**Sturdy Polymers Ltd. Vs. Commissioner of C. Ex.**

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**SooperKanoon Citation** : sooperkanoon.com/33043

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

**Decided On :** Nov-13-2003

**Reported in** : (2004)(164)ELT442TriDel

**Judge** : P Bajaj, M T K.D.

**Appellant** : Sturdy Polymers Ltd.

**Respondent** : Commissioner of C. Ex.

**Judgement** :

1. This order will dispose of the above appeals which have been filed by the appellants against the common Order-in-Appeal, vide which the Commissioner (Appeals) has affirmed the Order-in-Original of the Adjudication Authority.

2. The facts are not much in dispute. The appellants are engaged in the manufacture of tubes/pipes of plastics. The waste and scrap of plastics generated during the manufacture of plastic pipes/tubes was consumed captively by them in the manufacture of plastic granules which in turn were used again in the manufacture of tubes/pipes which were cleared on payment of duty.

3. The demand has been raised from the appellants on the waste and scrap on the ground that benefit of exemption Notification No.67/95-C.E. is not available to them and they are liable to pay duty on waste and scrap which they captively used in the manufacture of granules which were exempt from duty. Both the authorities below have, on this ground, had confirmed the duty demand and imposed

penalties, detailed in the impugned order.

4. The learned Counsel has contended that the waste and scrap is not final product of the appellants and that the same had been captively used in the manufacture of granules which in turn had been utilised by them in the manufacture of final products pipes/tubes cleared on payment of duty. He has also contended that whenever the granules had been cleared by them from the factory without using in the manufacture of tubes/pipes, and the duty has been paid in respect thereof. The impugned orders, according to the counsel, deserve to be set aside.

5. On the other hand, learned SDR has contended that the waste and scrap had been used as an intermediate products, by the appellants, and as such they were liable to pay duty before putting the same to use in the manufacture of granules which were exempt from duty under Notification No. 111/95. Therefore, the benefit of Notification No.67/95-C.E. had been rightly denied to the appellants by the authorities below.

7. We find from the record that the duty had been demanded from the appellants on the waste and scrap for having used captively in the manufacture of granules which were exempt from duty. But the authorities below have lost sight of the facts that the granules so manufactured from the waste and scrap, had been utilised by the appellants in turn for the manufacture of final product i.e. tubes and pipes, which were not exempt from duty under any notification. Rather, the appellants have cleared the final products i.e. tubes/pipes on the payment of duty. It is well settled that inputs need not be directly used in the manufacture of final products. In the instant case, waste and scrap can be said to be an input for the manufacture of pipes/tubes, final products of the appellants. The granules manufactured from the waste and scrap at an intermediate stage, had been used in the manufacture of final products, pipes/tubes. Therefore, it can be safely concluded that the waste and scrap had been utilised indirectly in the manufacture of final products which were not exempt from duty. That being so, the benefit of exemptin notification No.67/95 is available to the appellants. The benefit of this notification can be denied to them, for claiming duty on the waste and scrap as and when they clear

the granules as such, from their factory, being exempt from duty. In this context, a reference may also be made to the ratio of law laid down by the Larger Bench of the Tribunal in the case of Supreme Industries Ltd. v. CCE, Mumbai-III, reported in 2002 (148) E.L.T. 484, wherein also duty on the scrap/re-processed granules was involved and it was observed that re-processed granules were covered by the exemption notification No. 53/88-CE. That judgment of the Tribunal has been affirmed by the Apex Court as is evident from the Court-room Highlights, reported in 2003 (153) E.L.T. at page A91.Viral Laminates Ltd. v. CCE, Ahmedabad-II,Techno Cables Pvt.

Ltd. v. CCE, Hyderabad, reported in 2001 (136) E.L.T. 721, relied upon by the learned SDR, is not attracted to the facts of the case.

Moreover, the issue involved here stands settled in view of the above said judgment of the Tribunal which has been affirmed by the Apex Court.

9. In view of the discussions made above, the impugned orders of the Commissioner (Appeals) cannot be sustained and are set aside. The appeals of the appellants are allowed with consequential relief, if any, permissible under the law.