

(1984) 11 CAL CK 0037
In the Calcutta High Court
Case No : Matter No. (Sic)

National Insulated Cable Co. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 22-11-1984

Acts Referred:

Customs Act, 1962 — Section 12
Customs Tariff Act, 1975 — Section 2

Citation : (1985) 6 ECC 40 : (1985) 5 ECR 2436 : (1994) 69 ELT 465

Hon'ble Judges : Ajit Kumar Sengupta, J

Bench : Single Bench

Advocate : S. Pal, for the Appellant; Subrata Roy Chowdhury and J. Ghosh, for the Respondent

Judgement

Ajit Kumar Sengupta, J.—I have heard the learned counsel appearing for the parties and have also considered the written notes of submissions handed over by them.

2. The main controversy in the writ application is whether Hypalon-40 is to be classified under Heading No. 39.01/06 or Heading No. 40.01/04 of the First Schedule to the Customs Tariff Act, 1975. The contention of the writ petitioners is that Hypalon-40 is classifiable as a kind of synthetic rubber under Heading No. 40.01/04 whereas the customs authorities have submitted that Hypalon-40 is classifiable under Heading No. 39.01 /06 as synthetic resin. The reasons given by Mr. Ghose, learned Advocate for the customs authorities for such classification are stated hereinafter.

3. The customs duties are levied u/s 12 of the Customs Act, 1962. Prior to 2nd August, 1976 the customs duty was levied by classifying the imported goods under the item specified in the First Schedule to the Indian Tariff Act, 1934 at the rates mentioned therein. In the year 1964 the Tariff Revision Committee was set up by the Government of India which recommended for restructuring the customs tariff in India on the basis of Brussels Nomenclature now known as

"Customs Co-operation Council Nomenclature." On the basis of the said recommendation Parliament passed the Customs Tariff Act, 1975. The objects and reasons for enacting the charging section (Section 2) are as follows :-

"The Schedule is broadly based on the Brussels Tariff Nomenclature, but the individual headings of that Nomenclature have been either merged or sub-divided to accord with the pattern of India's Import Trade Policy."

4. The said Brussels Trade Nomenclature has been compiled by the Customs Co-operation Council, a Council constituted with the representatives of different nations of the world having its headquarters at Brussels. That is why the said Brussels Tariff Nomenclature is now renamed as Customs Co-operation Council Nomenclature or "C.C.C.N." The Indian Tariff Act, 1934 did not contain any statutory definition. Rubber and articles made of rubber previously came under Item No. 39 in the Schedule to the Indian Tariff Act whereas artificial or synthetic resin came under T.I. 82(3).

5. Under B.T.N. rubber including synthetic rubber falls under Chapter 40 and synthetic rubber falls under Heading 40.02. The B.T.N. also defines the term "synthetic rubber" in Chapter Note No. 4 as under :

"Unsaturated synthetic substances which can be irreversibly transformed into non-thermoplastic substances by vulcanisation with sulphur and which when so vulcanised as well as may be (without the addition of any substances such as plastidsers, fillers or reinforcing agents not necessary for the cross-linking) can produce substances which at a temperature between 18° and 29 C will not break on being extended to three times their original length and will return after being extended to twice their original length, within a period of five minutes to a length not greater than one and a half times their original length."

6. In the Customs Tariff Act the said classification has been bodily adopted to Chapter 40 and the sub-classification of 40/01 to .04 have been merged as 40.01/04 which includes raw rubber, synthetic rubber, etc. The definition given in B.T.N. of the term "synthetic rubber" is also in Chapter Note No. 4 in identical language. So the 1975 Act in Heading 40 contained a statutory definition of the term synthetic rubber.

7. It is also contended that the customs authorities have drawn samples from Hypalon-40 imported by the writ petitioners. On chemical examination it has been found that Hypalon-40 is fully saturated and/or cured by the reaction of chloride and sulphonil chloride. The Department's chemists have found that Hypalon-40 on the basis of chemical examination does not satisfy the statutory definition of synthetic rubber. It is further submitted that Hypalon-40 has to be classified as synthetic resin falling under Item No. 39.01/06. Under B.T.N. now named as C.C.C.N. it comes under Chapter 39. Synthetic resin comes under Heading 39.02 which covers polymerisation and co-polymerisation products (for example, polyethylene, polytetrahydro-ethylenes, polyisobutylene, polystyrene, polyvinyl, polyvinyl chloride, polyvinyl acetate, polyvinyl chloroacetate and other

polyvinyl derivatives, polyacrylic and polymethacrylic derivatives, coumarone-inden).

8. In the example No. 1 under Heading 39.02 it has been stated the polymerisation produce of ethylene or its substantive derivatives include polyethylene products. Examples of these are polyethylene, polytetrafluoroethylene and polychlorotrifluoroethylene. Their characteristic is that they are translucent, flexible and light in weight. They are used largely for insulating electric wire.

9. Chapter 39 B.T.N. has been bodily engrafted in Chapter 39 of Customs Tariff Act, 1975. However, the sub-classification, 01 to 06 has been merged and the Heading in the Act is 39.01/06.

10. The B.T.N. has further clarified that Chapter 40 (Rubber, synthetic rubber, etc.) excludes certain products which have some points in common with synthetic resin which do not however comply with the conditions laid down in Note 4 to the said Chapter 40, e.g., silicon rubber polyurethanes, polyesters, polyisobutylene, generally Chapter 39.

11. It is, therefore, submitted that since the statute provided a statutory definition of an article or goods mentioned in the tariff, the goods are to be classified as per the said statutory definition. The commercial test will have application only in the absence of any statutory definition. In any event, Hypalon-40 is also commercially known "synthetic resin" falling under 39.02 and not synthetic rubber as would appear from the interpretation given by the Customs Co-operation Council in regard to goods which would cover the goods under 39.02. The said body is the expert body consisting of the representatives of all the nations all over the world. It is submitted that the Directorate of Statistics & Intelligence, Government of India, has published the said compendium of classification information to help the assessing officers in proper interpretation of the tariff descriptions given in the Customs Tariff Act, 1975 "Hypalon (RTN), chlorosulphonated polythene" is one of the products falling under 39.02 under the heading "Description of the Goods" in the said compendium.

12. In support of the contention that "Hypalon" is classifiable under Chapter 39 of the Customs Tariff Act, 1975, Mr. Ghosh has relied on Notification No. 231/Cus., dated 18th August, 1983 where certain exemptions have been provided for import of specified goods for manufacture of specified goods. In the said notification at serial No. 41 "Hypalon" is shown against Chapter 39 of the First Schedule to the Customs Tariff Act, 1975 and exemption is provided for import of "Hypalon" for manufacture of ferrites or television deflection components. It is, therefore, contended that it is clear from the said notification that "Hypalon" comes within Chapter 39.

13. The contention of Mr. Pal on behalf of the writ petitioners is that the customs authorities have relied on a test memo dated 23rd August, 1984. In the column

"Results of the test" the following endorsements have been made :

"The sample is in the form of lump and is an organic polymer based on chlorosulphonated polyethylene.

Please see note attached.

Remnant returned."

14. He has disputed the correctness of the said memo. He further submitted that two principal points emerge from the said test memo :

First, the test result does not say anything positive. In particular it does not mention anything about saturation.

Secondly, the Cus. T.O. No. 1 of 1982-83 dated 2nd April, 1982 as referred to in the note annexed to the said test memo classifies Hypalon-40 under Chapter 39 on the assumption that it is fully saturated.

15. It is the submission of Mr. Pal that the test memo proceeds on a fundamental technical mistake in that the so-called saturated rubber which was considered to be resin by the customs authorities are also unsaturated. The difference between saturated and unsaturated rubber lies mainly in the degree of unsaturation. He has relied on the technical note of Hypalon-40 as synthetic rubber. According to him, to appreciate the difference between rubber and resin, one should understand the basic definition of rubber and resin. It is his submission that rubbers, both natural and synthetic, are a class of high polymers which after suitable compounding and vulcanisation, produce substance which can be extended by the application of tensile stress, even upto 1000% (in the case of pure gum compound whereas extensibility lies between 300-600% for normal compounds) and which on removal of stress, regain the original dimension almost to the fullest extent depending on the composition of the compound. They will also regain their dimension on removal of compressive stress.

16. According to him resins are also a class of high polymers which are broadly classified into two groups - thermoplasts and thermosets - former softening on heating and regaining original state on cooling while the latter can be cross-linked by suitable cross-linking agents to make thermosets which can be extended under tensile stress only upto 10-20% and which on removal of stress, recover upto 85-90% of their original deformation.

17. Mr. Pal submits that even the so-called saturated synthetic rubbers which are being kept out of the purview of synthetic rubbers according to customs classification are also not fully saturated. The difference between saturated and unsaturated rubbers lies mainly in the degree of unsaturation, for example, natural rubber (NR), polychloroprene, styrene-butadien rubber, acrylonitrile, butadien-rubber, isobutylene-isoprene rubber, butyl rubber contained unsaturation in mole per cent as 100.100, 88, 66.7, 0.6 - 2.5 respectively.

18. The so-called saturated rubbers (even including polyethylene generally

classified as resin according to customs classification) are also unsaturated, the percentage of unsaturation being comparatively low. For example, polyethylene contains unsaturation along the main chain to the extent of 3 double bonds per 1000 carbon atoms. The nature of unsaturation present in the polyethelene is 80% vinylidene type $C=CH_2$ in the pendant chain; = 10% Trans, type $R.CH=CH.R$ within the polymer chain.

19. He has also drawn my attention to the chemical formula of Hypalon rubber to show that Hypalon-40 answers all the descriptions or characteristics of synthetic rubber as defined in the customs tariff.

20. Apart from the contentions raised on merit, Mr. Pal has drawn my attention to other salient features of this case which according to him should conclude the controversy in favour of the writ petitioners. His first submission is that the Government of India has classified Hypalon-40, as synthetic rubber in its Import & Export Policy for 1984-85. The Government of India cannot speak in different voices on a common question of fact. Hypalon is the trade name of synthetic rubber manufactured by Du pont of U.S.A. which sells "Hypalon-40" all over the world as synthetic rubber. The Appellate Collector of Customs, Madras by order dated 26th November, 1976 held that "Hypalon-40" is classifiable as synthetic rubber. The Appellate Collector of Customs, Calcutta also by an order dated 22nd December, 1980 held that "Hypalon-40" is synthetic rubber in the case of Indian Cable Co. Ltd. and Another Vs. Collector of Customs and Others, . The Director General of Technical Development, Government of India registered the concerned contract of the petitioners for the import of synthetic rubber. P.C. Borooah, J., directed release of three consignments upon furnishing of bank guarantee. The customs authorities accepted the said orders and allowed the clearance on the basis thereof and accepted the said orders. On the aforesaid facts and circumstances Mr. Pal has submitted that Hypalon-40 is synthetic rubber falling under Heading 40.01/04 and the writ petitioner in any event has made out a strong prima facie case for classifying Hypalon-40 as synthetic rubber under Heading 40.01/04. He has also submitted that the matter should not be finally left to the adjudication of the customs authorities until the writ petition is disposed of because the customs authorities have already indicated in unequivocal terms that according to them Hypalon-40 is to be classified as synthetic resin falling under Heading 39.

21. In reply it has been submitted by the customs authorities that the Import Trade Control Policy (red book) is not a statutory document. No person can claim a right on the basis of the statement contained in Import Trade Control Policy. In any event reference to I.T.C. also in the matter of classification of a product under the Customs Tariff Act for the purpose of levy of customs duty is wholly misconceived. This policy is issued by the licensing authority just as a guideline. The description of an article under Excise Act cannot be taken as governing and determining the meaning of the said item under the Customs Act. Similarly the interpretation given of a term in sales tax has no application in the matter of

classification of the said article in the Excise Act or the Customs Act. The order of the Appellate Collector, Madras relied upon by the writ petitioners has no application as that case was decided on the basis of the then tariff under Indian Tariff Act, 1934 which did not contain any statutory definition of the term "synthetic rubber". It is not an order under the Customs Tariff Act, 1975 which is based on B.T.N. and contains a statutory definition. The order passed by the Appellate Collector, Calcutta relied on by the writ petitioner is based on the order of the Appellate Collector of Madras. The Appellate Collector, Calcutta has not considered the fact that 1975 Tariff Act contains a statutory definition and the decision of the Supreme Court that where the statute contains a definition, that is the deciding factor in determining the classification. There is no finding that Hypalon satisfies the said definition. Moreover, the said appellate order is under challenge before the Tribunal and as such it cannot be taken into consideration. It is, therefore, submitted that the writ petitioners should pay duty applicable to synthetic resin and clear the goods thereafter.

22. Mr. Ghosh has also relied on several judgments of the Supreme Court and other Courts in support of his above contentions. Since the principles of law are well settled and are not in dispute, it is not necessary to refer to those decisions. Each case will depend on its own facts.

23. The question is whether the petitioners have succeeded in making out a strong prima facie case in their favour.

24. On the state of records, the case of the customs authorities appears to be based mainly on the chemical report. This chemical report is not conclusive of the stand taken by the customs authorities. The test results do not indicate anything positive in support of the contention of the customs authorities. A note is attached to the test memo. This note is dated 23rd August, 1984 which invites attention to Customs T.O. No. 1 of 82-83 dated 2nd April, 1982 of the Deputy Collector of Customs as regards the assessment of Hypalon-40. According to the Deputy Collector Hypalon-40 is appropriately classifiable under Chapter 39. This T.O. on assessment by the Deputy Collector of Customs is a general instruction not based on any scientific data. It however mentions certain technical features. The conclusion reached by the Dy. Collector is that Hypalon is classifiable under Chapter 39 because Hypalon is fully saturated. It however goes on to say that Hypalon is as such saturated and that unsaturation results during curing process. Prima facie it appears that the said T.O. of the Dy. Collector proceeds on a fundamental technical mistake in that the so-called saturated rubber which are considered to be resin by the customs authorities are also unsaturated. The departmental chemist has not found, as contended by the customs authorities, that Hypalon-40, on the basis of chemical examination, does not satisfy the chemical definition of synthetic rubber. The test results have been quoted hereinabove which would go to show that no positive result was indicated but reference was made to the T.O. issued by the Dy. Collector of Customs. The difference between saturated and unsaturated rubber lies mainly in the degree of

unsaturation which would be apparent from the chemical formula of Hypalon-40 relied on by the writ petitioners.

25. From the technical literature as relied on by Mr. Pal it is also evident that Hypalon is chemically chlorosulphonated polyethylene designated as C.S.P. This is produced by the reaction of polyethylene in solution with sulphur dioxide and chlorine, thereby giving vulcanisable rubber. Hypalon is the trade name given by M/s. E.I. Du pont De Nemours, U.S.A., the first and only manufacturer of C.S.P. in the world, Hypalon-40 is one type of Hypalon rubbers suitable for general use and easy processing.

26. Before the Appellate Collector, Madras the contention raised was that Hypalon-40 is neither an artificial/synthetic resin nor a plastic material and that it is a premium rubber developed by Du pont of USA especially for industrial applications requiring a tensile strength, abrasive and flexfatigue resistance. It was further contended that the manufacturers had confirmed that the product is synthetic rubber; that Hypalon is the registered trade mark for chlorosulphonated polyethelenes manufactured by Du ponts and that the product is known in the trade throughout the world as synthetic rubber. It was also submitted that Hypalon is specifically classified as synthetic rubber in the Import Trade Control Policy.

27. The Appellate Collector of Customs, Madras in his order dated 26th November, 1976 held as follows :

"A sample of Hypalon-40 has been tested and found to be in the form of lumps and a synthetic organic polymer. The sample has not been subjected to test for elongation and retraction. However, as contended by the appellants, Hypalon is recognised as synthetic rubber in the trade the world over. In the technical literature also, they are known to be chlorosulphonated polyethelene and a synthetic rubber. Its uses are similar to the uses to which natural rubber or other synthetic rubber are put to, such as coatings, flexible tubes and hoses, automotive components, etc. But the preference for Hypalon is due to its resistance to ozone, whether, oil, solvent, chemicals, etc. The mere fact that it is a saturated synthetic substance will not take it away from the synthetic rubber group. That synthetic rubber is classified under Item 39 I.C.T. as raw rubber is not in doubt. Whereas the Tariff does not specify the physical and chemical composition of a product or products which can be considered as synthetic rubber for the purposes of classifying the article under that entry, the trade usage and understanding should be the guiding factor and not the chemical composition or physical properties. In a recent judgment in *Dunlop India Ltd. v. Union of India and Ors.* and *Madras Rubber Factory v. Union of India and Ors.* [(Civil Appeal 1446/72) AIR 1977 SC 597 the Supreme Court held that "meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject generally treat and understand them in the usual course." Viewed in the light of the Supreme Court judgment I have no hesitation in holding that the subject goods which are known in the trade and

trade parlance as synthetic rubber are classifiable under Item 391.C.T. with additional duty under Item 16AA C.E.T.

28. It will be evident from the said order of the Appellate Collector of Customs that in coming to his conclusion certain factors weighed with him. Firstly, in technical literature Hypalon-40 is known to be chlorosulphonated polyethelene and a synthetic rubber. Secondly, the mere fact that it is a saturated synthetic substance will not take it away from the synthetic rubber group. Thirdly, the Tariff does not specify the physical and chemical composition of a product or products which can be considered as synthetic rubber for purposes of classifying the article under that entry and accordingly the trade usage and understanding should be the guiding factor and not the chemical composition or physical properties.

29. The contention that the said order of the Appellate Collector of Customs holding that Hypalon-40 is classifiable as synthetic rubber cannot be relied on in view of the fact that the said decision was rendered before the Customs Tariff Act, 1975 came into force cannot be accepted. Synthetic rubber was also present in the Indian Tariff Act, 1934. Even though it was not an order under the Customs Tariff Act, 1975 but the order was passed after the Customs Tariff Act came into force on 1st August, 1976. The Appellate Collector must be deemed to have considered the definition or classification in the Customs Tariff Act before he passed the said order. In any event, the Appellate Collector took into consideration all the relevant facts in holding that Hypalon-40 is classifiable as synthetic rubber. The customs authorities have not disputed the conclusion of the Appellate Collector that merely because Hypalon-40 is a saturated synthetic substance it will not go out of the synthetic rubber group.

30. The Appellate Collector of Customs, Calcutta by his order dated 22nd December, 1980 held that Hypalon-40 is synthetic rubber and directed the refund of duty on reassessment of Hypalon-40 as synthetic rubber in the case of Indian Cable Co. Ltd. The issue before the Appellate Collector of Customs, Calcutta, was whether the item Hypalon-40 imported by the Indian Cable Co. Ltd. is synthetic rubber or resin. The Department took the stand on the basis of the chemical report urging that Hypalon-40 is synthetic resin. The Appellate Collector directed the reassessment of item Hypalon-40 as synthetic rubber. In arriving at his conclusion the Appellate Collector took into consideration certain very relevant factors. Firstly, he relied on the Condensed Chemical Dictionary (7th Edition) which included Hypalon-40 as synthetic rubber. Secondly, the import licence granted to the importer in that case was for synthetic rubber and the said licence was accepted by the customs authorities for importing Hypalon-40. Thirdly, the Import Trade Control Policy for the year 1977-78 included Hypalon-40 in the category of synthetic rubber. Fourthly, the Appellate Collector of Customs, Madras classified Hypalon-40 as synthetic rubber in his order dated 26th November, 1976. Fifthly, the chemical report on which the Department relied was not conclusive and lastly, the interpretation of the Customs Tariff Act was not

clear.

31. The contention of the customs authorities that the said order of the Appellate Collector, Calcutta is under appeal and therefore not binding on the customs authorities cannot be accepted. No materials have been disclosed to substantiate the submission that such appeal has been preferred or is pending. Assuming, however, that an appeal is pending the same cannot make the order appealed from non est. Until the said order of the Appellate Collector is set aside by the Tribunal, adjudicating authorities of the Customs Department are bound by the said decision. If the appellate authority directs refund of the payment of duty holding that Hypalon-40 is synthetic rubber and is classified under Serial No. 40.01/04, it is not known why the customs authorities should not allow the release of the goods upon furnishing bank guarantee by the petitioners in respect of the difference in the duty. The order of the Appellate Collector cannot be kept in cold storage during the pendency of the appeal before the Tribunal.

32. It is thus evident that neither of the Appellate Collectors proceeded to determine the item in question on the basis of the chemical report. The chemical report in the instant case also does not conclusively show that the item in question is synthetic resin. When the chemical report cannot be relied on as a decisive factor, the other factors which are relevant and have a material bearing on the question have to be taken into account in determining the nature and character of the article. This has been done by the two Appellate Collectors of Customs. The adjudicating authority under the Customs Act cannot proceed on their own view when two of the Appellate Collectors of the Customs Department have given finding that Hypalon-40 is synthetic rubber. Further when the article is internationally recognised and generally treated and understood in trade and commerce conversant with the subject as synthetic rubber, the adjudicating authority cannot base their decision solely on the chemical report. The Government of India has classified Hypalon-40 as synthetic rubber in its Import and Export Policy. Item No. 54 of Part-II of list 8 of Appendix 6 (OGL) of the Import and Export Policy 1984-85 is in the following terms :-

"54. SYNTHETIC RUBBER, viz., BUTYL RUBBER, NEOPRENECHLOROPRENE, HYPALON, VITON, PTEE & EPDM."

33. The importer is entitled to rely on the said classification for the purpose of obtaining licence from the licensing authority and for the payment of duty on that basis. If the classification would have only contained an item as synthetic rubber, in that event the customs authorities could have urged that Hypalon-40 does not come within the purview of synthetic rubber but since Hypalon-40 as a specific item has been included under Item No. 54 in the Import and Export Policy as being synthetic rubber by the Government of India, another department of the Government of India cannot challenge the classification and contend to the contrary. The Government in making the classification in the Import and Export Policy must have taken into consideration that in international market Hypalon-40 is recognised as synthetic rubber. So also international trade and

commerce conversant with the subject treated and understood Hypalon 40 as synthetic rubber. The Directorate General of Technical Development, Government of India registered the contract of the petitioner for import of synthetic rubber and the petitioner imported Hypalon-40 as Hypalon-40 is the trade name of synthetic rubber manufactured by Du pont. The petitioners are engaged in manufacture and sale of various types of electrical cables and wires and imports Hypalon-40 for being used as insulation of the wires and cables manufactured by the writ-petitioner. The commodity is purchased in the trade name. Hypalon-40 is the trade name and is known all over the world and trade and commerce as synthetic rubber. If an item is universally recognised as such in trade and industry, an artificial definition cannot be relied on for the purpose of holding that such item is not synthetic rubber.

34. The notification which has been relied on by Mr. Ghosh in respect of his contention that Customs Tariff Act has included Hypalon in Chapter 39 cannot be accepted. It is true that the customs authorities have purported to give exemption on Hypalon treating it as an item under Chapter 39 but such notification for granting exemption cannot be regarded as the decisive factor in determining the question. Moreover, the end-use referred to in column 4 of the notification refers to ferrites or television deflection components. It may also be noted that a mere reference to a particular chapter in an exemption notification cannot be conclusive on the question of classification. If Hypalon-40 is correctly classifiable under Heading 40, then could it be reasonably contended that because the notification shows it against Heading 39 it is not entitled to the exemption or is to be classified for regular assessment under Heading 39? *Prima facie*, I have serious reservations in answering the question in the affirmative.

35. I have given anxious consideration to all the aspects of this matter, both technical and commercial. Having regard to the facts and circumstances of this case, I am *prima facie* satisfied that Hypalon-40 comes within the purview of synthetic rubber and not synthetic resin.

36. Three separate orders were passed by P.C. Borooah, J., on 4th February, 1982, 26th February, 1982 and 21st June, 1983. The customs authorities accepted the said orders and allowed clearance on the basis thereof. P.C. Borooah, J. directed furnishing bank guarantee of the entire disputed amount. They never applied for vacating the said orders nor preferred any appeal from any of the orders. No adjudication has also been done in respect of the consignments which were cleared by the petitioners in terms of the said three orders passed by P.C. Borooah, J. The petitioners are entitled to the release of the goods on the same terms and conditions as mentioned in my order dated 13th August, 1984 after furnishing full bank guarantee for the disputed amount. I am not inclined at this stage to allow the respondents to encash the bank guarantee already furnished by the writ petitioners inasmuch as the issue whether Appellate Collector was right in holding that Hypalon-40 is synthetic rubber and not resin according to the customs authorities, is now pending before

the Tribunal. The respondents will be at liberty to apply for encashment of the bank guarantee in this case if the Tribunal upholds the contention of the Customs Department. I, therefore, direct that the respondents-customs authorities shall permit the petitioners to clear the consignment of Hypalon-40 imported by the petitioners which have now arrived at Calcutta per S.S. Robert-E-Lee on the petitioners paying customs duty on the basis that the said goods are synthetic rubber and furnishing security for the difference of the duty which would be payable by the petitioners if the goods were treated as synthetic resin. The security for difference of duty shall be furnished in the form of a bank guarantee or any other security to the satisfaction of the Collector of Customs, Calcutta. The customs authorities shall issue Wharf Rent Exemption Certificate, if necessary. The goods shall be released within 3 days after the bank guarantee is furnished.

37. Let a plain copy of this order countersigned by the Assistant Registrar (Court) be given to the learned Advocates appearing for the parties.