

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.12.2016

CORAM

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH  
AND

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.A. NO. 1518 OF 2015

1. The Central Board of Excise & Customs  
Government of India, Ministry of Finance  
Dept. of Revenue, North Block  
New Delhi.
2. The Commissioner of Central Excise  
No.1, Foulks Compound  
Anai Medu, Salem 636 001. ... Appellants

- Vs -

M/s.Mettur Thermal Power Station  
(A Unit of Tamil Nadu Generation &  
Distribution Corporation Ltd. (TANGEDCO)  
rep. By its Chief Engineer, V.Jayapaul  
Mettur Dam 686 406, Salem Dist. ... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 15.07.2015 passed by the learned Single Judge in W.P. No. 17282 of 2014.

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari to call for the records relating to the impugned Show Cause Notice issued by the 2nd respondent in SCN. Sl.No.12/2014 (C.Ex) (Commr) dated 21.3.2014 (C.No.V/26/ 15/2/2014- C.Ex.ADJ) and quash the same as without authority of law contrary to the scope and objective of Central Excise law and barred by limitation.

For Appellants : Mr. V.Sundareswaran

For Respondent : Mr. K.Jayachandran

|               |            |
|---------------|------------|
| RESERVED ON   | 09.12.2016 |
| PRONOUNCED ON | 21.12.2016 |

## JUDGMENT

This writ appeal is directed against the order passed by the learned single Judge, whereby learned single Judge had set aside the show cause notice issued by the 2<sup>nd</sup> appellant insofar as it related to imposition of excise duty, interest and penalty on the product 'fly ash'.

2. An abstract outline of the facts, which led to to the filing of the writ appeal is outlined hereunder :-

The respondent is one of the various Thermal Stations of TANGEDCO. The respondent is engaged in the generation and distribution of electricity falling under Chapter sub-heading 26219000 and 68159910 respectively of the Central Excise Tariff Act. The respondent was visited with a show cause notice by the 2<sup>nd</sup> appellant for contravention of Rules 4, 6 and 8 to 12 of the Central Excise Rules, 2002 (for short 'the Rules'). The show cause notice was issued on the ground that the respondent cleared 'Fly Ash' and 'Fly Ash Bricks' without payment of excise duty and without following the procedures prescribed under the Rules and, thereby, demand was raised for payment of excise duty and incidentally demand for interest was also raised in addition to the proposal to impose penalty under the Rules. Challenging the said show cause notice, the respondent herein preferred the writ petition.

3. In the writ petition, while the petitioner contended that 'fly ash' is not a product manufactured or produced by them and falling within the ambit of "manufacture" as envisaged under Section 2 (f) of the Central Excise Act, the said stand was countered by the appellants herein stating that 'fly ash', which is a by-product due to the burning of pulverised coal for power generation, is a marketable commodity having intrinsic value in the commercial market, which is used for the production of fly ash bricks, asbestos, cement, etc., and, therefore, by virtue of the notification dated 1.3.2011, duty is chargeable on the manufacture of the said 'fly ash', which is in turn cleared to various other customers. Since no duty has been paid by the petitioner on the 'fly ash' since 1.3.2011, with an intent to evade payment of duty, the show cause notice was issued invoking the extended period of limitation. Since, production of 'fly ash' and consequential manufacture of fly ash bricks attract excise duty since 1.3.2011, the date from which exemption was withdrawn, evasion of payment of duty warranted the issuance of the show cause notice.

4. Learned single Judge, after exhaustively considering the submissions advanced on either side, held that the 'fly ash', which is a by-product on the generation of electricity due to the burning of coal during the production of electricity cannot be said to be a product manufactured, but is only an off-shoot of the manufacturing activity, which has been carried out for the generation of electricity. In the absence of any manufacturing activity leading to the production of 'fly ash', excise duty is not attracted to the said product, though the same is shown as an excisable commodity under the First Schedule to the Central Excise Act. Insofar as 'fly ash bricks' is concerned, there being a manufacturing activity by the use of 'fly ash', excise duty is leviable on the 'fly ash bricks'. Accordingly, the relief sought for by the petitioner was partly allowed. Aggrieved by the said order, the appellant has filed the present appeal.

5. Learned counsel appearing for the appellants submitted that though 'fly ash' was an exempted product till 28.12.2011, vide notification No.1/2011-CE and Notification No.2/2011-CE dated 1.3.2011, however, on and from 1.3.2011, 'fly ash', which is produced pursuant to the burning of coal for the purpose of production and generation of electricity, has been made an excisable goods subject to certain conditions. Consequently, 'fly ash bricks', which is a product with the usage of 'fly ash' has also been made an excisable commodity vide Notification No.1/11-CE dated 1.3.2011. It is also the further submission of the learned counsel for the appellants that amendments have been carried out with regard to the percentage of excise duty on 'fly ash' and 'fly ash bricks' from time to time since March 2011.

6. It is the further contention of the learned counsel for the appellants that the respondent, without challenging the notifications, whereby imposition of excise duty has been made on 'fly ash' and 'fly ash bricks', has challenged the show cause notice issued on the ground that 'fly ash' is not an excisable commodity relying on the decision of the Apex Court in 2003 TIOL-17-SC-CX dated 29.10.03 (Ahmedabad Electricity Co. Ltd.) and, therefore, the writ petition itself is not maintainable. It is further stand of the respondent that since electricity is not an excisable commodity, the by-product, viz., 'fly ash' and 'fly ash bricks', also would stand exempt from excise duty, is legally untenable. It is the further contention of

the learned counsel for the appellants that the Apex Court in Ahmedabad Electricity Co. Ltd. Case (supra) has not dealt with the exigibility of 'fly ash', as at that particular point of time 'fly ash' was an exempted good and, therefore, the contention of the respondent that the Apex Court has held that 'fly ash' is not an excisable commodity is per se impermissible and has no legs to stand. It is the further contention of the learned counsel for the appellants that the respondent having not challenged the notification, whereby excise duty was levied on 'fly ash' and 'fly ash bricks' way back in the year 2011, cannot now, at this point of time challenge the show cause notice, which is an off-shoot of the notification. The root, viz., the notification, having been allowed to continue, challenging the show cause notice is highly improper and against the well accepted law of the land.

7. It is the further contention of the learned counsel for the appellants that the reliance placed on Notification No.89/95-CE dated 18.5.95 by the learned single Judge is totally erroneous as the said notification is in no way applicable to the case on hand. It is the submission of the learned counsel for the appellants that the said notification deals with waste, parings and scrap, whereas the goods in the present case, viz., 'fly ash' is a by-product during the production of electricity, which has marketability and, therefore, in no way could be termed as waste or scrap. Therefore, the said notification is in no way applicable to the case on hand. Further, the by-product, viz., 'fly ash' is produced in the course of production of electricity, which is an excisable commodity and though electricity stands exempted from excise duty, i.e., 'Nil' rate of duty, it cannot be said that 'fly ash' would also stand exempted from any levy. Due to the marketability of 'fly ash', which is a source of revenue generation for the respondent, if duty is levied on the same, it can in no way be said to be beyond the scope of levy, as the commodity finds place in the First Schedule to the Central Excise Act. Therefore, for the reasons aforesaid, the order passed by the learned single Judge is liable to be set aside.

8. Per contra, learned counsel appearing for the respondent, while reiterating the submissions advanced before the writ court, contended that there being no manufacturing activity as contained in Section 2 (f) of the Central Excise Act, levy of duty is impermissible and, therefore, the show cause notice has to fail. It is the further submission of the learned counsel for the

respondent that excise duty is leviable only on goods "produced or manufactured in India". It is the submission of the learned counsel for the respondent that 'fly ash', being a by-product during the production/manufacture of electricity, cannot be said to be a commodity falling within the meaning of "manufacture" as defined under Section 2 (f) of the Act.

9. It is the further submission of the learned counsel for the respondent that the decision of the Apex Court in Ahmedabad Electricity Co. Ltd., (supra) which has been relied on by the learned single Judge, arose in a case of similar nature. In the said case, it was held that cinder or coal ash, which is a part of unburnt coal during the production of electricity, cannot be said to be a product, which falls within the definition of "manufacture" to attract duty. Learned counsel, therefore, contended that in the present case as well, during the production of electricity, 'fly ash' is collected as a by-product and there being no manufacturing activity for the production of 'fly ash', the commodity cannot be said to have been manufactured so as to be visited with duty.

10. It is the further submission of the learned counsel for the respondent that learned single Judge, after careful consideration of the marketability of the product and Notification No.89/95-CE dated 18.5.95 relating to exemption granted to waste, etc., has held that the notification is squarely attracted to the case on hand. In fine, on the contentions above, it is submitted by the learned counsel for the respondent that no interference is called for with the well considered findings rendered by the learned single Judge.

11. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent and perused the materials available on record as also the decisions and the notification relied on by the learned counsel for the parties.

12. The moot question that arises for consideration in this appeal is :-

"Whether 'fly ash' as formed during the production of electricity is a product, which falls within the meaning of "manufacture" as defined under Sections 2 (f) of the Central Excise Act."

13. The incidental question that also falls for consideration is :-

"Whether the product 'fly ash', which is a by-product during the production/manufacture of electricity could be termed as a waste in order to attract Notification No. 89/95-CE dated 18.5.95."

14. Before embarking upon the issue, it would be prudent to have a look at Sections 2 (d) and (f) of the Central Excise Act, which deals with "excisable goods" and "manufacture" and for better clarity, the same are extracted hereinbelow :-

"2(d). "excisable goods" means goods specified in the First Schedule as being subject to a duty of excise and includes salt;

\*Explanation - For the purpose of this clause, "goods" includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

(\*Explanation has been inserted by Act 18 of 2008, Sec.78 (w.e.f.10.5.2008)

2(f). "manufacture" includes any process incidental or ancillary to the completion of a manufactured product.

(i) Incidental or ancillary to the completion of a manufactured produce;

(ii) Which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture; or

(iii) Which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or re-rebelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer;

and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in

the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account."

15. From a reading of the above statutory provision, it is unambiguously clear that for a commodity to be levied with duty, the same must be produced or manufactured in India and that the raw material should have gone through the process of transformation into a new product. Further, it is also clear that the product, which is to be levied with duty, should have gone through a process of manufacture from the raw materials, which were used in the manufacture of the said product. Further the particular product should be capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

16. In the case on hand, there is no quarrel that the product 'fly ash' falls within the definition of 'excisable goods' under Section 2 (d) of the Act. In that, the product 'fly ash' is capable of being bought and sold. The said issue is not in dispute, as the 'fly ash' is utilised in the production of cement, asbestos, fly ash bricks, etc. and, therefore, its capability of being bought and sold is unquestionable. So there is no quarrel that the product 'fly ash' is a marketable product.

17. Now the point to be determined is whether 'fly ash' that is formed during the production of electricity would fall within the ambit of "manufacture" as defined under Section 2 (f) of the Act.

18. "Manufacture", as defined under Section 2 (f) of the Act takes within its fold any process incidental or ancillary to the completion of a manufactured produce. Section 2 (f) uses the term any process "incidental or ancillary to the completion". The broader meaning that can be attributed to the term "incidental" or "ancillary" is that it is a happening which is subsidiary or subordinate to something more important. (See Webster's Dictionary). From the usage of the terms associated with manufacture, it would be evident that it considers any happening towards the achievement of a manufactured product as incidental or ancillary, which is an event in the manufacturing activity. There is no dispute that the respondent herein is engaged in the production/generation of electricity by burning pulverized coal. Therefore, the completed manufactured product in the present case is electricity and 'fly ash' is

only a by-product, which gets formed during the said manufacturing activity. Such being the case, by no stretch of imagination, could 'fly ash', which is formed during the process of production of electricity, could be said to have been a product "manufactured" to fall within the scope "manufacture" as defined under Section 2 (f) of the Act. For the reasons aforesaid, this Court holds that the 'fly ash', which stands formed during the production of electricity is not a product manufactured, but is only a by-product in the process of completion of a finished product.

19. However, it is the contention of the appellants that the product 'fly ash' has marketability, in that it is used in the manufacture of asbestos, cement, etc., and therefore, as an excisable good falling under First Schedule to the Central Excise Act, duty is leviable on the said product. However, it is the contention of the learned counsel for the respondent that 'fly ash' would attract Notification No.89/95-CE dated 18.5.95 and, thereby eligible for exemption as it is only a waste and scrap arising during the manufacture of an exempted product.

20. On the above rival contentions, learned single Judge had held that though 'fly ash' has marketability, however, Notification 89/95-CE dated 18.5.95 would stand attracted to 'fly ash' as it is a waste or scrap that has got formed during the process of manufacture of electricity.

21. Before answering the issue, it would be desirable to look at the law laid down on this point by the Supreme Court.

22. In the case of CCE - Vs - Laljee Godhoo & Co. (2015 (13) SCC 430), the Supreme Court held that twin tests are applicable for making the goods excisable, viz., (i) manufacture and (ii) marketability. In the said case, the Supreme Court further went on to hold that the first test of manufacture having not been satisfied, as no "manufacture" is involved, the product in the said case not was not exigible to excise duty.

23. In the case of Moti Laminates (P) Ltd. - Vs - CCE (1995 (3) SCC 23), the Supreme Court had occasion to deal with the exigibility to excise duty with regard to goods manufactured and held that goods produced or manufactured ipso facto do not attract duty unless they are marketable or capable of being marketed. The Supreme Court, after

discussing in detail very many judgments of its Co-ordinate Benches, held that manufacture and marketability are twin tests, which are to be satisfied to make a product exigible to excise duty. For better clarity, the relevant portion of the order of the Supreme Court is extracted hereinbelow :-

"8. The duty of excise is leviable under Entry 84 of List I of the Seventh Schedule on goods manufactured or produced. That is why the charge under Section 3 of the Act is on all "excisable goods" "produced or manufactured". The expression "excisable goods" has been defined by clause (d) of Section 2 to mean 'goods' specified in the Schedule. The scheme in the Schedule is to divide the goods into two broad categories - one, for which rates are mentioned under different entry and other the residuary. By this method all goods are excisable either under the specific or the residuary entry. The word 'goods' has not been defined in the Act. But it has to be understood in the sense it has been used in Entry 84 of the Schedule. That is why Section 3 levies duty on all excisable goods mentioned in the Schedule provided they are produced and manufactured. Therefore, where the goods are specified in the Schedule they are excisable goods but whether such goods can be subjected to duty would depend on whether they were produced or manufactured by the person on whom duty is proposed to be levied. The expression "produced or manufactured" has further been explained by this Court to mean that the goods so produced must satisfy the test of marketability. Consequently it is always open to an assessee to prove that even though the goods in which he was carrying on business were excisable goods being mentioned in the Schedule but they could not be subjected to duty as they were not goods either because they were not produced or manufactured by it or if they had been produced or manufactured they were not marketed or capable of being marketed.

9. The duty of excise being on production and manufacture which means bringing out a new commodity, it is implicit that such

goods must be usable, moveable, saleable and marketable. The duty is on manufacture or production but the production or manufacture is carried on for taking such goods to the market for sale. The obvious rationale for levying excise duty linking it with production or manufacture is that the goods so produced must be a distinct commodity known as such in common parlance or to the commercial community for purposes of buying and selling. Since the solution that was produced could not be used as such without any further processing or application of heat or pressure, it could not be considered as goods on which any excise duty could be levied.

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11. Although the duty of excise is on manufacture or production of the goods, but the entire concept of bringing out new commodity etc. is linked with marketability. An article does not become goods in common parlance unless by production or manufacture something new and different is brought out which can be bought and sold. In *Union of India v. Delhi Cloth & General Mills Co. Ltd.* [AIR 1963 SC 791], a Constitution Bench of this Court while construing the word 'goods' held as under:

"These definitions make it clear that to become 'goods' an article must be something which can ordinarily come to the market to be bought and sold."

Therefore, any goods to attract excise duty must satisfy the test of marketability. The Tariff Schedule by placing the goods in specific and general category does not alter the basic character of leviability. The duty is attracted not because an article is covered in any of the items or it falls in residuary category but it must further have been produced or manufactured and it is capable of being bought and sold. In *South Bihar Sugar Mills Ltd. - v - Union of India* [AIR 1968 SC 922 : (1968) 3 SCR 21] it was held by this Court:

"The Act charges duty on manufacture of goods. The word 'manufacture' implies a change but every change in the raw material is not manufacture. There must be such a transformation that a new and different article must emerge having a distinctive name, character or use. The duty is levied on goods. As the Act does not define goods, the legislature must be taken to have used that word in its ordinary dictionary meaning. The dictionary meaning is that to become goods it must be something which can ordinarily come to the market to be bought and sold and is known to the market. That it would be such an article which would attract the Act was brought out in Union of India v. Delhi Cloth and General Mills Ltd. [AIR 1963 SC 791] "

In A.P. SEB v. CCE [(1994) 2 SCC 428] , this Court reiterated the same principle and observed that marketability was must irrespective of whether it was marketed or not. Reference has already been made to Indian Cable [(1994) 6 SCC 610 : (1994) 74 ELT 22] . Thus any goods mentioned in the Tariff Schedule does not attract duty unless it is marketable or capable of being marketed. The test of marketability was relaxed in Union Carbide India Ltd. v. Union of India [(1986) 2 SCC 547 : 1986 SCC (Tax) 443 : (1986) 24 ELT 169] and it was held that "in order to attract 'excise duty the article manufactured must be capable of sale to a consumer' ". The question that arose was whether aluminium cans produced by the appellants for the flashlights manufactured by it were goods. It was held: (SCC pp. 550-51, para 7)

"The question here is whether the aluminium cans manufactured by the appellant are capable of sale to a consumer. It appears on the facts before us that there are only two manufacturers of flashlights in India, the appellant being one of them. It appears also that the aluminium cans

prepared by the appellant are employed entirely by it in the manufacture of flashlights, and are not sold as aluminium cans in the market. The record discloses that the aluminium cans, at the point at which excise duty has been levied, exist in a crude and elementary form incapable of being employed at that stage as a component in a flashlight. The cans have sharp uneven edges and in order to use them as a component in making flashlight cases the cans have to undergo various processes such as trimming, threading and redrawing. After the cans are trimmed, threaded and redrawn they are reeded, beaded and anodised or painted. It is at that point only that they become a distinct and complete component, capable of being used as a flashlight case for housing battery cells and having a bulb fitted to the case. We find it difficult to believe that the elementary and unfinished form in which they exist immediately after extrusion suffices to attract a market."

It was explained in *Bhor Industries Ltd. v. CCE* [(1989) 1 SCC 602 : 1989 SCC (Tax) 98 : (1989) 40 ELT 280] : (SCC p. 607, para 6)

"It appears to us that under the Central Excise Act, as it stood at the relevant time, in order to be goods as specified in the entry the first condition was that as a result of manufacture goods must come into existence. For articles to be goods these must be known in the market as such or these must be capable of being sold in the market as goods. Actual sale in the market is not necessary, user in the captive consumption is not determinative but the articles must be capable of being sold in the market or known in the market as goods."

It was reiterated in *Hindustan Polymers v. CCE* [(1989) 4 SCC 323 : 1989 SCC (Tax) 118 : (1989) 43 ELT 165] : (SCC p. 334, para 11)

"Excise duty, as has been reiterated and explained, is a duty on the act of manufacture. Manufacture under the excise law, is the process or activity which brings into being articles which are known in the market as goods, and to be goods these must be different, identifiable and distinct articles known to the market as such. It is then and then only that manufacture takes place attracting duty. In order to be goods, it was essential that as a result of the activity, goods must come into existence. For articles to be goods, these must be known in the market as such and these must be capable of being sold or being sold in the market as such."

(Emphasis Supplied)

24. From the above judgment of the Supreme Court, it is clear that the first test in the process of levy of excise duty is that the product has to be produced or manufactured and the second test being that the product so produced or manufactured should be a marketable commodity. Further, the Supreme Court has also categorically held that levy of excise duty is on the manufacture or production of the goods and that leviability of duty is linked to its manufacture or production. Therefore, as propounded by the Supreme Court in a catena of decisions referred to above, the twin tests of manufacture and marketability should be satisfied in order to bring the goods within the ambit of excise duty and failure of even one of the test would render the product not liable for excise duty. In the case on hand, it is clear from the averments of either party and is also not in dispute that 'fly ash' is a by-product during the production of electricity and is not the main manufactured item. Further, the 'fly ash' is not a commodity which can be used as such in the market, but it is usable only as one of the materials in the production of other products. Therefore, there being no manufacture of 'fly ash', but 'fly ash' gets formed as a by-product during the production of electricity, merely because the goods 'fly ash' finds a place in the specific or residuary entry in the schedule it cannot be termed as an excisable commodity, since it satisfies the test of marketability. The twin tests have to be satisfied in order to bring a product within the ambit of excise duty and satisfaction of

solitary test alone would not be sufficient to levy excise duty on the commodity. Therefore, mere marketability of the product alone would not suffice to levy duty on the 'fly ash', there being no manufacturing process involved.

25. Insofar as the incidental question "Whether the product 'fly ash', which is a by-product during the production/manufacture of electricity could be termed as a waste in order to attract Notification No.89/95-CE dated 18.5.95", it is the contention of the learned counsel for the appellants that Notification 89/95-CE dated 18.5.95 would not stand attracted to the case of the respondent, as the product 'fly ash' is not a waste or scrap to attract the said notification. It is the further contention of the appellants that the by-product, viz., 'fly ash', which emerges during the process of manufacture of an non-excisable exempted product, finding place in the First Schedule of the Central Excise Tariff Act, though rate of duty is quantified as 'Nil', it cannot be construed that electricity is an exempted commodity and, therefore, the said notification would not stand attracted.

26. Learned single Judge, referring to the decision of the Supreme Court in CCE, Hyderabad - Vs - Vazir Sultan Tobacco Co. Ltd. (1996 (3) SCC 434), wherein the Supreme Court held that 'Nil' rate of duty is also a rate of duty and that such goods are also excisable goods. Learned single Judge, therefore, went on to hold that explanation appended thereto clearly clarifies that "excisable goods" means goods which are chargeable even to 'Nil' rate of duty and, therefore, the notification would be squarely applicable as the product 'fly ash', which gets formed during the production of electricity is a waste.

27. The general synonymous meaning that could be attributed to the term "waste" or "scrap", as is found in the Notification No.89/95-CE dated 18.5.95, would effectively mean that any remains during the course of production or manufacture of a product would be worthless or not usable in any form and would only be fit for destruction. In effect, it means that the said remains are worthless, valueless and useless so that it cannot be put to use in any form.

28. It is not in dispute that 'fly ash', a by-product during the production of electricity, which is an exempted excisable commodity, is being sold in the market and that

it is used for the purpose of production of asbestos, cement, fly ash bricks, etc. The product is capable of being bought and sold, whereby marketability of the product is such that it has a value in the market. Once a product is said to have a value in the market to enable it to be sold for the purpose of manufacture of various commodities, it cannot be termed as "waste" or "scrap". Such being the case, learned single Judge has misled himself into giving a finding that the by-product 'fly ash', which is generated during the production of electricity is a "waste" or "scrap" and, thereby, Notification No.89/95-CE dated 18.5.95 would stand attracted. The said finding of the learned single Judge is per se erroneous and is liable to be interfered with.

29. Accordingly, for the reasons stated above, this Court is of the considered view that while the finding of the learned single Judge with regard to the applicability of Notification No.89/95-CE dated 18.5.95 to the case of the respondent herein is liable to be interfered with, however, this Court finds that insofar as the finding of the learned single Judge that the by-product 'fly ash', which is formed during the production of electricity is not a product produced or manufactured falling within the ambit of Section 2 (f) of the Central Excise Act, though the same is marketable, is liable to be sustained. Accordingly, while the primary issue is answered in favour of the respondent and against the appellants, the incidental issue is answered in favour of the appellants and against the respondent.

30. In the result, the writ appeal fails and the same is dismissed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Central Board of Excise & Customs  
Government of India, Ministry of Finance  
Dept. of Revenue, North Block  
New Delhi.

2. The Commissioner of Central Excise  
No.1, Foulks Compound  
Anai Medu, Salem 636 001.

3. The Chief Engineer  
M/s.Mettur Thermal Power Station  
(A Unit of Tamil Nadu Generation &  
Distribution Corporation Ltd. (TANGEDCO)  
Mettur Dam 686 406, Salem Dist.

+1cc to Mr.V. Sundareswaran, Advocate, S.R.No.74679

+1cc to Mr.K. Jayachandran, Advocate, S.R.No.74757

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