

**Commissioner of Central Excise Vs. H.M. Polycontainers Ltd.**

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**SooperKanoon Citation :** [sooperkanoon.com/39448](http://sooperkanoon.com/39448)

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

**Decided On :** Jun-23-2005

**Reported in :** (2006)(203)ELT628Tri(Mum.)bai

**Judge :** S T S.S., T Anjaneyulu

**Appellant :** Commissioner of Central Excise

**Respondent :** H.M. Polycontainers Ltd.

**Judgement :**

1. Revenue is in appeal. Respondents have been granted the benefit of Modvat credit inputs even though they have voluntarily paid duty when the goods manufactured were fully exempt. Gothi Plastic Industries v. CCE and judicial discipline requiring him to follow the same has been urged in the grounds taken in this appeal to be against CBEC Circular F.No.93/19/90 CEX3 dt 4.1.1999 and thus not binding on the department and not relevant as these cases do not refer to the said circular. We cannot appreciate the reasoning of the Commissioner in the ground taken. Board's Circular are not binding on Commissioner (Appeals).

However, in judicial discipline, the Commissioner (Appeals) is bound by the decision of the higher Tribunal. The decision relied upon hold that it is the option of the assessee to avail an exemption. We find no reason to differ with the same. No merits are found in the ground of Trade Notices issued etc as taken. No contra decision shown. Appeal of Revenue is to be rejected and order of CCE (A) upheld.