IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Excise Appeal No.76564 of 2018

(Arising out of Order-in-Original No.33/Central Excise/Pr.Commr./2018 dated 14.02.2018 passed by Commr. of CGST & Excise, Ranchi)

M/s Bharat Coking Coal Ltd.
WJ Area, Moonidih, Dhandbad-828129

Appellant

VERSUS

Commr. of Central Excise & S.Tax, Ranchi
Central Revenue Building, 5A, Main Road, Ranchi-834001

Respondent

Appearance:
Shri Rajeev Kumar Agarwal, Advocate for the Appellant
Shri S.Mukhopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI RAJU, TECHNICAL MEMBER

FINAL ORDER NO.75549/2021

DATE OF E-HEARING : 28.07.2021
DATE OF PRONOUNCEMENT : 27.08.2021

Per P.K.Choudhary :

The instant appeal has been filed by M/s. Bharat Coking Coal Limited, assailing the demand of central excise duty of Rs. 48,60,79,403/- incl. cess vide Order in Original no. 33/Central Excise/Pr. Commr./2018 dated 14.02.2018 alongwith equivalent penalty imposed under Section 11AC of the Central Excise Act, 1944 pertaining to the period March 2011 to October 2015.

2. Briefly stated, the facts of the case are that the appellant is a PSU and a 100% subsidiary company of Coal India Limited. The appellant is engaged in the business of mining and selling of coal. It has several units, commonly referred as "area offices" which got separately registered under Central Excise Act when coal became excisable w. e. f. 1st March 2011 as there was no centralized registration at that point of time. Representations were made to the

departmental authorities and the CBEC to allow Centralized Registration considering the various difficulties arising due to separate registrations for each unit/area. Effective from November 2015, the appellant company finally obtained a single Centralized Registration for the company as a whole. In the ER-1 return filed by the appellant at its Dhanbad Headquarters for November 2015 in the centralised registration regime, the CENVAT credit balance remaining unutilised at various units / Area offices were clubbed and used for payment of output excise duty liability for coal clearance by the Company as a whole. The period of dispute in the present case is for the period March 2011 to October 2015 when the various units of appellant were registered separately under the Central Excise Act.

One of the units of the appellant, i.e. WJ Area, which is a coal producing area transferred the raw coal produced by it to Coal Washery Unit at the selling price of raw coal and duly discharged the Central Excise duty liability. The selling price of raw coal is a regulated price, which is notified by the parent company Coal India Limited in consultation with Ministry of Coal. Both the areas (transferor and transferee) are part of the same legal entity, BCCL. Show Cause Notice dated 05.07.2016 was issued by invoking extended period of limitation which was adjudicated vide impugned order wherein demand has been confirmed by the Ld. Commissioner on the ground that:-

(a) the stock transfer from the appellant (WJ Area) to its Washery unit is a transfer between related persons and

(b) the valuation in such cases should have been made at 110% of the cost of production (CAS-4) for discharging the duty liability of excise as per Rule 8 of the Central Excise Valuation (Determination of Price) Rules 2000.

3. The Ld. Advocate appearing for the appellant assessee submitted that there are no “persons” but only one person i.e. Bharat Coking Coal Limited (BCCL), the appellant herein. The different Areas/Units

which were separately registered are under one single legal entity i.e. BCCL. Therefore, no related person exists in the transaction between the separately registered Areas/units of the same legal entity and consequently Section 4(3)(b)(iv) of the Act is not applicable at all. To support his contentions, he relied on the Tribunal's decision in the case of **India United Mills v Commissioner of Central Excise, Mumbai-2017 (5) G.S.T.L. 430 (Tri-Mumbai).** He accordingly submitted that the appellant which is a coal producing area (transferor of raw coal) and the washeries unit (transferee) are under one single entity i.e. BCCL and hence are one person and cannot be treated as different persons and hence, the very concept of "related person" does not arise in their case.

4. The Ld. Advocate also disputed the applicability of Rule 8 of the Valuation Rules as adopted by the Ld. Commissioner to raise the impugned demand. He referred to Rule 8 of the Valuation Rules which reads as below:-

*"Where the excisable goods are not sold by the assessee but are **used for consumption by him or on his behalf** in the **<u>production or manufacture of other articles,</u>** the value shall be one hundred and ten per cent of the cost of production or manufacture of such goods."*

He submitted that the above Rule 8 would be applicable only when the excisable goods are not sold, goods are used captively either by the assessee himself, or are consumed on his behalf, in the production or manufacture of other articles. He submitted that raw coal is neither used captively by the assessee nor is it otherwise consumed on its behalf. The appellant has only transferred its raw coal to the washery unit for further processing which is neither amounting to 'production' nor 'manufacture' of 'other article'. He relied on the Supreme Court decision in the case of **Commr.of C.Ex & Cus., Bhubneshwar vs Tata Iron & Steel Co. Ltd, 2003 (154) ELT 343 (S.C.)** to submit that washing of coal does not amount to production or manufacture. He also relied on the decision of the Tribunal in

Aryan Energy (P) Ltd v Commr.of Cus & C.Ex, Hyderabad-1, 2009 (13) STR 42 (Tri-Bang) to submit that washing of coal (also known as beneficiation of coal) does not amount to production of coal as washing is a process which enhances the quality of coal.

On the basis of above submissions, he further submitted that Rule 8 is not applicable in their case inasmuch as raw coal is neither used captively by the appellant nor it is otherwise consumed on his behalf and that washing of coal does not amount to production or manufacture of other articles.

5. The Ld. Advocate also strongly contested the demand on revenue neutrality. He submitted that had the demanded amount been paid, the same would have been available as credit to its washery unit which is under the same legal entity and duly paying excise duty on washed coal. He submitted that presently, when the Valuation Rules are no longer applicable after the implementation of GST w.e.f. 01.07.2017, the valuation dispute is only academic in nature in a complete revenue neutral situation. Further, he submitted that the valuation dispute arising out of impugned order was only for the period w.e.f. 1st of March 2011 till October 2015 when the units of appellant were separately registered with jurisdictional authorities under Central Excise. When the centralized registration was obtained for the Company as a whole, the revenue neutral dispute was automatically resolved. This fact has been admitted by the Ld. Commissioner in paras 3.4 and 3.5 of the impugned order which clearly shows that the disputed issue was for a particular period only and is a non-recurring issue and hence, now academic in nature. He relied on Tribunal's Mumbai Bench decision in **Commissioner of Central Excise, Mumbai v Special Steel Limited, 2015 (329) ELT 449 (Tri-Mumbai)** to support his arguments, which has been upheld by the Hon'ble Supreme Court reported as **Commissioner v. Special Steel Ltd. - 2016 (334) E.L.T. A123 (S.C.)**.

The Ld. Advocate also placed reliance on the ratio of the judgment of the Tribunal's Mumbai Bench in **Mahindra & Mahindra Ltd v CCE, Mumbai, 2019 (368) ELT 105 (Tri-Mumbai)**, civil appeal against which has been dismissed by Supreme Court **2019 (368) ELT A41 (SC).** The Tribunal in that case decided the issue of differential duty demand arising out of valuation on clearances to sister unit on the principle of revenue neutrality. In that case, the Tribunal set aside the demand solely on the principle of revenue neutrality without visiting the issue on valuation:-

- CCE, C & ST v. Tarapur Grease India Pvt. Ltd. [2016 (334) E.L.T. 416 (Bom.)]
- CCE v. Special Steel Ltd. [2015 (329) E.L.T. 449 (Tri.)]
- CCE & C v. Indeos ABS Ltd. [2010 (254) E.L.T. 628 (Guj.)]
- STI Industries v. CCE [2015 (327) E.L.T. 514 (Tri.)]

He also relied on the following decisions to support his case on revenue neutrality to submit that no demand exists in case of revenue neutrality:-

- CCE, Pune v. Coca Cola India Pvt Ltd 2007 (213) ELT 490 (SC)
- CCE, Vadodara Vs Narmada Chematur Pharmaceuticals Ltd., 2005 (179) ELT 276 (SC).
- Mafatlal Industries Ltd. vs. CCE Daman 2009 (241) ELT 153 (Tr-Ahm) duly maintained in Supreme Court reported in 2010 (255) ELT A77 (SC).
- CCE Vadodara vs. INDEOS ABS Ltd 2010 (254) ELT 628 (Guj)
- Sarovar Hotels Pvt Ltd. vs. CST Mumbai 2018 (10) GSTL 72 (Tri-Mum).

On merits, he lastly submitted that the entire foundation of the show cause notice is based on the wrong footing that the washery unit is a "related person" of the appellant which is a coal producing area/unit. Based on this misconceived notion, treating the units as "related persons", the SCN proceeds to dispute the self-valuation done by the appellant by alleging that Rule 8 of the Valuation Rules is applicable. He submitted that when the very premise of proposing demand is on a misconceived notion, the entire proceedings initiated gets vitiated. In this connection, reliance has been placed on the decision of the Tribunal in **India United Mills v Commissioner of Central Excise, Mumbai- 2017 (5) G.S.T.L. 430 (Tri-Mumbai).**

He also contested the demand on time bar in absence of fraud or wilful suppression and the imposition of penalty on same counts.

6. The Ld. A.R. appearing for the Revenue justified the findings made by the Ld. Commissioner and submitted that demand has rightly been confirmed. He accordingly prayed that the appeal filed by the assessee be rejected being devoid of any merit.

7. Heard both sides through video conferencing and perused the appeal records.

8. We find that the issue to be decided is whether Rule 8 is applicable on raw coal transferred by the appellant's coal producing unit, namely, WJ Area to its washery unit and whether both the transferor and the transferee units owned by the same legal entity i.e. BCCL, the appellant, are related persons. We find that the dispute with regard to valuation is only for the period upto October 2015, i.e. during the period when the units were separately registered with jurisdictional excise authorities. The question of valuation in the centralised excise registration regime, i.e. from November 2015 onwards, did not further arise as the transferor was not required to pay central excise duty since all the units were all clubbed in single registration.

Firstly, we decide the issue as to whether the transferor unit and the transferee unit can be said to be related person so as to invoke the very Rule 8 of the Valuation Rules. We find that the issue has been decided by Mumbai Bench in **India United Mills v Commissioner of**

Central Excise, Mumbai- 2017 (5) G.S.T.L. 430 (Tri-Mumbai) wherein the Division Bench observed as below:-

"*We find that the CDC is like a depot owned by M/s. National Textile Corporation (Maharashtra North) Ltd. and the appellant is a unit of said company. Therefore, all the three i.e., National Textile Corporation (Maharashtra North) Ltd., the appellant and CDC, are under one single entity, i.e. the company, M/s. National Textiles Corporation (Maharashtra North) Ltd.* ***Therefore, among three there are no different persons involved. <u>Accordingly, there is no related person exist in the entire transaction.</u> In the show-cause notice, the entire basis for disputing the valuation is that the CDC is a related person of the appellant, which is factually incorrect. <u>Therefore, the entire foundation of the show-cause notice gets demolished.</u> In such case in all the proceedings which is based on such show-cause notice will get vitiated. <u>Since the show-cause notice is based only on the point of related person, even though some other valuation provision may or may not apply, we cannot address to the same. Otherwise, we have to travel beyond the scope of show-cause notice, which is not permissible in the law."</u>***

9. We also find that the entire case of the Revenue is based on the observation that the two different units of the appellant are related persons but the relevant Rule 9 has not been invoked. On perusal of the allegations made in Para 4, Para 5 and Para 10 of the impugned SCN, we agree with the submissions of the Ld. Advocate for the appellant that since the entire foundation of the show cause notice is based on the wrong notion that the washery is a "related person" of the appellant, the entire demand is liable to be quashed. Further the invocation of Rule 8 of the Valuation Rules has been done mechanically without even appreciating the fact that there is no captive consumption by the appellant or consumption on its behalf and washing of coal is neither production nor manufacture.

10. Since we have decided the issue on merits to hold that Rule 8 of the Valuation is not applicable in the instant case for the reasons stated above, we are not further entering into the issue of revenue neutrality as pleaded by the appellant. In so far as the limitation is

concerned, we do not find any positive evidence in the entire SCN to prove the element of fraud or suppression and hence, the extended period is not applicable in the instant case.

11. In view of the above discussions, the impugned order cannot be sustained and is accordingly set aside. The appeal is thus allowed with consequential relief as per law.

(Pronounced in the open court on 27 August 2021)

Sd/

(P. K. Choudhary)
Member (Judicial)

Sd/

(Raju)
Member (Technical)

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