# Commissioner of Central Excise Vs. Star Paper Mills Ltd.

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**SooperKanoon Citation** : sooperkanoon.com/32473

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

**Decided On :** Sep-30-2003

**Reported in** : (2003)(158)ELT846TriDel

**Judge** : M T K.D.

**Appellant** : Commissioner of Central Excise

**Respondent** : Star Paper Mills Ltd.

**Judgement** :

1. This appeal of the Revenue is directed against the order-in-appeal passed by the ld. Commissioner (Appeals). The Commissioner (Appeals) has held that, the respondents M/s. Star Paper Mills, are not required to pay the amount equal to 8% of the price of "waste sludge" charged by the respondents to their customers for its sale. The Commissioner (Appeals) after placing reliance on the Supreme Court's judgment in Modi Laminates (P) Ltd. and Dharangadhra Chemicals [1997 (91) E.L.T.253 (S.C.)] as also several other cases, held that, the sludge is not an excisable product though sold by the respondents.

3. The catena of judgments extensively quoted by the Commissioner (Appeals) are enough to prove that the sludge is not an excisable product and is not required to pay any excise duty. The Tribunal in its judgment in the case of Shankar Sugar Mills [1998 (100) E.L.T. 151 (T)] and Supreme Court in their decision in the case of CCE, Meerut v.Titawi Sugar Complex [2003 (152) E.L.T. 21 (S.C.)I have held that press-mud, being a residue waste, cannot be called the final product.

4. In order to charge a manufacturer of having manufactured a product which is fully exempted or chargeable to Nil rate of duty, it requires to be demonstrated that the manufacturer has started with the idea of manufacturing that product as a final product. While embarking upon manufacture of finished product i.e. Paper in this case the assessee cannot be said to be aiming at manufacturing the "sludge" which incidentally comes out of the manufacturing process as a residue or waste. Therefore, such product would have to be treated as waste or by-product and not a final product, as claimed by Revenue. This situation would be therefore covered under Rule 57D(1). Hence there can be no question of resorting to provisions of Rule 57CC for the purpose of charging 8% amount, as proposed. When the "Waste Sludge" is squarely covered by the provisions of Rule 57D(1), Modvat credit would get settled in accordance with that rule and there is no scope to apply the provisions of Rule 57CC for the same set of transactions. Otherwise it would lead to a chaotic situation, whereby one rule permits retention of credit, by applying another rule the recovery is being enforced. All the rules have to be read in a harmonious manner and if the assessee can show that in terms of Rule 57D(1) he is entitled to retain the full credit recourse to provisions of Rule 57CC cannot be permitted to effect the recovery as proposed. The Revenue's appeals therefore, are devoid of merits and are accordingly rejected.