

**Collector of Central Excise Vs. Tarapur Cables (i) Ltd.**

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

**Decided On :** Dec-15-1995

**Reported in :** (1996)(85)ELT125Tri(Mum.)bai

**Appellant :** Collector of Central Excise

**Respondent :** Tarapur Cables (i) Ltd.

**Judgement :**

1. This is an appeal against the Order-in-Appeal No. SDK/257/B. II/91, dated 30-7-1991 allowing the appeal of the respondent. The Revenue is aggrieved by this order.

The respondents are engaged in the manufacture of wires and cables for which they bring duty paid PVC compound, which is used in the manufacture of wires and cables. They were taking Modvat credit in respect of PVC compound. However in respect of waste and scrap of plastic materials, arising in the course of manufacture, they were clearing such scrap without payment of duty, availing exemption under Notification No. 53/88. On a perusal of the Notification, it is found that waste and scrap of plastics arising from various goods falling under Chapter 39, on which the duty of excise or the countervailing duty, as the case may be has been paid, is exempted.

There is no stipulation in the Notification that the exemption is not available where Modvat credit is taken. The respondents were clearing plastic scrap without payment of duty. The dept. objected to its clearance, without payment of duty on

the ground that Modvat credit has been taken and the credit is to be reversed in regard to the clearance of waste, citing the provisions of Rule 57C.3. Shri Krishnamurthi, Id. JDR also points out that Rule 57F also would be attracted in this case. I am not persuaded to accept the appeal for the following reasons: The respondents are availing Modvat credit in respect of PVC compound and the waste is admittedly arising in the course of manufacture of wires and cables which is the final product.

As per the provisions of Rule 57D of the Central Excise Rules notwithstanding the fact that any waste or scrap or intermediate products are exempted, duty credit need not be varied. In this case plastic scrap is exempted, without any condition of availment of Modvat credit, if it is made out of duty paid materials . Hence applying the provisions of Rule 57D, credit initially taken on PVC compound would not call for variation. Even the provisions of Rule 57F would not come in the way, because credit accrued on the inputs can be utilised in regard to the clearance of similar final products covered by the Modvat declaration. I therefore see no merit in the appeal which is dismissed.

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