

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi - 110 066.**

Date of Hearing/Decision: 12/12/2018

Appeal No. E/53541/2018-DB

(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-181-18-19 dated 17/08/2018 passed by the COMMISSIONER OF CGST & CENTRAL EXCISE-BHOPAL(Appeal)

MAIHAR CEMENT UNIT-II

Appellant

Vs.

CGST C.E & C.C-BHOPAL

Respondent

Appearance

Shri Sanjay Grover, Advocate

- for the appellant

Sh R.K.Mishra, DR.

- for the respondent

**CORAM: Hon'ble Mr. ANIL CHOUDHARY, Member (Judicial)
Hon'ble Mr. BIJAY KUMAR, Member (Technical)**

Final Order No. 53548 /2019

Per: Bijay Kumar

The present appeal is filed against the impugned order by the appellant. The issue involved in this case is pertaining to denial of Cenvat credit availed on strength of supplementary invoices issued by M/s South Easter Coal Fields Ltd., alleged in contravention of Rule 9(1)(b) of Cenvat Credit Rules, 2004.

2. The appellant is engaged in the manufacture of Cement and Cement Clinker under Chapter 25 of First Schedule of Central Excise Tariff Act, 1985. The appellant has purchased/procured coal from M/s South Eastern Coal Field Ltd. (SECL), a subsidiary company of M/s Coal India Ltd. The appellant was purchasing and using duty paid coal as in input in its manufacturing activity. During the period from March, 2013 to July, 2013, SECL raised

supplementary invoices on appellant, asking to pay an amount towards Central Excise duty, due to inclusion of various amount towards royalty, stowing excise duty, clean energy cess etc. in the assessable value of the coal. The appellant paid the Central Excise duty and availed Cenvat credit of such duty paid in terms of Rule 3(1) of Cenvat Credit Rules.

3. In the above factual background, proceedings were initiated against the appellant wherein the department entertained a view that Additional Central Excise duty paid by SECL on account of it being recoverable from them due to non-levy of duty by reason of fraud etc and, therefore, the appellant was not eligible to avail Cenvat credit and as it was hit by embargo contained in Rule 9(1)(b) of the Credit Rules.

4. Aggrieved by the aforesaid order, the appellant is before us in the present appeal on the various grounds mentioned in the appeal memorandum.

5. We have heard Shri Sanjay Grover, Id. Advocate for the appellant and Shri R.K.Mishra, Id. AR for the Revenue.

6. The issue involved in this case is decided by this Tribunal vide Final Order No. 52710/2018 dated 30.7.2018 in case of M/s Diamond Cement which is based on relying upon Final Order No. 52486/2018 in case of M/s Birla Corporation Ltd. The relevant portion of the aforesaid order dated 30.7.2018, which is pertinent to be mentioned in the appeal is as under :

“6. The observations from the Tribunal decision in the case of **Birla Corporation Ltd. Vs. CGST, Jabalpur**, Final Order No. 52486/2018 dated 3.7.2018 and another in **Ultratech Cement Ltd. Vs. CCE, Raipur** Final Order No. 52611/2018 dated 23.7.2018 are reproduced below:-

“7. Having considered the rival contentions of both the sides, we take notice that this Tribunal in connected matter of South Eastern Coalfields Ltd. in Appeal No.52023- 52026/2014-DB dated 3.4.2017 vide Final Order No.52723- 52726/2017 dated 3.4.2017, taking notice of pendency of similar matter before the Hon’ble Supreme Court in the case of South Eastern Coal Fields Ltd. and ors. and also other cases, referred to in the above case, disposed of the appeal of the South Eastern Coal Fields Ltd., granting liberty to them to come again after having final verdict from the Hon’ble Supreme Court. Moreover, we are satisfied that there is 4 Excise Appeal No.50308/2018 no element of fraud and suppression on the part of the appellant. The issue herein is recurring in nature. Accordingly, we allow this appeal and hold that the appellant is entitled to take cenvat credit on the supplementary invoices in question. Thus, the appeal is allowed with consequential relief to the appellant.”

7. In view thereof and the above findings, we hereby accept the arguments of the appellant and allow the appeal.

(Pronounced in Court)

(Anil Choudhary)
Member (Judicial)

(Bijay Kumar)
Member (Technical)

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