RESERVED JUDGMENT

HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE THE CHIEF JUSTICE SHRI MANOJ KUMAR GUPTA
AND
HON'BLE SHRI JUSTICE SUBHASH UPADHYAY

COMMERCIAL TAX REVISION No. 10 OF 2025

1: Pidilite Industries Limited

...Revisionist

Versus

1: The Chairman, Commercial Tax Tribunal
2: The Commissioner, Commercial Tax

...Respondents

with

COMMERCIAL TAX REVISION No. 11 OF 2025
COMMERCIAL TAX REVISION No. 12 OF 2025
COMMERCIAL TAX REVISION No. 13 OF 2025
COMMERCIAL TAX REVISION No. 14 OF 2025
COMMERCIAL TAX REVISION No. 15 OF 2025
COMMERCIAL TAX REVISION No. 16 OF 2025
COMMERCIAL TAX REVISION No. 17 OF 2025

Counsel for the revisionist.	:	Mr. Prakash Shah, learned Senior Counsel assisted by Mr. Rohit Arora, Mr. Mohit Rawal and Mr. Yuvraj Singh, learned counsel.
Counsel for the respondents.	:	Ms. Puja Banga, learned Standing Counsel for the State of Uttarakhand.

JUDGMENT RESERVED : 06TH JULY, 2026

JUDGMENT DELIVERED : 18TH SEPTEMBER, 2026

COMMON JUDGMENT: **(per Hon'ble The Chief Justice Shri Manoj Kumar Gupta)**

1. Heard Mr. Prakash Shah, learned Senior Counsel assisted by Mr. Rohit Arora, Mr. Mohit Rawal and Mr. Yuvraj Singh, learned counsel for the revisionist and Ms. Puja Banga, learned Standing Counsel for State of Uttarakhand.

2. Since all these revisions arise out of a common judgment of the Commercial Tax Tribunal, and involve an

identical question of law, they are being decided by this common judgment.

3. The principal question, which arises for consideration is whether Dr. Fixit Pidicrete URP (SBR Latex) and Dr. Fixit Super Latex (SBR Latex) are covered by Entry No. 96 of Schedule II-B of the Uttarakhand Value Added Tax Act, or are liable to be treated as unclassified goods and taxed accordingly.

4. The Tribunal, by the impugned common judgment dated 05.06.2025, has held that the products in question, being synthetic latex, do not fall within Entry No. 96 of the Act. According to the Tribunal, the expression “latex” occurring in the said Entry is confined to natural latex obtained from a rubber plant. Consequently, the Tribunal has set aside the orders passed by the First Appellate Authority, and restored those of the Assessing Authority, treating the goods as unclassified and taxable at the rate of 13.5%. Aggrieved thereby, the assessee has preferred the present revisions.

RELEVANT ENTRY :

5. Entry No. 96 of Schedule II-B of the Act, in its English version, reads :-

"Rubber, raw rubber, latex, dry ribbed."

6. The corresponding Hindi version reads :-

"रबड़, कच्चा रबड़, रबड़ के पौधे का दूध (लैटेक्स) तथा सुखी पसलीदार"

7. The rate of tax prescribed under the Entry was 5%.

<u>NATURE OF THE GOODS</u> :

8. There is no dispute regarding the basic nature of the products. The Tribunal itself has recorded that Dr. Fixit Pidicrete URP (SBR Latex) and Dr. Fixit Super Latex (SBR Latex) are SBR Latex – a synthetic polymer derived from styrene and butadiene. It has further noticed that the products are synthetic rubber/ latex and are used, *inter alia*, as addition in concrete, mortar and grout and as waterproofing and bonding agents. Thus, the controversy essentially concerns the interpretation of Entry No. 96 of the Act.

<u>CONSIDERATION</u> :

9. In our considered opinion, the Tribunal has approached the controversy from an unduly narrow perspective. The entire discussion in the impugned judgment proceeds substantially on the question, whether the expression "latex", occurring in Entry No. 96 of the Act,

includes synthetic latex. In doing so, however, the Tribunal has failed to consider an anterior and more fundamental aspect arising from the language of the entry itself. Significantly, the expression "rubber" has not been qualified by the word "natural", nor does the entry provide that rubber must necessarily be obtained from a rubber plant. The products in question are admittedly "SBR Latex". "SBR" stands for Styrene Butadiene Rubber, and is a species of synthetic rubber. Therefore, before examining, whether synthetic rubber falls within the definition of latex, it was necessary for the Tribunal to have considered, whether the products, being admittedly synthetic rubber in latex form, were independently covered by the expression "rubber" occurring in the very same entry. This material aspect has not been considered by the Tribunal at all.

10. The mere fact that rubber is synthetically manufactured cannot, in the absence of restrictive words in the entry, take it outside the generic expression "rubber". Had the legislature intended to confine Entry No. 96 only to natural rubber, it could have said so expressly. To construe the unqualified word "rubber", as meaning only "natural rubber", would amount to introducing a limitation, which the legislature itself had not incorporated.

11. The manner, in which other entries in the very same Schedule have been worded reinforces this conclusion. Wherever the legislature intended to exclude a particular class of goods, it has expressly employed words of exclusion. For instance, Entry No. 103[1] uses the expression "other than", Entry No. 114[2] uses the word "excluding", while Entry No. 117[3] employs the expression "except". Entry No. 96, on the other hand, simply uses the words "rubber, raw rubber, latex, dry ribbed", without excluding synthetic rubber or synthetic latex.

12. This distinction cannot be regarded as insignificant. When the legislature has expressly provided for exclusion in other entries of the same Schedule, the absence of any such exclusion in Entry No. 96 assumes significance. Had the legislative intent been to confine expression "rubber" only to natural rubber, or to exclude synthetic rubber therefrom, nothing prevented it from saying so expressly. The Court cannot read into the entry an exclusion, which the legislature, despite knowing how to provide one, has chosen not to incorporate.

[1] Entry No. 103 : Solvent oils other than organic solvent oil

[2] Entry No. 114 : Toys excluding electronic toys

[3] Entry No. 117 : Umbrella except garden umbrella

13. The aforesaid conclusion also finds support from the decision of the Supreme Court in ***Dunlop India Ltd. v. Union of India and others, (1976) 2 SCC 241***. While dealing with the classification of Vinyl Pyridine Latex, the Supreme Court considered the technical material relating to natural and synthetic rubber and noticed synthetic rubber as synthetic rubber in latex form. The decision also notices styrene butadiene rubber in the context of synthetic rubber. The Supreme Court further emphasized that, when an article has, by all standards, a reasonable claim to be classified under a specified enumerated entry, it ought not to be relegated to a residuary clause. The relevant exposition of law is as follows :-

> *"35. It is good fiscal policy not to put people in doubt and quandary about their liability to duty. When a particular product like V.P. Latex known to trade and commerce in this country and abroad is imported, it would have been better if the article is, eo nomine put under a proper classification to avoid controversy over the residuary clause. As a matter of fact in the Red Book (Import Trade Control Policy of the Ministry of Commerce) under Item 150, in Section II, which relates to "rubber, raw and gutta percha, raw", synthetic latex including vinyl pyridine latex and copolymer of styrene butadiene latex are specifically included under the sub-head "Synthetic Rubber". We do not see any reason why the same policy could not have been followed in the ICT book being complementary to each other. When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause. The question of competition between two rival classifications will, however, stand on a different footing."*

(emphasis supplied)

14. The aforesaid principle applies with considerable force to the present case. Once the goods are admittedly Styrene Butadiene Rubber, the fact that such rubber is in latex form does not deprive it of its essential character as rubber. Its physical form cannot, by itself, be employed to deny it a specification, to which it otherwise answers by its nature and composition. We are, therefore, of the considered view that the goods in question have a direct claim to classification under Entry No. 96 by virtue of the expression “rubber” itself.

15. In view of this conclusion, we do not consider it necessary to enter into the question, whether there is any conflict or ambiguity between the Hindi and English version of Entry No. 96, although learned counsel for the parties have filed large number of precedents in support of, and against the said legal proposition. The entry has to be read as a whole, and not by isolating the expression “latex” occurring therein. Once the products in question are found to be covered by independent and unclassified expression “rubber”, the controversy regarding the precise amplitude of the expression “latex”, or any alleged conflict between its English and Hindi version does not arise for determination.

16. There is yet another aspect of the matter. It is well settled that resort to a residuary entry is warranted when the goods cannot be brought within a specified enumerated entry. When a commodity reasonably answers the description contained in a specific entry, it ought not ordinarily be relegated to the residuary category. Equally well settled is the principle that the burden of establishing the classification sought to be applied lies upon the Revenue. Where the Revenue seeks to exclude a commodity from a specific entry, and bring it within a residuary Entry, attracting a higher rate of tax, it must first establish that the commodity cannot reasonably be brought within the specific entry. Resort to the residuary entry cannot be justified merely by placing a restrictive construction upon the specific entry.

17. In ***Kesharwani Enterprises v. State of Chhattisgarh, 2019 (28) G.S.T.L. 397 (Chhattisgarh)***, it was held that the Department must first establish conclusively that the product cannot be brought under any of the specific tariff items before it can be brought under the residuary entry. It was further held that when two views, regarding classification are possible, the view favourable to the assessee is to be adopted.

18. In the present case, the Revenue has failed to discharge this burden. The goods are admittedly SBR Latex i.e. Styrene Butadiene Rubber Latex, whereas Entry No. 96 expressly includes rubber. Neither has the Revenue pointed out any provision expressly excluding synthetic rubber from Entry No. 96, nor has it established that SBR ceases to be rubber merely because it is synthetic, or is in latex form.

19. The Tribunal has also referred to the fact that the products are used as waterproofing and bonding agent and as additives in concrete, mortar and grout. The end use of a commodity cannot, by itself, determine its classification, when the commodity otherwise answers the description contained in its specific entry. The relevant inquiry is into the identity, nature and character of the goods, and not the end use, to which a product is put to. The fact that SBR Latex is used as waterproofing or bonding agent does not alter its character as synthetic rubber. Its ultimate use, therefore, furnishes no specific basis for excluding it from Entry No. 96 and relegating it to the residuary clause.

20. In view of the foregoing discussion, the judgment of the Tribunal cannot be sustained and is, accordingly, set aside. The order of the First Appellate Authority is,

accordingly, restored. The revisions are allowed. The SBR Latex is held to be covered by Entry No. 96 of Schedule II-B, and would be taxable accordingly.

21. All pending applications also stand disposed of accordingly.

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MANOJ KUMAR GUPTA, C.J.

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SUBHASH UPADHYAY, J.

Dt: 18th September, 2026
Rahul

RAHUL PRAJAPATI