

F No. 17/02/2009-CX-I

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise and Customs

New Delhi, 28th October, 2009.

To

The Chief Commissioners of Central Excise (All),

The Commissioners of Central Excise (All)

Director General of Central Excise Intelligence

Subject: - Clarification regarding excisability of Bagasse, Aluminium/Zinc Dross and other such products termed as waste or residue or refuse arising during the course of manufacture – reg

Sir,

References have been received from field formations on the issue of excisability of Bagasse and Aluminium/Zinc Dross.

2. The matter has been examined. Excisability of bagasse and similar waste products arising during the course of manufacture has been under dispute for a long period of time. There are number of Tribunal's judgments that being waste, these are not excisable products. Departmental appeal in respect of excisability of bagasse in one such case i.e Balrampur Chinni Mills Ltd. is reportedly still pending in the Supreme Court. Generally, the courts have been taking a view that the waste or refuse or residue arising during the course of manufacture can-not be treated as excisable goods even if such waste fetches some price in the market. However, all these matters pertain to the period prior to 2008.

3. In the budget of 2008, the definition of "excisable goods" in clause (d) of Section 2 of the Central Excise Act, 1944 was amended by adding an explanation that for the purposes of this clause, "goods" include any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

4. It is clarified that with this amendment in Section 2 (d), the bagasse, aluminium/zinc dross and other such products termed as waste, residue or refuse which arise during the course of manufacture and are capable of being sold for consideration would be excisable goods and chargeable to payment of excise duty.

5. Field formations are advised to take suitable action for ensuring recovery of duty from the assessees in respect of these goods for the period after the budget of 2008. It is further clarified that in case the rate of duty in respect of such products is Nil in the tariff or they are exempt from duty in terms of any exemption notification, and if Cenvat Credit has been taken on the inputs which are used for manufacture of dutiable and exempted goods, then in terms of rule 6 of Cenvat Credit Rules, 2004, the assessee is required to reverse the proportionate credit or pay 5% amount.

6. The cases prior to 2008 for excisability of bagasse may continue to remain in call book till department's appeal is decided in the case of Balrampur Chinni Mills Ltd.

7. Trade and Industry may be informed.

8. Receipt of this circular may be acknowledged

9. Hindi version would follow.

Yours faithfully,

(Sushil Solanki)

Commissioner (CX)