

**Commissioner of Central Excise Vs. Polyplex Corpn. Ltd.**

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

**Decided On :** Apr-15-2004

**Reported in :** (2004)(170)ELT487TriDel

**Judge :** P Bajaj

**Appellant :** Commissioner of Central Excise

**Respondent :** Polyplex Corpn. Ltd.

**Judgement :**

1. In this appeal filed by the Revenue against the impugned order-in-appeal, the issue relates to the denial of the Modvat credit to the respondents on G.I. Sheets and Silicon Spray, besides imposition of penalty on them equal to the amount of the Modvat credit wrongly availed by them.

2. I have heard both sides and gone through the record. The respondents are engaged in the manufacture of Polyester Films. The adjudicating authority disallowed the Modvat credit on all the goods which are subject-matter of the show cause notice including the above said two goods through the order-in-original. The Commissioner (Appeals) had allowed the Modvat credit on all the goods including the disputed one.

3. The Revenue has contested the allowance of the Modvat credit on G.I.Sheets and Silicon Spray only, in the present appeal. The Commissioner (Appeals) has allowed the credit on the G.I. Sheets by observing that these had been used in the

factory premises to protect the entry of dust which might settle on the manufactured Polyester Films. The learned Counsel has, tried to support the order of the learned Commissioner (Appeals) in this regard, by referring to the definition of 'Inputs' in Rule 57AA(d), which indicates that the 'inputs' include all goods used in or in relation to the manufacture of the final product whether directly or indirectly and whether contained in the final products or not. But, in my view, no capital out of this definition of the 'inputs' can be made by the respondents. The G.I. Sheets had not been used undisputedly in or in relation to the manufacture of the final product i.e. Polyester Films. These have been put in the factory premises where the films are stored to avoid the entry of the dust. These sheets have nothing to do directly or indirectly with the manufacture of the final product of the respondents. Therefore, the Modvat credit on these sheets could not be allowed by the Commissioner (Appeals). The order of the Commissioner (Appeals) in this regard is set aside.

4. However, on Silicon Spray which is being used as the anti rusting material for cleaning/lubricating the machines involved in the manufacture of the final products, the Commissioner (Appeals) has rightly allowed the credit by following the ratio of the law laid down in the case of Modi Rubber Ltd., 2000 (119) E.L.T. 197. The order of the Commissioner (Appeals) in this regard is upheld.5. Regarding the imposition of penalty for availing the wrongful Modvat credit in respect of the G.I. Sheets, the prayer of the Revenue cannot be allowed for the simple reason that in the show cause notice the imposition of penalty was never proposed. The Revenue cannot be permitted to travel beyond the scope of the show cause notice.

6. In view of the discussion made above, the impugned order of the Commissioner (Appeals) accordingly stands modified. The appeal of the Revenue stands disposed of in the above terms.

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