

**Ankit Polyester Ltd. Vs. Commissioner of Customs**

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

**Decided On :** Sep-14-2001

**Appellant :** Ankit Polyester Ltd.

**Respondent :** Commissioner of Customs

**Judgement :**

2. In the order impugned in the appeal, the Commissioner finds that the goods that the appellant imported were not entitled to the benefit of notification 203/92 for the reason that one of the conditions contained in the notification, the modvat credit should not be availed in the manufacture of export products, had been contravened.

3. Counsel for the appellant contends that it had imported these goods in terms of an advance licence which had been transferred to it by the person to whom the licence was issued. He contends, however, that it was unable to bring these facts to the notice of the Commissioner because the appellant had not received the notice or any intimation of hearing.

4. We note that the show cause alleges that the exporter had indicated in the export documents that no modvat credit had been availed of. It does not indicate any grounds in support of which contention that modvat credit has been availed of.

5. In these circumstances, we allow this appeal and set aside the impugned order. The department shall verify whether the appellant had been issued the notice as provided by law. If so, the matter should be adjudicated afresh after giving the

importer a reasonable opportunity of being heard for it to make its submission. In the event that the notice has not been communicated, the department may issue notice, if permitted by law and proceed to adjudicate upon it.

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