

Circular No. 1027/15/2016-CX

F. No. 96/115/2015- CX.1
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise & Customs)

New Delhi, dated the 25th April, 2016

To
Principal Chief Commissioner /Chief Commissioner of Central Excise (All),
Principal Chief Commissioner /Chief Commissioner of Central Excise and
Service Tax (All),
Principal Commissioner of Central Excise, Service Tax (All),
Web-master, CBEC

Madam/sir,

**Subject:- Withdrawal of Circulars/Instruction on excisability of
bagasse, aluminium/ zinc dross – reg.**

Excisability of bagasse and similar other by-products or wastes arising during the course of manufacture of an excisable product has been an issue under dispute. Following circulars/instruction have been issued from time to time on the subject:-

- (a) Circular No. 904/24/2009-CX dated 28.10.2009,
- (b) Circular No. 941/02/2011-CX dated 14.02.2011,
- (c) Instruction F.No.17/02/2009-CX (Pt.) dated 12.11.2014.

2. The issue came before the Hon'ble Supreme Court in a case of M/s Union of India and Ors vs M/s DSCL Sugar Ltd [2015-TIOL-240-SC-CX] dated 15.07.2015. Hon'ble Supreme Court examined the issue and reaffirmed that bagasse is not a manufactured product. The Judgement applies to both periods, before and after the insertion of explanation in Section 2(d) of the Central Excise Act, 1944 by the Finance Act, 2008. It may also be noted that Hon'ble High Court of Bombay in case of M/s Hindalco Industries Ltd. vs. Union of India [2015(315)E.L.T.10 (Bom.)] came to similar conclusion in relation to dross and skimming of aluminium, zinc or other non-ferrous metal.

3. In the light of the above judgments, circulars of the Board on the subject viz 904/24/2009-CX dated 28.10.2009, 941/02/2011-CX dated 14.02.2011 and instruction issued vide F.No.17/02/2009-CX(Pt.) dated 12.11.2014 have become non-est and are hereby rescinded. Cases kept in Call Book on the above issue may be taken out and adjudicated.

4.1 It may also be noted that rule 6 of the Cenvat Credit Rule (CCR), 2004 was amended with effect from 01.03.2015 by inserting explanation 1 and explanation 2 in sub-rule (1) of rule 6. These explanations continue in the present rule 6 also and are reproduced below for ease of reference :-

“Explanation 1. – For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory.”

Explanation 2. – Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made thereunder.”

4.2 Consequently, Bagasse, Dross and Skimmings of non-ferrous metals or any such byproduct or waste, which are non-excisable goods and are cleared for a consideration from the factory need to be treated like exempted goods for the purpose of reversal of credit of input and input services, in terms of rule 6 of the CENVAT Credit Rules, 2004.

5. Difficulty experienced, if any, in implementing the circular should be brought to the notice of the Board. Hindi version would follow.

(Santosh Kumar Mishra)
Under Secretary to the Government of India