CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

<u>NEW DELHI</u>

PRINCIPAL BENCH – COURT NO. – I

Excise Appeal No. 56177 of 2013

[Arising out of Order-in-Original No. Commissioner-RPR-CEX-114-2012 dated 14.12.2012 passed by the Commissioner of Central Excise, Raipur]

M/s. South Eastern Coalfields Limited **...Appellant**
Baikunthpur Area, CGM Office,
Baikunthpur, Korba,
Chhattisgarh

VERSUS

Commissioner of Central Excise and Service Tax, Raipur **...Respondent**
Central Excise Building, Dhamtari Road,
Tikrapara, Raipur, Chattishgarh - 492001

WITH

E/56176/2013	**E/56178/2013**	**E/56179/2013**
E/56180/2013	**E/56181/2013**	**E/56544/2013**
E/56545/2013	**E/56546/2013**	**E/56547/2013**
E/56548/2013	**E/56549/2013**	**E/56550/2013**
E/56551/2013	**E/60630/2013**	**E/60688/2013**
E/60690/2013	**E/60691/2013**	**E/60692/2013**
E/60693/2013	**E/60694/2013**	**E/60695/2013**
E/60696/2013	**E/60697/2013**	**E/52023/2014**
E/52024/2014	**E/52025/2014**	**E/52026/2014**
E/50149/2015	**and**	**E/50150/2015**

<u>APPEARANCE:</u>

Shri Rajeev Agarwal and Shri Sanjay Dixit, Advocates for the Appellant

Mr. Bhagwat Dayal, Authorized Representative for the Respondent

<u>CORAM</u>:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 19.01.2026
DATE OF DECISION: 06.02.2026

FINAL ORDER NO's. <u>50227-50256/2026</u>

JUSTICE DILIP GUPTA:

South Eastern Coalfields Limited [1] is a Government of India undertaking and a subsidiary company of Coal India Limited. It is engaged in the business of mining and selling of coal at the mines located in the State of Madhya Pradesh and Chhattisgarh. Central excise duty at the rate of 5% ad-valorem was introduced on coal w.e.f. 01.03.2011 by the Finance Act, 2011[2]. It was subsequently enhanced to 6% ad-valorem by the Finance Act, 2012. The various units/areas of the appellant were separately registered under Central Excise Act prior to 01.10.2013. The period in dispute in all the appeals pertains to periods prior to 01.10.2013.

2. The issue that arises for consideration in these thirty appeals is basically with respect to the deduction or otherwise from the 'transaction value' defined under section 4(3)(d) of the Central Excise Act, 1944[3] under the exclusion of 'other taxes' on the following amount received by the appellant in the sale cum excise invoices.

a. Royalty
b. Stowing Excise Duty,
c. Forest Transit Fees
d. Madhya Pradesh Rural Infrastructure and Road Tax,
e. Entry Tax,
f. Terminal Tax,
g. CG Development and Environment Cess

3. One more issue that arises for consideration is whether excise duty is leviable on captive consumption of coal.

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1. the appellant
2. the Finance Act
3. the Central Excise Act

4. The thirty appeals have been divided into three parts. Part-A comprises of appeals where the show cause notices proposed demand of excise duty only on the issue of royalty. Part-B consists of appeals where the show cause notices proposed demand of excise duty on the issue of royalty and all or some of the components from 'b' to 'g' specified above. Part-C consists of the appeal where the show cause notice proposed demand of excise duty only on all or some of the components specified from 'b' to 'g' and not on royalty. Details of the thirty appeals are as follows:

PART A- Duty demand solely on royalty

Sl. No.	SECL Unit/Area	Excise Appeal No.	Period	SCN Date	Order date	Remarks
1.	Baikunthpur	56177/2013	Mar 2011 to Feb 2012	04.04.2012	14.12.2012	Proceedings initiated under erstwhile Section 11A
2.	Bhatgaon	56178/2013	Mar 2011 to Jan 2012	04.04.2012	14.12.2012	Proceedings initiated under erstwhile Section 11A
3.	Kusmunda	56179/2013	Mar 2011 to Feb 2012	04.04.2012	14.12.2012	Proceedings initiated under erstwhile Section 11A
4.	Dipka	56180/2013	Mar 2011 to Jan 2012	04.04.2012	14.12.2012	Proceedings initiated under erstwhile Section 11A
5.	Chirimiri	56181/2013	Mar 2011 to Feb 2012	04.04.2012	14.12.2012	Proceedings initiated under erstwhile Section 11A
5.	Raigarh	56545/2013	Mar 2011 to Feb 2012	03.04.2012	14.12.2012	Proceedings initiated under erstwhile Section 11A
6.	Gevra	56546/2013	Mar 2011 to Feb 2012	04.04.2012	14.12.2012	Proceedings initiated under erstwhile Section 11A
7.	Hasdeo	56547/2013	Mar 2011 to Feb 2012	04.04.2012	14.12.2012	Proceedings initiated under erstwhile Section 11A
8.	Bisrampur	56548/2013	Mar 2011 to Feb 2012	04.04.2012	14.12.2012	Proceedings initiated under erstwhile Section 11A

9.	Korba	56549/2013	Mar 2011 to Jan 2012	04.04.2012	14.12.2012	Proceedings initiated under erstwhile Section 11A
10.	Hasdeo	60630/2013	Mar 2011 to Feb 2013	02.04.2013	29.08.2013	
11.	Raigarh	60688/2013	Mar 2011 to Feb 2013	05.04.2013	29.08.2013	
12.	Kusmunda	60690/2013	Feb 2012 to Jan 2013	05.04.2013	29.08.2013	
13.	Korba	60691/2013	Feb 2012 to Jan 2013	05.04.2013	29.08.2013	
14.	Chirimiri	60692/2013	Feb 2012 to Jan 2013	05.04.2013	29.08.2013	
15.	Gevra	60693/2013	Mar 2012 to Jan 2013	05.04.2013	29.08.2013	
16.	Baikunthpur	60694/2013	Mar 2012 to Jan 2013	28.03.2013	29.08.2013	
17.	Bhatgaon	60695/2013	Mar 2012 to Jan 2013	28.03.2013	29.08.2013	
18.	Bisrampur	60696/2013	Mar 2012 to Jan 2013	28.03.2013	29.08.2013	
19.	Dipka	60697/2013	Mar 2012 to Jan 2013	28.03.2013	29.08.2013	
20.	HQ	50149/2015	Feb 2013	05.03.2014	29.09.2014	

PART- B Duty demand on royalty & other levies

Sl. No.	SECL Unit/Area	Excise Appeal No.	Period	SCN Date	Order date	Remarks
1.	Sohagpur	56176/2013	Mar 2011 to Mar 2012	02.05.2012	14.12.2012	Time barred for March, 2011
2.	Hasdeo	56544/2013	Mar 2011 to Mar 2012	04.05.2012	27.11.2012	(1) Time barred for March, 2011 & (2) Includes Duty Demand on Captive Consumption
3.	Johilla	56550/2013	Mar 2011 to Mar 2012	02.05.2012	14.12.2012	(1) Time barred for March, 2011 & (2) Includes Duty Demand on Captive Consumption
4.	Jamuna & Kotma	56551/2013	Mar 2011 to Mar 2012	02.05.2012	14.12.2012	Time barred for March, 2011
5.	Jamuna & Kotma	52023/2014	Apr 2012 to Jan 2013	19.03.2013	31.12.2013	

6.	Johilla	52024/2014	Apr 2012 to Jan 2013	20.03.2013	31.12.2013	Includes Duty Demand on Captive Consumption
7.	Hasdeo	52025/2014	Apr 2012 to Jan 2013	19.03.2013	31.12.2013	
8.	Sohagpur	52026/2014	Apr 2012 to Jan 2013	19.03.2013	31.12.2013	

PART- C Demand solely on other levies

Sl. No.	**SECL Unit/Area**	**Excise Appeal No.**	**Period**	**SCN Date**	**Order date**	**Remarks**
1.	HQ	50150/2015	Mar 2011 to Sep 2013	06.06.2014	29.09.2014	Time barred from March, 2011 to April 2013

5. The Commissioner has observed in the adjudication orders that royalty and other levies are not 'taxes' and, therefore, includible in the 'transaction value' under section 4(3)(d) of the Central Excise Act. With respect royalty the Commissioner placed reliance upon the judgment of the Supreme Court rendered by five Hon'ble Judges of the Supreme Court in **State of West Bengal** vs. **Kesoram Industries**[4] wherein it was held that royalty is not a tax. With respect to the other amount shown from 'b' to 'g' in the aforesaid Chart, the Commissioner held that they do not qualify for deduction from 'transaction value' and shall form part of the assessable value for levy of excise duty on coal in terms of section 4(1) of the Central Excise Act. The Commissioner also rejected the contention of the appellant that the extended period of limitation under section 11(4) of the Central Excise Act could not have been invoked. The Commissioner has also imposed penalty equal to the amount of duty in terms of section 11AC of the Central Excise Act.

6. Shri Rajeev Agarwal, learned counsel for the appellant assisted by Shri Sanjay Dixit made the following submissions:

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4. (2004) 10 SCC 201

(i) The Commissioner ignored the binding decision rendered by seven Hon'ble Judges of the Supreme Court in **India Cement Limited** vs. **State of Tamil Nadu**[5], wherein it was held that royalty is in the nature of tax and on the other hand relied upon the decision of the Supreme rendered by five Hon'ble Judges in **Kesoram Industries**;

(ii) The judgment of the Supreme Court in **India Cement** had not been stayed and, therefore, it was obligatory on the part of the Commissioner to have followed this decision of the Supreme Court in **India Cement** and by not doing so the Commissioner breached judicial discipline;

(iii) The recovery provisions of section 11A of the Central Excise Act have been invoked on the allegation that the appellant had undervalued the excisable goods and, therefore, short paid duty. On the date of manufacture as well as the removal of goods there was no short payment of duty in view of the decision of the Supreme Court in **India Cement** and, therefore, proceedings could not have been initiated;

(iv) The show cause notice is the foundation and if the show cause notice could not have been be issued, the entire confirmation of demand by the impugned order cannot be sustained;

(v) The judgment of the Supreme Court in **Mineral Area Development Authority** vs. **Steel Authority of India**[6] rendered by nine Hon'ble Judges is not

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5. (1990) 1 SCC 12
6. (2024) 21 Centax 378 (S.C.)

applicable to the facts of the present case. The issue under consideration before the Supreme Court was not an issue under the Central Excise Act but was regarding the true nature of royalty determined under section 9 read with section 15(1) of the Mines and Minerals (Development and Regulation) Act, 1957[7];

(vi) In ten show cause notices the demand has been proposed under the erstwhile proviso to section 11A(1) of the Central Excise Act. Section 11A was substituted w.e.f. 08.04.2011 and so the show cause notices could have been issued only under the provisions of the amended section 11A;

(vii) The demand of central excise duty with applicable interest and penalty on the other charges mentioned from 'b' to 'g' in the Chart could not have been confirmed as they are in the nature of 'other taxes' referred to in section 4(3)(d) of the Central Excise Act;

(viii) The central excise duty demand on captive consumption is not sustainable;

(ix) In four Excise Appeal Bearing No's. 56176 of 2013, 56544 of 2013, 56550 of 2013 and 56551 of 2013 the demand is beyond the normal period and the extended period of limitation could not have been invoked. In Excise Appeal No. 50150 of 2015, the demand for the period from March 2011 to April 2013 is covered by the extended period of limitation, which could not have been invoked in the facts and circumstances of the case; and

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7. MMDR Act

(x) Neither penalty could be imposed nor interest could be charged.

7. Shri Bhagwat Dayal, learned authorized representative appearing for the department, however, supported the impugned order and submitted that they do not call for any interference in these appeals. Learned authorized representative pointed out that in view of the judgment of nine Hon'ble Judges of the Supreme Court in **Mineral Area Development Authority** holding that royalty in the nature of a tax, the amount of royalty received by the appellant would be includible in the transaction value under section 4(3)(d) of the Customs Act. Learned authorised representative also submitted that the amount received by the appellant under Serial No. 'b' to 'g' in the Chart are not in the nature of taxes and, therefore, includible in the transaction value under section 4(3)(d) of the Customs Act. Learned authorised representative also submitted that excise duty is leviable on captive consumption of court.

8. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

9. Section 4 of the Central Excise Act deals with valuation of excisable goods for purposes of charging of duty of excise. Sub-section (1) is as follow:

> **"Section 4(1)** Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall-
>
> (a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer

> of the goods are not related and the price is the sole consideration for the sale, be the transaction value;
>
> (b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed."

10. Section 4(3)(d) defines 'transaction value' in the following manner:

> "**Section 4(3)(d)** "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods."

11. It would, therefore, be seen that where the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall in a case where the goods are sold by the assessee for the delivery at the time and place of the removal and the assessee and buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value. 'Transaction value' has been defined to mean the price actually paid or payable for the goods when sold but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.

12. What has, therefore, to be seen is whether the amount received by the appellant towards Royalty, Stowing Excise Duty, Forest Transit Fees, Madhya Pradesh Rural Infrastructure and Road Tax Entry Tax, Terminal Tax and CG Development and Environment Cess are covered under the 'other taxes'.

13. The Commissioner has held that royalty is not a tax in view of the decision of the Supreme Court in **Kesoram Industries** rendered by five Hon'ble Judges.

14. A Constitution Bench of the Supreme Court in **Mineral Area Development Authority** consisting of nine Hon'ble Judges has laid down that royalty is not in the nature of a tax.

15. The contention advanced by the learned counsel for the appellant is that the Commissioner has placed reliance upon the judgment of the Supreme Court in **Kesoram Industries** rendered by five Hon'ble Judges of the Supreme Court, though at the relevant time the judgment of the Constitution Bench of the Supreme Court consisting of seven Hon'ble Judges in **India Cement** had held that royalty is in the nature of tax. The submission advanced by learned counsel for the appellant is that the Commissioner was bound to follow the decision of the Supreme Court in **India Cement** and, therefore, the amount received by the appellant towards royalty cannot be included in the transaction value.

16. The law, as it stands today, is that royalty is not in the nature of tax in view of the Constitution Bench judgment of the Supreme Court rendered by nine Hon'ble Judges in **Mineral Area Development Authority**. The artificial distinction sought to be made by the learned counsel for the appellant that the Supreme Court was examining the provisions of the MMDR Act and not the Central Excise Act for the

purpose of determining whether royalties in the nature of tax is not justified. It needs to be noted that royalty was paid by the appellant under the provisions of MMDR Act. This is the same Act which was considered by the Supreme Court in **Mineral Area Development Authority** to examine whether royalty is in the nature of tax or not. The Supreme Court in **Mineral Area Development Authority** took into consideration the earlier judgments rendered by the Supreme Court in **Kesoram Industries** and **India Cement**. The Supreme Court did not agree with the view earlier taken in **India Cement** and held that royalty is not a tax for it is a contractual consideration paid by the mining lessee to the lessor for the enjoyment of mineral rights.

17. It has, therefore, to be held that as royalty is not in the nature of tax and it would be includible in the transaction value.

18. The Commissioner, therefore, committed no illegality in holding that the amount collected towards royalty would be includible in the transaction value, though on the basis of the judgment of the Supreme Court in **Kesoram Industries**.

19. The issue that now arises for consideration is whether the amount received by the appellant under 'b' to 'g' of the chart is also includible in the definition of 'other taxes' under section 4(3)(d) of the Central Excise Act. Each of these heads would be considered separately.

Stowing Excise Duty

20. Stowing Excise Duty is levied under the Coal Mines (Conservation and Development) Act, 1974 read with the Coal Mines (Conservation and Development) Amendment Rules 2011. The Preamble to the said Act states that it has been enacted to provide for the conservation of

coal and development of coal mines and for matters connected therewith or incidental thereto.

21. Section 6 deals with imposition of excise duties and sub-section (1) provides that:

> "**Section 6(1)** With effect from the appointed day there shall be levied and collected on all coke raised and dispatched, and on all the coal manufactured and dispatched, from the collieries in India, such duty of excise, not exceeding rupees ten per tonne, as may be fixed from time to time by the Central Government by notification, and different rates of duty may be levied on different grades or description or coal or coke.
>
> Provided that the Central Government may, by general or special order, exempt any special grade or grades or description of coal or coke from the levy of such duty of excise."

22. Section 8 of the Act provides that the duty of excise levied under section 6 shall be collected by such agencies and in such manner as may be prescribed. Section 9 of the Act deals with utilization of proceeds of duties levied and collected under section 6 and section 7 of the Act. Chapter III of the Coal Mines (Conservation and Development) Amendment Rules 2011 deals with collection of excise duty. Rule 8 provides for collection and assessment of excise duty while rule 9 provides for the review of assessment of excise duty.

23. This issue was examined by the Tribunal in **Eastern Coalfields Ltd.** vs. **Commr. of Central Excise**[8]. It was held that stowing excise duty is a duty of excise and, therefore, has to be excluded from the transaction value under the exclusion clause of 'other taxes' as contemplated under section 4(3)(d) of the Central Excise Act. The relevant portion of the decision is reproduced below:

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8. Excise Appeal No. 75694 of 2015 decided on 11.03.2025

> "**38.** We have seen the earlier paragraphs that the levy is being termed as "Duty of Excise" and also being treated as such. It is also not disputed that in the case of the goods in question, the Stowing Excise Duty is being paid by the appellant. The Revenue cannot take a contorted and narrow view that only when the Duty of Excise is paid as Central Excise Duty, such exclusion is available. It is to be noted that the word used is "duty of excise" along with "sales tax" and "other taxes", which would clarify that if these are paid to State Govt or to any other agency also, the transaction value should exclude the same. Considering these provisions, we set aside the confirmed demand in respect of the Stowing Excise Duty and allow the Appeals."

24. It has, therefore, to be held, in view of the aforesaid decision of the Tribunal, that the amount received by the appellant towards the stowing excise duty has to be excluded from the transaction value. The Commissioner, therefore, committed an error in holding that it would be includible in the transaction value.

Forest Transit Fees

25. This fee is charged under the provision of the Chhattisgarh Transit (Forest Produce) Rules 2001. The recovery of transit fee under the said Rules is in pursuance of the Forest Act 1927.

26. Though the expression 'other taxes' has not been defined in the Central Excise Act or the Rules made thereunder but it would be pertinent to refer to the judgment of the Supreme Court in **Commissioner of Central Excise, Lucknow** vs. **Chhata Sugar Co. Ltd.**[9] wherein it was held that a broad meaning should be attributed to the word 'tax' and a regulatory fee may be in effect and substance be a tax. It was also held that if the burden of fees is borne by the buyers

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9. 2004 (165) E.L.T. 369 (S.C.)

and the sellers are merely collecting agents, the impost is not a fee but a tax. The relevant paragraphs are reproduced below:

> "18. The definition of 'tax' in terms of Clause (28) of Article 366 of the Constitution is wide in nature. The said definition may be for the purpose of the Constitution; **but it must be borne in mind that the legislative competence conferred upon the State Legislature or the Parliament to impose 'tax' or 'fee' having been enumerated in different entries in the three lists contained in the Seventh Schedule of the Constitution of India, the same meaning of the expression "tax" unless the context otherwise requires, should be assigned.**
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> xxxxxxxxxxx
>
> 21. The expression 'regulatory fee' is not defined. Fee, therefore, may be held to be a tax if no service is rendered. **While imposing a regulatory fee, although the element of quid pro quo, as understood in common parlance, may not exist but it is trite that regulatory fee may be in effect and substance a tax.** [See The Corporation of Calcutta and Another v. Liberty Cinema, AIR 1965 SC 1107].
>
> xxxxxxxxxxx
>
> 36. In any event regulatory fee imposed for the purpose of regulating the industry producing molasses, in my opinion, cannot be passed on to the buyers as they are not subjected to any regulation under the Act. **The nature of impost is such that burden thereof is to be borne by the buyers and the respondents herein are merely the agents for collecting the same on behalf of the State. The impost, therefore, cannot be termed as a 'fee' so as to deprive the respondents of the benefit of deduction of the tax for the purpose of Section 4(4)(d)(ii) of the Central Excise Act, 1944.**
>
> **(emphasis supplied)**

27. In the present case, the burden of the regulatory forest transit fee is passed on to the buyers on actual basis. Such regulatory fee charged

under the provisions of the Rules and Indian Forest Act, 1927 would, therefore, be in nature of a 'tax' and so cannot be included in the assessable value in terms of section 4(3)(1) of the Central Excise Act.

Madhya Pradesh Rural Infrastructure and Road Tax

28. The Madhya Pradesh High Court in **Neogy & Sons** vs. **The State of M.P. and Another**[10] examined the constitutional validity of the Madhya Pradesh Rural Infrastructure and Road Development Act, 2005. The petitioners had challenged the constitutional validity of the Act conferring power on the State Government to levy Rural Infrastructure and Road Development tax upto 20% of the annual value of the annual value of mineral bearing land leased for carrying out mining operation.

29. The annual value of mineral bearing land has been defined in section 2(a) of the Act in the following manner:

> "**2.** In this Act, unless the context otherwise requires,
>
> (a) "annual value of mineral bearing land" in relation to a financial year, means one-half of the value of mineral produced from mineral bearing land during the two years immediately preceding that financial year, the value of mineral being that as could have been fetched by the entire production of mineral during the said two immediately preceding years, had the owner of such mineral bearing land sold such mineral at the price or prices excluding the amount of tax, fee, duty, royalty, crushing charge, washing charge, transport charge or any other amount as may be prescribed, that prevailed on the date immediately preceding the first day of that financial year."

30. Section 3 of the said Act deals with levy and collection of rural infrastructure and roads development tax and is reproduced below:

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10. 2006 SCC OnLine MP 912

> 3.(1) On and from commencement of this Act there shall be levied and collected a rural infrastructure and roads development tax on all mineral bearing land in the manner hereinafter provided.
>
> (2) The rural infrastructure and roads development tax shall be levied annually on all mineral bearing land at such rate, not exceeding twenty percentum of the annual value of such mineral bearing land, as the State Government may, be notification, fix in that behalf, and different rates may be fixed for different mineral bearing land:
>
> Provided that where in case of any mineral bearing land, there is no production of mineral for two consecutive year or more, such land shall be liable for levy of tax at such rate, as may be prescribed;
>
> Provided further that the State Government shall not enhance the rate of tax in respect of any such mineral bearing land more than once during any period of three years.
>
> The State Government, before fixing the rate of tax under subsection (2), shall appoint a committee, in such manner as may be prescribed who shall recommend to the State Government the rate at which the tax may be levied.
>
> (4) Every notification issued under sub-section (2) shall be laid on the table of the Legislative Assembly.
>
> Section 4 deals with the payment and recovery of tax. Section 7 provides for separate head of account for tax proceeds. Section 8 provides for utilization of tax proceeds, Section 8 is quoted below:-

31. Section 8 of the said Act deals with utilization of the proceeds of tax and is reproduced below:

> "8. The proceeds of the tax shall be utilized by the State Government for improvement and development of infrastructure and roads in rural areas, with special emphasis to backward areas and mining areas, for which the State Government shall take appropriate

> measures by drawing up suitable infrastructure development programmes."

32. The Madhya Pradesh High Court, while examining the constitutional validity of the Act held as follows:

> "**It is clear from the aforesaid provisions of the Act that tax has been imposed for the purpose of development of rural infrastructure and for road development. It. is clearly a tax on the land which bears mineral.** Merely because of the definition of annual value of mineral bearing land in Section 2(a), there is reference to one half value of mineral produce during preceding two years which is made basis to realize tax in question in financial year, it cannot be said that it is a tax on the mineral. **It remains essentially a tax on the land.** Method of on mineral produced, method of computation of tax is based computation of tax may be on mineral but it is tax on land, method of calculation does not encroach on MMRD Act. When we consider the entry 4, 9 of list IInd of VIIth Schedule, it is clear that tax on the lands and buildings can be imposed by the State Government. **Thus it is open to State to levy tax on development of rural infrastructure and road development for the purpose of which the legislation has been enacted under Entry 49 of List IInd of VIIth Schedule.**"
>
> **(emphasis supplied)**

33. It is seen that the High Court has held that the levy imposed under the said act is a tax on land bearing mineral. Thus, the amount collected under this head would not be included in the transaction value in terms of section 4(3)(d) of the Central Excise Act.

Entry Tax

34. Section 3(1) of the Chhattisgarh Sthaniya Kshetra Me Mal ke Pravesh Par Kar Adhiniyam, 1988 provides that there shall be levied an entry tax on the entry in the course of business of a dealer of goods

specified in Schedule II, into each local area for consumption, use or sale therein.

35. A bare perusal of the Preamble to the said Act provides that the enactment has been legislated for leving tax on the entry of goods into a local area in Chhattisgarh for consumption, use or sale therein.

36. The department had initiated proceedings against the appellant in respect of levy of entry tax for the subsequent period from June 2014 to January 2015 alleging that the appellant was not discharging central excise duty on entry tax by issuing a show cause notice dated 01.07.2015. This show cause notice was adjudicated by the Principal Commissioner, Raipur by order dated 24.05.2016. The Principal Commissioner held that entry tax is a statutory tax levied under constitutional authority and so it cannot form part of the transaction value and excise duty is not payable on entry tax.

37. As the demand of excise duty on entry tax has been dropped for the subsequent period by order dated 24.05.2016 and this order has attained finality as the order dated 24.05.2016 has not been challenged by the department, the demand of excise duty confirmed in the impugned order is liable to be set aside.

Terminal Tax

38. The authority to levy tax in India is derived from the Constitution of India which not only empowers the Central and the State Governments to levy various taxes but also the local authorities such as the Municipalities/Municipal Corporations. The amount paid by the appellant to the Municipalities/Municipal Corporations as Terminal Tax has been disputed on the ground that the same is not in the nature of a tax.

39. Terminal Tax is a tax imposed by the Municipality/Municipal Corporation under the Statute on goods or animal exported from the limits of the Corporation/Municipal Council.

40. The Madhya Pradesh High Court in **South Eastern Coalfields Ltd.** vs. **State of Madhya Pradesh & Ors.**[11] held that the Municipal Corporation has the authority to levy terminal tax under the Municipal Corporation Act and such power is derived from Entry 56 of List II of the Seventh Schedule of the Constitution.

41. The judgment of the Madhya Pradesh High Court was challenged before the Supreme Court and is reported in 2023 SCC Online SC 1238. The Supreme Court held that section 132 of the Madhya Pradesh Municipal Corporation Act, 1956 provides for 'taxes to be imposed under the Act' and that sub-section 6(n) of section 132 empowers the Corporation to levy a 'terminal tax' on goods and animals exported from the limits of the Corporation.

42. Thus, the levy of 'terminal tax' is a compulsory levy in the nature of 'tax' and, therefore, cannot be included in the assessable value in terms of section 4(3)(d) of the Central Excise Act.

CG Development and Environment Cess

43. The Preamble to the Chhattisgarh (Adhosanrachna Vikas Evam Paryavaran) Upkar Adhiniyam, 2005 states:

> "An Act to provide for levy of cess on land for raising funds to implement infrastructure development projects and environment improvement projects.
>
> Whereas it is expedient to provide for additional resources for augmenting the development activities and improvement of environment in the State.

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11. Writ Petition No. 1340 of 2005 decided on 21.02.2010

44. The Preamble to the Act states that the Cess levied under this Act is a Cess on land for raising funds to implement infrastructure development projects and environment improvement projects. Section 3(1) provides for the levy and collection of infrastructure development Cess on all lands on which land revenue or rent, by whatever name called is, levied. Sub-section (2) provides that such Cess shall be levied at the rates prescribed in Schedule-I. Section 4(1) provides for the levy and collection of environment Cess on all lands on which land revenue or rent, by whatever name called, is levied. Sub-section (2) of section 4 provides that such Cess shall be levied at the rates prescribed in Schedule-II. Section 7 of the Act provides for assessment and collection of Cess levied under section 3 and section 4. Sub-section (2) of section 7 provides that the Cess levied under this Act shall be collected as an arrear of land revenue and provisions of the Chhattisgarh Land Revenue Code, 1959 shall apply mutatis mutandis for such collection and recovery.

45. Rule 4 of the Chhattisgarh (Adhosanrachna Vikas Evam Paryavaran) Upkar Adhiniyam, Rules deals with levy of tax where there is no production of mineral for two consecutive years or more and provides that such land shall be liable to levy of tax at the rate fixed in Schedule I and II. Rule 5 provides for the manner of payment of tax. Rule 7 deals with the assessment of tax. Rule 8 deals with the manner of submissions of returns and revised return. Rule 9 deals with appeals and rule 10 deals with recovery of tax.

46. It is, therefore, evident that the Cess levied is in the nature of compulsory extraction of money by public authority for public purposes

enforceable by law. Further, the Rules provide for a complete machinery for collection, assessment and recovery of tax.

47. The infrastructure development Cess and environment Cess are, therefore, in nature of tax and, therefore, not liable to be included in the assessable value in terms of section 4(3)(d) of the Central Excise Act.

Duty demand on captive consumption

48. In respect of three Excise Appeal No's. 52024 of 2014, 56544 of 2013 and 56550 of 2013, duty demand has been raised on the quantity of coal which has been captively consumed in boiler within the mining premises in the underground mines. The Commissioner, after noticing that coal was captively used in boiler, disallowed exemption under Notification No. 67/95-C.E. dated 16.03.1995.

49. This issue has been decided by the Tribunal in favour of the appellant in **South Eastern Coalfields Ltd.** vs. **CCE, Raipur**[12]. The entitlement of exemption under the Notification has been held to be justified in respect of coal captively consumed within the mines for use in further production of coal. The said decision has also been followed by the Commissioner (Appeals), Ranchi in Order-in-Appeal No. 286/RAN/2018 dated 03.07.2018 in the appeal filed by the sister company M/s. Bharat Coking Coal Ltd. Thus, the demand of duty of coal captively consumed in the aforesaid three Excise Appeals cannot be sustained.

Extended Period of Limited

50. Section 11A of the Central Excise Act deals with recovery of duties not levied or not paid or short-paid.

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12. 2018 (364) E.L.T. 404 (Tri.- Del)

51. Sections 11A(1) and 11A (4) of the Central Excise Act, as it stood at the relevant time, which deal with issuance of notices for recovery of date not paid or levied are reproduced below:

> **"SECTION 11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—**
>
> **(1)** Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,—
>
> (a) the Central Excise Officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;
>
> (b) the person chargeable with duty may, before service of notice under clause (a), pay on the basis of,—
>
> (i) his own ascertainment of such duty; or
> (ii) duty ascertained by the Central Excise Officer, the amount of duty along with interest payable thereon under section 11AA.
>
> (2) *****
> (3) *****
> **(4)** Where any duty of excise has not been levied or paid or has been short levied or short-paid or erroneously refunded, by the reason of –
>
> (a) fraud; or
> (b) collusion; or
> (c) any wilful mis-statement; or
> (d) suppression of facts; or

> (e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,
>
> by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 11AA and a penalty equivalent to the duty specified in the notice".

52. It would be seen from a perusal of sub-section (4) of section 11A of the Central Excise Act that where any excise duty has not been levied or paid, the Central Excise Officer may, within one year from the relevant date, serve a notice to the person chargeable with the duty requiring him to show cause why he should not pay the amount specify in the notice. Sub-section (4) of section 11A, however, provides that where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, by reason for fraud; or collusion; or any wilful mis-statement; or suppression facts; or contravention of any of the provisions of the Act or Rules made thereunder with intent to evade payment of duty, the Central Excise Officer shall, within five years from the relevant date service notice on such person requiring into show cause why he should not pay the amount specified in notice with interest and penalty.

53. Learned counsel for the appellant submitted that appellant had not suppressed any material facts from the department and in any view of the matter as the ingredients of fraud or suppression with intent to evade payment of duty were absent, the demand pertaining to the month of March 2011 which falls outside the normal period of limitation cannot be sustained.

54. Learned authorised representative appearing for the department, however, supported the impugned order.

55. The relevant allegation made against the appellant for invocation of the extended period of limitation are contained in paragraph 9 of the show cause notice and they are reproduced below:

> "**9.** The fact that the Noticee was collecting amounts over and above assessable value was never disclosed to the department at any given point of time. The fact of collection of such additional consideration from buyers has neither been shown in the ER-1 returns nor disclosed or declared to the department otherwise. The Noticee claims to have considered such charges as taxes eligible for deduction but has failed to provide basis of such assumption or belief for treating the said charges as tax. The Noticee did not seek any clarification from the department on this issue. The Noticee's claim of treating such charges as taxes appears to be arbitrary and devoid of any substantial basis. The Noticee has suppressed the fact and details of charging and collecting money in the name of various charges over and above assessable value. The Noticee has thus failed to pay appropriate excise duty by excluding some portions of price charged from buyer while calculating and paying excise duty. In view of the suppression of material facts pertaining to transaction value with intent to evade payment of duty, extended period of limitation in terms of section 11A of the Central Excise Act, 1944 and penal provisions of section 11AC of the Central Excise Act, 1944 are attracted aforementioned contraventions and evasion of excise duty."

56. The appellant submitted a reply to the show cause notice and contended that the extended period of limitation could not have been invoked. The relevant portion of the reply as contained in paragraphs 6.1 and 6.2 of the order are reproduced below:

> "**6.1** In the impugned SCN, the extended period of limitation in terms of section 11A of the Act has been

> invoked on SECL with the allegation that there has been suppression of fact by SECL with the intent to evade payment of duty. It is submitted that there has been no willful suppression, as explained hereinbefore, since SECL is with the bonafide belief that no Central Excise duty is payable on the aforesaid elements recovered from the buyers in as much as the said elements are in nature of statutory levies excludible from the assessable value.
>
> **6.2** Furthermore, it is submitted that it is a settled position of law that there is a presumption that PSUs do not have any intention to evade the payment of tax as held by the Hon'ble Tribunal in the case of Burn Standard Co. Ltd. vs. CCE [2007 (216) E.L.T. 77 (Tri.)] and earlier upheld by the Hon'ble Supreme Court in the case of CCE vs. Chennai Petroleum Corpn. Limited [2007 (211) E.L.T. 193 (SC)]. In view of the fact that SECL is a PSU, it is submitted that an allegation of evasion and suppression of fact may not be leveled against the same."

57. The Commissioner did not accept the contention advanced by the appellant and held that the extended period of limitation was correctly invoked. The relevant portion of the order of the Commissioner is reproduced below:

> "**27.** The Noticee has canvassed that demand is time barred as extended period of limitation would not apply. I note that the show cause notice has been issued on 01.05.2012 and pertains to the period March 2011 to March 2012. It is clear that the demand for the period April 2011 to March 2012 is within the normal period of limitation i.e. one year. The demand for only one month i.e. March 2011 lies in the zone of extended period of limitation. The Noticee has failed to demonstrate through cogent documentary evidence as whether such collection of additional consideration was declared or brought to the notice of the department. **The Noticee has failed to show basis of its belief on the issue of eligibility for deduction from transaction value. It is settled law that a belief must be based on reason and law.** It cannot be

> something in the nature of a wish or desire. I find that the Noticee has failed to demonstrate the basis of claim of a bona fide belief. In the facts and circumstances, I hold that there was suppression of facts and extended period of limitation is rightly applicable in the case in hand. Accordingly, an amount of Rs.7,67,10,533/- is determined as central excise duty dues for recovery under the provisions of section 11A of the Central Excise Act, 1944. The Noticee shall also be liable to pay interest on the said duty amount in terms of section 11AA of the Central Excise Act, 1944."

58. The contention of the learned counsel for the appellant is that the appellant bonafide believed that it is not liable to pay duty on the amount of royalty in view of the decision of the Supreme Court in **India Cement** which held that royalty was in the nature of tax. In respect of the other amounts mention from 'b' to 'g' of the Chart, the appellant contends that it also believed that they were in the nature of tax.

59. The Commissioner has, however, held that the appellant had failed to show the basis of its belief for deduction from the transaction value and, therefore, there was suppression of facts and the extended period of limitation was correctly invoked.

60. In the first instance, there was no suppression of facts, but even if it assumed that there was suppression, it has to be examined whether suppression of facts by the appellant was wilful and with an intent to evade payment of central excise duty. The Supreme Court and the Delhi High Court have held that suppression of facts has to be "wilful" and there should also be an intent to evade payment of duty.

61. In **Pushpam Pharmaceutical Co.** vs. **Commissioner of Central Excise, Bombay**[13], the Supreme Court examined whether the department was justified in initiating proceedings for short levy after

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13. 1995 (78) E.L.T. 401 (SC)

the expiry of the normal period of six months by invoking the proviso to section 11A of the Central Excise Act. The proviso to section 11A of the Central Excise Act which was considered by the Supreme Court carved out an exception to the provisions that permitted the department to reopen proceedings if the levy was short within six months of the relevant date and permitted the Authority to exercise this power within five years from the relevant date under the circumstances mentioned in the proviso, one of which was suppression of facts. It is in this context that the Supreme Court observed that since "suppression of facts" has been used in the company of strong words such as fraud, collusion, or wilful default, suppression of facts must be deliberate and with an intent to escape payment of duty. The observations of the Supreme Court are as follows:

> "4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. **But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts.** The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of court the context in which it has been used indicates otherwise. **A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty.** Where facts are known to both the parties the omission by one to do

> what he might have done and not that he must have done, does not render it suppression."
>
> **(emphasis supplied)**

62. This decision was referred to by the Supreme Court in **Anand Nishikawa Company Ltd.** vs. **Commissioner of Central Excise**[14] and the observations are as follows:

> "26. ***** This Court in the case of Pushpam Pharmaceutical Company v. Collector of Central Excise, Bombay, while dealing with the meaning of the expression "suppression of facts" in proviso to Section 11A of the Act held that the term must be construed strictly. **It does not mean any omission and the act must be deliberate and willful to evade payment of duty.** The Court, further, held :-
>
>> "In taxation, it ("suppression of facts") can have only one meaning that the correct information was not disclosed deliberately to escape payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."
>
> 27. Relying on the aforesaid observations of this Court in the case of Pushpam Pharmaceutical Co. v. Collector of Central Excise, Bombay [1995 Suppl. (3) SCC 462], we find that **"suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty.** When facts were known to both the parties, the omission by one to do what he might have done not that he must have done would not render it suppression. It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression. Therefore, in view of our findings made herein above that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of

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14. 2005 (188) E.L.T. 149 (SC)

duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in proviso to Section 11A of the Act."

(emphasis supplied)

63. The Supreme Court in **Continental Foundation Joint Venture Holding** vs. **Commissioner of Central Excise, Chandigarh-I**[15] also held:

> "10. The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. **Suppression means failure to disclose full information with the intent to evade payment of duty.** When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11-A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct."
>
> **(emphasis supplied)**

64. In **Mahanagar Telephone Nigam Ltd.** vs. **Union of India and others**[16], the Delhi High Court also observed as follows:

> "28. In terms of the proviso to Section 73(1) of the Act, the extended period of limitation is applicable only in cases where service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, or collusion, or wilful misstatement, or suppression of facts, or contravention of any provisions of the Act or the Rules made thereunder with an intent to evade payment of service tax. However, the impugned show cause notice does not contain any

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15. 2007 (216) E.L.T. 177 (SC)
16. W.P. (C) 7542 of 2018 decided on 06.04.2023

allegation of fraud, collusion, or wilful misstatement on the part of MTNL. **The impugned show cause notice alleges that the extended period of limitation is applicable as MTNL had suppressed the material facts and had contravened the provisions of the Act with an intent to evade service tax.** Thus, the main question to be addressed is whether the allegation that MTNL had suppressed material facts for evading its tax liability, is sustainable.

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41. **In the facts of this case, the impugned show cause notice does not disclose any material that could suggest that MTNL had knowingly and with a deliberate intent to evade the service tax, which it was aware would be leviable, suppressed the fact of receipt of consideration for rendering any taxable service.** On the contrary, the statements of the officials of MTNL, relied upon by the respondents, clearly indicate that they were under the belief that the receipt of compensation/financial support from the Government of India was not taxable. **Absent any intention to evade tax, which may be evident from any material on record or from the conduct of an assessee, the extended period of limitation under the proviso to Section 73(1) of the Act is not applicable.** The facts of the present case indicate that MTNL had made the receipt of compensation public by reflecting it in its final accounts as income. **As stated above, merely because MTNL had not declared the receipt of compensation as payment for taxable service does not establish that it had willfully suppressed any material fact.** MTNL's contention that the receipt is not taxable under the Act is a substantial one. **No intent to evade tax can be inferred by non-disclosure of the receipt in the service tax return."**

(emphasis supplied)

65. **Commissioner of C. Ex. & Customs** vs. **Reliance Industries Ltd**[17], the Supreme Court held that if an assessee bonafide believes that it was correctly discharging duty, then merely because the belief is ultimately found to be wrong by a judgment would not render such a belief of the assessee to be malafide. If a dispute relates to interpretation of legal provisions, it would be totally unjustified to invoke the extended period of limitation. The Supreme Court further held that in any scheme of self-assessment, it the responsibility of the assessee to determine the liability correctly and this determination is required to be made on the basis of his own judgment and in a bonafide manner. The relevant portion of the judgment is reproduced below:

> "23. **We are in full agreement with the finding of the Tribunal that during the period in dispute it was holding a bona fide belief that it was correctly discharging its duty liability. The mere fact that the belief was ultimately found to be wrong by the judgment of this Court does not render such belief of the assessee a mala fide belief particularly when such a belief was emanating from the view taken by a Division Bench of Tribunal. We note that the issue of valuation involved in this particular matter is indeed one were two plausible views could co-exist. In such cases of disputes of interpretation of legal provisions, it would be totally unjustified to invoke the extended period of limitation by considering the assessee's view to be lacking bona fides. In any scheme of self-assessment it becomes the responsibility of the assessee to determine his liability of duty correctly. This determination is required to be made on the basis of his own judgment and in a bona fide manner.**
>
> 24. **The extent of disclosure that an assessee makes is also linked to his belief as to the**

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17. 2023 (385) E.L.T. 481 (S.C.)

> **requirements of law.** xxxxxxxxxxx. On the question of disclosure of facts, as we have already noticed above the assessee had disclosed to the department its pricing policy by giving separate letters. It is also not disputed that the returns which were required to be filed were indeed filed. In these returns, as we noticed earlier there was no separate column for disclosing details of the deemed export clearances. Separate disclosures were required to be made only for exports under bond and not for deemed exports, which are a class of domestic clearances, entitled to certain benefits available otherwise on exports. **There was therefore nothing wrong with the assessee's action of including the value of deemed exports within the value of domestic clearances."**
>
> **(emphasis supplied)**

66. The contention of the appellant that it bonafide believed that it was not liable to pay excise duty on the amount of royalty and also on the other amount mentioned from 'b' to 'g' of the chart deserves to be accepted. At the relevant time the judgment of the Supreme Court in **India Cement** did hold that royalty was in the nature of tax and, therefore, in terms of section 4(3)(d) of the Central Excise Act, the amount of royalty was not required to be included in the transaction value. It is subsequently that the judgment of the Supreme Court in **India Cement** was reversed by the Supreme Court in **Mineral Area Development Authority** and it was held that royalty is not in the nature of a tax. In respect of the amount collected from Serial No. 'b' to 'g' of the chart, it has been found that they are in the nature of 'other taxes' contemplated under section 4(3)(d) of the Central Excise Act.

67. It can, therefore, safely be said that the appellant, a Government of India undertaking, could have bonafide believed that it was not liable to pay central excise duty and, therefore, there cannot be any intent to evade payment of duty.

68. The extended period of limitation, therefore, could not have been invoked in the facts and circumstances of the case.

69. In respect four Excise Appeal No's. 56176 of 2013, 56544 of 2013, 56550 of 2013 and 56551 of 2013, the duty demand has been proposed by issuing show cause notice in May 2012 for the period March 2011 to March 2012. According to the appellant, the demand for the period March 2011 falls beyond the normal period of limitation. In Excise Appeal No. 50150 of 2015, the show cause notice was issued in June 2014 for duty demand pertaining to March 2011 to September 2013. The demand for the period March 2011 to April 2013 falls beyond the normal period of limitation.

Penalty under section 11AC

70. Penalty under section 11AC is imposed for short payment of duties by reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of the Act or the Rules made there under with an intent to evade payment of duty. This penalty is equal to the duty determined.

71. The Commissioner has confirmed the imposition of penalty in paragraph 28 of the order, which paragraph is reproduced below:

> "**28.** The show cause notice seeks to invoke penal provisions of section 11AC of the Central Excise Act, 1944. The Noticee has submitted the ER-1 returns were duly filed and the issue is one of interpretation of law and, therefore, penal provisions of section 11AC are not attracted. The Noticee did file ER-1 returns. But the crucial point is whether true and complete transaction value was declared in the returns. Mere filing of ER-1 returns would not absolve the Noticee when the allegation is that true and complete information on transaction value was not declared. The Noticee never sought any clarification on the issue if it considered a

> matter of interpretation. The Noticee's claim could have force in case it sought to address its views on the claimed interpretation of law. In the facts and circumstances, **I hold that true and complete information on price charged for coal was not declared and excise duty was evaded in such manner. Therefore, I hold that penal provisions of section 11AC of the Central Excise Act, 1944 are fully satisfied in the case in hand.**"
>
> **(emphasis supplied)**

72. It has been found, while dealing with the extended period of limitation, that it could not be invoked in the facts and circumstances of the case. Since the ingredients for invoking the extended period of limitation and for imposing penalty under section 11AC are same, penalty could not have been imposed upon the appellant.

Interest

73. In respect of the amount of interest on payment of duty, it is seen that the amount of duty only for the amount received towards royalty has been confirmed. The amount received towards 'b' to 'g' of the chart has not been confirmed.

74. The Supreme Court examined the imposition of penalty in **Mineral Area Development Authority** vs. **Steel Authority of India**[18] in paragraph 22 of the judgment and held that taking into consideration the lapse of more than three decades since **India Cement** was decided and more than a decade since the matter was referred to a Larger Bench, equities will be balanced if the State Governments waive the outstanding interest accrued on the principal amount due from the assessee. The relevant paragraph is reproduced below:

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18. (2024) 21 Centax 313 (S.C.)

> "**22.** The total amount, that is the principal plus the interest, due by the assesses in the pending matters may be substantial in comparison to their total net worth. Steel Authority of India has stated on affidavit that retrospective application of MADA (supra) will lead to revival of cumulative demands to the tune of approximately Rupees three thousand crores from different States. The delay in the court proceedings should not be to the detriment of the assesses (See K C Ninan v. Kerala State Electricity Board, 2023 SCC OnLine SC 663 [339]). **Taking into consideration the lapse of more than three decades since India Cement (supra) and more than a decade since the matter was referred to a larger Bench, equities will be balanced if the State governments waive the outstanding interest accrued on the principal due from the assesses. This direction applies to all assesses, regardless of whether they have approached this Court or the High Courts challenging the validity of the relevant statutes.**"
>
> **(emphasis supplied)**

75. In this view of the aforesaid judgment of the Supreme Court in **Mineral Area Development Authority**, the demand of interest upon the appellant deserves to be set aside.

76. The contention of the learned counsel for the appellant that the show cause notice could not have been issued under the erstwhile proviso to section 11A (1) of the Central Excise Act as it had been amended w.e.f. 08.04.2011 cannot be accepted. Learned counsel for the appellant has not been able to point out any difference and in any case mere wrong mention of the section will not be vitiate the show cause notice.

Conclusion

(i) Levy of central excise duty on the amount received towards royalty is confirmed for the normal period of limitation, as this amount is includible in the transaction value. It is set aside for the extended period of limitation. However, even for the normal period, the imposition of penalty and demand of interest is set aside; and

(ii) The demand of central excise duty on Stowing Excise Duty, Forest Transit Fees, Madhya Pradesh Rural Infrastructure and Road Tax Entry Tax, Terminal Tax and CG Development and Environment Cess and captive consumption is set aside. Accordingly, the imposition of penalty and interest are also set aside.

77. The matter is, therefore, remitted to the Adjudicating Authority only to determine the duty to be paid by the appellant in terms of this decision. This determination shall be done within four months from today.

78. All the thirty appeals are, accordingly, partly allowed to the extent indicated above.

(Order pronounced on **06.02.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

Jyoti