CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 05.01.2018

Appeal No. E/50657 & 50714/2017 [DB]
[Arising out of the Order-in-Appeal No.BHO-EXCUS-002-APP-292-16-1 Dated 19/12/2016 & BHO-EXCUS-002-APP-327-16-17 Dated 05/01/2017 passed by the Commissioner of Central Excise-RAIPUR (Appeal)]

M/s South Eastern Coalfields Ltd. … Appellant

Vs.

C.C.E.-Raipur …Respondent

Appearance:
Present Shri Rajeev Aggarwal, Advocate for the appellant
Present Shri M.R. Sharma & S.K. Bansal, AR for the respondent

Coram: Hon'ble Justice Dr. Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

FINAL ORDER No. 50078-50079/2018

Per B.Ravichandran

1. Both the appeals are on identical dispute regarding the appellant's eligibility for exemption under Notification No. 67/1995 dated 16/03/1995 with reference to coal produced by the appellants and captively used within the mines. The appellants are engaged in production of coal in their mines and the same is cleared on payment of applicable Central Excise Duty along with cesses. The dispute in the present appeal is only with reference to certain quantity of coal so produced which is consumed by the appellant in the mining area for further use captively. Since the appellants did not indicate the quantum and details of such captive consumption in the statutory records and returns of ER-1 filed, the Revenue proceeded to demand and recover duty and cess on that portion of coal. The lower

Authority confirmed the differential duty along with cess and imposed penalty.

2. The Ld. Counsel appearing for the appellant submitted that, admittedly, they are eligible for exemption from duty and cess for the coal used captively by them in their mines. The dispute is with reference to only not declaring the details in their statutory records. However, they maintained day to day production details along with detailed clearance particulars which can satisfactory explain the said captive consumption. In such situation he prayed that the duty demand and penalty are not sustainable.

3. The Ld. AR contested the appeal and stated that clearances, both duty paid as well as captive consumption are to be specifically declared in statutory returns filed with the department. Having failed to do so, the appellants cannot claim exemption under Notification No. 67/95. He supported the findings of the lower Authority.

4. We have heard both the sides and perused the appeal records.

5. We have perused the sample copies of Daily Monetary Report maintained in the mines of the appellants. The said report contained details of production, dispatch, road sale, CC and closing stock. The Ld. Counsel explained that CC- Captive Consumption, quantity is specifically captured in their records which tallies with the non-duty paid portion of their ER-1 return. Admitting that segregation of duty paid and captive consumption quantity has not been made in ER-1, the Ld. Counsel pleaded the same cannot be the reason for denying exemption which is otherwise available to them. Having perused the records submitted before us and also upon examining the submissions of the appellant we are satisfied that the coal captively

used by the appellant and captured in detail in their records will show that they are rightly eligible for exemption as claimed under Notification No. 67/95 for duty as well as cess. Here we note that the Clean Energy Cess Rules, 2010 defines *"Removal" as dispatch of specified goods from a mine and shall include dispatch of such goods for captive consumption within that mine for any purpose other than for raising of such goods"*. The lower Authorities otherwise indicated that the appellant shall be eligible for coal if shown to have been used for raising of such coal captively. As such we note that no excise duty as well as cess on such captively consumed coal are liable to be demanded and paid.

6. In view of the above analyses and discussions, we set aside the impugned order and allow the appeals.

[Order dictated and pronounced in the open court]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Rekha