

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 78883 of 2018

(Arising out of Order-in-Original No.78/Central Excise/Pr. Commr./2018 dated 28.03.2018 passed by Commissioner of CGST & Central Excise, Ranchi.)

M/s Central Coalfields Limited

(Rajrappa, District – Ramgarh, Pin - 829150.)

...Appellant

VERSUS

Commissioner of CGST & CX, Ranchi Commissionerate

(CGST & CX, Ranchi, Central Revenue Building,
5A, Main Road, Ranchi - 834 001.)

...Respondent

APPEARANCE :

Shri Bipin Kumar, Chartered Accountant, for the Appellant

Shri S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. K. CHOUDHARY MEMBER (JUDICIAL)

HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No...75924/2023

DATE OF HEARING : 7th June 2023

DATE OF PRONOUNCEMENT: 23.06.2023

PER K. Anpazhakan:

Central Coalfields Limited (The Appellant), a Subsidiary of Coal India Ltd, are registered as producer of Coal for Clean Energy Cess. They are engaged in extraction of Raw Coal and manufacturing and clearance of Coking Coal and other Coal. They regularly submitted their monthly ER-1 return for clearance of excisable goods and Form I for clearance of goods liable for Clean Energy Cess.

2. Raw Coal is extracted from Rajrappa Project mines. After extraction of Raw Coal, it is sent to Rajrappa Washrey Plant for further processing such as washing and sizing.
3. As per Rule 6(1) of Clean Energy Cess Rules 2010, Cess on specified goods removed from the mine during a month shall be paid @ Rs 50/- per MT, by 5th of the succeeding month.
4. As per Rule 2(g) of Clean Energy Cess Rules 2010, removal means dispatch of specified goods from a mine, shall include dispatch of such goods for captive consumption within that mine for any purpose other than for raising of such goods.
5. In compliance with Rule 2(g) and Rule 6(1) of Clean Energy Cess Rules 2010, the Appellant has discharged complete Clean Energy Cess liability at the stage of extraction of Coal from the Mines on the gross extracted quantity of 29,50,080 MT of Raw Coal during the period July 2010 to March 2013. During this period the Appellant discharged Clean Energy Cess @ Rs. 50 per MT amounting to Rs. 14,76,04,018/-. They have also furnished the Gross Extracted Quantity of Raw Coal from Mines and Clean Energy Cess Payment thereon in its Monthly Return Form I, as prescribed under Rule 11 of Clean Energy Cess Rules 2010.
6. A Show Cause Notice dated 02/06/2016 was issued to the Appellant alleging that they have collected excess amount of Rs. 12,30,00,478/- as Clean Energy Cess from their customers and retained the same. Accordingly, the demand was made by invoking section 11D of the Central Excise Act 1994. Interest under Section 11DD of the said Act was also demanded. The Notice was adjudicated by the Principal Commissioner and the demand made in the Notice was confirmed along with interest, vide Order-in-Original dated 19.04.2018. The Appellant is before us against this impugned order.

7. In their submissions, the Appellant stated that they have already paid Clean Energy Cess @ Rs. 50 Per MT amounting to Rs. 14,76,04,018/ on the quantity of 29,50,080 MT of raw coal extracted during July 2010 to March 2013. The raw coal extracted has been dispatched from the mines to the Washery plant. In the Washery, the raw coal was converted into four different varieties of coal namely, Clean Coal (yield of slurry and reject is 22%), WCP (yield Approx 35%), Slurry and Reject-by Product (Yield of slurry and reject is 22%). They stated that the above said different varieties of coal on clearance from the Washery are exempt from levy of Clean Energy Cess , as the Cess has already been paid on the raw coal extracted from the mines, as per Notification 4/2010 dated 22.06.2010.

8. The Appellant stated that the Notice has demanded 'excess collection of Clean Energy Cess' against sale of Clean Coal as per presumptive calculation and presumed recovery of Clean Energy Cess of Rs. 12,30,00,478 on 16,78,729 MT of Clean Coal @ Rs. 73.27 per MT. The impugned Order has confirmed excess recovery of Clean Energy Cess from customers amounting to Rs. 7,23,94,806/- after deducting the Credit Notes issued to Customers amounting to Rs. 5,06,05,672.

9. The Appellant stated that the impugned Order had presumed Charging and Recovery of Clean Energy Cess on 16,78,729 MT of Clean Coal @ Rs. 73.27 per MT in addition to the earlier charged and paid Clean Energy Cess on gross extracted raw coal of 29,50,080 MT on which Clean Energy Cess amounting to Rs. 14,76,04,018 has already been paid @ Rs. 50 MT. Clean Coal is made out of Raw Coal, which is is exempt from levy of Clean Energy Cess under Notification No. 4/2010-CE dated 22.06.2010 provided Clean Energy Cess @ Rs. 50 Per MT on coal extracted from the mines is already paid. In the present case, since Clean Energy Cess @ Rs 50 per MT is already paid on the gross extracted raw coal quantity of 29,50,080 MT during the

relevant period, no Clean Energy Cess is again payable at the time of clearance of Clean Coal from the Washery. However, the impugned Order attempts to levy Clean Energy Cess again, ignoring the exemption provided under Notification 4/2010 dated 22.06.2010.

10. The Appellant stated that during the period under dispute they have cleared all the Clean Coal to Steel Authority of India Limited (i.e. SAIL) and Rashtriya Ispat Nigam Limited (RINL) only. Both the buyers are Public Sector Undertakings administered by Ministry of Steel, Govt. of India. Fixation of Final Selling Rate of Clean Coal between the Appellant and its buyers is a subject matter of several rounds ministerial level discussion between Ministry of Coal and Ministry of Steel and hence usually final price is mutually fixed only after the year end of supply made and accordingly necessary debit/credit notes were issued to adjust the differential price against the earlier period supply of Clean Coal . This is evident from the fact that Final MOU with SAIL for the fixation of sale price of clean coal for Financial Year 2010-11 was signed on 04.05.2011 and for Financial Year 2011-12, the MOU was signed on 20-7-2012. Accordingly, debit notes were raised @ Rs. 73.27 for realization of increased MOU price for the supplies made during the Financial Year 2010-11 and also credit notes were issued for April 2011 to August 2012 based upon the Final MOU of FY 2011-12. In the impugned order, the Adjudicating authority has presumed this differential MOU price for the financial year 2010-11 @ Rs. 73.27 per MT, as deemed excess collection of Clean Energy Cess for the period of July 2010 to March 2013. Accordingly, the Appellant contended that no excess collection of Clean Energy Cess was made during the relevant period and hence the impugned order cannot be sustained.

11. The Ld A.R reiterated the findings of the adjudicating authority in the impugned order.

12. Heard both sides and perused the appeal records.

13. We observe that as per Rule 6(1) of Clean Energy Cess Rules 2010, Cess is payable on the raw coal removed from the mines @ Rs 50/- per MT by 5th of the succeeding month. In this case, there is no dispute that the Appellant has already paid Clean Energy Cess amounting to Rs. 14,76,04,018 on the gross quantity of raw coal of 29,50,080 MT extracted from the mines during the period July 2010 to March 2013.

14. We observe that Notification No 4/2010 Dated 22nd June 2010 exempts levy of Clean Energy Cess on clean coal if the Cess is already paid on the raw coal on extraction and removal from the mines. For ready reference, the said Notification is reproduced below:

In exercise of the powers conferred by section 83 of the Finance Act, 2010 (14 of 2010) read with section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts all goods falling under Central Excise Tariff headings 2701, 2702, 2703 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than raw coal, raw lignite and raw peat, from the clean energy cess leviable under section 83 of said Finance Act. Provided that the said exemption shall be applicable subject to the condition that applicable clean energy cess has been paid at the stage of raw coal, raw lignite or raw peat from which the said goods are produced or manufacture.

15. Thus, as per the Notification cited above, all goods falling under the Chapter Heading 2701 is exempt from levy of Clean Energy Cess, if Clean Energy Cess has been paid at the stage of raw coal itself on removal from the mines. The Appellant has cleared the raw coal from the mines to the Washery on payment of Clean Energy Cess @ Rs 50 per MT. The raw coal cleared to the Washery is then converted into four different varieties of coal namely, Clean Coal (yield of slurry and reject is 22%), WCP (yield Approx 35%), Slurry and Reject-by Product (Yield of slurry and reject is 22%). Thus, as per Notification

4/2010 dated 22.06.2010, no Clean Energy Cess will be payable by the Appellant again when the clean coal is cleared from the Washery.

16. It is observed that during the period under dispute, the Appellant has cleared all the Clean Coal from the Washery to Steel Authority of India Limited (SAIL) and Rashtriya Ispat Nigam Limited (RINL) only. Both the buyers are Public Sector Undertakings administered by Ministry of Steel, Government of India. Fixation of Final Selling Rate of Clean Coal between Appellant and its buyers is a subject matter of several rounds ministerial level discussion between Ministry of Coal and Ministry of Steel and hence usually final price is mutually fixed only after the year end of supply made and accordingly necessary debit/credit notes were issued to adjust the differential price against the earlier period supply of clean coal . This is evident from the fact that Final MOU with SAIL for the fixation of sale price of clean coal for Financial Year 2010-11 was signed on 04.05.2011 and for Financial Year 2011-12, the MOU was signed on 20.-7-2012. Accordingly debit notes were raised @ Rs. 73.27 for realization of increase MOU price for the supply made during Financial Year 2010-11 and also credit notes were issued for April 2011 to August 2012 based upon the Final MOU of FY 2011-12. In the impugned order, the Adjudicating Authority has presumed this differential MOU price for financial year 2010-11 @ Rs. 73.27 per MT, as deemed collection of Clean Energy Cess for the period of July 2010 to March 2013. However, while presuming to the differential rate of price increase @ Rs. 73.27 per MT on the Clean Coal, the Ld. Adjudicating Authority has totally overlooked the basic spirit of levy of Clean Energy Cess:

- a) Clean Energy Cess is not leviable on exempted goods
- b) Clean Energy Cess rate is fixed on cleared quantity and not on the agreed price between buyers and sellers.

17. We observe that the basis of calculation of differential Clean Energy Cess Rate @ Rs. 73.27 per MT on Clean Coal, in the impugned order is only on the basis of a presumption that this amount collected separately was on account of Clean Energy Cess. The Appellant has clearly established that the amount collected was on account of differential rate arrived at due to late signing of MOUs.

18. We observe that in the impugned order the demand has been confirmed under Section 11D of the Central Excise Act, 1994. As per Section 11D, any amount collected as duty is to be deposited in the Government Account. In the present case, the Appellant has already paid Clean Energy Cess amounting to Rs. 14,76,04,018 on the gross extracted quantity of raw coal of 29,50,080 MT during the period July 2010 to March 2013, at the time of removal of the same from the mines. They are entitled to collect this amount from the customers. Provisions of Section 11D would be attracted only when it is established that the Appellant has collected more than Rs 14,76,04,018/- as Clean Energy Cess from the customers. We observe that the investigation has not established any such excess collection by the Appellant over and above the amount of Rs 14,76,04,018/- of Clean Energy Cess already paid by the Appellant.

19. It is observed that the Appellant has paid Clean Energy Cess @ Rs 50 per MT on the quantity of raw coal of 29,50,080 MT amounting to Rs.14,76,04,018. After processing in the Washery, the Clean Energy Cess is chargeable only on the Clean Coal, as there is no Clean Energy Cess on the other products emerge in the Washery. Thus, the Appellant has to collect the amount of Rs 14,76,04,018/- paid on 29,50,080 MT of raw coal from 16,78,729 MT of Clean Coal cleared from the Washery. To collect the Clean Energy Cess of Rs.14,76,04,018/- from 16,78,729 MT of Clean Coal, the rate has to be applied higher than the @50 per MT paid earlier. It is observed that the Appellant has cleared all the clean coal to two public Sector undertakings,

namely SAIL and RINL at a negotiated price. The Appellant stated that as per the MOU agreed upon between them, the customer has agreed to pay Clean Energy Cess only during the Financial Year 2010-11. The Appellant also stated that as per the MOU, they have returned back Rs Rs. 5,06,05,672 collected as Clean Energy Cess from the customers, by issuing debit notes..Thus, effectively, they have collected less than Rs 14,76,04,018/- as Clean Energy Cess already paid by them from their customers during the relevant period. We observe that there is no findings by the adjudicating authority in the impugned order contrary to this claim by the Appellant. Provisions of Section 11D can be invoked only when it is established that the Appellant has collected excess amount of Clean Energy Cess than what was paid by them. From the records, it is observed that the Clean Energy Cess collected by the Appellant from their customers was much less than the amount of Clean Energy Cess actually paid by them on the raw coal. In view of the above discussion, we hold that the demands confirmed in the impugned order under Section 11D of the Central Excise Act,1994 is not sustainable. Accordingly, the demand of interest under Section 11DD is also not sustainable.

20. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the Appellant.

(Pronounced in the open court on.....23rd June, 2023.....)

Sd/-
(P. K. Choudhary)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Pinaki