Commissioner of Central Excise Vs. Union Quality Plastics Pvt. Ltd.

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SooperKanoon Citation : sooperkanoon.com/30591

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-09-2003

Reported in : (2003)(160)ELT1090Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Commissioner of Central Excise

Respondent : Union Quality Plastics Pvt. Ltd.

Judgement :

1. In the order impugned in this appeal, the Commissioner (Appeals) has held that the benefit of the exemption provided in entry 19 of the Table to the Notification 14/92 could not be denied to the respondent before him solely for the reason that Modvat credit had been taken on the duty paid on the inputs out of which scrap was manufactured. He noted that the entry provided exemption to waste and scrap of plastic specified therein provided that it arose from the goods on which duty of excise or additional duty of customs have already been paid. In the absence of any condition in the entry, that Modvat credit could not have been availed of he held this fact would not affect the eligibility of the exemption.

2. The appeal is based on a view that since Modvat credit was taken of the duty paid on the goods out of which scrap arose, they must be considered to be non-duty paid. Such a proposition is clearly unacceptable. The effect of a manufacturer taking credit of the duty paid on any input is not to render it non-duty paid. The duty paid character of such goods does not change only because Modvat credit

was taken of the duty so paid. The ratio of the judgment of the Bombay High Court in Indoswe Engineers Private Limited v. Union of India - 1989 (41) E.L.T. 217 which lays down the same proposition with regard to proforma credit under Rule 56A, applies with equal force in the case of Modvat credit.