

**indo Plast Vs. Cce**

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**SooperKanoon Citation :** [sooperkanoon.com/16634](http://sooperkanoon.com/16634)

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

**Decided On :** Aug-31-1999

**Reported in :** (2000)(90)LC108Tri(Mum.)bai

**Judge :** J T J.H., G Srinivasan

**Appellant :** indo Plast

**Respondent :** Cce

**Advocate for Pet/Ap. :** Shri. D.D. Gwalani

**Judgement :**

1. When these stay applications were heard, it appeared that at this stage the main appeals themselves could be disposed of. Both sides agreeing, this was done, after granting waiver of the pre-deposit of the duty amounting to Rs. 5,52,828.02.
2. These three appeals arise from the same impugned order. They are therefore being disposed of in this common order.
3. We have heard Shri D.D. Gwalani the Ld. Counsel for the appellants and Shri K.L. Ramteke for the Revenue.
4. The appellants were manufacturing Jute Fabric Coated with preparation of LDPE. During the course of the period covering the present dispute, they availed of the benefit of Notification No.27/94-CE dt. 1.3.1994 and Notification No. 31/95

dt. 16.3.1995. Both notifications exempted laminated jute fabrics provided the base fabrics were duty paid. Three show cause notices were issued alleging that the benefit of Notifications was not available in the absence of the assessees showing that the base fabrics had discharged the burden of duty. Before the Assistant Commissioner the assessees contended that they were purchasing such fabrics from the market and that in terms of the Supreme Court Judgment in the case of Collector of Central Excise v. Decent Dyeing Co. , the goods purchased from the market were presumed to be duty paid and that they were not required to show any further proof in that regard. The Assistant Commissioner accepted this claim and discharged the show cause notices. The Jurisdictional Commissioner then caused applications to be filed before the Commissioner (Appeals). The Commissioner in disposing of the three orders of the Assistant Commissioner in the face of the cited judgements also held that where the assessee was making the claim for the benefit of the notification, the burden of proving eligibility was on the assessee and since the assessee had failed to discharge this burden, the benefit of the notifications was not available to them.

With this observation he reversed the orders of the Assistant Commissioner. Hence the present appeals before us.

6. It is correct that the burden of proving the eligibility to a notification lies on the claimant assessee. But where the assessee is able to prove the duty paid nature of the goods by relying on a Supreme Court verdict to the effect that the goods purchased from the market should be presumed to have discharged the burden of payment of duty, the burden no longer rests on the assessee. We also find that the Ld.

Commissioner had erred in distinguishing the second cited Judgment of the Supreme Court on the basis of the facts before him. To our mind the law in the Decent Dyeing Company Judgment covers this case. The benefit of the notifications was therefore correctly availed of by the assessees. The impugned order is set aside. The appeals are allowed, with directions of consequential relief.