CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 50518 of 2017

(Arising out of Order-in-Original No. BSP/EXCUS/COM/000/030/2016 dated 30.11.2016 passed by the Commissioner of Customs & Central Excise, Bilaspur**)**

DATE OF HEARING : 09.11.2017
DATE OF DECISION : 09.11.2017

M/s Jindal Power Ltd. …. Appellants
(Rep by Sh. Rahul Tangri, Adv.)

VERSUS

CCE, Bilaspur …. Respondent
(Rep. by Sh. M.R. Sharma, DR)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 57869/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellants against the Order-in-Original No. BSP/EXCUS/COM/000/030/2016 dated 30.11.2016 passed by the Commissioner of Customs & Central Excise, Bilaspur. The period in dispute is July to October, 2010.

2. The brief facts of the case are that, during the period under consideration, the assessee-Appellants were engaged in the mining and extraction of coal, which fall under Chapter Heading

27011920 of the Central Excise Tariff Act, 1985, from the open cast coal mine located in Tamnar district, Raigarh. When the coal is extracted, then shale rejects (carbonaceous shale) also got extracted. The Department demands Clean Energy Cess on the entire extraction from the mines. It is the claim of the assessee-Appellants that Clean Energy Cess is not applicable on shale rejects. In other words, the Clean Energy Cess is applicable only on power coal as the rejects were never removed from the mines. Being aggrieved, the assessee-Appellants have filed the present appeal.

3. With this background, we have heard Shri Rahul Tangrai, learned counsel for the assessee-Appellants and Shri M.R. Sharma, learned DR for the Department.

4. Shri Rahul Tangri, learned counsel, at the strength of the written submissions and duly assisted by Shri Amit Jain, learned counsel,, submits that the shale rejects were never removed from the mines as it has no marketability. It is the submission of the learned counsel that whenever plate i.e. SIM in the mines is changed, only then shale rejects generated. He has drawn our attention to the definition of 'Removal' as defined under Rule 2(g) of the Clean Energy Cess Rules, 2010. The learned counsel further submits that in the instant case penalty is not leviable as the issue is debatable.

5. On the other hand, Shri M.R. Sharma, learned DR for the Revenue, has justified the impugned order. He has drawn our

attention to Rule 2(h) of the Clean Energy Cess Rules, 2010 where it is mentioned that 'Specified Goods' means, **"raw coal, raw lignite and raw peat"**. He submits that shale rejects is nothing but part of the raw coal.

6. After hearing both sides and on perusal of the material available on record, we are of the view that as per the definition given in Rule 2(h), the 'Specified Goods' means **"raw coal"**. Shale rejects is also part of the raw coal. When it is so, then the Clean Energy Cess is leviable on the raw coal. Hence, we decline to interfere with the impugned order and the same is hereby sustained along with the reasons mentioned thereon.

7. Regarding penalty, it appears that since the issue has come up for adjudication for the first time before the Tribunal and both sides have failed to produce any case law on the issue, and, more particularly, when there is no malafide intention on the part of the assessee-Appellants, the imposition of penalty is uncalled for. Hence, we set aside the penalty.

8. In the result, the appeal filed by the assessee-Appellants is partly allowed.

(Dictated & pronounced in the open court)

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(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

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