**Customs, Excise & Service Tax Appellate Tribunal**
**West Zonal Bench at Ahmedabad**
REGIONAL BENCH-COURT NO. 1

**Excise Appeal No. 10799 of 2019**

(Arising out of OIA-BHV-EXCUS-000-APP-012-2019 dated 24/01/2019 passed by Commissioner (Appeals), Central Excise, Customs and Service Tax-Rajkot)

**GHCL Limited** **......Appellant**
SUTRAPADA, VERAVAL-KODINAR HIGHWAY,
TALUKA VERAVAL,
JUNAGADH, GUJARAT

*VERSUS*

**Commissioner of C.E. & S.T.-Bhavnagar** **......Respondent**
PLOT NO.6776/B-1...SIDDHI SADAN,
NARAYAN UPADHYAY MARG,
BESIDE GANDHI CLINIC,
NEAR PARIMIAL CHOWK,
BHAVNAGAR, GUJARAT- 364001

**APPEARANCE:**
Shri Anand Nainawati, Advocate for the Appellant
Shri A R Kanani, Superintendent (AR) for the Respondent

**CORAM:**
**HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA**
**HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH**

**Final Order No. 10666/2025**

DATE OF HEARING: 22.08.2025
DATE OF DECISION: 22.08.2025

**SOMESH ARORA**

The issue involved in the instant case is whether fly Ash arising out of burning of Coal in boilers by the appellants amounts to “manufacture” as per the Section 3 of the Central Excise Act, 1944 or not?

2. As per the learned Advocate, this is only the sequel period demand pertaining to period October 2015 to March 2017 and for the earlier period with no change in legal position, matter has already been decided in their favour as per final order No. 11973/2024 dated 11.09.2024. Therefore, the issue is already covered in their matter.

3. The learned AR agrees that there has been no change in the legal position and the matter stands covered by the decision quoted. However, he reiterates the findings given by the impugned order.

4. We have gone through the factual submissions. We find that vide para 4 of the quoted decision, the matter was decided by this Tribunal. The same is reproduced below:-

> *"4. We have carefully considered the submission made by both the sides and perused the record. We find that the issue involved in the present case to be decided is whether the fly Ash generated out of burning of coal for generation of power amounts to manufacture and exigible to excise duty. This issue is no longer res-integra as Hon'ble Supreme Court has settled this issue for both pre and post 01.03.2011, wherein it was consistently held that burning of coal is for the purpose of generating power and emergence of fly Ash in this process does not amount to manufacture as coal is not raw material for manufacturing of fly Ash whereas the same is required for generation of electricity, the fly Ash is generated inevitably. In this position, the Hon'ble Apex Court taken a view that this cannot be called as manufacture of Fly Ash and accordingly, the same is not liable to duty. The relevant Judgment is in the case of Union of India V. Ahmedabad Electricity Company Limited (Supra) wherein it was held as under :-*
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> > *"23. In the case in hand also coal which leads to production of cinder is not used as a raw material for the end product. It is being used only for ancillary purpose that is as a fuel. Therefore, irrespective of the fact whether any manufacture is involved in production of cinder it should be held to be out of the tax net for the reason that it is not a raw material for the end product.*
> >
> > *24. In producing cinder, there is no manufacturing process involved. Coal is simply burnt as fuel to produce steam. Coal is not tampered with, manipulated or transformed into the end product. For purposes of manufacture the raw material should ultimately get a new identity by virtue of the manufacturing process either on its own or in conjunction or combination with other raw materials. Since coal is not a raw material for the end product in all the cases before us, the question of getting a new identity as an end product due to manufacturing process does not arise.*
> >
> > *26. Can burning of coal be called manufacturing? The locomotive steam engines used to run on coal. Coal was being constantly burnt in the boiler of the engine. The constant burning of coal produced cinder. Could it be said that the engine driver was manufacturing cinder? Is any manufacturing activity involved? Burning of coal for purposes of producing steam cannot be said to be a manufacturing activity. Therefore, neither ash nor cinder can be said to be products of a manufacturing process. From burning coal when you get either cinder or ash, it cannot be said that a new product had emerged. Cinder remains coal. In fact, the Department has itself described it as unburnt part of coal in the grounds of appeal in C.A. Nos. 2168-2169 of 2001 in the*

*Ahmedabad Electricity Supply Company case 'Cinder is not a new product. After correctly describing cinder as unburnt part of coal, the Revenue cannot equate it to ash simply to somehow bring it within Entry 26.21 of the Tariff Act. In the First Schedule to the tariff. cinder does not find any place anywhere. It appears that it is because of this that the Revenue had to fall back upon Entry 26.21 in the First Schedule in order to cover cinder within the excise net. The new Tariff that is Tariff Act. 1985 does not have a residuary entry like Entry 68 in the old Tariff. Instead the new Tariff has interpretative notes. Whenever some by-product of a product is sought to be included for taxability it has been so said in the interpretative notes. However, regarding coal there is no interpretative note nor there is anything about cinder. When cinder is derived from coal it could have at best been treated as coal for purposes of entries in the First Schedule to the Tariff Act. But that would not suit the department because coal is exempt from excise duty. The department now describes cinder as "coal ash". But coal ash also falls (sic. Fails) the test of being manufactured in India. It cannot be subjected to levy of excise duty.*

*……..*

*32. From the above discussion, it is clear that to be subjected to levy of excise duty 'excisable goods must be produced or manufactured in India For being produced and manufactured in India, the raw material should have gone through the process of transformation into a new product by skilful manipulation. Excise duty is an incidence of manufacture and, therefore, it is essential that the product sought to be subjected to excise duty should have gone though the process of manufacture. Cinder cannot be said to have gone through any process of manufacture, therefore, it cannot be subjected to levy of excise duty."*

*Relying on the aforesaid judgment of the Apex Court, even for the period post 01.03.2011 Hon'ble Madras High Court also held that Fly Ash generated during the burning of coal for generation of power being not a manufactured goods is not liable to duty. The said judgment of the Hon'ble Madras High Court has been upheld by Hon'ble Supreme Court, the extract of the decision of the Hon'ble Supreme Court is as under :-*

*"10. For the sake of deciding this issue, **we will assume that cinder is ash** and, therefore, is liable to be covered under Entry 26.21. The real question to be considered is whether all items listed in the First Schedule to the Tariff Act, per se become subject to levy of excise duty………."*

*From the above consistent view taken by the Hon'ble Supreme Court in the similar fact where the fly Ash is generated out of burning of coal for generation of electricity, the issue is no longer res Integra."*

We therefore find that the issue is no more res-integra and the decision quoted by the learned Advocate is fully followed. Accordingly, appeal is allowed with consequential relief.

5. Appeal allowed.

*(Dictated and pronounced in the open court)*

**(SOMESH ARORA)**
**MEMBER (JUDICIAL)**

**(SATENDRA VIKRAM SINGH)**
**MEMBER (TECHNICAL)**

Raksha