**Commissioner of C. Ex. Vs. Soma Textiles Industries Ltd.**

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**SooperKanoon Citation** : sooperkanoon.com/19959

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

**Decided On :** Dec-07-2000

**Reported in** : (2001)(133)ELT229Tri(Mum.)bai

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

**Respondent** : Soma Textiles Industries Ltd.

**Judgement** :

1. This appeal was posted for admission. On hearing both the sides I admit the appeal and take up the appeal for final disposal.

2. The assessees manufacture textiles. For the packing materials, they had filed declarations under Rule 57G. One declaration was dated 6-9-1996 under which the inputs specifically declared were pipes, tubes etc. falling under Chapter 3917.00. At a later date i.e. on 1-4-1997 they had also shown HDPE rolls as falling under Chapter 3917.00. During the intervening period, the assessees received HDPE films and rolls.

The invoice described the goods as falling under Tariff Heading 3917.00. The assessee took credit. This was objected to by the Department. After issue of show cause notice, the Asstt. Commissioner reversed the credit and imposed penalty. The ground was that the goods were not declared. The Commissioner (Appeals) held that the inputs had been broadly declared by the appellants as plastic in roll forms. On the ground that minor variation in the description of the goods should not deny substantial benefit, he allowed the appeal. The Revenue have filed the present appeal saying that the inputs received did not find any place in the declaration filed at all.

3. The applicant Commissioner should have enclosed the copies of the various declarations. However, Shri Arrawatia, Office Manager had the complete documents which were seen by me. On perusal, I am satisfied that even a general declaration was not made of the plastic in roll form in the declaration prevalent on the date of the receipt of the inputs. The assessees made much of the case laws saying that where the Heading was declared correctly, minor variation should not come into play. It is their plea that 3917 was the Heading declared in the declaration and therefore, rolls falling thereunder was declared.

4. I have seen the Tariff. At the material time HDPE rolls classified under either Heading 3920 or 3921 and never under Heading 3917. It is not known how the supplier manufacturer had shown the classification in the invoice under 3917 at all. Therefore, the benefit of the case law is not available to them.

5. I also find that floor covers had been declared as packing materials. But that is not the subject matter of the appeal. On perusal I am satisfied that the order of the Commissioner (Appeals) is wrong and therefore, not sustainable. The Revenue appeal is allowed.