IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 55682, 55681 of 2014

[Arising out of Order-in-Original No. No. 25-26/2014 dated 28.8.14 passed by the Commissioner of Customs, Central Excise & Service Tax, Bhopal (MP)]

M/s. Northern Coalfields Ltd. **Appellant**

Vs.

Commissioner of Central Excise **Respondent**
Bhopal

Appearance:

None for the Appellants
Shri Dharma Singh, DR for the Respondent

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing : 09.06.2017
Date of Decision : 04.07.2017

FINAL ORDER NO. 54526-54527 /2017

Per: V. Padmanabhan:

These two appeals have been filed challenging order-in-original No. 25-26/2014 dated 28.8.14. The issue is that the appellant who is a manufacturer of coal, falling under Chapter heading 2701, of the Central Excise Tariff Act, 1985, are availing the facility of cenvat credit. They availed the cenvat credit on lubricating oil which is used in dumpers and heavy earth moving machines falling under Chapter 87. Revenue was of the view that the appellant was not entitled to avail such credits since dumpers and other heavy earth moving machines were not capital goods. Since they are classifiable under Chapter 87 and have been specifically excluded from the list of capital goods. Aggrieved by the impugned order disallowing such cenvat credit, present appeal has been filed.

2. With the above background, we heard Shri Dharam Singh, learned DR for the Revenue. None appeared for the appellant.

3. On perusal of the record, we find that a similar issue came up before the Tribunal in the case of Hindustan Zinc Ltd. which was decided vide Final Order No. A/54868/2016 dated 07.11.2016. In the above said decision, Tribunal has held as follows:

> *"4. …… the appellant is entitled to avail cenvat credit in respect of lubricating oil used in the dumpers which are meant for mining areas. The appellant - assessee is the owner of the dumpers. The lower authorities have denied the credit on the ground that since the dumpers are not eligible capital goods for the purpose of cenvat credit, so for oil and grease consumed in such dumpers also Cenvat credit is not available.*
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> *5. From the record, it appears that the issue is squarely covered by the ratio laid down by the Tribunal in the case of Jaypee Bela Plant vs. C.C.E.,Bhopal – 2007 (219) ELT 357 (Tri-*

Del.) wherein it was held that lubricating oil used in dumpers which used in transporting mined material to factory are eligible for credit under Rule 57A of erstwhile Central Excise Rules, 1944.

6. In the instant case, the appellant is the owner of the dumpers. To run the dumpers, lubricating oil, greases are required. When it is so, then we are of the view that the appellant is entitled to avail cenvat credit as observed by the Tribunal (supra).”

4. By following the decision of the Tribunal as above, we set aside the impugned order and allow the appeal.

(Pronounced in the open Court on 04.07.2017)

(V. Padmanabhan)	**(Justice (Dr.) Satish Chandra)**
Member (Technical)	**President**

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