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23.म अञ्चल (अस्पेरम) का कार्याभार, बदबु एक क्षेत्रा कर्य भीर नेप्कीय करवार, हुस्बरः POTENTIA SAING PALL CONTRISSIONS RESERVATOR, UST ACENTRAL CACISI

ਤਿਤੀਆਰਥ, ਸੰ(ਜਦਾ ਨੂੰ ਜ਼ਬੂਦ $\mathbb{A}^{1/2}$ Floor, $\mathrm{GSC}(50, 20)$ ve Alg Collide Cheer parts Ring Rober



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BHV-EXCUS-000-APP-003-2019

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24.01.2019

त में करने की नारीका (Onle of Insue):

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कुमार सुद्धीय, JBI (११५०) अभिन्य), सामग्रीय हाटा पारिक (१

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েশ্ব একু পুন্নি । এক, পুন্নি স্থান্ত প্ৰশ্নিক। সেনুনা, শিকীন নামাত পুন্না, নিমায়ক কৰে এই নিমায়ক, অসমীত পুনানানাৰ প্ৰতিক্ৰমান্ত সংগতিক আই এই নিমায়ক আই এই এই এই Soung on a Mark on a control of the world a 200 mark of Page 15742 প্ৰতেশিক প্ৰতিশ্বিদ্ধা (Analysis) (2005) (2005) ₹

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तीमा शुक्त कर्षेष्ठ रामान प्रकृतक समाम्य समामित सम्पूर्ण कामान समान समामित्रक समामित्रक स्थान समामित्रक समामित एक फिल प्राथमित्रक २०० वर्ष प्रमाण कि विकास समामित्रक स्थान समामित्रक समामित्रक समामित्रक समामित्रक समामित्रक स 29% eppedato Distriction and the Alexander Total Alexandria Total or a Scholar 1991 Full Alexand Challes Service Total Alexandria Total Alexandria Challes Challes Alexandria Challes Chal

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প্ৰকাশ কৰিব কৰা হ'ব। ই পিছত কৰাৰ প্ৰকাশ কৰিব কৰিব কৰিব কৰা কৰিব কৰা কৰিব কৰা কৰিব কৰা হ'ব। এই পিছত বাৰ্ড ই ইট্ কাপোনাৰ কৰাৰ বিষয়ে কৰা কৰিব কৰা কৰিব কৰা কৰিব কৰা কৰিব কৰা কৰিব কৰিব কৰিব কৰিব কৰা হ'ব। এই কৰা কৰিব কৰা কৰিব আৰু এই বাবে বিষয়ে বিষয়ে কৰা কৰা কৰা কৰা কৰিব কৰা কৰা কৰিব কৰা কৰিব কৰিব কৰা কৰিব কৰা কৰিব কৰা কৰিব কৰা কৰিব এই এই বাবে বিষয়ে কৰিব প্ৰকাশ কৰিব কৰা কৰা কৰা কৰা কৰা কৰা কৰিব কৰা কৰিব কৰা কৰিব কৰা কৰিব কৰা কৰিব কৰা কৰিব ক ra.

नार्ष (८०१) अन्य का प्राप्तान किया जीता जातर के बावर, प्राप्ता की प्राप्त की साथ स्ववान किया करा है है. जा कार्य की poolsycoodic local state, while to the Advisor for the Section 1 (1997) وبايا

ा विकास प्रकार के का प्रकार कर कर कर के जा है जो का के किया के किया कर है है अंग्रामक का कर का प्रकार की का की विकास अधिक का मान के का किया है के उन्हों की कार की किया कर है है अग्रामक का कर का प्रकार की का माने की किया क किया का अधिक का मान की कार किया है के उन्हों के अधिक का अधिक की की की का अधिक की Melampera a sector of the melamic processor of the control of the

्रभोद्धा प्रभित्ता होता को स्वास समूच्या है। जा बार का कर्षा अकार अवस्था के लिए को आहे. हैं दिन से के सामन के में किस सकता बार कार का को करना के दूसरों की बाद मिलाइस का करता भाषात्र का अकार का समान के का बाद का नाम की कुटी का दूसराई की कृष्या का कुछ अने का से का समान के साम किस से का में किस का की अवस्था का का किस का 19 की जान के कर की का सम का के बार :-: on the programment and the market of the form of the Bod was an elementary to be able to the participate of Bod to the market programment of the design of the participate of the partic

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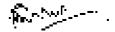
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्रम् क्षीचित्र क्षित्र में हैं, कुरम् कुमार कार मुख्य रूप रूप में निर्देश की तथी होता सकता है कि अधिक की कि की की की की आहे. अस्तरक कुमार की के कि स्वादक के को कुमार कि कार्य किस्स कार्यक के उपाद के कि अपनी सुन्ता के असी कार्य के उपाद की कार्य की स्वाद की क असी को कि विकास कर कि असी की कार्य की जिल्ला की किया है है **£**1

9 !: ORDER I<u>N APPEAL ::</u>

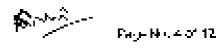
The present appeal has seen filed by W/s. GFCL Ltd., Sutrapada Veraval Kodinar Highway, Tal.: Veraval, Dest. Junegadh-382275 (heremefter referred to as "the appealant") against Order-in-Original No.AC/JND/43/2017 dated 07.12.2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissionar C/SST Division: Junegadh (hereinafter referred to as "the adjudicating authority")

The brief facts of the case are that the appellant engaged in the manufacture of ' Sobal Ash and Sodium Bio-Carponato falling under Chapter Sub-heading No. : 28382010 and 25013020 respectively of the First Schedule to the Central Excise Tariff. Act, 1986 (hereinafter referred to as "the fine products") and availing CENVAT Credit. uncker the CFNVAT Credit Rules, 2004 (boreinaffer referred to as "the CCR, 2004). The sppellant was using obablighita-based polara for generation of steam which was used for manufacture of the said final products and also evailing Cenval Crest, of duty paid on coaldignite. The Fly Ash darived from the eald bollers and classifiable under Chapter. Heading No 28.21 was attracting Central Exciso duty @ 5% Ad Valorem vide: Notification No.2/2011-CE dated 01 03:2011 (6% Ad Valorem w.e.f. 17:03:2012), with CENVAT Credit facility, end therefore, the appellant was required to day Central Excise. cuty at appropriate rate on removat of Fly Ash, to maintain 'Daily Stock Account' thereof. and to fire Monthly Return 16. ER-1 In respect of the said product also in terms of Rule. Rula 10 and Rula 12 of the Central Excise Rules, 2002 respectively. However, on. being asked, the appellant donied to consider the said product as an excisable goods. and to recognize the generation of ily ash as manufacturing process, relying upon the judgments in the cases of Shaw Wallace Celatina Ltd. reported as 2001(131). ELT397(7ri., Cel) and Ahmedabad Flectricity Co. Ltd. reported as 2003(158) ELT3(SC). said contended that it was waste product, no transaction value and the product was not markefable. Eight Show Cause Notices covering the the period March, 2011 to March, 2015 demending Centre: Excise buty of Rs. 1,73,09 8444 on Fly Ash manufactured and cleared by them were confirmed by the then adjudicalling authority under common Order-in-Original No. BHV-FXCUS-000-JC-01-09-2018-17 dated 7-4,2016 which was upheld by the thee Commissioner (Appeals). Certifal Facisal Rajkot vide Ordar-jp-Appeal No. BHV-EXCUS-000-APP-012-2017-18 dated 5.6.2017. SQN No. WS-4/D/2017-16 dated 25.7.2017 was appeared by the appellant demanding Central Excise buty of Rs. 45.99,9824 under Segtion 414(1) of the Cantral Excise Act. 1944 (here risfler referred to as "the Act) along with Interest under Section 1.1AA of the Aux and for imposition of penalty under Rule 25 and Rule 27 of Central Fixing Roles, 2002 (hersinafter referred to as "the Rules")for the period from October, 2015 to March. [2017] 08 fly e88 manufactured and dieated by them, which was adjudicated vide the impugned order wherein demand of Rs.15,99,982/- was confirmed along with interest



under Section 11AA of the Act and penalty of Rs. 15/89,982/- under Rule 25 of Fo. Rules was imposed and also penalty of Rel 5,000/ under Rule 27 of the Rules was impoped

- 3. Being aggrieved by the impugned order, the appellant filed the present appeals ਅਨਾ-ਕਵਿ, on the fo!owing grounds -
- The process by which the item emerges should amount to manufacture j.e. new ſπ. product with distinct name, character and use should emerge by processing of raw. material, and such new item emerges out of the process should be genes. A leapacter of being brought said sold or marketable. It an flow does not satisfy the pefullion of goods or the process by which the item emerges does not amount to manufacture. Dentra: Excise duty is not leviable on such item. The appellant relies on decisions in the assa of Moti Laminates reported as 1995 (76) FLT 241 (8C). Indian Alum hium reported. as 1980 (8) SLT 146 (Bond). Tala Iron & Siee, Do. Ltd. recorded as 2004 (165) ELT 335. ;3C).
- The generation of Fly Ash is morely a residue arising out of well buttli to ranboilers used in the course of manufacture of final products. By no stretch of imagination, it can be assumed that the apparant is manufacturing Fly Ash. The Griding of the lower acjudicating authority that Fly Asin is generaled during production of electricity and is thus covered under the definition of manufacture as being incidental or arctitary to the completion of manufactured product, a not sustainable. It is not the case that Fly Ash is an intermediate product required for the production of electricity further used in the manufacture of final products.
- The tower adjudicating authority has relied upon the decision of the Hon'ble 121) CESTA1 in the cash of Andrie Predesh State Finanticity Board reported as 1997 (23) ELT 324 is not sustainable in view of the fact that a contrary view in fevour or the авсезвее has been taken by the Horibic Apex Court in the case of Ahmedebad Slectricity Cu. reported as 2003 (156), ELT S (SC). The appellant also relied on following decisions wherein the Horible CESTAT has held that coal ash obtained by burning of goal (singt exclaable since it is not a manufactured product.
 - Shri Vittal SSK Ltd. 2014 (300) ELT 516 (Tri. Mumbar)
 - Snew Watane Getatines Ltd. 2001 (131) ELT 397 (Tri. DH.).
 - Railarour Industries Ltd. + 2002 (146) FI.T 623 (Trl. + Mumbai)
 - Робос: Stonewsie Рюва 2002 (148) FLT 222 (Тл. Del.)
 - RRC Ltd. = 2202 (*49) ELT 376 (Trit Murrigai).
 - Kuşum Pradacta Ltd. 2003 (656) ELT 903 (Trl. Xolkate).
 - Rexpm Strips Ind. 2003 (160) E. . 918 (Tri. Kokala)
 - Gujgraf Heavy Chemicals Ltd. = 2003 (181) ELT 578 (Tr. = Murchal)



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- (14) The decisions above were affirmled by the department by the Honicle Supreme. court in the case of Anmedahad Electropy Co. Ltd. reported as 2003 (198) ELN 3 (80). It is submitted that Fly Asn and Cinders are waste/refuse arising during the burning of coal and thus are products of a similar nature. The finding of the lower adjuscating subjointy that the decision in the case of Alimedabad Electricity Co. is distinguishable. as the same relates to dinders and not by Ash becomes unguaternable. The lower adjudicaling authority has also distinguished the judgments sited by the epsellant by stating that the decisions were issued much prior to issuence of Notification No. 2/2011-CE dated 1 3,2011 and the said Notification shows the intention of the legislature to charge Central Excise duty on Fly Ash. The appellant submitted that the Honiele High-Court of Madras, in the case of Mettur Therms. Hower Station reported as 2016 (335). bil 129 (Msd.) has decided the issue in favour of the assessee for the period after. issuance of Notification No. 2/2011-CE dated 1.3.2011 and has held that even for the j certod after 1.3.20%1, the decision of the Hombile Subremo Court in the case of Ahmadabad Electricity Co. will continue to apply to determine the cuestion whether Fly-As nike generated uptraff a manufacturing process or not and since the Hamilto Supreme. Court and the Herible High Court have answered this question in negative, there is no question of demanding Central Excise didy on Fly Ash. The lower adjudicating authority. has not commented or distinguished the said judgment of the Hoolble High Court though sited in the submission by the appellant.
- (v) Central Excise duty under Section 3 of the Act can be levied only when the goods in question eaterly the definition of excisable goods under Section 2(d) of the Act and are manufactured goods in terms of Section 2(f) of the Act. In this regard, the appellant relied on decisions in the case of Grashh Industries Ltd. reported as 2011 (273) ELT 10 (SC) and Mori I aminates reported as 1996 (76) ELT 241 (SC). It is settled law that Act are generated as residue during burning of coal used as firel in hollers cannot be considered as manufactured goods under Section 2(f) of the Act and no Central Excise Suty under Section 3 of the Act is therefore reviable.
- (vi) the existence of Notification No. 2/2011-CF dated 1.3.2011 carried an ground to hold that Fly Ash is liable to Central Erosse duly when Fly Ash is not emerging consequent to a process of manufacture. The appellant reflection decisions in the case of Kiran Spirming Mills reported as 1984 (17) ELT 326 (T). Metro Tyres reported as 1985 (60) ELT 78 (T) and Sglop Figureigns reported as 1984 (15) ELT 386 (T).
- (vii) The expansion inserted to Section 2(d) of the Act darified that the goods which can be bought and solo in the market are deemed to be trankeleble. The explanation was inserted to put to rest all doubts that may arise and that goods are not maintable in tax over though they are sold. The explanation seeks to make the Act of soft contained and so that there is no need to refer judgments or law journals. Where the

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judgments ched supra state that Fly Ash Is not manufactured, if means that Fly Ash Is not manufactured, if means that Fly Ash Is not manufactured product. A judgment has to be read in its entirety. The packground faces under which the dispute arosa capture he tost eight of. Explanation to Section 2(d) of the Act enacts the test of marketability as an essential test for dubability of goods as laid down by the Hon'ble Suprame Court in the case of Bhor industries reported as 1989 (40) ELT 230 (SC), Anibalal Sarabhai reported as 1988 (43) ELT 214 (SC) and ladian Caste Col reported as 1994 (74) ELT 22 (SC).

- (VII) There is no amendment to Section 2(f) of the Act, If the legislature Intended to doorn certain goods as manufactured goods for levy of central excise duty, a clear and specific legal fiction ought to have dean inserted either by way of amonomout in Section 2(f) of the Act or by insertion of Section Note/Chapter Note in the Tartiff as held by the Harriste Apex Court in the case of indian Aluminiam Co. Ltd. reported as 2008 (203) ELT 3 (SC) followed in the case of Vishal Pipes reported as 2010 (205) ELT 532 (T). The Fry Aan is non-marketistic commodity and even if it is assumed to be marketistic in terms of Exclanation to Section 2(d) of the Act, it cannot be conblidered as delicate unless the same is manufactured in terms of Section 2(f) of the Act
- (ix) The Fig Ash is disposed of by the appellant and is not suid by them. The department has adopted the price at which Fly Ash is sold by M/s. Aditya Birta Nuvo. Indian Rayon, Veraval. The said matner to arrive at the easequable value is confrary to Section 4 of the Art since the value of goods is transaction value. Since Fly Ash is not being sold by the appellant, Section 411(s) of the Act is not applicable and Section 4(1)(b) of the Act would be applicable. Rule 4 th Rule 10 of the Valuation Rules. 2050 would also be inapplicable to appellant's case and only Rule 11 of the Valuation Rules. 2050 remains which states that the value of any exclable goods which cannot be determined under other provisions of the Rules, is to be determined using reasonable means consistent with the principles and provisions of the Rules and Section 4(1) of the Act. It is submitted that if at all value is to be determined if can only be cost of production. Since Fly Ash is a waste and refuse generates out of burning of coal used in boilers, it has zero coat of production and therefore the assessable value is zero and no central excise is payable on the Fly Ash.
- (x) It is submitted that for demanding Central Excise duty in carrier SCN for the period September, 2011 to March, 2015, the department adopted the price of Hy Ash solid by M/s. Saurasotra Chemicals, However, the said assessed had cleared Fly Ash at the rate of Rs. 1/- PMT during January, 2012 and February, 2012, the department has continued to assess the Hy Ash generated by the Appellant during said period at the rate of Rs. 315/- PMT based on price of Hy Ash generated by the said assessed during some other months. Further, the said assessed has sold Fly Ash at a price of Rs. 3/- PMT from December, 2014 privards, the separtment has now reflect upon the price of

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Fly Ash sold by M/s. Aditya Bir a Nuvo. Verays, at a price ranging between Rs. 120/-PMT to Rs 283/ PMT. It is submitted that the above variation in value adopted by the department for the same goods is incoherent and inconsistent with Rule 11 of Valuation Rules. 2000 and the impugned order continued the duty demand to liable to be set aside.

- (xi) The lower adjudicating authority has relied on Order-in-Appeal dated 5.6.2017 passed by the ther Commissioner (Appeals), Central Excise. Rajkot, and hold that the previous adjudicating authorities have confirmed the demands, there is no reason to deviate from the stand taken by previous adjudicating authorities. It is submitted that finding of the lower adjudicating authority is not tenade in law as the appealment has prevented an appeal before the Northble CESTAT. Annotabad against the eard Coder-in-Appeal. Thus, the matter has not resoned the Smalily and hence cannot be concluded.
- (XIII) It is aubmitted that penal arrion under Ruig 25 of the Ruies can be invoked when the goods in question held table for confiscation. In the present pass, there is no question of confiscation of goods as the appallant has not cleared any dubable coods. without payment of appropriate duty. The impurped group did not held the goods tiable. for confiscation and therefore, penalty under Rule 25 of the Rules cannot be imposed. The appetent relied on decision in the base of Star Paper Mills Ltd. reported as 2003. (151) FLT 307 (T). It is submitted that noise of the clauses of Rollo 25(1) of the Rules. are applicable to the present case. Penalty under Rule 25 of the Rules is not impossible. where there is no intercent to evade payment of dust and whom penalty under Section. 11AC of the Actie not imposed as nekl by the Hon'ble High Court of Gujaral in the case. of Saurashira Coment Ltd. reported as 2010 (280) El.T 71 (Gig.) maintained by the Hon'ble Supreme Court reported as 2013 (292) Al.T A98 (80). The appellant also reliable on the decision of the Honfale High Court of Guarat in the case of Harlan Silk Industries. reported as 2018 (288) FillTi74 (Guj.) wherein it has been held that imposition of penalty under Rule 25 of the Rulas is subject to Section 11AC of the Actions the requirements under Section 11AC of the Act have to be satisfied while imposing penalty. under Rule 25. In the present asse, the impagned order has not imposed penalty under Section 11AC of the Act and penalty under Section 11AC of the Act to not impossible and therefore consity cannot be imposed under Rule 25 of the Rules.
- (xii) Penalty under Rule 27 of the Rules provides for a general panelty for any violation of the Rules where no specific penalty is provided for. Since in the present case, no Central Entire Rules are violated, the question of penalty under Rule 27 of the Rules does not arise.

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(xiv). Since no control excise duty is payable, the question of interest also does not arise.

Personal hearing in the realter was alterded by Shri Deopak Singhal, AGM on 4 cehalf of the appellant who refterated the grounds of appeal and submittee that FM Ash. s not excisable goods as hold by the Hon'ble Agex Count in the case of Ahmedadas. Electricity Co. ctd. reported as 2003 (158) EUT 3 (SC); that it is not manufactured product as held in Para 26 of the judgment, that the Honible Madras High Court in the case of Mettur Thermal Power Station recorded as 2016 (325) ELT 29 (Mad.) has also held that oven after March, 2011 i.e. after Notification No. 2/2013-CE dated 1.3.2013. Ty Ash can't be subjected to Central Excise duty; that they have not sold Fly Ash to anyone on consideration, that in such a base no Central Excise duty is payable on the basis of value of Fly Ash sold by some other company as their Fly Ash is generated ritions (grille (worst form of cost) whereas M/s. Nirms Ltd. has beet type of coals. That Rule 11 of Valuation Rules, 2000 is not correct application as their Hy Ash is not marketable/marketed; that the impugned order taking price of M/s. Nirma Ltd. for the years 2011 15 in other SCNs whereas in this SCN, the department has taken crice of W/s. Aditya Birla Nuvo and not of M/s. Nirma Ltd. as because the price of M/s. Nirma is: Rs. 14 PMT; that in view of this, the impugned order needs to be set aside and appeal. allowed.

FINDINGS:

- 5. I have sarefully gond through the facts of the case, impugned order grownds of appeal and submissions made by the appellant. The leades to be decided in the present appeal are as under: -
- (i) Whether Fly Ash generoted/produced during burning of lightle cost in boilers for generation of steam; which was used for generation of steaminity for manufacture of the line and uses a excise steam goods within the meaning of Section 2(d) of the Act;
- (ii) Whether generation/production of Fly Ash curing the process of manufacture of final angluids can be considered as manufacture within the meaning of Section 2(f) of the Act
- (iii) Whether the impugned order confirming demand of Central Excise duty along with interest and imposing penalty equal to the confirmed demand under Rule 25 of the Rules with regard to the subjected goods viz. 5 y Aah, classifying under Chapter Heading No. 28.21, in terms of Notification No. 2/20: 1 CE dated 01 03.2511 is proper or otherwise; and

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- (iv) Whether peneity under Rule 25 and under Rule 27 of the Rules imposed ancer. The impugned order is correct or not
- 6. If is on record that the adjudicating authority has confirmed the demand of Central Explainduty on the Hy Ash holding to be excisable goods under Section 2(d) of the Act, classifiable under Ch. Heading No. 28.21 and leviable to the duty under Not (ication 2/2011 CE dated 1.5.2011) whereas the appellant strongly contended that the disputed goods (i.e. Fly Ash, being a residue product having no value and being non-excisable goods could not be subjected in Central Excise Duty since the process does not arrefull to manufacture and then the sah were not marketable.
- 6.1. It is also on record that the appellant was/a engaged in manufacturing of final products via. Soda Ash, Sodium Bio-Carbonate etc. (and not fly ash) but use of coal for coal/lightte-based boriers for generation of steam/electricity was giving rise to production of fly ash. The appellant was availing Convat Credit of duty paid on coal/lightte.
- 6.2 I find that Section 3 of the Act provides that CENVAT shall be levied on all excleable goods produced or manufacture in India, which reads as under -
- Section 3: (1) There shall be levied and collected in such manner as may be prescribed a duty of excise to be called the Centra! Value Added Tax (CENVAT) on all excesses goods (excluding goods produced or manufactured in special economic collect) which are produced or manufactured in India as, and at the rates set forthing the First Schodula to the Central Excise Tariff Add, 1955 (5 of 1966).
- 6.3 . The term 'excisable goods' defined under Spelion 2(a) of the Acties under \times

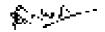
'excleable <u>pouds' means goods specifie</u>d in the F<u>irst Schedule and the Second</u>
<u>Schedule to the Contral E</u>xclea Fa<u>rtif Act. 1985 (5 of 1988)</u> as being audject to a duty of except and includes salt.

Explanation — For the purpose of this clause <u>goods</u>* induces <u>any article, insterio or substance which is capable of being bought and ecid for a consideration and such goods shall be marketable.</u>

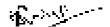
6.4 If the term: "manufacture" defined under Section 2(f) of the Actiae under:

"manufacturo" includes any process – i

- Incidental or ancillary to the completion of a menufactured product.
- 6.5. The conjunctive reading of Sections 2(a), 2(f) and 3 of the Act makes clear that in order to levy Central Excise duty on any existe, materia, or substance, it must be an excessible goods specified in the Central Excise Tariff Arr., 1985, it should be manufactured or produced and capable of being dought and sold for a consideration.



- B.B. In the present resp. I find that 5 y Ash leaves emerged as a by-product during the process of combustion of chair for generation of steem/electricity, which were used further for manufacturing of the earli-final products and Fly Ash is finding stace in the Hist Schedule of the Central Excise Tariff Art, and the same was classifiable under Chapter Hoseing No 26.21, attracting Central Excise duty @ 5% Ad Velorem 16% Ad Valorem wielf 17,03,2012), vice Notification, No.2/2011-CE, dated 01.03,2011, as amended.
- , also find that by ash is a commodify distinct from coal having a pifferent name unadamentalitis and use and is produced during burning of soal in bolleys for generation. of ateam for further use in the manufacture of moir final products, I also find that the appellant is availing convat gradit on goal used for manufacture of their (inst coudules and Hy Aéh is capable of being sold in the market as done by other manufacturers like. M/s. Aditya Brita Nuvo, Verevst. M/a. Nirma Limited, Porbandar and is used for the purpose of production of asbestos, comerc, fly set; bricke, etc. and thus, the product is capable of being bought and sold, whereby marketability of the product is such togt it has a value in the market. The appealant relied upon case laws in their favour, however. I find that the issue involved in those cases was related to other goods such as scapstack, asrap, waste, caringa, stress & skimmings of Aluminium/Zinc/Steela/other nonferrous metal, however fry ash is not identical to the goods under reference in the basic on hand I find that the Appellate 1 ribunals/Courts in the said case laws have dealt with the issue with reference to word knunctionared deployed in Section 3 of the Act and not decided the matter of goods. "produced", which is very vital facts for the case in hand. I place religince on the decision of the Hon'ble Atahabad High Court in the case. of Cuch Sugar Mils Lic. reported as 1982 (10) ELT 957 (All) wherein it has been held that any by-product or intermediary product would be dovered by the word 'product on' in Section 3 of the Abl. I also find that the Hon'ble Supreme Court in the case of Khandelwal Metal & Engineering Works reported as 1985 (20) ELT 222 (S.C.). Itas keki that waste and ecrap are by-products of the process of manufacture and are inevitably incidents, to the manufacturing process. Therefore, in the instant case, it clearly implies that the combustion of coal is incidental/andilary process for manufacturing of the final products, during the course of which By Ash is produced. As regard the appellant's relance in the case of Anniecabad Electricity Company Ltd (isuprai), I find that the goods involved in that case was feinder, held to be con excisable goods being undurnt part of scal, produced without having gone through the manufacturing process, which is and the case here. Fly Ash was is produced during the combastion of coal in the course. of manufacturing of their final products, hands the said case law is not applicable. I further find that the FIv Ash produced is a new and distinct product having different use. and fly set has slee been specified in Central Excise Tariff and can be Lought and solufor consideration, as is evident from the facts available and practices adopted by other



manufacturers, who deared similar Tylash on payment of duty on the basis of Sale value and sessessable value of fly ash in this case has been surved at on that basis in the impugned order.

- In the case of Anmedabad Electricity Company Ltd. (2003) in their support. I observe that the said case was conded much pour lu issuance of the Natification No. 2/2011-CF clared 01.03.2011 which shows that the legislation after considering the said decision has consciously peopled to there is no acceptable to all the legislation is very dear and hence, I find that there is no accept tylabout charging of central excise duty on the said goods.
- 6.3 The appelant relied on the decision of the Hon'dic High Court of Madras in the case of Metric Thermal Power Station reported as 2019 (335) ELT 29 (Msd.) wherein the Humble High Court has perided the Issue In tayour of the assessee for the period even after result to a Notification. No. 272011-CE dated 1,3,2011 and has hold that even for the period after 1,3,7011, the draft on of the Hon'ble Supreme Court in the case of Annecabad Electrony Co. will continue to apply. If no that the said decision has been chollenged before the Hon'ble Supreme Court and therefore, ratio of this decision cannot be applied in the present case.
- Regarding argument of the appolant for non-applicability of Rule 11 of the Maluation Rules. 2000, I find that the appellant has disposed off their fly ash without consideration. However, it is sected legal position that levy of excise duty is on the maint acture or production of the goods and that tovishility of duty is linked to the maintracture or production and once the salid product is held to be excisable grows produced duting process ancillarly to _the completion of a manufactured product capable of being bought and sold in market and finds place in the First Schedide to the Central Excise Tailff Act, 1995. Control Excise duty has to be revised. Since, except Pulle 11 fixed all rules of the Central Excise Valuation (Determination of Priors of Excisable Goods) Rules 2000 covers contingencies where sale or self-consumption is involved in some form or other therefore, in such case, the assessable value would be determinable in terms of residuary rule in Rule 11 of the Valuation Rules 2000, which has compatible been educated in the impugned order. I know, there is no force in the appellant's arguments in this regard.
- 8. Hence, I held that Fiy Ash is an excisable goods having satisfied the lest of marketability as it is capable of being purchased and sold in the market, thus needs to be subjected to control excise duty as per Notification No. 2/2011-CE called 01.03.2011 as amended. The appellant is therefore Table to pay duty along with interest.

Spanish ...

- Regarding imposition of ponelty under Picle 25 of the Rules, I find that penalty under Rule 25 of the Rules is impossible subject to provisions of Sparion 11AC of the Act. In the present case, SCN demanding central exceed duly on fly ast produced during the subsequent period has been agreed when has been continued in the impugned order. There is no allegation to the effect that there was any fread, collusion or any willful misstatement or suppression of facts on that the contravention of Rules with intention as exact payment of duty and there was no proposal of confiscation of goods. Therefore, I find that behalfly under Rule 25 of the Rules is not inconside. Sence, I set aside the penalty of Rs. 15,90,9824 impossed under Rule 25 of the Rules. Individual Rules I uphola the penalty of Rs. 5,0004 imposed under Rule 27 of the Rules.
- 10. In Yew of above factual and legal ensilion. I uphoid the impropried order for demand and interest but set aside penalty of Re. 15.59.962/ imposed under Rule 25 of the Rules and modify the impugned opporto this extent.

११. अपीलकर्ता बुवारा दर्ज की गई अपील धर निपदारा अपरोक्षत सरीके से किया जाता है।

11. The appeal find by the appellant stands disposed off in above terms

E-A-CART CAR

्हि_{या} प्रियम् विकास (कुमार सैलिय) ^{दिल}े^{र्ग भारति} प्रधान आयक्त (अवील्स)

By Repd. Host AC

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M/s. OHOL Ltd.,

ं हो, जी एवं.सी.एस. ब्रिमिटेड.

Surrapada,

Veraval Kodinar Highway, Tal.. Vere ^{सूत्रमङा,}

Cisc Junagadh-362275

सञ्चा.

देशवक कोडिनार हाईबे,

उंदासस्य,

<u> अस्ट्रिक्ट – जूनागरू – २६२२४%</u>

<u>Conviter</u>

- 1) The Principal Chief Commissioner CCST & Central Excise, Ahmedetad Zona, Ahmedebad for favour of kind information
- The Commissioner, CGST & Central Excise Commissionerate Bhavnagar for necessary sollon.
- The Assistant Commissioner, CSST Division, Junegath for necessary action.
- #i Guard file