



NITYA'S INSIGHT

Tax Alert | Madras High Court holds that generation of fly ash is not manufacturing activity

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Dear Reader,

This is to update you on a recent ruling of the Madras High Court in the case of **Mettur Thermal Power Station vs The Central Board of Excise and Customs and The Commissioner of Central Excise, W.P.No.17282 of 2014** dated 15.7.2015. Copy of the judgment has been attached for ready reference.

In this case, the petitioner filed a writ petition against the Show Cause Notice wherein excise duty on fly ash and fly ash bricks was demanded. The notice was issued basis the Explanation inserted in the definition of 'excisable goods' in the Central Excise Act, 1944, stating that any article, material or substance which is capable of being bought and sold for a consideration shall be deemed to be marketable, was also placed before the Court.

The Court allowed the petition on the ground that generation of fly ash does not involve any manufacturing activity. The Court relied upon the decision of the Supreme Court in the case of **Ahemdabad Electricity Company Limited, (2002) 11 SCC 129**, wherein it was held that cinder (unburnt part of coal) is not eligible to excise duty. Applying the ratio of the above Supreme Court judgment to fly ash, the High Court held that no excise duty can be demanded on fly ash, even after the Explanation has been inserted in the definition of 'excisable goods'.

In respect of fly ash bricks, the Court held that the process of making fly ash bricks would tantamount to manufacture and excise duty will be payable on the same.

We hope that you will find this update useful. For any clarification, please feel free to revert.

Regards,

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