

Khandesh Extraction Ltd. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-28-2003

Reported in : (2003)(156)ELT928Tri(Mum.)bai

Judge : S T Gowri, A Wadhwa

Appellant : Khandesh Extraction Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. Duty of Rs. 34,240/- has been demanded and penalty of Rs. 17,000/- imposed on the finding that the cinders which resulted in the burning of coal in the boilers of the applicant are liable to duty.
2. The representative of the applicant relies upon the judgment of the Supreme Court dismissing the Special Leave Petition filed by the Union of India against the judgment of the Bombay High Court in Century Rayon & Anr., 2002 (142) E.L.T. 319, holding that such cinder is not excisable. The departmental representative contends that the Bombay High Court had relied upon a judgment of the Gujarat High Court in Ahmedabad Electricity Co. Ltd. v. UOI, 2001 (131) E.L.T. 535 holding that cinder is not excisable and that stay of operation of this order had been stayed by the Supreme Court with regard to the particular assessee.
3. That may be so, however, the assessee before us is within the jurisdiction of the Bombay High Court, the appeal against the judgment of which has been dismissed

by the Supreme Court.

4. Accordingly we waive deposit of the duty and penalty and stay their recovery.

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