**(1986) 09 MAD CK 0010**

**In the Madras High Court**

**Case No :** Writ Petition 4161 of 1980

Seshasayee Paper and Boards Ltd. APPELLANT

Vs

Collector of Central Excise, Madras and Others RESPONDENT

**Date of Decision :** 09-09-1986

**Acts Referred:**
Central Excises and Salt Act, 1944 — Section 2, 3

**Citation :** (1987) 12 ECC 228 : (1987) 28 ELT 258

**Hon'ble Judges :** Nainar Sundaram, J

**Bench :** Single Bench

**Advocate :** A.L. Somayaji, for Aiyar and Dolia and A.S. Thamhusami, for the Appellant; T. Somasundaram, Addl. Central Government Standing Counsel, for the Respondent

## Judgement

1. The petitioner manufactures paper and paper boards. In the course of such manufacture, certain items are being received as ''waste''. The

petitioner addressed a communication dated 7.12.1979, to the Assistant Collector of Central Excise, Salem in the following terms :-

Seshasayee Paper and Board Ltd.

SI/730/1130 7th December 1979

The Asstt. Collector of Central Excise,

Salem I.D.O. Salem 636 007

Dear Sir,

Re : Sale of waste

In the course of manufacture of paper, the following items are received as waster :

1. Causticizing lime sludge (50% dry)

 

2. Effluent sludge (40% dry)

3. Causticiaing hypo grits

4. Clinker ash

5. Fine ash

6. Chipper House dust.

All these years we have been throwing away the above products as waste except in the case of causticizing lime sludge in which a small quantity

was sold to Messrs. India Cements and on which duty was demanded. An appeal was also filed with Appellate Collector of Central Excise, who

has since passed orders in this regard. It is, of course, our contention that we are not liable to pay duty on lime sludge in view of the fact that it is a

waste product. We have now been getting some enquiries from parties who are interested in buying the above 6 items. We presume that no excise

duty is payable on these items if they are sold. We shall be grateful to you for a line in confirmation. We also enclose a Note giving the description

of the above items.

Thanking you,

Yours faithfully

for Seshasayee Paper and Boards Ltd.,

Sd/-

N. Subrahmanyan

Deputy Sales manager"".

2. As we could see from the said communication, there was an admission that a quantity of causticizing lime sludge was marketed by the

petitioners. In the present writ petition, we are not concerned with the other items, except caustisizing lime sludge. The petitioner has been visited

with a show cause notice by the third respondent in respect of this item, and the show cause notice runs as follows -

Office of the Superintendent Central Excise,

Komarapalayam Range

O.C. No. 330/80 dated.. 8-7-1980.

Show cause Notice

 

Sub : Central Excise - sale of waste materials... reg

Whereas it is seen that the lime sludge is obtained as a bye-product in the process of manufacture of paper and it is also stated by you that it

contains 80% to 85% calcium carborate. This product will fall under Tariff item 68 attracting an ad valorem duty of 8%. Hence you have to file the

classification list under Tariff item 68 and get it approved by the Assistant Collector of Central Excise, Erode and you have to observe all the

Central Excise formalities enshrined in the Central Excise rules and clear the goods only under gate pass 1. You have also furnished in your letter

dated 3.7.1980 that you have cleared 5519 314 MT of lime slug from 19.5.1980 to 30.6.1980 at Rs. 2.50 per MT valued at Rs. 13,798.29.

Since you have cleared the goods without central excise formalities, you may please show cause why action under rule 173 Central Excise Rules

may not be taken against you and also with the duty due i.e., Rs. 1,103.85 may not be collected from you.

The reply may be sent to the Assistant Collector of Central Excise, Erode, within one week from the date of receipt of the show cause notice,

failing which the matter will be decided (to the) ex-parte on the strength of the documents available.

If preferred you can have a personal hearing by the Assistant Collector of Central Excise, Erode Division wherein you can produce the documents

in favour of your argument.

You are once again advised to clear the lime sludge only under Central Excise formalities and in continuation of Inspector of Central Excise S.P.B.

Ltd. O.C. No. 217/80 dated 27.5.1980 and also Appellate Collector (Madras) order A. No. 732/77 MC No. V/68/167/77 dated 13.11.1978.

Sd/-

Superintendent of Central Excise, Komarapalayam

To

M/s. Shesasayee Paper and Boards Ltd. Pallipalayam, Erode-7

Copy submitted to the Assistant Collector of Central Excise, Erode Division.

Copy to the Inspector of Central Excise, SPB Ltd., Erode-7.

3. This show cause notice is the subject matter of challenge in this writ petition, and there is a prayer for the issue of a writ prohibiting the third

 

respondent from proceeding further on the basis of the show cause notice. Mr. A.L. Somayaji, learned counsel for the petitioner, would submit

that causticizing lime sludge is nothing but a waste and is not an excisable goods within the meaning of Section 3 of the Central Excises Act, 1944 -

Section 3 hereinafter referred to as the Act, and it cannot be regarded as capable of being produced or manufactured. In support of this

submission, learned counsel places reliance on the pronouncement of a single Judge of the High Court of Bombay in Indian Aluminium Co. Ltd.

and another v. A.K. Bandhyopadhyaya and others - 1980 ELT 146. The learned single Judge dealt with a case of a company manufacturing

aluminium sheets and the question that arose for consideration before him was as to whether dress and skimmings could be considered as a by-

product so as to come within the purview of excisable goods. The learned Judge expressed the view that refuse or cum 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 and end-product or a finished

product. I would have ventured to examine the proposition in detail but for the fact Mr. T. Somasundaram, learned Additional Central Government

Standing Counsel appearing for the respondents brings to my notice the latest pronouncement of the Supreme Court in Khandelwal Metal and

Engineering Works and Another Vs. Union of India (UOI) and Others, , wherein an unambiguous terms, the question as to whether ''waste and

scrap'' can be regarded as capable of being produced or manufactured has been answered in the affirmative. It is true the Supreme Court was

concerned with clause 1(b) of Entry 26-A of the First Schedule to the Act to find out as to whether it is ultra vires Section 3 of the Act or beyond

the legislative competence of the Parliament. But the principles countenanced are in general terms and it is worthwhile to advert to paragraphs 39

& 40 of the report which runs as follows :-

The next question which is raised by some of the appellants as to whether the imposition of excise duty on ''waste and scrap'' which is referred to

in clause 1(b) of Entry 26-A of the First Schedule to the Central Excises and Salt Act, 1944 is either ultra vires Section 3 of that Act or beyond the legislative competence of the Parliament. Section 3 of the Act of 1944 provides that there shall be levied and collected duties of excise on all

excisable goods, other than salt, which are produced or manufactured in India. The question as to whether ''waste and scrap'' can be regarded as

capable of being produced or manufactured, the appellant''s argument being that it cannot be so regarded, has already been answered by us in the

affirmative. 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 the manufacturing process. ''Intention'' is not the gist of the manufacturing process. We have already dealt

with this aspect of the matter and do not consider it necessary to elaborate upon it any further.

The argument of legislative competence of the Parliament as a facet of the same contention. Section 3 of the Act of 1944 brings to duty excisable

goods produced or manufactured in India. Section 2(d) of the Act defines ''excisable goods'' to mean goods which are specified in the First

Schedule as being subject to a duty of excise. Therefore, the goods mentioned in the First Schedule will attract excise duty u/s 3 only if they are

manufactured in India and not otherwise. Entry 26-A(1b) of the First Schedule of the Act of 1974 cannot be held to be beyond the legislative

competence of the Parliament, because, the pre-condition of the excisability of the articles mentioned therein, namely, waste and scrap, is in the

manufacturability of those articles. Since the production of waste and scrap is an integral part and an inevitable incident of the manufacturing

process, Parliament has the legislative competence to make ''waste and scrap'' excisable under Entry 84 of list-I of the Seventh Schedule to the

Constitution, which relates to ''duties of excise on tobacco and other goods manufactured or produced in India'', except intoxicants and narcotics.

If we take note of the above principle laid down by the highest court in the land, I cannot accept and countenance the argument put forth by the

learned counsel for the petitioner and his attempts to derive support from the judgment of the single Judge of the High Court of Bombay.

 

Accordingly, the writ petition fails and the same is dismissed. No costs.

 