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**Commissioner of C. Ex. Vs. Prudential Polyweb (P) Ltd.**

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**SooperKanoon Citation : [sooperkanoon.com/12923](http://sooperkanoon.com/12923)**

**Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai**

**Decided On : Feb-21-1998**

**Reported in : (1998)(99)ELT520Tri(Mum.)bai**

**Appellant : Commissioner of C. Ex.**

**Respondent : Prudential Polyweb (P) Ltd.**

**Judgement :**

1. This is an appeal filed by the department against the decision of the Collector (Appeals), Indore made in Order-in-Appeal No. 203/93, dated 9-3-1993 whereunder he has allowed the Modvat credit amounting to Rs. 2,72,047/-. The facts of the case are that the respondent who is a manufacturer of HDPE Polypropylene woven sacks/bags falling under Chapter 39 of Central Excise Tariff. For his commercial venture he used polypropylene which is declared input by means of import of Bill of Entry rotation No. 270 of 10-5-1991. The said Bill of Entry in case of 45 M.T. of the inputs have been imported whereas the respondent alleged to have consumed only 30 M.T. as reflected in the RG 23A entry made on 25-8-1991 and 27-8-1991 i.e. entries No. 153 and 156. It is the case of the department that the goods have been cleared from Bombay Custom House and the certificate which was demanded by the Department from the jurisdictional Supdt. indicate that the duty paying documents are amended from Kandla Custom House. The Appellate Collector has agree with the contentions raised by the respondent stating that these are only procedural irregularity and said to be followed the judgement of Tribunal in C.C.E. v. Goodlass Nerolac Paints -1986

(26) E.L.T. 57. The said decision is being challenged by the department.

2. In the ground of appeal it is stated that the order passed by the Collector (Appeals) is wrong in law inasmuch as the Range Superintendent's Certificate does not tally with the duty paying documents viz. Bill of Entry. The port of importation in the B/E indicated Bombay whereas the certificate given by the Supdt. is Kandla.

Therefore, there is no proper evidence of the duty paying document.

Ground taken by the department in my view, is totally misconceived as long as it is not the case of the department that the inputs have not been utilised in the manufacture of the final product which is the genesis or foundation of the claim of Modvat. It is not the case of the department that the inputs and the final products have not been reflected in the declaration filed under 57G. Hence in my view the appeal of the department is totally devoid of any merits. Hence stands dismissed.

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