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**IN THE COMMERCIAL TAX TRIBUNAL
UTTARAKHAND, DEHRADUN**

Present: Malik Mazhar Sultan, H.J.S President.

Vipin Chandra,Member.

Second Appeal No. 08/2025

**Assessment year – 2015-2016,
First Appeal No- 159/2019,
Amount of disputed tax – Rs. 1,78,83,769/-**

And

Second Appeal No. 09/2025

**Assessment year – 2017-2018,
First Appeal No- 05/2022,
Amount of disputed tax –70,08,221/-**

Commissioner- Commercial Tax, Uttarakhand, Dehradun. Appellant.

Versus

M/s. Kansai Nerolac Paints Ltd. Dehradun.

Respondent.

For Appellant: Shri Bhuwan Chandra Pandey

State-Representative.

For Respondent: Smt. Sujata Runekar C.A and Smt. Kalpana Singh Ld. Advocate.

J U D G M E N T

Malik Mazhar Sultan,

These appeals are filed against order dated 13.03.23 passed by Ld. Joint Commissioner (appeal) in the first appeal No. 159 of 2019 and 05/2022. By means of impugned order, setting aside the assessment order dated 12.02.2019 and 13.08.2021 respectively passed under Section 25 (7) of

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Second Appeal No. 08/2025, 09/2025

(Vipin Chandra)

(Malik Mazhar Sultan)

UVAT Act the first appellate authority allowed the first appeal preferred by the respondent/trader.

2. Facts necessary for the disposal of this appeal are that the respondent/trader is registered for trading paints, epoxide polyester powder (EPP), epoxy resin used as metal coating powder or moulding powder. The firm of the respondent/trader M/s Kansai Nerolac Paints Ltd. was assessed under section 9 (2) of Central Sales Tax Act. Holding that the product epoxy polyester powder traded by the respondent is completely different from Lisa (लीसा) hence the tax at the rate of 13.5% is to be levied on it. Considering the product in question EPP as “Resin” covered under entry 95 of Schedule II B the assessee admitted the tax liability on the sale of it at the rate of 5%. Denying the above mentioned averment of the assessee it was held by the assessing officer that under entry 95 of Schedule II B of UK VAT Act Lisa (Resin) is notified which is taxable at the rate of 5 %, while the commodity in question Epoxy Polyester powder is different from lisa. Lisa is a liquid commodity which is used as raw material to make varnish, biroja and tarpeen oil while the epoxy polyester powder is used along with paint. The epoxy polyester powder is not covered under Schedule II B hence it is taxable at the rate of 13.5 %. Consequently a demand of Rs. 5,10,855/- was raised against the assessee/respondent.

3. Against the assessment order dated 27.09.19 first appeal under section 51 of the Act was preferred by the assessee/respondent before the joint commissioner appeal, which was registered as first appeal No 24 of 2020. The first appeal was allowed by the impugned order dated 13.10.23. Relying upon the Judgment of this tribunal itself passed in assessee’s own case in reference of the assessment year 2008-09 the first appellate authority recognized the claim of assessee holding that it being covered under entry 95 Schedule II B of the Act as “resin” the product EPP is liable to tax at the rate of 5 %.

4. Being aggrieved by the impugned order dated 13.10.23 this second appeal is filed by the department through Commissioner of State tax. The instant appeal is filed on the ground that the impugned order is against law. Supporting the assessment order it is stated by the appellant that the term “Lisa” (लीसा) is mentioned under entry 95 of Schedule II B of the Act., which is an sticky commodity procured from pine tree. It is further stated that the term lisa (Resin) should be understood in the same way in which it is

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understood in the common parlance in the area in which the law is in force or by the people who ordinary deal with them. It is further alleged that the commodity in question is EPP coating powder which is used to paint the car, refrigerator, furniture etc. The raw material of the EPP is synthetic resin while the entry 95 of Schedule II B termed as “lisa” which connote only the natural resin obtained mainly from pine tree. The commodity traded by the respondent can not be treated as lisa, hence liable to tax at the rate of 13.5% being unclassified.

5. Heard the Ld. State Representative and Ld. Counsel / Ld. C.A. for the respondent and perused the record.

Supporting the order of assessing authority passed under section 9 (2) of the Act it was argued on behalf of appellant that according to uttarakhand official language Act 2009 Hindi is the official language in uttaraknad. If we go through the Hindi version of UK VAT Act the term लीसा (Lisa) is mentioned under entry 95 of Schedule II B of the Act. The meaning of Lisa in english is obviously resin. Lisa in common parlance is known an sticky item procured mainly from pine tree. The term resin has different meaning to cover even synthetic resin but there is nothing like natural लीसा or synthetic लीसा. The english version of lisa is distinctly resin. There is neither any conflict nor any discrepancy or ambiguity in both the Hindi version and English version of entry 95, Schedule II B. It is the manifest intention of the legislature to include “लीसा” (natural resin) in the concerned entry. It is further argued that the product of the trader is different in form and use. Lisa is semi liquid sticky item while EPP is in powder form. Lisa is raw material for tarpeen oil, varnish etc. while EPP is final product. On the basis of above it is vehemently argued that EPP is unclassified and liable to tax at the rate of 13.5 %. It is further argued that under UK VAT Act tax is levied in accordance with section 4 of the Act read with the schedules. Harmonized System of Nomenclature (HSN) has nothing to do with UK VAT Act for the purpose of determining the rate of tax. It was further contended that had the intention of the legislature been to include all kind of resin in the concerned entry the term “all kind of resin” or resin including epoxy resin, polyester resin, EPP etc would have been mentioned.

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6. Supporting the impugned order passed by the first appellate authority it was argued on behalf of the respondent that entry 95 of Schedule II B is not succeeded or preceded with any qualification or condition and therefore it has to be construed as covering all kind of resins. Referring to the dictionary meaning of resin it was argued that resins are obtained through two sources namely plant based resins and synthetic/petroleum based resins. Thus, in common parlance both type of resins natural and synthetic are considered as resin. It is vehemently argued that H.S.N as well as Central Excise Tariff Act which is based on HSN recognizes both natural and synthetic resin. It is further argued that even if entry 95 of Schedule II B is not linked with Central Excise Tariff (CET), nonetheless the classification under CET is clear indication that the said product is considered as resin only. It is further argued on behalf of respondent that if the product is capable of being classified in two or more entries, the benefit of doubt must go to the assessee and the entry with lowest rate of tax must be applicable. That is, if the word is ambiguous and open to two interpretation, the benefit of doubt should be given to assessee. Referring to article 345 and 348 of the constitution it was vehemently argued on behalf of respondent that english version of the Act or Bill will prevail if there is any conflict between the regional language and its english version. Ld. Counsel for the respondent relied upon the following case laws-

1. Judgement passed by this tribunal in the trader's case for the assessment year 2008-09, 2009-10.
2. Collector of Central Excise, Shillong V/s Woodcraft product Ltd. (1995 (77) ELT 23)
3. Order passed by Commissioner of Uttarakhand U/s 57 of the Act is M/s Parag Polymers.
4. Durga Packaging Pvt. Ltd, Muradabad and M/s Gyan Scientific Traders, Lucknow.
5. Re assessment order passed by Assistant Excise & Taxation Commissioner, Solan, H.P.
6. Appeal order passed by Joint Excise & Taxation Commissioner, Faridabad.

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7. M/s Sujata Painters (DDQ-11-2007/ADM-3/16/B-1 dated 20.01.2012.
 8. Commissioner of Central Excise, Culcutta – II V/s Burger paints India Ltd.(2011) 131 ELT 50.
 9. Commissioner of Central Excise, Meerut V/s Asian Paints (1999) 114 ELT 972.
 10. Commissioner of Central Excise, Surat V/s Hard castle and Waud Manufacturing Company. Ltd. 2006(194) ELT 60.
 11. CIT V/s Kasturi & Sons Ltd. (1999) 3 SCC 346.
 12. Shah Jahan Begam V/s V.D.M. Udham Singh Nagar Special Appeal No 593 of 2017.
 13. Mata Badal Pandey & another V/s Board of revenue Uttar Pradesh & others (1974 U.P Tax Case 570).
7. On the rival contention of the parties the point of determination involved in this appeal is as under:-

Whether the product in question that is Epoxy Polyester Powder (EPP) used as metal coating powder or moulding powder can be considered as “Resin” as enumerated under entry 95 of Schedule II B of the Act.

Admittedly, the sale invoice describe the product in question as EPP (Epoxy Polyester Powder) which according to respondent is synthetic resin or epoxy resin meant for powder coating of metal like refrigerators, motor car etc.

8. As far as the arguments advanced by the respondent with regards to applicability of Harmonized System of Nomenclature (HSN) code / Central Excise Tariff Act, ambiguity in classification of goods and applicability of English version, in case of any conflict between Regional and English version are concerned, these arguments need not to be looked into in view of the Hon’ble Allahabad High Court Judgement in the matter of **M/s M. Kumar Udyog Gandhi Gram, Kanpur**, Judgement dated 27/01/2006 wherein the Hon’ble High Court has held that the resin includes both, natural resin as well as synthetic resin. Therefore, synthetic resin is covered by the entry 95 of Schedule II B of the VAT Act. In the context of this case what to be ascertained is, whether the product in question that is, Epoxy Polyester

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Powder (EPP) used as metal coating powder or moulding powder can be considered as Resin as enumerated under entry 95 of Schedule II B of the Act.

9. In this regard mutually adverse contention of both the parties are that the respondent treated the commodity Epoxy Polyester Powder (EPP) as synthetic resin which according to respondent covered under entry 95 of the Schedule II B. The appellant asserted that under entry 95 of the above schedule only “लीसा ” is covered which in common parlance as well as in commercial parlance is known as nothing but “resin”. It is argued on behalf of appellant that the commodity in question epoxy polyester resin (EPP) is unclassified item hence liable to tax as such.

10. The respondent Kansai Nerolac Paints Ltd. is Manufacturer of paint, Varnishes, Epoxy Polyester Powder etc. **The sale invoice of the traded goods admittedly describe the term EPP.** Undisputedly, the raw material used for manufacturing the product in question are as follows:-

- a. Epoxy Resin/ Polyester Resin
- b. Curing agent / hardener
- c. Pigments and extenders
- d. other additive such as flow control agent/ anti caking agents.

The above mentioned raw materials go through the particular manufacturing process to find out the product in question that is Epoxy Polyester Powder. It is thus clear that “epoxy resin” is one of the Content/ Component of the product in question which is in powder form. It is reiterated that epoxy resin is a raw material whereas epoxy polyester powder (EPP) is a finished product. Epoxy Resin is raw material for the manufacturing of various products like adhesives, coating, paints, plastics, primers and other items and materials used in building applications. On the contrary epoxy polyester powder (EPP) is manufactured for coating and moulding only.

11. The argument of Ld. Counsel for the respondent that Epoxy Resin and the product in question that is Epoxy Polyester Powder are same in character and quality and the so called manufacturing processing does not make any difference is not sustainable. At this juncture it is pertinent to mention here

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the definition of the term manufacture which is described under Sec 2 (21) of the Act as follows:-

“Manufacture” means any activity that brings out a change in an article or results in transformation into a new and different article so understood in commercial parlance, and would include producing, making, mining, collecting, extracting, altering, ornamenting, finishing, assembling or otherwise processing, treating or adapting any goods, but would not include any such process or mode of manufacture as may be prescribed;

12. Undisputedly epoxy polyester powder is manufactured product. Epoxy resin is one of the content used in the manufacturing of the same. We are of the considered opinion that the manufacturing process has brought out a change in the articles used and resulted in transformation into a new and different article understood as EPP used as metal coating powder or moulding powder. The product in question that is EPP is not know in market as resin, it is commonly and commercially known as coating powder or moulding powder. In order to have EPP, buyer will have to ask specifically for EPP, otherwise dealer may hand over epoxy resin to him. Thus, we find that commercially epoxy resin and EPP are entirely different commodities.

13. In support of his case Ld. CA referred the order passed by Ld. Commissioner of sales tax, Uttarakhand U/s 57 of the Act in M/s Parag Polymers case. Perused the order. The question involved in the above said matter before Ld. Commissioner was that what would be the rate of tax of “pleated filter paper” in view of entry no 79 of Schedule II B of the Act. The said entry describe as “Paper including news print and paper board”. Referring to the report of plasma laboratory it was held by Ld. Commissioner that the raw material used for manufacturing “plain paper” and “pleated filter paper” is same. Filter paper basically falls in the category of paper because all qualities of paper remain intact therein. Likewise, Ld. C.A also relied on the judgement of Hon’ble High Court Allahabad passed in commissioner trade tax, U.P. Lucknow V/s M/s Durga Packaging Products Muradabad. Trade tax revision No. 1050 of 1996. In this matter the question before the Hon’ble Court was that whether corrugated sheets are covered under entry of “paper of all kind”. In this matter it was held that there is no doubt that corrugated sheet

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manufactured by the assessee is a kind of packing material, but papers meant for packing also included under the entry of “paper of all kinds”.

14. We are of the considered view that both the above matters are different from the instant matter. As has been discussed above as regard nature, composition and use of the commodity in question and in view of the term used in the concerned entry no benefit of the above mentioned order of Ld. Commissioner and the Judgement of Hon’ble High Court can be given to the respondent/trader.

15. Now come to the earlier Judgments of this tribunal passed in the respondents own matters as regard assessment year 2008-09 and onward as pointed out by Ld. C.A appeared on behalf of the respondent.

16. The Same issue was under consideration before the earlier bench of this tribunal. It has been held by the earlier bench that the product in question does not loose its character as resin. It was held by the earlier bench that epoxy polyester powder (EPP), comes within the purview of resin because entry 95 of the schedule II B covers all kind of resin weather natural and synthetic. Earlier bench opined that despite passing through the manufacturing process the basic character of the product in question (EPP) remains as epoxy resin. Entry 95 of Schedule II B is not preceded or succeeded with any qualification or condition so it has to be construed to cover all kind of resin weather natural and synthetic. It is further observed by the earlier bench that had the intention of the legislature been to impose tax on epoxy resin as unclassified item the term “resin excluding epoxy resin ” would have specifically been included in the concerned entry. Referring to the judgement of Hon’ble High Court of Allahabad passed in Commissioner of Trade Tax U.P. Lucknow V, M/s M. Kumar Udyog Gandhi Gram, Kanpur. It was stated by the earlier bench that resin will include synthetic resin as well.

17. Referring to Section 53(12) of the UVAT Act Ld. Counsel for the respondent argued that the bench can only recall its earlier order if the bench is of the view that earlier decision is legal impediment in giving relief in subsequent matter of the same nature. Section 53(12) reads as under-

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“ All appeals arising out of the same cause of action in respect of an assessment year shall be heard and decided together:

Provide that where any one or more of such appeals have been heard and decided earlier, and if the bench hearing the remaining appeals considers that such decision may be legal impediment in giving relief in such remaining appeals, it may, if the earlier decision was given-

- (a) by a smaller bench or a bench of equal strength, recall such earlier decision and proceed to decide all the appeals together;
- (b) by a larger bench, refer such remaining appeals to such larger bench having jurisdiction and thereafter such larger bench may recall such earlier decision and proceed to decide all the appeals together.

This provision specifically empower the bench of equal strength to recall its earlier decision if the earlier decision is legal impediment in giving relief in the subsequent matter. In the instant matter earlier bench oversight the definition of the term “Manufacture” while the product in question is uncontrovertly manufactured/processed item Undoubtedly earlier Judgement poses a legal impediment in giving relief to the appellant.

18. At the cost of repetition we are again asserting that the product in question is epoxy polyester powder (EPP). “Epoxy resin” is one of the component used in manufacturing epoxy polyester powder (EPP). The Manufacturing process resulted in transforming into a new and different article. As have been discussed above entry 95 of the schedule II B is meant for resin only. There is no scope to covered EPP under entry 95 schedule II B of the Act. The concerned entry is very much clear and specific to include resin only. The detailed discussion in this regard has been made above at appropriate place in the body of this judgement. So far as the ruling of the **Hon’ble High Court of Allahabad in M/s M. Kumar Udyog Gandhi Gram, Kanpur**, which is discussed by the earlier bench in its judgement is concerned we are of the considered opinion that no benefit of this ruling can be extended to the matter in hand. In this case law what is observed by the Hon’ble High Court is that **resin include synthetic resin as well**. As has been stated above the product in question is epoxy polyester powder (EPP), which

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is manufactured item. Epoxy resin/ Synthetic resin is one of the ingredient used in the process of manufacturing the product in question (EPP) which is used as coating powder or moulding powder. **It is thus clear that epoxy polyester powder (EPP) being a completely different commodity can not be covered under entry 95 of schedule II B of the Act.**

19. On the basis of above discussion we are of the considered opinion that the product in question that is, Epoxy Polyester Powder (EPP) used as metal coating powder or moulding powder can not be considered as “Resin” as enumerated under entry 95 of Schedule II B of the Act.

20. To sum up we conclude as under-

- a) There is significant difference between the product traded by the respondent and “resin” as regard, use, nature and composition.
- b) Epoxy polyester powder (EPP) is manufactured finished item while “ resin ” enunemerated in the concern entry is a raw material.
- c) Though in view of ruling of the Hon’ble High Court of Allahabad passed in M/s M. Kumar Udyog Gandhi Gram, Kanpur, case epoxy resin/polyester resin are covered under entry 95 of schedule II B even then the product in question, that is epoxy polyester powder (EPP) is not covered under the entry because as has been stated above it is manufactured item and synthetic resin is one of the component used in manufacturing it.
- d) In common parlance as well as commercial parlance the product in question (EPP) is not known in market as resin. It is in fact known as coating powder or moulding powder.
- e) Most importantly from the perusal of assessment order it appear that respondent himself admitted tax on this product in question at the rate of 13.5 % as is clear from page no 1 of assessment order and last para of page no 4 of assessment order.

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- f) Finally, HSN Code or Central Excise Tariff Act are not relevant for the purpose of determining the tax under UK VAT Act. The tax under UK VAT Act is imposed in accordance with section 4 reads with schedules.
- g) By virtue of Section 53(12) of the UVAT Act the bench of equal strength is empowered to review its earlier decision.

21. On the basis of above discussion we are of the considered opinion that the assessing officer was absolutely justified in holding that epoxy polyester powder (EPP) is not covered under entry 95 of the Schedule II B of the Act. The first appellate authority has materially erred in holding that the above mention product traded by the respondent comes within the preview of “Resin” which is enumerated under the concerned entry. Accordingly the impugned order dated 13.10.2023 passed by the Ld. first appellate authority is unsustainable and liable to be set aside. The order passed by assessing authority is legally sound. Consequently, the instant appeals deserve to be allowed.

ORDER

The instant appeals No. 08/2025 and 9/2025 presented by the department through Commissioner are allowed and the impugned judgement /orders dated 12.02.2019 and 13.08.2021 passed in first appeal no. 159/2019 and 05/2022 respectively are here by set aside. The copy of this Judgement be placed in both the above appeals. Let the file be consigned.

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(Vipin Chandra)
Member,
Commercial Tax tribunal,
Uttarakhand, Haldwani

S/d- 27.09.2025

(Malik Mazhar Sultan)
President,
Commercial Tax tribunal,
Uttarakhand, Dehradun

Dated : 27 Septemer, 2025

S/d- 27.09.2025

(Vipin Chandra)

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(Malik Mazhar Sultan)

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