**Consumers Plastics Pvt. Ltd. Vs. Commr. of Cus. (Export)**

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**SooperKanoon Citation** : sooperkanoon.com/24556

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

**Decided On :** Jul-19-2001

**Reported in** : (2001)(134)ELT521Tri(Mum.)bai

**Appellant** : Consumers Plastics Pvt. Ltd.

**Respondent** : Commr. of Cus. (Export)

**Judgement** :
2. The common issue in both these appeals is whether duty could be demanded from an importer by seeking to revoke the benefit of exemption contained in Notification 203/92 which was extended to the goods on their importation. The show cause notice issued to each of the appellants alleges that Modvat credit had been taken of the duty paid on the inputs used in the manufacture of exported goods, thus contravening the condition contained in clause v(a) to Notification 203/92. The notices invoked the extended period contained in the proviso to Sub-section (1) of Section 27 of the Act on the ground that the exporter had made a wrong declaration on the shipping bill that Modvat credit has been availed of. The counsel for Gaurisons says that no show cause notice was received by it and it is only on passing of the order that it came to know of the existence of the proceedings.

Counsel for the Consumers Plastics Pvt. Ltd. submits that the reply that it filed to the notice was not considered. Each of them requests remand of the matter to the Commissioner for decision on merits afresh, contending that their case is covered by the ratio of the Tribunal in Plastchem Industries v CCE, 2000 (120) E.L.T. 775.

3. In that decision, the Tribunal had concluded that while it was open to the department, when the import took place to ask the importer to satisfy that Modvat credit has not been availed of and it could deny exemption in the event compliance of this condition was not demonstrated. It however, state that once the import has taken place and the extended period is invoked the requirement of material sufficient to conclude that credit had indeed been taken, and to justify invoking the extended period specified in the proviso to Sub-section (1) of Section 27 would have to be shown by the department.

In the absence of such material, it held the demand to be impermissible. The same consideration would apply to the facts before us.

4. It is in fact clear that the failure to verify compliance with the condition contained in the paragraph (v) of the notification was due to the omissions of the assessing officer and not due to any suppression or mis-statement or such act on the part of the importer. In each of the orders, the Commissioner says, "Examination of the question whether they (i.e. the importer) had availed Modvat credit on the inputs while exporting the goods towards discharge of export obligation in the advance licensing scheme was missed or overlooked." Further, there is also not slightest evidence that Modvat credit has in fact been availed of. What the department has done, in order to make up for the acts or omissions of its officers, is to transfer to the importer the burden which now lies upon it of showing that credit has been availed of We are hence unable to confirm the orders impugned before us.