

## Sludge manufactured unintentionally cannot be treated as an 'exempted goods' – CESTAT

6 December 2021



## Summary

The Customs, Excise, Service Tax Appellate Tribunal (CESTAT) Chennai observed that the sludge emerging from effluent treatment plant is a waste and cannot be considered as a manufactured product. The appellant needs to comply with the pollution control requirements and therefore maintain the effluent treatment plant and remove the waste as per the effluent norms. The CESTAT observed that no manufacturer would consciously manufacture waste rather they would be happy in case where less waste or no waste is generated to reduce the burden of maintaining the effluent treatment plant and transportation of the sludge. Therefore, the CESTAT held that it cannot be said that the waste/sludge is an 'exempted goods' manufactured by the appellant. Further, the CESTAT set aside the demand of 10%/5% on value of sludge removed as required under Rule 6(3) of the CENVAT Credit Rules, 2004.

### Facts of the case

- The appellant<sup>1</sup> is engaged in manufacture of Gelatine, Phosphoryl (A), Phosphoryl (B) in their unit situated at Ooty.
- During the manufacturing activity, waste arising from such manufacture is drained into Effluent Treatment Plant. The solid waste removed from the Effluent Treatment plant is 'sludge' and it is removed daily to their dumping yard wherein it gets naturally dried for a few months. The dried sludge is crushed and packed in small bags and sent to fertiliser manufacturers.
- The department alleged that the appellant is also manufacturing exempted product namely 'sludge'. Therefore, since the appellants have used common inputs for manufacture of dutiable product (gelatine) and exempted product (sludge) and did not maintain separate accounts as required<sup>2</sup>, they are liable to pay an amount equal to 10% / 5% of the total value of the exempted sludge cleared by them for the along with interest and penalty.
- The demand for the period prior to 10 May 2008 was set aside by the Commissioner (Appeals) and the demand, interest and penalty for the subsequent period was upheld. Aggrieved by such order, the appellants filed present appeal before the Tribunal<sup>3</sup>.

### CESTAT Chennai observations and ruling<sup>4</sup>:

- **Waste is not consciously manufactured:** During manufacture, the waste that arises is drained into the Effluent Treatment Plant. The sludge is dried and thereafter sold to fertiliser manufacturers. The appellant needs to comply with the pollution control requirements and therefore maintain the Effluent Treatment Plant and remove the waste as per the effluent norms. Therefore, such waste arises during the manufacturing activity and is not manufactured consciously.
- **Sludge is not an exempted good:** A manufacturer would be happy in a situation where there is less waste as it leads to minimal maintenance of effluent treatment

<sup>1</sup> Sterling Biotech Ltd

<sup>2</sup> under Rule 6 (3) of CENVAT Credit Rules, 2004

<sup>3</sup> EXCISE APPEAL No. 41097 of 2013

<sup>4</sup> FINAL ORDER No. 42452 / 2021 dated 25 November 2021

plant. No manufacturer would consciously manufacture waste and thus, it cannot be said that sludge is an exempted good manufactured by the appellant.

- **Demand on value of sludge cannot sustain:** Sludge emerging from effluent treatment plant is in the nature of waste and cannot be considered as manufactured product. Therefore, demand of 10%/5% of value of sludge cannot sustain.

### Our comments

The Apex Court in the case of Hindustan Zinc Limited had held that when a by-product emerges as a technical necessity, it cannot be said that any inputs have been used for the manufacturer of the by-product. Therefore, the SC had held that there was no need to maintain separate accounts or payment of 8% under Rule 6 of the CENVAT Credit Rules, 2004. Further, similar ruling was pronounced by the Hon'ble Mumbai Tribunal in the case of M/s JSW Steel Ltd. wherein it had observed that credit of that quantity of raw materials shall be allowed which is required for manufacture of the intended quantity of final products, irrespective of the fact that certain by-products emerge as technical necessity. Thus, the Tribunal had held that the demand of reversal of ITC on inputs used in manufacture of by-product or waste under Rule 6(3) of the CENVAT Credit Rules, 2004 is not sustainable.

This is a welcome ruling by the CESTAT and shall provide required relief to the manufacturing sector and will set precedence in similar matters. Further, an analogy can also be drawn under the GST regime since similar provisions exist even under the GST law.

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