

ipcl Vs. Commissioner of Customs and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-13-1998

Reported in : (1999)(112)ELT113Tri(Mum.)bai

Appellant : ipcl

Respondent : Commissioner of Customs and

Judgement :

1. In his impugned order passed on 12-3-1991 the Collector confirmed the demand for duty of Rs. 34.07 lakhs from M/s. Climax Synthetics P.Ltd. on the ground that it had cleared without payment of duty plastic sheets in the guise of high density polyethylene sheets which was exempted from duty imposed a penalty on M/s. Climax. He also imposed a penalty of Rs. 75 lakhs on the appellant for abetting the clearance without payment of duty by misdeclaring in the contract for the goods plastic sheets other than high density polyethylene manufactured by job worker.

2. The Tribunal by its order dated 17-7-1993 set aside the order of the Commissioner and remanded the matter and determination after considering the contention raised on behalf of the Climax that it was entitled to Modvat credit of duty paid on the inputs used for the manufacture. In that de novo order dated 24-6-1995 the Commissioner has confirmed the demand for duty of Climax but allowed to be adjusted against it an amount of Modvat credit (due) which was in excess of the duty demanded, refrained from imposing any penalty on the ground that the duty was adjusted against the Modvat credit. It would follow from this that

no penalty could be imposed on the appellant before us who was alleged to have abetted Climax Synthetics in the offence. It would also follow that the confiscation ordered of goods in the appellants possession on the ground that they were cleared by Climax Synthetics without payment of duty is not sustainable. Accordingly we allow the appeal, set aside the order confiscating the goods and imposing penalty on the appellant.

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