

UNION CARBIDE INDIA LTD.  
v.  
STATE OF ANDHRA PRADESH

MARCH 20, 1995

[J.S. VERMA, S.P. BHARUCHA AND K.S. PARIPOORNAN, JJ.]

*Andhra Pradesh General Sales Tax Act 1957—First Schedule—Dry cell batteries' and 'arc carbons'—Whether exigible to tax under Entry 3 or Entry 38 of the first schedule to the Act.*

The assessee company manufactured dry cells and arc carbons, and the question arose as to whether they were liable to a higher rate under entry 3 or 4 as wireless reception instruments or cinematographic equipment respectively, or a lower rate under entry 38 relating to all electrical goods, of the first schedule of the Andhra Pradesh General Sales Tax Act 1957 for the assessment years 1969-70. The Tribunal held that dry cell batteries were taxable under entry 38 except those specified for use in transistors which would fall under entry 3, while arc carbons were taxable under entry 4. The revision petitions filed by the assessee were dismissed by the High Court. Hence these appeals and special leave petitions.

Dismissing the matters, this Court

**HELD:**1. The main use of the arc carbons was duly proved to be that of production of powerful light used in projectors in cinemas. The fact that they can also be used for search lights, signalling, stage lighting, or where powerful lighting for photography or other purposes might be required could not detract from the classification to which the arc carbons belong. That is determined by their common purpose or user. This is evident from the fact that they are known as 'cinema arc Carbons' in the market. The goods are covered by entry 4. [789-E-G]

*Annapoorna Carbon Industries v. State of A.P.*, (1976) 37 STC 378, relied on.

2.1 Dry batteries are called primary cells which are different from accumulators, secondary cells or storage batteries. For this reason dry batteries cannot be treated as storage batteries for the purpose of entry .

A 137 or accumulators for the purpose of entry 3. [792-H, 794-F]

2.2 The expression 'accessories thereof' in entry 3 indicates that the entry can be attracted only if the dry batteries or cells can be treated as accessories of the wireless reception instruments etc. specified in entry 3 or else they would fall under entry 38 as other accessories of all electrical goods being the residuary entry. The dry cells or batteries used in transistors manufactured by the assessee alone during the pre-1976 period may fall under entry 3. However batteries not specified for use in transistors alone cannot be treated as 'accessories thereof' of wireless reception instruments etc., for the purpose of entry 3. Applying the test, it cannot be held that dry batteries or cells which are not market 'for Transistors' and were multi-purpose cells manufactured for predominant use as accessories of the wireless instruments to fall under entry 3 so that they could not be treated as 'other accessories' for the purpose of attracting entry 38.

[794-G, H, 795-A-E]

D *Hamlyn All-Colour Science Encyclopedia; the Chambers Science and Technology Dictionary and New Encyclopedia Britannica, Vol.I. page 963, referred to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 102 and 961 of 1977.

E From the Judgment and Order dated 5.2.76 of the Andhra Pradesh High Court in T.R.C. No. 19 and 18 of 1975.

F Dr. D.P. Pal, C. Sitaramiah, Mrs. A.K. Verma, P.D. Tyagi for J.B.D. & Co., Ms. Priya Hingorani, Kamini Jaiswal, G. Prakash, Ms. T.V.S.N. Chari, S.R. Agrawal, Gautam Khaitan, A.N. Arora (NP) and B. Parthasarthy for the appearing parties.

The Judgment of the Court was delivered by

G J.S. VERMA, J. These appeals by special leave are against the judgment dated 5.2.1976 in Tax Revision Case Nos. 18 and 19 of 1975, by the High Court of Andhra Pradesh. The two questions answered by the High Court relate to the assessment years 1968-69 and 1969-70 which are:

H (1) Whether dry cell batteries manufactured by the assessees are exigible to tax under Entry No. 3 or Entry No. 38 of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957?

(2) Whether the arc carbons manufactured by the assessee are exigible to tax under Entry No. 4 or Entry No. 38 of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957? A

The Tribunal held that the "dry cell batteries" are taxable under Entry No. 38 except only those which are specified for use in transistors, which alone are taxable under Entry No. 3; and the "arc carbons" are taxable under Entry No. 4. The revisions filed by the assessee have been dismissed by the High Court. Hence these appeals by special leave. The connected matters are similar and are disposed of in terms of this judgment. B

The relevant entries with reference to which the above questions are to be decided, at the material time, were as follows :- C

"3. Wireless reception instruments and apparatus, radios, and radio gramophones, electrical valves, accumulators, amplifiers and loud-speakers and spare parts and accessories thereof.(b).	At the point of first sale in the state	12 paise in the rupee	D
4. Cinematographic equipment including cameras, projectors and sound recording and reproducing equipment lenses, films and parts and accessories required for use therewith.	-do-	12 paise in the rupee	E
38. All electrical goods, instruments, apparatus and appliances including fans and lighting bulbs electrical earthenware and procelain and all other accessories.	-do-	8 paise in the rupee	F

The assessee contends for taxing of these articles at the lower rate under Entry No. 38 and not at the higher rate under Entry Nos. 3 or 4.

We shall first consider the question relating to "arc carbons". The only argument on behalf of the assessee is that the carbon is used up and, therefore, it cannot be an accessory of the equipment specified in Entry No. 4. On this basis, the assessee claims that arc carbon used in the equipment is taxable under Entry No. 38 at a lesser rate. The High Court following its earlier decision held that arc carbons manufactured by the assessee were assessable under Entry No. 4 and not Entry No. 38. That G  
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A view of the Andhra Pradesh High Court has been approved by this Court in *Annappurna Carbon Industries Co. v. State of Andhra Pradesh*, [1976] 37 S.T.C. 378, and it was held that arc carbons fell within Entry No. 4 of the First Schedule to the Act. It was held by this Court that :

B "..... The meaning of this entry can only be satisfactorily determined in the light of the language of the entry itself considered in the context in which it occurs.

C The entry No. 4 occurs in a schedule in which descriptions of goods to be taxed indicate that the expression "required for use therewith" has been employed for equipment or accessories connected with the main purpose. For instance, in entry No. 5, the expression occurs at the end as follows:

D "Photographic and other cameras and enlargers, lenses, films and plates, paper and cloth and other parts and accessories required for use therewith."

E Apparently, the deciding factor is the predominant or ordinary purpose or use. It is not enough to show that the article can be put to other uses also. It is its general or predominant user which seems to determine the category in which an article will fall.

F ..... Again, entry No. 3 for "wireless reception instruments an apparatus" includes "electrical valves, accumulators, amplifiers and loud-speakers and spare parts and accessories thereof". The words "parts thereof" are used in several entries, such as entry No. 6 for clocks, time-pieces and watches, entry No. 10 for dictaphones and other similar apparatus for recording sound, and entry no. 11 for sound transmitting equipment such as telephones and loud-speakers.

G Our object in indicating the nature of entries, amidst which entry No. 4 occurs, is to show that some precision has been attempted in making the entries. When it was intended to confine the entry to particular gadgets and "parts thereof" the entry said so. Of course, even where an entry relates to parts manufactured for use for a particular kind of instrument or gadget only, the  
H article, manufactured to serve as a part of a particular kind of

apparatus, would not cease to be covered by the intended entry simply because a purchaser makes some other use of it. We have to find the intention of the framers of the schedule in making the entry in each case. The best guide to their intentions is the language actually employed by them. A

We find that the term "accessories" is used in the schedule to describe goods which may have been manufactured for use as an aid or addition. A sense in which the word "accessory" is used is given in Webster's Third New International Dictionary as follows: "an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else". Other meanings given there are : "Supplementary or secondary to something of greater or primary importance"; "additional"; "any of several mechanical devices that assist in operating or controlling to tone resources of an organ". "Accessories" are not necessarily confined to particular machines for which they may serve as aids. The same item may be an accessory of more than one kind of instrument. B C D

It will be noticed that the entry we have to interpret includes "parts" as well as "accessories" which are required for use in projectors or other cinematographic equipment. *We think that the Andhra Pradesh High Court correctly held that the main use of the arc carbons under consideration was duly proved to be that of production of powerful light used in projectors in cinemas.* The fact that they can also be used for searchlights, signalling, stage lighting, or where powerful lighting for photography or other purposes may be required, could not detract from the classification to which the carbon arcs belong. *That is determined by their ordinary or commonly known purpose or user.* This, as already observed by us, is evident from the fact that they are known as "cinema arc carbons" in the market. This finding was enough, in our opinion, to justify the view taken by the Andhra Pradesh High Court that the goods under consideration are covered by the relevant entry No. 4." E F G

(emphasis supplied)

(at pages 380-81)

A plea on behalf of the assessee for reconsideration of the decision H

A of this Court in *Annapurna Carbon Industries Co.* (supra) was made. We find no ground to that submission. We may add that the decision had held the field for all these years and we do not find any reason to doubt the correctness of that decision. It must, therefore, be held that the decision of the High Court that arc carbons are taxable under Entry No. 4 of the First Schedule to the Act does not call for any interference.

B We now consider the question relating to dry battery cells. The matters involving this question are of two broad categories. One category relates to the period prior to certain amendments made in the Act in 1976 while the other category of matters relates to the period subsequent to that amendment. For the period prior to the 1976 amendment, the dry cell batteries only of Union Carbide India Ltd. which bore on it the mark "for transistors" were held to be taxable under Entry No. 3 at a higher rate while the multi-purpose dry cell batteries of all the assesseees which did not bear any such mark were held to be taxable at the lesser rate under Entry No. 38. Accordingly, for the period prior to 1976, the only aggrieved assessee is the Union Carbide India Ltd. in respect of its batteries bearing the mark "for transistors" which were assessed at the higher rate under Entry No. 3 while the State is aggrieved by assessment of the remaining dry cell batteries of all assesseees under Entry No. 38. For this reason, there are cross appeals by the Union Carbide India Ltd. and the State relating to the period prior to 1976 amendment.

F For the post-1976 period, the High Court has held that all dry cell batteries, after the amendments in the Act, are taxable only under Entry No. 38. Accordingly, the State alone has preferred the appeals in this behalf for the post-1976 period.

G All the appeals are considered together since they involve for decision the common question of taxability of dry cell batteries. The contention of the learned counsel appearing for the assessee is that the dry cell batteries are taxable only under Entry No. 38 for the entire period. On the other hand, the contention on behalf of the State Government is that all such batteries are taxable throughout only under Entry No. 3. In the alternative, it was urged that after the 1976 amendment effective from 1.9.1976, the dry cell batteries are taxable under Entry 137 as it then stood but not under Entry No. 38. It was submitted that Entry No. 3 is attracted because dry cell batteries are "accessories" of wireless reception instru-

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ments etc. even if not "accumulators"; and that it is not "accessories" of "electrical goods" due to which Entry No. 38 is excluded. In short, the contention on behalf of the State is that a "dry cell battery" is either an "accumulator" or "storage battery" or an "accessory" of wireless reception instruments etc. to fall under Entry No. 3 throughout or Entry No. 137 w.e.f. 1.9.1976 but not an "accessory" of "electrical goods" to fall under Entry No. 38. The question for decision, therefore, is whether the view taken that dry cell batteries fall within Entry No. 38 is incorrect on the grounds urged by the State. Only in respect of Union Carbide India Ltd. for the pre-1976 period, the question also is : Whether the dry cell batteries marked "for transistors" were wrongly assessed to be taxable under Entry No. 3 instead of Entry No. 38?

At this stage, relevant entries as they stood after the amendment made in 1976 and 1985 may also be quoted :

With effect from 1.9.1976:-

"3. Wireless reception instruments and apparatus, radios and radio gramophones, electrical valves, accumulators, amplifiers and loud-speakers and spare parts and accessories thereof. (1003)	At the point of first sale in the state	12 paise in the rupee
38. All kinds of electrical goods, instruments, apparatus and appliances that is to say -	-do-	8 paise in the rupee
(i) Wires, holders, plugs, switches, electrical earthenware and procelain ware;		
(ii) Casings, cappings, reapers, bends, junction boxes, meter-boxes, switch-boxes, meter-boards and switch boards other those made of wood		
(iii) Electrical fans, lighting bulbs, torches, fluorescent tubes and their fittings, like chokes and starters and other parts and accessories thereof;		

A	(iv) Electrical grinders, mixers, blenders, hair driers, shavers, washing machines, cooking ranges, boilers, ovens, geysers, generators, transformers and parts and accessories thereof;		
B	(v) Electronic systems, instruments, apparatus, appliances including electronic cash registering, indexing card-punching, franking and addressing machines, computers of analog and digital varieties, one record units, oscilloscopes and other electronic equipment and material and parts and accessories thereof; (1038)		
C	137. Electrical storage batteries and parts thereof including containers, covers and plates (1137)	At the point of first sale in the state	12 paise in the rupee
D	<b>With effect from 1.7.1985 :-</b>		
	152. Dry batteries or cells* ( <i>and parts and accessories thereof</i> ).	At the point of first sale in the state	*(10) paise in the rupee

E \* Rate of tax on item 152 reduced from 11 paise to 10 paise and the bracketed words added by G.O.Ms. No. 630, Rev., dt. 30.5.1986 w.e.f. 1.6.1986 and later by Act 19 of 1986 w.e.f. 1.8.1986

F The subsequent amendments show that with Entry No. 152 specifically providing for "dry batteries or cells" while Entry No. 3 remained the same, since then "dry batteries or cells" cannot come under Entry No. 3 in view of the specific Entry No. 152. The question is whether prior to the specific provision being made in Entry No. 152 for dry batteries or cells, Entry No. 3 had to be preferred or it was Entry No. 137 w.e.f. 1.9.1976 which included "dry batteries or cells". To come under Entry No. 137 which is the alternative argument advanced on behalf of the State Government, dry batteries or cells must fall within the meaning of "storage battery" and for attracting Entry No. 3 it must fall within the expressions "accumulators" or "accessories thereof". We shall presently show that dry batteries or cells are not "storage batteries" or "accumulators". The real question therefore would be

G whether they can be called "accessories" of wireless reception instruments

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etc." to fall within Entry No. 3. This is because the expression is "accessories thereof". A

In *Hamlyn All-Colour Science Encyclopedia* the "accumulators" are described as:

"The accumulator does not make electricity in the way that the dry battery does. Electricity has to be put in before any can be taken out. The same amount of electricity can be obtained from an accumulator as was put into it." B

On the other hand dry batteries are called a primary cell which is different from an accumulator, secondary cell or storage battery. C

In *Chambers Science and Technology Dictionary*, "accumulator" is defined as:

"Voltaic cell which can be charged and discharged. On charge, when an electric current is passed through it into the positive and out of the negative terminals (according to the conventional direction of flow of current), electrical energy is converted into chemical energy. The process is reversed on discharge, the chemical energy, less losses both in potential and current, being converted into useful electrical energy. Accumulators therefore form a useful portable supply of electric power, but have the disadvantages of being heavy and of being at best 70% efficient. More often known as battery, also called reversible cell, secondary cell, storage battery" D E

and storage battery is mentioned to be the same as an accumulator. F

Primary cells and primary batteries or dry batteries or cells are understood in common parlance as well as in technology to be different from accumulators or storage cells.

In *The New Encyclopedia Britannica*, Vol. I, at page 963, it is stated that, G

"There are two major types of voltaic cells: primary batteries and secondary, or storage, batteries. (The latter are sometimes also called accumulators.) Primary cells are constructed in such a way that only one continuous or intermittent discharge can be obtained. H

A Secondary devices, on the other hand, are constructed so that they can be discharged and then recharged to approximately their original state. The charging process is the reverse of the discharge process; therefore, the electrode reactions in these batteries must be reversible.

B "Primary batteries" are defined as

C "Several varieties of primary cells are available. These include dry, wet, and solid electrolyte. Dry cells are not actually dry but contain an aqueous electrolyte that is unspillable or immobilized. Many of these cells are sealed to prevent seepage of the electrolyte or reaction products. Common examples of such primary batteries are acidic dry cells (e.g. carbon-zinc cells), used in flashlights, toys, and certain transistorized portable radios; alkaline dry cells, employed in camaras, tape records, and electric razors; and mercury cells, utilized in hearing aids and photographic flash guns."

D and "Secondary batteries" are defined as

E "Such batteries consist of an assemblage of several identical voltaic cells. Of the various types of storage batteries available, the lead-acid type is the most widely used. It serves as the power source for the electrical systems of many kinds of motor vehicles, particularly automobiles and trucks. It is also commonly used to provide electricity for emergency lighting and communication circuits. ...."

F For this reason, dry batteries or cells cannot be treated as "storage batteries" for the purpose of Entry No. 137 or "accumulators" for the purpose of Entry No. 3.

G The expression "accessories thereof" in Entry No. 3 indicates that Entry No. 3 can be attracted only if the dry batteries or cells can be treated as accessories of the wire reception instruments etc. specified in Entry No. 3 or else they would fall under Entry No. 38 as "other accessories" of "all electrical goods" being the residuary entry. The dry cells or batteries marked for use in transistors as is the case of some such batteries manufactured by the Union Carbide India Ltd. alone during the pre-1976 period, H may fall under Entry No. 3 as held by the High Court. However, multi-pur-

pose batteries, not specified for use in transistors alone cannot be treated as "accessories thereof" of wireless reception instruments etc. for the purpose of Entry No. 3. A

In *Annapurna Carbon Industries Co.*, significance is attached to use of the word "thereof" and it was indicated that the deciding factor is the predominant or ordinary purpose or use and it is not enough to show that the articles can be put to other uses also. It was held therein that the general or predominant use seems to determine the category in which an article will fall. On a comparison made between the different entries in which the term "accessories" is used in the Schedule to describe goods, it was shown that the word was construed taking into account the fact whether the goods have been manufactured for use as an aid or addition to any of the specified articles in that entry or not. It was also pointed out that when it was intended to confine the entry to particular gadgets and particulars thereof, the entry said so; and, therefore, the expression "accessories thereof" must mean the general or predominant user of the article only as an accessory of one of the specified items mentioned in that entry. Applying that test, it cannot be held that dry batteries or cells which were not marked "for transistors" and were multi-purpose cells were manufactured for predominant use as accessories of the wireless reception instruments etc. to fall under Entry No. 3 so that they could not be treated as "other accessories" of "all electrical goods" for the purpose of attracting Entry No. 38. B  
C  
D  
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At this stage, it is also useful to refer to a clarification made by the Board of Revenue by a circular dated 7.1.1977 which reads as follows:

"B.P.Rt.No. 29/1977

Board of Revenue (C.T.) F  
Hyderabad D/7-1-1977

Shri A. Krishnaswamy, I.A.S.,  
Commissioner of Commercial Taxes.

Sub.: Andhra Pradesh General Sales tax Act, 1957 Rate of tax on dry battery cells - Clarification issued G

Ref: Representation dated 27.9.1976 from M/s. Indo National Limited, Nellore - H

A The trade has requested the Board to clarify the rate of tax applicable to dry battery cells.

The Board has examined the issue and is of the view that dry battery cells would be of two types :

- B
1. Those labelled for a special use such as transistor batteries. The rate of tax would depend on the rate leviable on the goods for which they are labelled as being an accessory. In the case of transistor batteries, they would be subjected to tax as accessories of radios.
- C
2. Those that are not labelled for special use, such dry cells would be liable to tax falling under entry 38 of the 1st Schedule to the Andhra Pradesh General Sales Tax Act 1957, i.e. 'Electrical Goods' liable to tax at 8% at the point of 1st sale in the State.
- D

Sd/- T. Jesudanam  
Asstt. Commissioner (CT)"

(at page 120 from paperback  
of C.A. Nos. 4537-39/1986)

E The above circular is of significance to indicate the manner in which these entries were understood and construed even by the Department which is in accord with the construction made of the entries by the High Court.

F For the above reasons, we do not find any infirmity in the view taken by the High Court on any of the two questions which it has decided. There is no ground to interfere in any of these appeals.

G Consequently, all the appeals and the special leave petition are dismissed. No costs.

S.K.

Appeals and Petitions are dismissed.

COLLECTOR OF CENTRAL EXCISE, SHILLONG

v.

WOOD CRAFT PRODUCTS LTD. ETC. ETC.

MARCH 20, 1995

[J.S. VERMA, S.P. BHARUCHA AND K.S. PARIPOORNAN, JJ.]

*Central Excise Tariff Act, 1985—Classification of block board.*

*Indian Tariff—Heading Nos. 44.08 and 44.10—Whether block board is included in "similar laminated wood" under heading No. 44.08.*

A dispute arose between the manufacturers of block board and the revenue in respect of classification of block board for the purpose of levy of excise duty. Under the Central Excise Tariff Act, 1985, "Plywood, veneered panels and similar laminated wood" are classified under Heading No. 44.08 of the Indian Tariff whereas "articles of woods not elsewhere specified" are classified under Heading No. 44.10. The manufacturers contended that block board falls under heading No. 44.10 Sub-heading No. 4410.90 whereas the revenue contended that block board is covered by the expression "Similar laminated wood" in Heading No. 44.08 Sub-heading No. 4408.90.

The manufactures relied upon the ISI Glossary of Terms in support of their contention. On the other hand, the revenue contended that the tariff structure is based on a system of classification derived from the Brussels' Convention on the Harmonised Commodity Description and coding system (Harmonised system of Nomenclature called the HSN). Heading No. 44.12 of HSN is the same as Heading No. 44.08 of the Indian Tariff and the explanation to the said Heading No. 44.12 of HSN expressly includes block board in the said Heading. The revenue, therefore, contended that block board is included under "similar laminated wood" in Heading No. 44.08.

The custom Excise and Gold (Control) Appellate Tribunal held that the block boards fall under the Heading No. 44.10, sub-heading No. 4410.90.

With effect from 19.3.1990, amendment was made in chapter 44 in

A the Central Excise Tariff Act and Chapter Note 5 was introduced and block boards "in which the core is thick and composed of blocks, laths or battens of wood *glued together* and surfaced with the outer plies "was included under the expression "similar laminated wood" for the purpose of Heading No. 44.08. The Guahati High Court relying upon amended chapter 44 held that from 19.3.1990 only those block boards which are put together by adhesive or glue in between would fall under Heading No. 44.08, sub-heading No. 4408.90.

C Thereafter, with effect from 1.3.1992, another amendment was made in chapter Note 5 including block boards "in which the core is thick and composed of blocks, laths or battens of wood *glued together* or *otherwise joined together* and surfaced with the outer plies "under the expression "similar laminated wood", For this period, the Guahati High Court held that all kinds of block boards whether glued together or joined and kept in place by any other mode fall under heading No. 44.08, Sub-heading No. 4408.90.

D On appeals by the manufactures as well as the revenue, this Court.

E HELD:1. As expressly stated in the statement of objects and Reasons of the Central Excise Tariff Bill, 1985 which led to the enactment of Central Excise Tariff Act, 1985 the Central Excise Tariff are based on the HSN and the internationally accepted nomenclature was taken into account to "reduce disputes on account of tariff classification." This being the expressly acknowledged basis of the structure of Central Excise Tariff in the Act and the tariff classification made therein, in case of any doubt, the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act. [806-D-E]

G 2. A comparison of chapter 44 is the Central Excise Tariff Act, 1985 and the corresponding chapter in the HSN of the Customs Cooperation Council shows that they are similar. For this reason, the expression "similar laminated wood "in the identical heading in the Indian tariffs and the HSN should have the same meaning since the pattern of the Indian tariffs of the classification made therein is based on the HSN. [806-G]

H 3.1. HSN in the explanatory note expressly says that block board is "similar laminated wood" wherein the core is thick and composed of blocks and surfaced with outer plies. All kinds of block board answer to this

description being comprised of the core composed of blocks which are joined together and surfaced with outer plies. [807-B] A

3.2. The meaning of the expression "similar laminated wood" in the heading "Plywood, Veneered panel and similar laminated wood" given in the explanatory note to the HSN for Heading No. 44.12 therein, identical to Heading No 44.08 in the Indian tariff is also in accord with the general meaning of the relevant words used in the expression. The word "similar" is expansive and not restrictive like "same". Thus some resemblance with "plywood" or "veneered panels" is enough provided that the article can be treated as "laminated wood". The sweep of the heading is, therefore, wide and resort to the residuary Heading No. 44.10 is to be had only when a liberal construction of the wide Heading No. 44.08 cannot accommodate "block board" within it. [808-C-E] B C

3.3. The expression "similar laminated wood" in Heading No. 44.08 as it stood from the beginning must be construed to include within it block boards of all kinds so that the amendment in chapter Note 5 w.e.f. 19.3.1990 and thereafter w.e.f. 1.3.1992 merely clarified and made explicit that which was implicit in the heading throughout. The amendments were obviously made to end the dispute raised by the manufacturers by an express statement. [810-H, 811-A] D

3.4. The definition of a term in the ISI Glossary, which has a different purpose, cannot, in case of a conflict, override the clear meaning of an identical expression in the same context in the HSN. [810-E] E

*Nat Steel Equipment Private Ltd. v. Collector of Central Excise, [1988] 34 ELT 8 S.C.; Oxford Encyclopedic English Dictionary, New Encyclopaedia Britannica, Micropaedia, referred to.* F

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1315-18 OF 1990 Etc. Etc.

From the Judgment and Order dated 18.10.89 of the Central Excise and Salt Act, 1944 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in A.No. E/1672/88-D, E/1673/88-D, E/1674/88-D and E/1721/88-D Order No. 427-30 of 1988-D. G

Joseph Vallapally, J.P. Bhattacharjee, P. Chidambaram, K.K. Venugopal, H.N. Salve and P.K. Goswami, A.K. Srivastava, V.K. Verma, H

**A** D.S. Mehra, N.R. Choudhary, Somnath Mukherjee, M.L. Lahoty, Ms. Shipra Khazanchi, P.S. Jha, Atishi-Dipankar, P.P. Tripathi, D.N. Mehta, Dr. Meera Aggarwal, R.C. Mishra for Aggarwal & Mishra Co., Khaitan & Co., (NP), Narender Kaushik, A.K. Sharma, Kailash Vasdevand and M.P. Shorawala for the appearing parties.

**B** The Judgement of the Court was delivered by

**J.S. VERMA, J.** The main question for decision in these appeals and the connected matters is whether "block boards" are to be classified under Heading No. 44.08, Sub-heading No. 4408.90 as claimed by the revenue or

**C** under Heading No. 44.10, Sub-heading No. 4410.90 as claimed by the manufacturers of block boards. The controversy relates to three periods, namely, from 28.2.1986 to 19.3.1990, from 20.3.1990 to 28.2.1992 and from 1.3.1992 onwards. The division into three periods is on account of the fact that an amended Chapter Note 5 in Chapter 44 was introduced w.e.f.

**D** 19.3.1990 on account of the controversy which had been raised about the classification of block boards and, thereafter, w.e.f. 1.3.1992 a second amendment was made in Chapter Note 5 on account of the surviving controversy even after the amendment made w.e.f. 19.3.1990. These appeals and the connected matters relate to these three periods.

**E** For the first period, the Tribunal held in the main judgment dated 18.10.1989 reported in 1992 (60) E.L.T. 668 that block board does not fall within Heading No. 44.08, Sub-heading 4408.90 and the more appropriate classification would be under Heading No. 44.10, Sub-heading No. 4410.90.

**F** This decision being in favour of the manufacturers, the appeals relating to this period are by the revenue. For the second period writ petitions filed by the manufacturers in the Gauhati High Court were allowed by the judgment dated 23.3.1993 reported in 1993 (66) E.L.T. 345 - *Arunachal Forests Products Ltd. v. Union of India*. Civil Appeal Nos. 3977-4020/94 are by the revenue against the decision. For the third period, the writ petitions

**G** filed by the manufacturers in the Gauhati High Court have failed being dismissed by the judgment dated 17.3.1993 and the manufacturers have challenged that decision.

**H** At the outset, the competing headings with reference to which the question has to be decided may be quoted. They are as under:-



<b>"44.08 Plywood, veneered panels and similar laminated wood</b>			<b>A</b>
4408.10	Marine plywood an aircraft plywood	30%	
4408.20	Plywood for tea-chests when cut to size in panels or shocks and packed in sets	30%	
4408.30	Decorative plywood	-	<b>B</b>
4408.40	Cuttings and trimmings of plywood of width not exceeding 5 centimeters	Nil	
4408.90	Others	30%	<b>C</b>
<b>44.10 Articles of wood not elsewhere specified</b>			
4410.10	Flush door	30%	
4410.90	Others	12%	<b>D</b>

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With effect from 19.3.1990, amended Chapter Note 5 in Chapter 44 was introduced which read as follows:-

"5. For the purposes of heading No. 44.08 the expression 'similar laminated wood' includes block board, laminated board and batten board, in which the core is thick and composed of blocks, laths or battens of wood glued together and surfaced with the outer plies and also panels in which the wooden core is replaced by other materials such as a layer or layers of particle board, fibre board, wood waste glued together, asbestos or cork."

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Thereafter with effect form 1.3.1992 a second amendment was made in Chapter Note 5 after which it read as follows:

"5. For the purposes of heading No. 44.08 the expression 'similar laminated wood' includes block board, laminated board and batten board, in which the core is thick and composed of blocks, laths or battens of wood glued or otherwise joined together and surfaced with the outer plies and laso panels in which the wooden core is

A replaced by other materials such as a layer or layers of particle board, fibre board, wood waste glued together, asbestos or cork."

"Block board" has not been expressly specified in any entry. The revenue contends that "block board" is covered by the expression "similar laminated wood" in the heading "Plywood, veneered panels and similar laminated wood" of Heading No. 44.08 and, therefore, falls under the sub-heading No. 4408.90 - "other" which is the residuary Sub-heading. On the other hand, the manufacturers of block board contend that it is an "article of wood" and, therefore, falls under Heading "articles of wood not elsewhere specified" of Heading No. 44.10, Sub-heading No. 4410.90 - "other" which is the residuary entry since it is not "similar laminated wood".

B The basis of the rival contentions is that according to the manufacturers such an indication flows from the ISI Glossary of Terms, while according to the revenue the structure of the central excise tariff in the Central Excise Tariff Act, 1985 is the adoption of a detailed central excise tariff based broadly on the system of classification derived from the International Convention called the Brussels' Convention on the Harmonised Commodity Description and Coding System (Harmonised System of Nomenclature called "HSN") with the necessary modifications. The revenue contends that the expression "similar laminated wood" in Heading No. 44.08 expressly includes block board, laminated wood and batten board, in which the core is thick and composed of blocks, laths or battens of wood glued or otherwise joined together and surfaced with the outer plies as clarified by the amendment in Chapter Note 5 which was always the meaning of the expression "similar laminated wood" according to HSN. The revenue contends that this is how the expression was always understood in the HSN which is the pattern adopted while enacting Central Excise Tariff Act, 1985. According to the revenue, the ISI Glossary of Terms being for a different purpose is not the appropriate aid to construction of these headings in the Central Excise Tariff Act. The revenue contends that the amendments made in Chapter note 5 were only with a view to clarify this position and end the controversy which was raised by the manufacturers relating to construction of these headings in the Act. On this basis, the revenue urges that the Tribunal's decision relating to the first period from 28.2.1986 to 19.3.1990 reported in 1992 (60) E.L.T. 668 and of the High Court for the second period from 20.3.1990 to 28.2.1992 reported in 1993 (66) E.L.T. 245 deserve to be reversed maintaining the decision of the High Court for the third period from 1.3.1992 onwards which is against the manufacturers. It is obvious that in the event of the revenue succeeding in

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respect of the first period, it must follow that the revenue must succeed for the other two period also. It is equally obvious that for the third period from 1.3.1992 onwards, in view of the clear wording of the amended Chapter Note 5 w.e.f. 1.3.1992, the question is beyond controversy since the expression "glued or otherwise joined together" has been added in Chapter Note 5 to make it beyond controversy that block boards of all kinds fall within the expression "similar laminated wood".

It is significant that Heading No. 44.12 of the HSN is the same as Heading No. 44.08 of the Indian Tariff and reads "Plywood, veneered panels and similar laminated wood". The explanatory notes on the HSN indicate the meaning of the expression "similar laminated wood" as under:-

"Similar laminated wood. This group can be divided into two categories:

Block board, lamin board and batten board, in which the core is thick and composed of blocks, laths or battens of wood glued together and surfaced with the outer plies. Panels of this kind are very rigid and strong and can be used without facing or backing."

It is clear that if the expression "similar laminated wood" in the Indian Tariff is understood as it meant under the HSN on which pattern the Central Excise Tariff Act is based, then block boards of all kinds would fall within the expression "similar laminated wood". This is how the amended Chapter Note reads expressly. The question is whether it can be so read even for the earlier periods particularly the first period before amendment of Chapter Note 5 to expressly include block board in the expression "similar laminated wood".

The ISI Glossary contains the following definitions:-

'Laminated wood - An assembled product made up of layers of wood and adhesive in which the grains of adjacent layers are parallel.

Block board - A board having a core made up of strips of wood, each not exceeding 25 mm in width, laid separately or glued or otherwise joined to form a slab which is glued between two or more outer veneers with the direction of the grain of the core blocks running at right angles to that of the adjacent outer veneers

A (See Fig.)."

The Tribunal has taken the view that the block boards manufactured by these manufactures do not conform to the definition of "laminated wood" given in the ISI Glossary. It further held that the block boards are similar to "flush doors" and, therefore, the more appropriate classification is under Heading No. 44.10 which specifies the flush doors as a specific category and other articles of wood not elsewhere specified would all under the residuary sub-heading No. 4410.90. Reliance was placed on the definitions in the ISI Glossary.

C After the amendment made in Chapter Note 5 w.e.f. 19.3.1990 for the period from 20.3.1990 to 28.2.1992, the High Court in 1993 (66) E.L.T. 345 placed reliance similarly on the ISI Glossary to hold that where no artificial means by way of glue or metal fastener is used to hold the blocks together and where the blocks of woods are separately laid, they are "otherwise joined together" to form a slab and, therefore, such block boards could fall under Heading No. 44.08, sub-heading No. 4408.90 in the light of Chapter Note 5 as amended from 1.3.1992 but in the absence of the words "or otherwise joined" from Chapter Note 5 as introduced w.e.f. 19.3.1990, only block boards in which the core is composed of blocks of woods "glued together" would fall under Heading No. 44.08, Sub-heading No. 4408.90 during the second period between 20.3.1990 to 28.2.1992. In other words, for the second period the High Court took the view that the only block boards in which blocks of wood are put together by applying adhesive or glue in between, could fall under Heading No. 44.08, sub-heading No. 4408.90 in view of Chapter Note 5 as introduced w.e.f. 19.3.1990 prior to its further amendment w.e.f. 1.3.1992. After the further amendment made in Chapter Note 5 w.e.f. 1.3.1992 by enlargement of the expression "glued together" to "glued or otherwise joined together", the High Court for the third period commencing from 1.3.1992 held that all kinds of block boards whether glued together or joined and kept in place by any other mode fall under the Heading No. 44.08, Sub-heading No. 4408.90.

G Having heard learned counsel for the parties, we are satisfied that the contention of the revenue must be accepted with the result that the decision of the Tribunal reported in 1992 (60) E.L.T. 668 for the first period and that of the High Court reported in 1993 (66) E.L.T 345 for the second period must be reversed, while the decision dated 17.3.1993 of the

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High Court against the manufacturers for the third period commencing from 1.3.1992 must be affirmed. A

The Statement of Objects and Reasons of the Central Excise Tariff Bill, 1985 which led to the enactment of the Central Excise Tariff Act, 1985 is indicative of the pattern of the structure of the central excise tariff enacted therein. It reads as under: B

"Central Excise duty is now levied at the rates specified in the First Schedule to the Central Excises and Salt Act, 1944. The Central Excises and Salt Act, 1944 originally provided for only 11 items. The number of Items has since increased to 137. The levy, which was selective in nature, to start with, acquired a comprehensive coverage in 1975, when the residuary Item 68 was introduced. Thus, barring a few Items like opium, alcohol, etc., all other manufactured goods now come under the scope of this levy. C

2. The Technical Study Group on Central Excise Tariff, which was set up by the Government in 1984 to conduct a comprehensive inquiry into the structure of the central excise tariff has suggested the adoption of a detailed central excise tariff based broadly on the system of classification derived from the International Convention on the Harmonised Commodity Description and Coding System (Harmonised system) with such contractions or modifications thereto as are necessary to fall within the scope of the levy of central excise duty. The Group has also suggested that the new tariff should be provided for by a separate Act to be called the Central Excise Tariff Act. D

3. *The tariff suggested by the Study Group is based on an internationally accepted nomenclature, in the formulation of which all considerations, technical and legal, have been taken into account. It should, therefore, reduce disputes on account of tariff classification. Besides, since the tariff would be on the lines of the Harmonised System, it would bring about considerable alignment between the customs and central excise tariffs and thus facilitate charging of additional customs duty on imports equivalent to excise duty. Accordingly, it is proposed to specify the Central Excise tariff suggested by the Study Group by a separate tariff Act instead of the present system of the tariff being governed by the First Schedule* E F G H

A to the Central Excises and Salt Act 1944.

4. The main features of the bill are as follows :-

B (i) The tariff included in the Schedule to the Bill has been made more detailed and comprehensive, thus obviating the need for having a residuary tariff Item. *Goods of the same class have been grouped together to enable parity in treatment.*

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5. The Bill seeks to achieve the above objects

C (emphasis supplied)

D It is significant, as expressly stated, in the Statement of Objects and Reasons, that the central excise tariffs are based on the HSN and the internationally accepted nomenclature was taken into account to "reduce disputes on account of tariff classification". Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. This being the expressly acknowledged basis of the structure of central excise tariff in the Act and the tariff classification made therein, in case of any doubt the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act. The ISI Glossary of Terms has a different purpose and, therefore, the specific purpose of tariff classification for which the internationally accepted nomenclature in HSN has been adopted, for enacting the Central Excise Tariff Act, 1985, must be preferred, in case of any difference between the meaning of the expression given in the HSN and the meaning of that term given in the Glossary of Terms of the ISI.

G A comparison of Chapter 44 in the Central Excise Tariff Act, 1985 and the corresponding chapter in the HSN (Harmonised system of Nomenclature) of the Customs Cooperation Council (CCC) shows that they are similar. Heading No. 44.08 of the Indian Tariff is "Plywood, veneered panels and similar laminated wood" which is identical to Heading No. 44.12 of the HSN. For the reason, the expression "similar laminated wood" in the identical heading in the Indian tariffs and the HSN should have the same meaning since the pattern of the Indian tariffs of the classification may therein is based on the HSN. The explanatory note in H the HSN expressly includes block board in "similar laminated wood". The

word used in the expression is "similar" and not "same" which means that the block board to be included in this heading need not be the same as laminated wood but similar to it. The ISI Glossary of terms defines "laminated wood" and "block board" separately to indicate that block board is not included in the definition of "laminated wood" for the purpose of ISI. On the other hand, HSN in the explanatory note expressly says that block board is "similar laminated wood" wherein the core is thick and composed of blocks and surfaced with outer plies. All kinds of block boards answer this description being comprised of the core composed of blocks which are joined together and surfaced with outer plies. This is the basic requirement according to the explanatory note in the HSN to make the article "similar laminated wood". The process by which the core composed of blocks is kept together in place to form the core between the outer plies is not significant for classification of the article as block board. The fact that all kinds of block boards irrespective of the manner in which the blocks composing the core are kept together in place are known as block boards, makes this evident. It is clear that any article having a core composed of blocks of wood kept together in place between outer plies is a block board and block board is included within the expression "similar laminated wood" for the purpose of bringing it within the heading "Plywood, veneered panels and similar laminated wood" which is Heading No. 44.08 in the Indian tariff as it is in Heading No. 44.12 of the HSN.

The mere fact that on account of the dispute raised by the manufacturers, Chapter Note 5 was amended w.e.f. 19.3.1990 to bring it in line with the corresponding explanatory note in the HSN and the expression "glued together" used therein was enlarged by a further amendment therein w.e.f. 1.3.1992 to read "glued or otherwise joined together" does not indicate that block board was not included in the expression "similar laminated wood" in Heading No. 44.08 as it stood from the beginning. It is significant that no amendment was made in the Heading and that the amendment was made only in the explanatory note. The exercise of amendment of Chapter Note 5 was ex abundante cautela merely to clarify and make explicit that which was implicit earlier in the expression "similar laminated wood" since the identical heading was lifted from the HSN wherein an explanatory note existed, including block board in the expression "similar laminated wood". In our opinion, the express provision made for "flush doors" in Heading No. 44.10, Sub-heading No. 4410.10 is no indication, in the context, that block board must be classified as an article of wood not elsewhere specified

A under Heading No. 44.10, Sub-heading no. 4410.90 - "others". It merely means that "flush door" being expressly classified under Heading No. 44.10, Sub-heading No. 4410.10, is taken out of the ambit of "similar laminated wood" in Heading No. 44.08 leaving the rest included in that expression untouched. We do not think that the specification of "flush door" under Heading No. 44.10, Sub-heading No. 4410.10 has the effect of also excluding block board from "similar laminated wood" in Heading No. 44.08, Sub-heading No. 4408.90.

C The meaning of the expression "similar laminated wood" in the heading "Plywood, veneered panels and similar laminated wood" given in the explanatory note to the HSN for Heading No. 44.12 therein, identical to Heading No. 44.08 in the Indian tariff is also in accord with the general meaning of the relevant words used in that expression. The heading means that it covers "plywood" and "veneered panels" together with all kinds of "similar" laminated wood". In other words, treating "plywood" or "veneered panels" as "laminated wood", it covers all kinds of laminated wood bearing any resemblance with "plywood" or "veneered panels". The word "similar" is expansive and not restrictive like "same". Thus, some resemblance with "plywood" or "veneered panels" is enough provided the article can be treated as "laminated wood". The sweep of the heading is, therefore, wide and resort to the residuary heading No. 44.10 is to be had only when a liberal construction of the wide heading No. 44.08 cannot accommodate "block board" within it.

F The significant words are "plywood", "veneered panels" and "laminated wood" with reference to the meaning of which, the ambit of Heading no. 44.08 has to be determined. In the Oxford Encyclopedic English Dictionary, the meaning given are:

Plywood - a strong thin board consisting of two or more layers glued and pressed together with the direction of the grain alternating."

G "Blockboard - a plywood board with a core of wooden strips."

"Lamination - the manufacture by placing layer on layer."

H The new Encyclopaedia britannica, Volume 19, Macropaedia, under the heading "Forestry and Wood Production", in the section "Wood utilization"



at pages 420-21 states -

"Veneer. Veneer is a thin layer, or sheet, of wood that is uniform in thickness - ....

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"Plywood and laminated constructions. Plywood and laminated constructions are glued-wood products. Although gluing is an old art, practiced since ancient times the modern development of various products was made possible by the improvement of glues - especially by the production of synthetic resin adhesives.

Plywood is a panel product manufactured by gluing together one or more veneers to both sides of a veneer solid wood, or reconstituted wool core (.....). In the case of solid-wood-core plywood, an additional intermediate step is the production of cores, which are made by lateral gluing of blocks or strips of wood or by gluing oriented wood chips or flakes with resin adhesive.

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"Another important glued product is laminated wood....."

In Vol.7, Micropaedia, at page 123, it says -

"lamination, in technology, the process of building up successive layers of a substance such as wood or textiles, and bonding them with resin to form a finished product. Laminated board, for example, consists of thin layers of wood bonded together;....."

The meaning of the significant words and description of the wood products as intermediate materials meant for manufacture of final products clearly indicate that "laminated wood" means a wood product prepared by placing layer on layer and "block board" is a plywood board with a core of wood. Any plywood board with a core of wood in which there are layers, one above the other is, therefore, laminated wood similar to plywood or, veneered panels. It is "similar laminated wood" included in the heading "Plywood, veneered panels and similar laminated wood". Similarity with, and not identity with plywood or veneered panels is required. In *Nat Steel Equipment Private Ltd. v. Collector of Central Excise*, [1988] 34 E.L.T. 8

A (S.C.), while considering the meaning of the word "similar" in a tariff item, in similar context, it was stated thus:

" ..... The expression "similar" is a significant expression. It does not mean identical but it means corresponding to or resembling to in many respects; somewhat like; or having a general likeness. The statute does not contemplate that goods classed under the words of 'similar description' shall be in all respects the same. If it did these words would be unnecessary. These were intended to embrace goods but not identical with those goods. ...."

(at page 10)

C This test is satisfied. Thus, the meaning given to the expression "similar laminated wood" in the HSN is not any special meaning thereof but the general meaning as understood internationally in the field of "Forestry and Wood Production".

D We are of the view that the Tribunal as well as the High Court fell into the error of overlooking the fact that the structure of the central excise tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, any dispute relating to tariff classification must, as far as possible, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself. The definition of a term in the ISI Glossary, which has a different purpose, cannot, in case of a conflict, override the clear indication of the meaning of an identical expression in the same context in the HSN. In the HSN, block board is included within the meaning of the expression "similar laminated wood" in the same context of classification of block board. Since the Central Excise Tariff Act, 1985 is enacted on the basis and pattern of the HSN, the same expression used in the Act must, as far as practicable, be construed to have the meaning which is expressly given to it in the HSN when there is no indication in the Indian tariff of a different intention.

G In our opinion, the expression "similar laminated wood" in Heading No. 44.08 as it stood from the beginning must be construed to include within it block boards of all kind so that the amendment in Chapter Note 5 w.e.f. 19.3.1990 and thereafter w.e.f. 1.3.1992 merely clarified and made H explicit that which was implicit in the heading throughout. These amend-

ments were obviously made to end the dispute raised by the manufacturers by an express statement. Any further discussion with reference to the definitions in the ISI Glossary is unnecessary for the reason already indicated. A

The result is that the decision of the Tribunal reported in 1992 (60) E.L.T. 668 and that to the High Court in 1993 (66) E.L.T. 345 are reversed, while the decision of the High Court dated 17.3.1993 for the third period commencing from 1.3.1992 is affirmed even though for different reasons given herein. B

Consequently, all the appeals of the revenue are allowed while the appeals and SLPs of the manufacturers are dismissed. No costs. C

B.K.M.

Appeals and Petitions dismissed.