

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No.52029 of 2018 (DB)

(Arising out of Order-in-Appeal No.BHO-EXCUS-002-APP-522-17-18 dated 22.03.2018 dated 26.11.2014 passed by the Commissioner (Appeals), Central Excise & Customs, Raipur (C.G.)]

M/s. Monnet Ispat & Energy Ltd.

Village & Post Naharpali,
Tehsil, Kharsia,
Distt.- Raigarh (C.G.).

Appellant

VERSUS

**Commissioner of Customs &
Central Excise,**

Bilaspur Central Excise Bhawan,
Dhamtari Road,
Raipur-492 001 (C.G.)

Respondent

APPEARANCE:

Shri Gaurav Agarwal, Advocate for the appellant
Shri H.C. Saini, Authorised Representative for the respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Hon'ble Mr. Bijay Kumar, Member (Technical)

FINAL ORDER NO.53632/2018

DATE OF HEARING/DECISION: 17.12.2018

ANIL CHOUDHARY:

The brief facts are that the appellant is a manufacturer of sponge iron and angles/beams falling under Chapter 72, which are dutiable. One of their inputs is coal. The appellant purchases coal from South Eastern Coal Fields Ltd. (SECL), a Public Sector Undertaking. The appellant was taking cenvat

credit on the invoices for coal. The Department initiated inquiry against the SECL as regards valuation of coal. The Department raised demand on SECL alleging short payment on account of non-inclusion of Royalty, Stowing excise duty, Forest Cess, Terminal Tax, C.G. Vikas Upkar, Entry Tax and C.G. Paryavaran Upkar and Transit Fee, etc. That SECL did not agree with the view of the Department, however, they deposited differential duty under 'protest' and also issued 'supplementary invoices' on their buyers including this appellant. The appellant paid the availed cenvat credit on such supplementary invoices. It appeared to Revenue that no cenvat credit as per Rule 9(1) (b) of the Cenvat Credit Rules, 2004 can be availed by the appellant as the additional duty paid by SECL became recoverable on account of short levy by reason of suppression of facts, etc. As the appellant has taken cenvat credit of Rs.1,00,20,623/- (including an amount of Rs.55,68,138/-, where the credit was availed after one year from the date of issue), accordingly, alleging the contravention of the provisions of CCR, 2004, show cause notice dated 11.03.2016 was issued for the period 2010-2011 to 2014-2015 invoking the extended period of limitation, along with proposal to impose penalty.

2. The show cause notice was adjudicated on contest confirming disallowance as proposed with interest and equal amount of penalty under Rule 15(2) of Cenvat Credit Rules.

3. Being aggrieved, the appellant preferred appeal before the Id. Commissioner (Appeals), who vide impugned order, has been pleased to dismiss the appeal. Being aggrieved, the appellants are before this Tribunal.

4. Heard the parties and perused the case records.

5. From the facts and circumstances, we find that SECL has contested the demand being a valuation dispute, being duty demanded as short paid due to change of opinion on the part of the Department, that the value of the goods /coal shall include elements like royalty, stowing excise duty, etc. SECL is registered with the Department for many years prior to the dispute raised and further, they have disputed the contention of the Revenue and paid the duty under protest. We further find that as recorded in para 4.3.1 of the Order-in-Original that the issue whether the amount of royalty and stowing excise duty etc. can be added to the transaction value under Section 4(3)(d) of the Central Excise Act, is pending before Nine Member Bench of the Hon'ble Supreme Court and the reference in this respect is made by the Apex Court in the case of **Mineral Area Development Authority and Others vs. Steel Authority of India Ltd. and others reported in 2011 4 SCC 450**. The Hon'ble Supreme Court referring to its earlier decisions in **India Cement Ltd., Union of India Vs. Azadi Bachao Andolan and Others** has referred the matter to the Larger Bench of Nine Judges. Thus, evidently the issue of valuation is lying pending before the Hon'ble Supreme Court since the year 2010-2011. Thus, evidently, the show cause notice has been issued on the appellant, in a disputed matter, which is a matter of interpretation and the issue is admittedly pending before the Constitution Bench of Hon'ble Supreme Court. Further, there being conflicting decisions of the Apex Court, the matter has been referred by the Hon'ble Judges to the Constitution Bench of Nine Judges. Thus, there is no case of any

suppression and fraud, etc. on the part of the SECL or on the part of the present appellant.

6. Accordingly, we hold that the appellant is entitled to cenvat credit on the supplementary invoices in question issued by the SECL. Accordingly, we allow this appeal and set aside the impugned order. The appellant is entitled to consequential benefits in accordance with law.

(Operative part already pronounced in open court)

(Anil Choudhary)
Member (Judicial)

(Bijay Kumar)
Member (Technical)

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