CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3

EXCISE APPEAL NO. 51669 OF 2022

[Arising out of Order-in-Original No. RPR/EXCUS/000/COM/AUDIT/17/2022 dated 31.03.2022 passed by the Commissioner (Audit), CGST & Central Excise, Central GST Bhawan, Dhamtari Raod, Tikrapara, Raipur]

HINDALCO INDUSTRIES LTD **......APPELLANT**

Under Ground Coal Mines Village &
PO: Milupara, Tehsil-Tamnar,
Dist. Raigarh
Chhattisgarh-496 107

Vs.

COMMISSIONER, CENTRAL EXCISE & CGST-RAIPUR **......RESPONDENT**

Commissioner CGST & GST Bhawan,
Dhamtari Raod, Tikrapara, Raipur-492 001,
Chhattisgarh

WITH

EXCISE APPEAL NO. 51670 OF 2022

[Arising out of Order-in-Original No. RPR/EXCUS/000/COM/AUDIT/18/2022 dated 31.03.2022 passed by the Commissioner (Audit), CGST & Central Excise, Central GST Bhawan, Dhamtari Raod, Tikrapara, Raipur]

HINDALCO INDUSTRIES LTD **......APPELLANT**

Gare Palma IV/4 & IV/5,
PO: Milupara, Tehsil-Tamnar,
Dist. Raigarh
Chhattisgarh-496 107

Vs.

COMMISSIONER, CENTRAL EXCISE & CGST-RAIPUR **......RESPONDENT**

Commissioner CGST & GST Bhawan,
Dhamtari Raod, Tikrapara, Raipur-492 001,
Chhattisgarh

Appearance:

Present for the Appellant : Ms. Sukriti Das and Ms. Daliya Singh, Advocates
Present for the Respondent: Shri Rakesh Agarwal, Authorised Representative

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO’S. 50276-50277 /2025

Date of Hearing/Decision: 28/01/2025

BINU TAMTA:

1. The issue in the above appeals relate to recovery of Clean Environment Cess[1] from the appellant on the closing stock of coal as on 30.06.2017 and removed on or after 01.07.2017 on repeal of the Finance Act, 2010.

2. The submissions of the learned counsel for the appellant is that the issue is no longer *res integra* and has been decided by the decision of the Principal Bench in the matter of **South Easter Coalfields Limited** vs. **Commissioner (Audit), CGST & C.Ex., Raipur[2],** and subsequently by the Kolkata Bench in **Bharat Coking Coal Limited vs. Commissioner, CGST & Central Excise, Ranchi[3],** whereby it has been held that on the repeal of the Finance Act, 2010, CEC is not payable on the closing stock of coal lying as on 30.06.2017 and, therefore, the demand was set aside. The relevant paragraph of the decision in **South Eastern Coalfields Limited** is quoted below:

> "50. In the instant case, the position is different. Section 83(3) of the 2010 Finance Act provided that there shall be levied and collected in accordance with the provisions of the Chapter a cess at the rates set forth in the Tenth Schedule. Section 83(3) was repealed by section 18(1) of the 2017 Taxation Amendment Act w.e.f. 01.07.2017 and consequently the 2010 Rules also stood repealed. However, a new levy of cess, namely, the GST Compensation Cess @ Rs. 400 per M.T. was made leviable w.e.f. 01.07.2017 under the provisions of the 2017 Compensation Act. Section 18(2) of the 2017 Taxation Amendment Act merely provides that notwithstanding the repeal of section 83(1) of the 2010 Finance Act, the liability already acquired, accrued or incurred shall not be affected. In the present case, as the goods were removed on or after 01.07.2017, liability had not accrued or incurred on 30.06.2017 and even section 19 talks of collection and payment of arrears of duty. The appellant admittedly paid GST Compensation Cess w.e.f. 01.07.2017. The department

1 CES
2 2024 (1)TMI 179-CESTAT New Delhi
3 Final Order No. 77199 of 2024 dated 04.10.2024

> is, however, contending that the appellant should have paid cess under section 83(3) of the 2010 Finance Act read with 2010 Cess Rules @ Rs. 400 per M.T. on goods lying in stock as on 30.06.2017, but removed on or after 01.07.2017 and not the GST Compensation Cess @ Rs. 400 per M.T. The decision of the Supreme Court in Vazir Sultan Tobacco, therefore, does not help the department."

3. Considering the law laid down above, we find that the appellant having Unit-I and Unit-2 are engaged in the production of coal and were discharging the CEC chargeable on coal. Prior to introduction of GST, the appellants were discharging the excise duty liability along with CEC levied on it under section 83 of the Finance Act, 2010. With the introduction of the GST, w.e.f. 01.07.2017, the appellants cleared the closing stock of coal as on 30.06.2017 on payment of applicable GST and Compensation CEC on or after 01.07.2017, since the CEC levied under section 83 of the Finance Act, 2010 was repealed by section 18 (i) of the Taxation Laws (Amendment) Act, 2017.

4. The facts of the present case and the issue involved being identical to the case of **South Eastern Coalfields**, we hold that the demand of CEC confirmed by the impugned order dated 31.03.2022 is unsustainable and is, therefore, hereby set aside.

5. The appeals are, accordingly, allowed with consequential relief, if any.

(Order pronounced in open court)

(BINU TAMTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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