**Commissioner of Central Excise Vs. Globe Industries**

**Commissioner of Central Excise Vs. Globe Industries**

**SooperKanoon Citation** : sooperkanoon.com/15673

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

**Decided On :** Apr-20-1999

**Reported in** : (1999)(112)ELT898Tri(Mum.)bai

**Appellant** : Commissioner of Central Excise

**Respondent** : Globe Industries

**Judgement** :

1. This is a departmental appeal against the decision of the Commissioner of Central Excise (Appeals), Mumbai made Order-in-Appeal No. YPP/1006/M-III/98, dated 29-10-1998 whereunder he had allowed the Modvat credit for the inputs purchased by the assessee respondents before me.

2. The assessee respondents are engaged in the manufacture of Organic Surface Active Agents, Plasticisers for rubber or Plastic vegetable fats and oils and their fractions, Rosin & Rosin acids, Acrylic Alcohols and Poly Carboxylic Acids falling under Chapter sub-headings 3402.90, 3812.00, 1504.00, 3806.90, 2905.90 and 2917.90 respectively of the schedule to the Central Excise Tariff Act, 1985 and are availing Modvat credit under Rule 57A of the Central Excise Rules and SSI exemption under Notification No. 1 /93. After crossing the total clearances again started paying Central Excise duty w.e.f. 14-5-1993 by opting Modvat from 14-5-1993. The Department's contention is in respect of certain inputs i.e. T.D. Alcohol, they had not filed a declaration under Rule 57G and show cause notice dated 3-3-1994 was issued disallowing the transitional Modvat credit. The assessees pleaded before the assessing authorities that a Modvat credit utilised yet stress

payment of duty in finished product and they had also shown the RG 23A and PLA for the month of March, 1993 and April, 1993. After the matter was remanded by the Collector (Appeals), the adjudicating authority namely A.C. XI, Bombay II Collectorate by the Order-in-Original had held that T.D. Alcohol and Plastic Container the credit availed by the assessee was correct or not the Assistant Commissioner disallowed the credit and on appeal. The Commissioner of Central Excise (Appeals), Mumbai by the impugned order had held that the appellants had broadly declared Tridecyl Alcohol as Organic Surface Active Agents and Plastic Containers as HDPE Barrels or Carbouys. He also held that there was not dispute as regards the Chapter sub-heading of the products. After perusing the declaration it was held by him appellants large number of final product by inputs and following the Judgment of the Tribunal in the case of Pawan Tyres Limited v. C.C.E.1994 (73) E.L.T. 212, where the Tribunal held that if there are large number of rubber processing chemicals, it is not practicable to enumerate all of them in a 57G declaration. Hence the present appeal by the Department.

2. Shri A. Ashokan the ld. JDR reiterated the grounds of appeal namely that under three decisions of the Tribunal as mentioned in the grounds of appeal that filing a declaration is a substantive one and further emphasises the fact that where the input is not described credit is not allowable.

3. Considered the grounds raised by him and also perused the orders passed by the Commissioner (Appeals) in the impugned order. The Commissioner has found that the appellants had large number of final products an inputs in the declaration filed. Therein they have the assessees respondents have indicated input as Emulsifier (USA) 3402.90 as also HDPE Barrels or Carbouys 3929.90. Apart from that, they have also shown, the G.P. 1 under which the inputs have been purchased indicating the duty payment. It is not the case of the department that the inputs have not suffered duty and that the said inputs have not been utilised in the manufacture of declared final product. As far as the case which inputs are have been generally described as in this case where rubber chemicals have got lot of items the Modvat credit cannot be denied. I find from the decisions of the Pawan Tyres Ltd. v. C.C.E.1994 (73) E.L.T. 212 there also lot of rubber chemicals have been mentioned and therefore, I am of the view that there has been a

substantial compliance of the Modvat scheme. Hence the department appeal is dismissed. Hence, I cannot agree with the submissions made by the DR and I dismiss the Department's appeal.