# Collector of Central Excise and Vs. Andhra Pradesh State Electricity

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**SooperKanoon Citation** : sooperkanoon.com/3291

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

**Decided On :** Mar-11-1987

**Reported in** : (1987)(12)ECC73

**Appellant** : Collector of Central Excise and

**Respondent** : Andhra Pradesh State Electricity

**Judgement** :
1. Appeal at Sl. No. 1 was listed for hearing on 11.3.87. Appeal at Sl.No.2 however could not be listed, despite the request from Andhra Pradesh State Electricity Board, due to non-traceability of papers till filed a few days back. After the arguments in the first appeal were concluded, both the sides were asked whether the second appeal namely No. 2015/84-0 could also be disposed of in the light of arguments furnished by them on the first appeal namely 237/84-D. Neither side had any objection to the aforesaid proposal.

2. Since a common question is involved in both the appeals, a common order is being issued.

3. Short question which falls for consideration in these cases is whether 'Fly ash' produced during the course of burning of pulverised coal (Powdered coal) is liable to duty under Tariff Item 68 or not.

4. Contention of the learned advocate from Andhra Pradesh State Electricity Board is that fly ash is not 'goods' and as such cannot be treated as excisable. It is

merely a waste product arising out of burning of powdered coal. After combustion ash which is not combustible is collected as residue. Some quantity of ash is collected at the bottom of the furnace while most of the ash is carried away alongwith flue gases. Since it is not desirable to allow the ash particles to go into atmosphere with a view to check pollution, the ash particles are extracted from the flue gases either by Mechanical Dust Collector or Electrostatic Precipitators before allowing the flue gases to escape air through a chimney. The ash settled at the bottom of the furnace is called "Bottom Ash" and the ash collected from the flue gases in the Mechanical Dust Collectors/Electrostatic precipitators is called the "Fly Ash". 'Bottom Ash' and 'Fly Ash' are same in chemical composition while the physical characters vary. Bottom ash is collected as lumps while the fly ash will be in the form of 'very fine' particles.

Normally bottom ash is crushed in Grinders, mixed with water and pumped to the ash pond (disposal area) away from the Power House. Fly Ash is collected in the dry form and transported to the storage silo from where it is unloaded in the trucks for transportation to the consumers' factory where it is utilised for manufacture of Pozzolana Cement. If any quantity of fly ash is surplus and not required by any consumer, it is mixed with water and pumped to the disposal area as in the case of Bottom Ash. The learned advocate has, therefore, submitted in the light of the aforesaid process that fly ash like bottom ash is also a residual waste and the burning of coal which leads to fly ash cannot be termed as a process of manufacture. Accordingly, fly ash should not be charged to excise duty. In support of his proposition, the learned advocate relies strongly on a judgement of single Judge of the Bombay High Court in the case of Indian Aluminium Company v. A.K.Bandopadhyaya (1980 ELT 146), it has been held therein as follows :- "It may well be that dross and skimmings may be capable of fetching some sale price. For that matter any rubbish can be sold. But that is not the criterion. It cannot be said that dross and skimmings are the result of treatment, labour or manipulation whereby the end-product is dross and skimmings. They are merely the scum thrown out in the process of manufacture of aluminium sheets. Therefore, t cannot be said that dross and skimmings are .transformation resulting in a new and different article with a distinctive name, character or use or that they. ordinarily come to the market to be bought and sold and are known to the market." "Refuse or scum thrown off during the process of manufacture cannot by any stretch of imagination be considered as a by-product and merely because such refuse or scum may fetch some price in the market does not justify it being clothed with the dignity of being called a by-product, much less an end-product or a finished product." 5. Learned SDR on the other hand has pleaded that fly ash is a commodity distinct from coal having a different name, characteristics and use. It is at once marketable commodity inasmuch as Indian Standard institution has laid down the standard for fly ash. She has invited attention to page 11 of the Paper Book filed by the Department which gives extract from the Foreword to IS 3812 - 1966. It clearly indicates that fly ash is, no doubt a waste product from a number of Thermal power stations and industrial plants using pulverised coal as a fuel for the boilers; but its use as Pozzolana and also for other allied purposes is also well established in a number of countries abroad and has come in vogue in India as well. Learned SDR has also pointed out that there is a clear admission on the part of the Assessee namely Andhra Pradesh State Electricity Board, that it has sold fly ash to consumer industry. In these facts and circumstances, there can be no two opinions, according to the learned SDR, on the fact of fly ash being marketable goods. As such, it is rightly classifiable under Item 68 of the Central Excise Tariff as it existed during the relevant period. She, has also relied upon the Supreme Court's judgement in the case of Khandelwal Metal and Engineering Works 1985 (20) ELT 222.

6. We have carefully considered the plea advanced from both sides and we are inclined to agree to the views advanced by the learned SDR. Her reliance placed on Supreme Court's judgement cited supra, is well founded. It has been held therein that: "...Brass scrap is a by-product of the manufacturing process. Such goods can and do come into existence as waste articles or rejected Articles during the process of manufacturing that class of articles.

Indeed, brass scrap is known in commercial parlance by that name and is excisable as such...".

It has also been held by the Hon'ble Supreme Court in the said judgement that: "The production of waste and scrap is a necessary incident of the manufacturing process. It may be true to say that no prudent businessman will intentionally manufacture waste and scrap. But it is equally true to say that waste and scrap are the by-products of the manufacturing process. Sub-standard goods which are produced during the process of manufacture may have to be disposed of as 'rejects' or as scrap. But they are still the products of manufacturing process".

In view of these observations of the Supreme Court, it cannot be held, as is contended by the learned advocate on behalf of the assessee on the authority of Bombay High Court judgement in the case of Indian Aluminium Company mentioned above, that every waste and scrap is non-excisable, each case has to be decided on its own facts. There is no doubt in the instant case that fly ash is a by-product and is a marketable, commercial commodity known and traded as such. Accordingly, fly ash is liable to excise duty under Tariff Item 68 of the Central Excise Tariff s it then existed.

7. In the result, appeal No. 1 of the Department succeeds and appeal No. 2 of the Assessee fails.