 put up for retail sales glues or adhesive, not exceeding a net weight of 1 kg (heading 3506)*

(c) *Plastics..... of the goods (Chapter 49)".*

8. I am in my opinion that the said product "Epoxy Grout" is not in its pure and primary form. Hence, the chapter heading 3907, decided by the adjudicating authority for the product "Epoxy Grout of 5kg is not sustainable.

8.1 It is very clear from grounds of appeal and the impugned order that the chapter heading 3506 consist two parts:

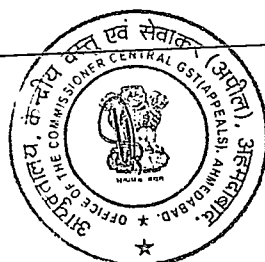
Part A: Prepare glues and other prepared adhesives, not elsewhere specified or included.

Part B: Product suitable for use as glues or adhesive, put up for retail sale as glues or adhesives, not exceeding net wt. of 01 kg.

8.2 Further the said product is based on **Epoxy resin** falling under 3907 i.e. from 3901 to 3913, it will fall under chapter heading 350691. It can be understand with the General Explanatory Notes the Chapter heading 3506 as under:

Part A

Product suitable for use as glues or adhesive, put up for retail sale as glues or adhesives, not exceeding net wt. of 01 kg	
3561000	
Product suitable for use as glues or adhesive, put up for retail sale as glues or adhesives, not exceeding net wt. of 01 kg.	-other



Part B

Prepare glues and other prepared adhesives, not elsewhere specified or included.		
350691		
--Adhesives bases on polymers of heading 3901 to 3913 or on rubber (The product Epoxy Grout is based on Epoxy resin falling under 3907 falling under 3907 i.e. from 3901 to 3913)		
35069110	35069190	
--- Based on latex, phenol formaldehyde (PF), urea formaldehyde(UF) and polyvinyl alcohol (PVA)	---other	
--other		
350699		
35069910	35069991	35069999
---Synthetic glue with phenol urea or cresol (with formaldehyde) as the main component	---Based on starch, gum, latex, PF, UF and PVA	---other

8.3 The respondent himself classified their goods "Epoxy Grout" under SH-35069190 before the observation raised by the Audit Party of Central Excise, Audit-I, Ahmedabad.

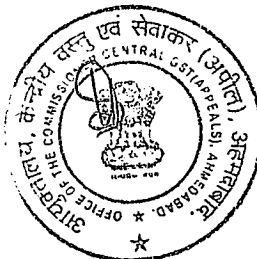
8.4 The adjudicating authority had classified the goods Epoxy Grout in Chapter Heading 3907 on the property of the goods. Further, the same goods of 01 kg pack classified in 35069190 and 05 kg in 3907. I also agree with the view of department (appellant) that property of the goods cannot be changed, if the goods packed in different size of container.

9. On the basis of above discussion, I conclude that the goods "Epoxy Grout" classified in 35069190 only and covers the goods **"prepare glues and other prepared adhesives, not elsewhere specified or included"** as stated in above table i.e. Part-B.

9.1 I agree with the contention of the adjudicating authority that the Notification No. 49/2008-CE **prepared adhesive, not elsewhere specified or included"** classified under heading 3506.

9.2 As it is now clear that the product 'Epoxy Grout' packed in 1 kg and 5kg are classifiable under 35069190 of the Central Excise Tariff Act, 1985, the same are covered under MRP based assessment as per sr. no. 43 of notification 49/2008-CE (N,T.) dated 24.12.2008.

9.3 In view of the above, I find that the goods "Epoxy Grout" packed in 1 kg and 5g are to be assessed under Section 4A of the Central Excise



Act, 1944 as it fulfill the condition of the Notification No. 49/2008-CE dated 24.12.2008.

10. In view of the above, I set aside the impugned order and I allow the appeal filed by the department. Accordingly, the demand raised in the impugned show cause notice is required to be recovered with interest under Section 11AA of CEA, 1944 and penalty under Section 11AC of CEA, 1944.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

केन्द्रीय कर, प्रधान आयुक्त

(अपील्स)

Dt. .0.2019

Attested:

B.A. Patel
26/06/19
(B.A. Patel)
Supdt. (Appeals)
Central GST, Ahmedabad.



BY SPEED POST

To
M/s Dubond Products (India) Pvt Ltd.,
Opp. Mahdev Temple, Narmada Pipe Compound,
Santej, Tal.- Kalol, Dist.-Gandhinagar

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Gandhinagar (RRA Section).
- (3) The Asstt. Commissioner, CGST, Division Kalol.
- (4) The Asstt. Commr (System), CGST, Gandhinagar.
(for uploading OIA on website)
- (5) Guard file
- (6) P.A. file.

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