CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
REGIONAL BENCH - COURT NO. – I

Excise Appeal No. 22683 of 2014
(Arising out of **Order-in-Appeal** No.HYD-EXCUS-003-COM-05-14-15 dated 22.04.2014 passed by Commissioner of Central Excise, Customs & Service Tax, Hyderabad)

Pr. Commissioner of Central Tax .. APPELLANT
Rangareddy - GST
GST Bhavan,
H.No.1-98-7-43,
Vip Hills,Jaihind Enclave,
Madhapur,Hyderabad,
Telangana – 500 081.

VERSUS

M/s ITC Ltd., .. RESPONDENT
Paper Board and Specially
Paper Division, Rb.No.4,
Sarapaka Village,
Bhadrachalam,
Hyderabad,
Telangana – 507 128.

APPEARANCE:
Shri Dr. T.V. Rajesh, Authorized Representative for the Appellant.
Ms. Adithi Reddy, Advocate for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30333/2026

Date of Hearing: 24.06.2026
Date of Decision: 24.06.2026

[ORDER PER: ANGAD PRASAD]

The Department has filed this appeal against the Order-in-Appeal No.HYD-EXCUS-003-COM-05-14-15 dated 22.04.2014, whereby, the Adjudicating Authority has dropped the proceedings initiated by the Show Cause Notice dated 05.02.2013 and 06.11.2013 against the respondent.

2. The issue involved is whether the respondent is liable to pay central excise duty on fly ash generated as waste during generation of electricity from coal in their factory of production.

3. The brief fact of the case is that the respondent is engaged in the manufacture of paper and paperboards in their plant, where they are also generating electricity for captive use. Department noticed that they were clearing "sludge" and "fly ash" while generating electricity from coal. The sludge was emerging in their efficient treatment plan whereas, fly ash was generated. The Department felt that both these goods were liable to central excise duty and accordingly show cause notice was issued. However, on adjudication, the demands were dropped by extending the benefit of Notification No. 17/2011 dated 01.03.2011.

4. Being aggrieved by the order, Department filed appeal before CESTAT.

5. Learned Counsel for the respondent submits that in earlier period in their own case vide Final Order No. A/30197/2025 dated 10.06.2025, the matter was decided in their favour. Learned AR also accepted that the matter is already settled and decided in favour of the respondent.

6. Heard both the sides and perused the records.

7. We find that the short question to be decided is whether the fly ash generated in the course of manufacturing/production of electricity can be considered as excisable goods leviable to central excise duty or otherwise. From the facts, it is apparent that though the fly ash is not being sold by the appellant, we agree with the observation of Adjudicating Authority and the submission of the Learned AR that merely because it has not been sold by the appellant, it cannot be said to be non-marketable. The concept of marketability is whether the product is capable of being sold or not. However, we find that the marketability is only one of the criteria for considering whether the 'goods' are excisable goods within the scope of

Section 3 of Central Excise Act. The other criteria is whether it is a manufactured product or not. We find, in the case of Union of India Vs Ahmedabad Electricity Company Ltd., [2003 (158) ELT 3 (SC)], the issue of "cinder" was taken up which was emerging in the course of generation of electricity from coal and relying on various judgments on the issue of manufacture, Hon'ble Supreme Court held that the emergence of cinder would not tantamount to manufacture of goods and therefore not leviable to duty.

8. Relevant paras of the judgment, supra, are cited below for ease of reference:

> "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 purposes, 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.
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> 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.
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> 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 their 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 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 skillful 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." … (emphasis supplied)

9. In view of the above, we find no merits in the appeal and appeal filed by the Department is liable to be dismissed.

10. Appeal dismissed.

(Dictated and pronounced in open court)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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