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

Excise Appeal No. 70699, 70724 of 2013

(Arising out of the Order-in-Original No. 10-11/COMMR./BOL/13 dated 21.03.2013 passed by Commissioner of Central Excise, Bolpur.)

M/s Eastern Coalfields Ltd,
Sanctoria, P.O.- Dishergarh, Dist.-Burdwan, Pin-713333.

...Appellant (s)

VERSUS

Commissioner of CGST & Central Excise, Bolpur.
Sian, Bolpur, Dist.-Birbhum, West Bengal, Pin-731204.

. ...**Respondent(s)**

APPERANCE :

Mr. Rajeev Kumar Agarwal & Mr. C. Kumar Chandra, both Advocates for the Appellant
Shri K. Choudhury, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No...77339-77340/2023

DATE OF HEARING : 12.10.2023
DATE OF DECISION : 12.10.2023

PER K. ANPAZHAKAN :

Briefly stated facts of the case are that the appellant, a PSU and 100% subsidiary of Coal India Ltd, is engaged in the business of mining and selling of coal from its mines located in the State of West Bengal. 'Coal' was made subject to levy of Clean Energy Cess for the first time w.e.f. 01.07.2010 under the provisions of the Finance Act, 2010. Further, Central Excise Duty on coal become payable for the first time w.e.f. 01.03.2011 vide the Finance Act, 2011, with a levy at the rate of 5% in place of 'NIL' rate of duty.

2. For the purpose of payment of Central Excise Duty on coal, a concessional rate of 1% was prescribed provided that the benefit of CENVAT credit under the provisions of CENVAT Credit Rules, 2004 (CCR) is not availed. Since, the payment of duty at the concessional rate of 1% was optional, the Appellant opted to make the payment of Central Excise Duty at the normal tariff rate of 5% with CENVAT credit facility. The Appellant duly claimed the benefits of CENVAT credit of inputs, inputs services and capital goods under the CCR and started making payments of Central Excise Duty at the normal tariff rate of 5% instead of paying concessional rate of 1%.

3. The Appellant is captively using some quantity of coal within the mines for further production of coal. The said quantity of coal is used to generate steam to be used as power for the purpose of lifting coal from the underground mines by using mechanical means. The Appellant claimed that the coal so captively used, since not removed from the mines, is entitled to the benefit of exemption under Notification No. 67/1995 – CE date 16th March, 1995.

4. Dispute has been raised by the Central Excise Department to deny the benefit under Notification No. 67/1995 on the ground that the said exemption benefit would be available only when the coal is 'manufactured. Since coal is 'produced' and not 'manufactured', the Appellant would not be entitled to the benefit of the aforesaid exemption. It has also been contended that by producing coal, there is no emergence of a new product so as to consider the coal mining activity undertaken by the appellant to be amounting to 'manufacture'.

5. The Appellant submits that they were discharging the payment of Central Excise Duty at the normal tariff rate of 5% along with CENVAT credit facility", which is not in dispute. The very impugned demand has been raised by charging duty at the rate of 5% is on record. Further, the CENVAT credit availed by the Appellant has not been denied under the provisions of CCR. Having allowed the CENVAT credit facility, which is available on inputs used in the manufacture of final product, the Authorities have in-principle accepted that the "activity of coal mining amounts to manufacture". It cannot be the case of the Department that the Coal mining activity would amount to 'manufacture' for the purpose of availment of CENVAT credit under CCR, whereas, the very same coal mining activity would not amount to 'manufacture' for the purpose of consideration of exemption under Notification No. 67/95 .

6. The Appellant further submitted that the Ld. Commissioner, has wrongly applied the decision of the Hon'ble Supreme Court in the case of **CCE, Bhubaneswar v. Tata Iron and Steel Company Limited 2003(154)ELT 343(SC)** to hold that the activity of coal mining is a production activity and not a manufacturing activity. In the said decision, the Hon'ble Apex Court was interpreting the provisions of Coal Mines (Development and Regulation) Act, 1974, with regard to the leviability of Additional Customs Duty. The provision of Central Excise Act, 1944, was not the subject matter for consideration before the Hon'ble Court in the said case. The said decision of the Hon'ble Supreme Court has been duly considered by the Bangalore Bench of this Tribunal in the case of **Coastal Energy Private Limited v.**

Commissioner of Custom and Central Excise 2014(310)ELT 97(Tribunal)Bangalore.

7. This Tribunal in the case of **Avian Overseas Pvt. Ltd. v. COMMR. Of C.EX., CUS. & S.T., BBSR-II 2009 (15) S.T.R. 540 (Tri. – Kolkata)**while considering as to whether Service Tax would be leviable on coal mining activity under Business Auxiliary Services observed that since the definition of Business Auxiliary Services excluded the activity of manufacture as defined under Section 2(f) of the Central Excise Act, no Service tax could be levied under Business Auxiliary Services since the mining activity will amount to manufacturing activity. The aforesaid decision in the case of **Avian Overseas (supra)** has been further relied by the Tribunal in the case of **CCE v. Integrated Coal Mining Ltd. (Final Order dated 5th January, 2021Service Tax Appeal No. 75388 of 2014,)**

8. The instant issue also stands clarified by the Tax Research Unit in **F. No.332/8/2012-TRUdated 06.03.2012**, holding that the coal companies would be legally entitled to avail CENVAT credit under the CCR by paying Excise Duty at normal tariff rate of 5%. In the said clarifications, after duly considering the decision of the Hon'ble Supreme Court in the case of Tata Iron and Steel Company Limited (Supra), it has been clarified that the said decision pertained to the levy under Coal Mines Act and not the Central Excise Act, 1944. Accordingly, it has been clarified therein that there would not be any requirement to make any amendment in the definition of manufacture under Section 2(f) of the Central Excise Act, which clearly implies that coal mining activity is already covered as an activity amounting to 'manufacture' and exigible

to central excise levy and, therefore, no further amendment is warranted so as to bring it within the purview of Central Excise Levy.

9. In view of the above submissions, the Appellant prayed that the demand of duty on the coal consumed captively, is legally not sustainable. Further, there cannot be any case of imposition of penalty since the issue involves interpretation of legal provisions as has been held by the Hon'ble Courts from time to time.

10. The Ld. A.R reiterated the findings in the impugned order.

11. Heard both sides and perused the appeal documents.

12. We observe that the Appellant has opted to make payment of Central Excise Duty at the normal tariff rate of 5% with CENVAT credit facility. The present dispute in this case is whether exemption under Notification No. 67/1995 – CE dated 16th March, 1995 is available on the quantity of coal captively used for further production/manufacture of coal within the mines.

13. The Appellant is captively using some quantity of coal within the mines for further production of coal. The said quantity of coal is used to generate steam to be used as power for the purpose of lifting coal from the underground mines by using mechanical means. The Appellant claimed the benefit of exemption under Notification No. 67/1995 – CE date 16th March, 1995 for the coal consumed captively. The department denied the benefit of the Notification No. 67/1995 to the Appellant on the ground that the said exemption benefit would be available only when the coal is 'manufactured. Since coal is 'produced' and not 'manufactured' in this case, Cenvat credit is not eligible to the Appellant. It has also been contended that by producing coal, there is

no emergence of a new product so as to consider the coal mining activity undertaken by the appellant to be amounting to 'manufacture'.

14. We find the grounds of denial of Cenvat credit very strange. The Appellant has opted for payment of Central Excise Duty at the normal tariff rate of 5% with CENVAT credit facility", which is not in dispute. Having allowed the CENVAT credit facility, which is available on inputs used in the manufacture of final product, the Authorities have in-principle accepted that the "activity of coal mining amounts to manufacture". The department has not raised any objection to payment of duty by the Appellant by treating the process as amounting to 'manufacture'. In fact, the very demand in the Notice has been raised by charging duty at the rate of 5%, which is applicable along with Cenvat facility. Thus, we observe that for the purpose of demanding duty on coal, the Department considers that the Coal mining activity would amount to 'manufacture'. But, the very same coal mining activity has been considered as not amount to 'manufacture' for the purpose of consideration of exemption under Notification No. 67/95. Thus, we observe that there is no merit in the impugned order that has denied the benefit of Notification No. 67/95 to the Appellant for the coal consumed captively. In view of the above discussion, we hold that the Appellant is eligible for the benefit of Notification No. 67/95 for the coal consumed captively to generate steam to be used as power for the purpose of lifting coal within the mines. Accordingly, we hold that the demand confirmed in the impugned order is not sustainable and we set aside the same. As the demand itself is not sustainable, the question of demanding interest and imposing penalty does not arise.

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

(Dictated and pronounced in the open Court)

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

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

Tushar