(2001) 09 GUJ CK 0009

In the Gujarat High Court

Case No : Special Civil Application No. 4082 of 1984

Ramkrishna Mills Co. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 11-09-2001

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2, 3
Constitution of India, 1950 — Article 226, 227

Citation : (2003) 159 ELT 43

Hon'ble Judges : D.M. Dharmadhikari, C.J;R.R. Tripathi, J

Bench : Division Bench

Advocate : S.A. Mehta, for Nanavati and Nanavati, for the Appellant; S.R. Shah, for the Respondent

Final Decision : Allowed

Judgement

D.M. Dharmadhikari, C.J.—By this petition, challenge is made to the demand of Excise Duty on a by-product (half-burnt coal ash) described as cinder. According to the respondents, cinder is an excisable item falling within the Heading 26.21 of Central Excise Tariff Act, 1985 under old tariff item No. 68. Learned counsel appearing for the petitioner submits that coal ash or cinder which is obtained by use of coal in boiler for generating electricity cannot be held to be a manufactured excisable item, either under the old tariff or the new tariff. It is not disputed that the present case pertains to the old tariff item No. 68. Reliance on behalf of the petitioner is placed on the decision of Division Bench of this Court in the case of Ahmedabad Electricity Co. Ltd. Vs. Union of India (UOI), . Learned counsel for the Department has informed this Court that against this decision a SLP has been filed in the Supreme Court and is pending decision.

2. Learned counsel appearing for the Department made some attempt to point out that the decision of Ahmedabad Electricity Company (supra) pertains to the new tariff entry and therefore is not applicable to the present case. We, however, find from the Division Bench decision of this Court (supra) that in Paragraph 11

even there is a mention of the old tariff item No. 68 and reference was made to the decision in the case of Swadeshi Cotton Mills Ltd. v. Collector - 1996 (82) E.L.T. A160 (S.C.), of the Supreme Court which has held that even under the old tariff such waste or by-product called cinder is not liable to levy of excise duty under the said tariff item No. 68. Since the point raised is squarely covered by the decision of the Supreme Court, we allow this Petition. The impugned orders dated 24-4-1984 and 15-6-1984 (Annexure C) passed by the respondent Assistant Collector of Central Excise Division ID, Ahmedabad are hereby quashed.

Rule is made absolute. There shall be no order as to costs.

