**CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL**
**NEW DELHI**

PRINCIPAL BENCH, COURT NO. 2

**Excise Appeal No. 51656 / 2018**

[Arising out of Order-in-Appeals No. BHOEXCUS002APP467-17-18 dated 16.02.2018 passed by the Commissioner (Appeals), Central Excise & Customs, Raipur (CG)]

**M/s. Monnet Ispat & Energy Limited** **Appellant**

VERSUS

**Commissioner of Central Excise** **Respondent**
**& Service Tax**, Raipur

APPEARANCE:
Present for the Appellant : Shri Gaurav V Agrawal, Advocate
Present for the Respondent: Shri R K Mishra, AR

**CORAM**: **Hon'ble Mr. Anil Choudhary, Member (Judicial)**
**Hon'ble Mr. C L Mahar, Member (Technical)**

**FINAL ORDER NO. 51199/2019**

Date of Hearing : 18/04/2019
Date of Decision : 18/04/2019

**PER C L Mahar :**

The brief facts of the matter are that the appellant is engaged in the manufacture of Sponge Iron and Angle/ beams falling under Chapter 72 of the Central Excise Tariff Act, 1985. The appellants have been availing the cenvat credit of excise duty paid on inputs, input service, capital goods and service tax paid on input services as per the provision of Cenvat Credit rules, 2004. The appellants have been purchasing coal from M/s. South Eastern Coalfields Ltd. (SECL) which is a subsidiary company of Coal India Limited. The coal purchased by the appellant is used in the manufacture of final product namely, sponge iron. There is no denying of fact that the coal is an input for manufacture of dutiable final product of the appellant and the appellants have been availing the cenvat credit of Central Excise duty paid on coal purchased from M/s. SECL.

2. The Department had initiated certain inquiries against M/s. SECL with regard to the valuation of coal supplied by them to the factory of the appellant. It appears that the Department entertained a view that for payment of Central Excise duty, M/s. SECL should have included the cost element of royalty, stowing of Excise duty, clean energy cess, transit fee etc. into the assessable value for payment of Central Excise duty. It is a matter of record that this issue of inclusion of certain cost elements into the assessable value of coal for payment of Central Excise duty is under litigation before the Hon'ble Apex Court. However, pending litigation, M/s. SECL paid the differential duty under protest on the cost of royalty, stowing of Excise duty, clean energy cess, transit fee etc. and issued supplementary invoices to their buyers of coal which also included the appellant. The appellant on payment of value of supplementary invoices also availed the cenvat credit of extra Central Excise duty paid on such supplementary invoices.

3. The Department has entertained a view that since the element of suppression of facts, collusion or wilful mis-statement with an intent to evade payment of duty etc. are involved in the present case and, therefore, the appellant is not entitled to take cenvat credit under Rule 9 of Central Credit Rules, 2004 and accordingly, a show cause notice dated 01.07.2016 came to be issued demanding reversal of cenvat credit amounting to Rs.25,09,832/- for the period April – May, 2013 by invoking the extended time proviso under section 11A(4) of Rule 14 of Cenvat Credit Rules, 2004. Penal provisions as well as interest have also been invoked in the show cause notice. The matter has reached upto the level of Commissioner (Appeals) and all the charges as alleged in the show cause notice have been confirmed by

impugned order in appeal No. 79/ADJ/CC/RD-II/CEX/2016 dated 01.02.2017.

4. It has been the contention of the appellant that they have taken the cenvat credit on the basis of supplementary invoice issued by M/s. SECL, a division of Coal India Ltd. which is a Public Sector Undertaking. There is no dispute about payment of Excise duty on the inputs purchased by the appellant from the supplier namely, M/s. SECL. There is no denying of fact that goods have been received by the appellant and used in the finished manufactured dutiable products namely, the sponge iron. Learned advocate appearing for the appellant have contended that in respect of availment of cenvat credit on the strength of supplementary invoices, the provisions of Rule 9(1) B of Cenvat Credit Rules, 2004 specifically provides that the appellant can avail the cenvat credit of the additional amount of Central Excise duty paid on supplementary invoice. It has also been contended that there is no suppression, fraud or mis-declaration with an intent to evade central excise duty and therefore, demanding reversal of Cenvat credit by invoking the extended time proviso under section 11A(4) of the Central Excise Act, 1944 read with Rule 14 of Cenvat Credit Rules, 2004 is not legally sustainable.

5. We have also heard learned Departmental Representative, Shri R K Mishra, in this regard, who has generally supported the findings given in the Order-in-Appeal. However, on perusal of the record of appeal, we find that the matter no longer res integra as the issue involved in this appeal has already been decided by this Tribunal in the case of M/s. Jaypee Bela Plant vs. Commissioner of CGST, CC & CE, Jabalpur Final Order No. 52950/2018 dated 04.09.2018. The relevant extract of the same is reproduced below:-

> "5. After hearing both the parties and perusing the decisions as impressed upon, we observe that the moot issue

is about the entitlement of the appellants to avail cenvat credit on the basis of supplementary invoices issued by the Coal Companies. It has been specifically noted that the connected matters of South Eastern Coal Field Ltd. are pending adjudication before the Hon'ble Apex Court. Issue being already sub-judiced the element of confusion cannot be ruled out. 'Suppression' being altogether contradictory to 'Confusion', the same cannot be made applicable in the given circumstances, unless and until there is some apparent positive act of the appellant on the record amounting suppression of fact. Mere failure of ascertaining about the exclusion part of Rule 9 (1) (b) cannot be held to be the act of suppression or collusion on part of the appellant. Above all, the supplementary invoice has been issued by the Coal Companies which are the undertakings of the Government of India, there can be no presumption, unless rebutted, of any alleged suppression or collusion.

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. No doubt, it is apparent on record that the show cause notice to M/s. SECL is prior event than the appellant availing

> the credit on supplementary invoices issued by the said M/s. SECL but the simultaneous fact remains is that the demand against M/s. SECL vide said show cause notice is still under challenge and is pending adjudication before the Hon'ble Apex Court. It is clear to hold that the issue of wrong availment on part of M/s SECL is still a debatable issue. In such circumstances, the ascertainment on part of the appellant as is required under Rule 9 (1) (b) of Cenvat Credit Rules cannot be held to have been an act of suppression."

6. Since the facts of the present case are similar to the one decided in the above referred Final Order of this Tribunal, we feel that impugned order in appeal is without any merits, hence we set aside the same and accordingly, appeal is allowed.

(operative part of the order pronounced in the Court)

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| **(C. L. Mahar)** | **(Anil Choudhary)** |
| **Member(Technical)** | **Member(Judicial)** |

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