

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

Excise Appeal No. 56732 of 2013
Excise Appeal No. 51249 of 2014

[Arising out of Order-in-Original No. Commissioner/RPR/CEX/125-126/2012 dated 31.12.2012 and 19/Ref/CEX/2012 dated 26.2.2013 both passed by the Commissioner of Customs & Central Excise, Raipur]

M/s. Jindal Steel & Power Ltd.

Appellants

Vs.

**Commissioner of Central Excise
Raipur**

Respondent

Appearance:

**Shri Rahul Tangri, Advocate for the Appellant
Shri M R Sharma, DR for the Respondent**

CORAM:

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

Date of Hearing/ Decision: 30.10.2017

FINAL ORDER NO. 57645 -57646/2017

Per: Justice (Dr.) Satish Chandra:

Both the present appeals are filed against the order in Originals No. 125-126/2012 dated 31.12.2012 and 19/Ref/CEX/2012 dated 26.2.2013. The period of dispute is from July, 2010 to July, 2012.

3. Heard Shri Rahul Tangri and Shri M R Sharma, learned Counsels for the parties.

2. Brief facts of the case are that the appellant is engaged in the manufacture of sponge iron, pig iron, steel bloom, slab, round, steel beam etc. falling under chapter 72 and 73 of the first schedule to the Central Excise Tariff Act, 1985. It also has captive mine at Raigarh where from coal is mined.

3. With effect from 1.7.2010, clean energy cess was imposed and for the purpose Clean Energy Cess Rules, 2010 were declared. The core issue in the present appeals is from which date and from which stage the Clean Energy Cess will be applicable. Shri Rahul Tangri, learned advocate for the appellant, submits that coal extracted from the mines contained minerals which were to be removed before use, so the coal was crushed, washed, dried and used for captive consumption in another unit. He submits that the final product has come up only after drying and hence only that quantum of coal is leviable to cess. For this purpose, he has submitted some literature regarding nature of the coal. It is also the submission of the learned Counsel for the second issue involved which is a refund claim of the appellant which was disallowed by the department on the principles of unjust enrichment.

4. On the other hand, Shri M R Sharma, learned DR appearing for the Revenue justified the impugned order. He has submitted that the

Clean Energy Cess is applicable from the date i.e. 1.7.2010 when notification was introduced. Regarding the stage, of applicability of Cess, he submits that the Cess is payable on the quantum of coal raised from the mines. It is his submission that in the raw coal, there is no impurity as it was extracted from the deep of mine.

5. By considering the rival submissions and on perusal of record, we are of the view that Rule 6(1) of the Clean Energy Cess Rules, 2010 prescribed the manner for payment. Accordingly, **Cess was payable on the specified goods when removed from the mines.** So, when the goods were removed from the mines, cess is applicable. Hence, we are of the view that levy of Clean Energy Cess is applicable from 1.07.2010 and at the stage, when the coal was removed from the mines. Hence, Cess is to be paid on the quantity of coal raised from the mine. So, the claim of the appellant in this regard is rejected.

6. With the above clarification, it is clear that Cess is chargeable w.e.f. 1st July, 2010 on the coal **when it was removed from the mines as per Rule 6(1)** (supra). Other issues raised by the appellant will have to be decided afresh by the adjudicating authority in the light of above clarification/Decta.

7. Hence, we modify the impugned order and remand the matter to the adjudicating authority for deciding the remaining issue including

refund *denovo* in the light of the above observations but by providing reasonable opportunity to the appellant. Fresh evidence, if need be, may be admitted as per law.

8. In the result, the appeals are partially allowed by way of remand.

(Dictated and pronounced in the open Court)

(V. Padmanabhan)
Member (Technical)

SS

(Justice (Dr.) Satish Chandra)
President