Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Excise Appeal No.11106 of 2018-SM
(Arising out of OIA-VAD-EXCUS-002-APP-676-2017-18 dated 01/12/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Gujarat Mineral Development Corporation Ltd **.........Appellant**
Lignite Project, Rajpardi, Taluka-Jhagadia,
Bharuch, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-ii **.........Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

WITH

Excise Appeal No.11110 of 2018-SM
(Arising out of OIA-VAD-EXCUS-002-APP-676-2017-18 dated 01/12/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Gujarat Mineral Development Corporation Ltd **.........Appellant**
Lignite Project, Rajpardi, Taluka-Jhagadia,
Bharuch, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-ii **.........Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

APPEARANCE:
Shri Rahul Gajera, Advocate for the Appellant
Shri. Vinod Lukose, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A/ 12418-12419 /2021

DATE OF HEARING: 30.09.2021
DATE OF DECISION:06.10.2021

RAMESH NAIR

The issue involved is that whether the appellant is required to pay an amount as per Rule 6 of Cenvat Credit Rules, 2004 in respect of exempted product, namely, Silica Sand and Ball Clay when the input service is used for mining of Lignite as well as Silica Sand and Ball Clay.

2. Shri. Rahul Gajera, Learned Counsel appearing on behalf of the appellant submits that Silica Sand and Ball Clay are by-product which are generated during excavation of Lignite. This Silica Sand and Ball Clay are

excavated from the upper layer during the mining which is unavoidably generated as the main product is Lignite, therefore, both the products are being by-product, no amount is required to be paid in terms of Rule 6. He further submits that as per the contract with the contractor for excavation, it is only in respect of Lignite and the payment terms is also with respect to the Lignite only and no payment is made for excavation of by-product namely Silica Sand and Ball Clay, for the reason that Silica Sand and Ball Clay is unavoidably generated while mining of Lignite. He further submits that in case of by-product no demand under Rule 6 is sustainable as held in various judgments which are relied upon as under:-

- CCE vs Sterling Gelatin 2011 (270) ELT 200
- Upheld in 2015 (320) ELT A343 (SC)
- Balrampur Chini Mills Ltd. 2019 (368) ELT 276 (ALL)
- UOI vs DSCL Sugar Ltd. 2015 (322) ELT 769 (SC)
- CC Raipur vs Sharda Energy and Minerals 2014 (34) STR 618
- Bajaj Hindustan Ltd. Vs CCE Meerut 2012 (286) ELT 397 (Tri. Del.)
- Triveni Engg. & Ind. Ltd. Vs CCE Allahabad 2014 (302) ELT 246
- CC vs Auto Ignition Ltd. 2008 (226) ELT 14 (SC)
- CCE vs Sangrur Agro Ltd. 2006 (202) ELT 835
- Upheld by P&H High Court 2010 (254) ELT 25 (P&H)

2.1 He further submits that one of the show cause notice is completely barred by limitation. The issue in the present case is one of the interpretation of Rule 6 and the appellant have acted on the basis of the interpretation for which appellant's bonafide belief is correct based on various decisions. Even assuming while denying that the said interpretation is not correct that cannot be ground for invocation of extended period. The demand of beyond normal period of limitation is barred by time. He submits that the appellant being a Government Corporation cannot have a malafide intention to evade duty, for this reason also, the extended period is not invokable.

- Commr. Of C. Ex. Jaipur-I vs Rajashtan Renewable Energy Corpn. Ltd. 2018 (15) GSTL 661 (Raj.)

- Tamilnadu State Transport Corpn. (Coimbatore) LTd. Vs CCE 2019 (28) GSTL 225 (Tri. Chennai.)

3. Shri Vinod Lukose, Learned Counsel appearing on behalf of the revenue reiterates the finding of the impugned order. He further submits that there is no difference between Lignite, Silica Sand and Ball Clay which are excavated in the same mining process, therefore, there are three different minerals, it cannot be considered that two product out of these three are by-product, therefore, the product namely Silica Sand and Ball Clay are also the final product as well as being exempted product, Rule 6 shall apply and appellant is required to pay an amount under Rule 6 of Cenvat Credit Rules, 2004. He placed reliance on the following judgments:

- CCE Thane-I vs Nicholas Piramal (India) Ltd. 2009 (244) ELT 321 (Bom.)
- CCE & Cus Vadodara-II vs Unimed Technologies Ltd. 2018 (17) GSTL 181 (Guj.)

4. I have carefully considered the submissions made by both the side and perused the records. To understand that which is the main product and which are by-product, it is necessary to see the nature of work contracted with the contractor. Some relevant Clauses of contract are reproduced below:-

Description of Work

i **Work of Lignite Mining, Loading and Dispatch**: Work of Lignite Mining, Loading and Dispatch which includes excavation, transportation and unloading of OB/IB up to dump, dozing, spreading, levelling, dust suppression, road formation, excavation and loading of lignite in to consumer trucks/ dumpers from mines face, loading/ unloading of lignite from trucks / dumpers in case of excess/ shortage (Vadh/ Ghat) in desired tonnage of lignite to be loaded in Trucks/ dumpers and related ancillary activities requires to be carried out under turnkey mining contract.

iv **Overburden (OB)**: Lignite being sedimentary in nature occurs either in a single layer or in multiple layers at various depths. Opencast mining method to win this lignite involves excavation of the entire overlying materials up-to the depth of lignite formation in the target area. The materials lying from the surface level to the first layer of lignite in the target area is termed ar Overburden (OB). For the purpose of the agreement, the OB materials chiefly constitute top soil, silica sand, sandstone, clay, shale etc.

B. Method of Mining

i. Lignite has been mined by opencast mining method, using conventional mining machinery like hydraulic shovels and dumpers for OB/IB removal and excavation & loading of lignite in to consumer's trucks or dumpers/ trucks of other agency from mines working face as directed by GDMC. Entire mining operations, inclusive of all ancillary operations, are to be carried out by the contractor. The entire topsoil excavated from the mining area will be stacked separately or spread over the reclaimed area as directed by the General Manager (P). Other minerals like Silica sand, Ball clay or any other economic mineral, if found in the mining area, will be mined out separately and shall be stacked at placed as may be advised by the Mine Manager or loaded into consumer's trucks for which no extra payment will be made.

4.1 From the above it is clear that the main contract is for mining of Lignite while doing the excavation to achieve Lignite, the over burden has to be removed and this over burden constitute Silica Sand and Ball Clay etc., thereafter the Lignite is excavated. With this it is clear that to excavate the Lignite unavoidably upper layer has to be removed and, in that process the said by-products are also removed. Therefore, from the nature of mining of Lignite as discussed above, it is clear that the Silica Sand and Ball Clay are generated unavoidably which is inevitable.

5. Learned Counsel has also submitted a chart giving ratio of main product i.e. Lignite, Silica Sand and Ball Clay according to which almost 98% to 99% is the Lignite and remaining very small percentage of these by products. This also show that the Silica Sand and Ball Clay are by-product. As per para 3.7 of Chapter 5 of CBEC's manual which is reproduced below:-

> *"3.7 CENVAT Credit is also admissible in respect of the amount of inputs contained in any of the waste, refuse or by-product. Similarly, Cenvat is not to be denied if the inputs are used in any intermediate of the final product even if such intermediate is exempt from payment of duty. The basic idea is that Cenvat credit is admissible so long as the inputs are used in or in relation to the manufacture of final products, and whether directly or indirectly."*

From the above para, it is clear that any input/input services contained in any by-product/waste/refuse, Cenvat Credit cannot be varied or denied. With this logic demand under Rule 6 in respect of by-product is not applicable. This issue has been considered in various judgments as cited by Learned Counsel. Once it is established that the product in question are by-product then it is settled in respect of by-product demand under Rule 6 will not sustain. Accordingly, in the present case also, Silica Sand and Ball Clay being a by-product, no demand under Rule 6 shall sustain.

6. Accordingly, the impugned orders are set aside and appeals are allowed.

(Pronounced in the open court 06.10.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

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