

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

Excise Appeal No. 75329 of 2023

(Arising out of the Order-in-Appeal No. 15/CEX/BBSR-GST/2023 dated 28.02.2023 passed by Commissioner (Appeals), CGST, Central Excise & Customs, Bhubaneswar.)

M/s Mahanadi Coalfields Limited,

Bharatpur Area, Office of the General Manager,
N.S. Nagar, Dist.-Angul (Odisha)-759148.

...Appellant (s)

VERSUS

Commissioner of CGST & Central Excise & Customs, BBSR.

C. R. Building, Rajaswa, Vihar, P.O. Vani Vihar, Bhubaneswar-751007 (Odisha).

...Respondent(s)

APPEARANCE :

Shri Rajeev Agarwal, & Mr. S. Dixit, both Advocates for the Appellant
Shri S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)

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

FINAL ORDER No.77288/2023

DATE OF HEARING : 10.10.2023
DATE OF DECISION : 10.10.2023

PER K. ANPAZHAKAN

Mahanadi Coalfields (The Appellant) are engaged in the business of production and selling of coal. A central excise duty demand of Rs.34,97,579/- including Education Cess was confirmed against the Appellant vide the impugned Order-in-Appeal passed by the Commissioner (Appeals). The demand pertains to the period 2011-12 to 2014-15. Aggrieved against the impugned order, the Appellant has filed the present appeal.

2. Briefly stated facts of the case are that the Appellant has their coal mines located in the State of Odisha. The Appellant has ten (10) Units (generally referred to as Area Offices). The present demand pertains to MCL Bharatput Area.

Excise Appeal No. 75329 of 2023

2.1 Coal was made subject to levy of Clean Energy Cess for the first time w.e.f. July 2010. Further, Central Excise Duty was imposed for the first time w.e.f. March 2011. Each of the Area Offices / Units of the Appellant Company obtained separate registration with the Central Excise Authorities. Representations were made by the Appellant with the Central Excise Department seeking waiver of various procedural requirements for movement of goods from one Area Office to another without issuance of excise invoice. Effective from April-2015 onwards, the Appellant Company obtained a single Centralized Registration with the Central Excise Authorities for a company as a whole at its Sambalpur Headquarters. The closing balance of unutilized Cenvat Credit lying as on 31st March, 2015 with the Area Offices were carried forward in the Excise Return filed at the Sambalpur Headquarters in April 2015.

2.2 The present dispute pertains to the period March 2011-12 to 2014-15, i.e., prior to obtaining Centralized Excise Registration. During the period in dispute, the Area Offices have removed coal to another area office (within the same legal entity) from where coal has been ultimately sold to buyers through Railway sidings. The transferred area while removing coal has not deposited Central Excise Duty and Clean Energy Cess. However, the said duties have been duly paid by the transferee Area Office which has issued excise invoice to the ultimate coal buyer while making dispatch through Rail mode on the basis of Railway receipt. In the ER-1 Returns filed by the transferee area, necessary disclosures have been made in the remarks column with

Excise Appeal No. 75329 of 2023

regard to the coal quantity which has been received by the transferee Area which has been subsequently dispatched upon payment of duty.

2.3 The aforesaid practice with regard to the payment of duty by the transferee Area was always in the knowledge of the Central Excise Authorities. In the course of Central Excise Audit undertaken during the period of October-2014, the non-payment of duty on coal removed by the transferor Area was pointed out by the authorities. The Appellant had duly submitted that the duty amount has been duly paid by the transferee Area Office while removing coal from the Railway siding located in the transferee Area and that a book adjustment was made to settle the accounts between area offices inter-se. In the Audit Memo, it was noted that a decision was taken on 4th December, 2013 to initiate action for recovery of duty from the concerned transferor Area Office.

2.4 Consequent to aforesaid Audit Objection, Show Cause Notice dated 19.04.2016 was issued to the Appellant, which has been received by MCL Bharatpur Area on 28.04.2016 . In the said SCN, demand of Central Excise Duty and Clean Energy Cess were proposed for the period March 2011 to March 2015. It was alleged that in terms of the Central Excise Act, duty is required to be paid at the time of removal by the transferor Area.

2.5 The show-cause notice was adjudicated. The demand was confirmed by invoking extended period of limitation.

2.6 Being aggrieved with the said order, the appellant is before us.

3. The Id. Counsel for the appellants submits that although it is the case of revenue neutrality as their sister unit to whom the goods have been transferred without payment of duty by the Appellant, has paid the duty

Excise Appeal No. 75329 of 2023

on their clearances. Therefore, the demand of duty and cess are not sustainable.

3.1 He further submits that as the period involved in the year 2011-2015, and the show-cause notice has been issued on 19.04.2016, which has been received by the appellants on 28.04.2016, is beyond the period of limitation. Therefore, on limitation of time, the show-cause notice fails.

4. On the other hand, the Id. A.R. for the Revenue submits that it is fact on record that the Appellant has cleared the goods without payment of duty. Therefore, they are liable to pay duty, which they have evaded.

5. Heard the parties and considered the submissions.

6. We find that it is fact on record that the Appellant has cleared the goods from their unit without payment of duty to their sister unit and the said sister unit cleared the said coals on payment of duty. Although it is a situation of revenue neutrality, but the appellant was monthly required to pay duty at the time of clearance from the transferor unit, otherwise, the Central Excise Act will become redundant.

7. Therefore, we hold that at the time of clearance of goods, the Appellants was liable to pay duty.

8. We further find that in the facts and circumstances of the case that when the fact of clearance of coals from the transferor unit without payment of duty was in the knowledge of the respondent as various correspondences were made during the impugned period and the show-cause notice has been issued to the Appellant by invoking extended period of limitation, in that circumstances, we hold that whole

Excise Appeal No. 75329 of 2023

of the demand is barred by limitation. Accordingly, on limitation, the Appellant succeeds.

9. In view of the above observations, we hold that on merit Appellant is liable to pay duty, but on limitation, the show-cause notice fails. Accordingly, the demand confirmed in the impugned order is not sustainable. Accordingly, we set aside the same.

10. In view of the above discussion, the appeal filed by the Appellant is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in the open Court)

Sd/-
(R. Muralidhar)
Member (Judicial)

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

Tushar