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**CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066**
**SINGLE MEMBER APPEAL BRANCH**

Appeal No. E/2455/2007 – SM[BR] Date 27/08/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S SHRI KESHAV POLYVIN,
SANGRUR ROAD, DHURI

M/S SHRI KESHAV POLYVIN, Appellant
Vs
C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1087 / 2009 –SM[BR] dated 12.8.2009

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

**Copy to :**
1. Respondent

   C.C.E. LUDHIANA

   CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR, LUDHIANA 141001 (PUNJAB)
2. Adv. / Consult SHRI BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ NEW DELHI

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Appeal No.E/2455/07-SM

[Arising out of Order-in-Appeal No.42/CE/LDH/07 dated 28.2.2007 passed by the Commissioner (Appeals) Chandigarh].

**Date of Hearing:12.08.2009**
**Date of decision: 12.08.2009**

M/s. Shri Keshav Polyvin, ...Appellant

Vs.

CCE, Ludhiana ... Respondent

Present for the Appellant :Shri.Harish, Advocate
Present for the Respondent:Shri S.K. Bhaskar, DR

**Coram: Hon'ble Mr. Rakesh Kumar, Technical Member**

Final **ORDER NO.** 1087/2009 SM(BR) **DATED:12.08.2009**

**PER: RAKESH KUMAR**

The appellant in their factory manufacture PVC pipes chargeable to Central Excise duty under sub-heading 3917007 of the 1st Schedule to the Central Excise Tariff Act, 1985 from plastic resin and other raw materials. During the process of manufacture of PVC pipes from the raw-material, some waste and scrap is generated and the same is again re-used for manufacture of PVC pipes. The appellant's factory was visited by the Central Excise Officers on 30th Nov., 2004. They found that the waste & scrap generated during the process of manufacture of PVC pipe was being captively used and the same, though liable to Central Excise duty was fully exempt from duty under Notification No. 67/95 CE. But according to the Department, since the goods are excisable, their stock account should have been maintained in RGI Register. The appellant was not maintaining the stock account in the RGI Register. It is on this ground that the stock of the PVC scrap was placed under seizure. The Asstt. Commissioner has vide order in original dated 1.08.2000 ordered confiscation of the seized PVC scrap under rule 25 (1) (b) of Central Excise Rules 2002 with the option to be redeemed on redemption fine of Rs.30,000/-. Besides this the Asstt. Commissioner also imposed penalty of Rs.15,000/- under Rule 25 (1) (b). The appeal against Asstt. Commissioner's order was dismissed by the Commissioner (Appeals) vide impugned order in appeal No.42/CE/LDH/2007 dated 28.2.07. It is against this order that the present appeal has been filed.

2. Heard both the sides. Shri Atul Gupta, Company Secretary, the ld. Counsel for the appellant, pleaded that this scrap is generated in the course of manufacture of PVC pipes from raw material, that the scrap is fully used for manufacture of PVC pipes in a continuous process, that since scrap is captively consumed, it is fully exempt from duty under notification No.67/95-CE and as such there is no dispute on this issue and since the scrap generated was fully exempt from duty and was being re-used in the manufacture of PVC pipes, no stock account was being maintained and that the appellant starting maintaining the stock account as soon as they were directed to do so by the Jurisdictional Central Excise Officers. In view of the above, he pleaded that there was no case for confiscation of the goods and imposition of penalty.

3. The ld. DR defended the impugned order pleading that the PVC scrap is an excisable item and even though it is fully exempt from duty under Notification No.67/95-CE on account of being used for capitive consumption, the goods being excisable goods as per the

provisions of Central Excise Rules, stock account should have been maintained and since stock account was not maintained, the appellant would be liable for penalty and the stock seized was liable for confiscation also. In view of this, he pleaded that there is no infirmity in the impugned order.

4. I have carefully considered the submissions from both the sides. The generation of scrap in the course of manufacture of PVC pipe from raw-materials, and its use again in the manufacture of PVC pipe is a continuous process. There is no dispute that this scrap generated which is capitively used, is fully exempt from duty under Notification No.67/95-CE. There is no allegation that the appellant were not maintaining the stock account of the raw material or the stock account of the finished goods. In view of these circumstances, I hold that non-maintenance of stock account of scrap which was being used captively cannot be treated as a serious offence to warrant confiscation of the goods and imposition of penalty. In view of these circumstances, I hold that the impugned order is not correct. The impugned order, therefore, is set aside and the appeal is allowed.

[Dictated & Pronounced in the open Court].

**(RAKESH KUMAR)**
**TECHNICAL MEMBER**

Anita