**Commissioner of Central Excise, Vs. Garware Plastics and Polyester**

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**SooperKanoon Citation** : sooperkanoon.com/25034

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

**Decided On :** Aug-16-2001

**Reported in** : (2002)(148)ELT753Tri(Mum.)bai

**Appellant** : Commissioner of Central Excise,

**Respondent** : Garware Plastics and Polyester

**Judgement** :

1. Garware Plastics and Polyester Ltd., and respondent to this appeal manufactured X-ray films, cleared the scrap that arose in the manufacture of such films in terms of exemption of entry 19 to the table to notification 14/92. This entry exempts from payment of duty waste, parings and scraps of plastic classifiable under heading 39.15 of the Tariff subject to the condition that such waste, parings and scrap have arisen from goods on which excise duty or additional duty of Customs has been paid. Notice issued to it proposed on them not very clearly recovery of duty on two counts. So much modvat credit taken of the duty paid on the inputs as contained in the waste was sought to be recovered. the benefit of exemption contained in entry 19 of the table to the notification 14/92 was sought to be denied on the ground that these goods were not duty paid. The Additional Collector confirmed the proposal in the notice. On appeal from that order, the Commissioner (Appeals) found for the manufacturer that the provisions of rule 57D(1) would apply with regard to modvat credit sought to be recovered on the portion of the inputs contained in the waste. He found that exemption contained in entry 19 of the table to the notification 14/92 would be available. Both these

contentions are questioned in this appeal by the department.

2. One of the two grounds in the appeal in that since the manufacturer took modvat credit on the inputs, the condition subject to which exemption contained in entry 19 will apply is not fulfilled. No reason is advanced in support of this proposition, but it appears to be that since modvat credit has been taken, the goods ceased to be goods on which duty has been paid. We are unable to accept this proposition.

Modvat credit is a facility given to the user of a particular excisable commodity fort the manufacture of another commodity of make use of the duty paid on the inputs towards payment of duty on the finished product. Availing of this facility does not take away from the goods their nature as duty paid inputs. There is nothing in law to support the proposition.