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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 76139 of 2019

(Arising out of Order-in-Appeal No. 101/RAN/2019 dated 29.01.2019 passed by the Commissioner (Appeals), Central Goods and Service Tax and Central Excise, Grand Emerald Building (2nd & 3rd Floors), Ashok Nagar, Kadru-Argora Main Road, Ranchi – 834 002)

M/s. Bharat Coking Coal Limited **: Appellant**
Koyla Bhawan, Dhanbad,
PIN – 826 005 (Jharkhand)

VERSUS

Commissioner of C.G.S.T. and Central Excise **: Respondent**
Ranchi Commissionerate
Grand Emerald Building (2nd & 3rd Floors), Ashok Nagar,
Kadru-Argora Main Road, Ranchi – 834 002

APPEARANCE:

Shri Sanjay Dixit, Advocate for the Appellant

Shri S.K. Dikshit, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75070 / 2025

DATE OF HEARING: 06.01.2025

DATE OF DECISION: 17.01.2025

ORDER:

M/s. Bharat Coking Coal Limited, Koyla Bhawan, Dhanbad, PIN – 826 005, Jharkhand (hereinafter referred to as the "Appellant") are engaged in the production and clearance of coal. Prior to November, 2015, the Appellant had separate registration for their area offices / washeries with the respective jurisdictional central excise authorities and discharged Central Excise Duty and filed returns with the respective authorities. With effect from November, 2015, they took centralized registration and started filing a single consolidated monthly ER-1 return after obtaining the data from all of their 21 area offices / washeries.

2. The Appellant issues invoices which contain two different dates viz. loading date – on which the coal is cleared; and invoicing date – on which the invoice in respect of the coal is ultimately issued. Excise Duty is discharged by the Appellant on the basis of the loading date.

2.1. During the period November, 2015 to December, 2015, certain area offices of the Appellant provided details of the coal cleared on provisional basis as the final figures were not available. Accordingly, there was an excess payment of Central Excise Duty, as claimed by the Appellant, amounting to Rs.25,39,396/- for the month of November, 2015 and Rs.8,513/- for the month of December, 2015. The Appellant filed a refund claim on 03.12.2016 claiming refund of Central Excise Duty totally amounting to Rs.25,47,909/-.

3. The refund claimed by the Appellant was rejected by the ld. adjudicating authority vide the Order-in-Original No. 01/REFUND/AC/DNB North/2017 dated 25.08.2017

4. On appeal, the Ld. Commissioner (Appeals) upheld the rejection of the refund claim vide the impugned Order-in-Appeal No. 101/RAN/2019 dated 29.01.2019

5. Aggrieved by the impugned order, the Appellant has filed this Appeal.

6. The submission of the Appellant is that while filing the returns for the month of November, 2015, some area offices had provided an estimated amount for filing of return as billing was not complete at that time; similarly, it is stated that while filing the return for the month of December, 2015, the figures provided by some area offices were an estimated one because billing was not complete at that time. Accordingly, they have filed the refund for the excess payment of duty paid. The Appellant contends that the Ld. AC has grossly erred in observing that actual verification of duty liability for the period November 2015 and December 2015 was not possible on the basis of bill wise details submitted. The Appellant states that they had submitted the details of errors in ER-1 returns filled and details of correct figures that should have been considered while verifying the correctness of total duty actually payable and refund claimed, vide their letter dated 18.02.2016 and have also submitted the attested copies of invoices issued in relation to clearances made during the period in dispute vide letter dated 03.12.2016; these evidences submitted by them vide letter dated 18.02.2016 clearly support the correct duty payable by them for the period under dispute. On perusal of the Statements of excise duty actually payable, as submitted by them vide their letter dated 18.02.2016, with the copy of invoices as submitted vide letter dated 03.12.2016, the Appellant submits that the actual duty liability could be easily verified, which has not been done by the lower authorities.

6.1. The Appellant submits that the Ld. Assistant Commissioner has made an error in observing that the Appellant had on their own volition posted the excess duty amount paid as 'Advances and loans' in Note 18 of the Annual Accounts of 2015-16, just for accounting purpose without ascertaining proper duty liability required to be paid by them. In this regard, it is contended that the said observation shows complete non-application of mind inasmuch as the Appellant is a PSU and the accounts are duly audited and the bona fide of the entries made therein cannot be doubted. Moreover, they have submitted a Chartered Accountant's certificate showing excess payment of duty the correctness of which has nowhere been disputed by the lower authorities.

6.2. The Appellant submits that the lower authorities have erred while holding that the provisions of Rule 7(1) of CER as amended relating to provisional assessment procedure to be applicable in the instant case. It is their submission that w.e.f. November 2015, they have started to file consolidated ER-1 return for all its 21 area offices; the instant refund has arisen as a result of excess excise duty paid on account of non-availability of final details from all area offices during the period of November 2015 and December 2015. The Appellant further contends that their claim for refund of excess duty cannot be denied merely for the reason that the provisional assessment has not been followed by the Appellant.

6.3. The Appellant submits that they have submitted the details of excise duty paid, the details of excise duty that was payable, copies of invoices that were issued in relation to clearances made during the period in dispute, copy of ER-1 returns and CA Certificate certifying that they have paid excess excise duty of Rs. 25,47,909/-; on correlating all the aforesaid documents, the actual duty payable for the months of November 2015 and December 2015 can be arrived at. Thus, it is contended by the Appellant that without acknowledging the documents submitted by the appellant as mentioned above, the Ld. Assistant Commissioner has erred in his observation that the Appellant had not submitted concrete evidences to prove their claim of excess payment; he has not indicated what documents are further required for him to ascertain whether there is an excess payment or not.

6.4. The Appellant submits that the lower authorities have travelled beyond the allegations as made in the impugned Show Cause Notice inasmuch as the fact of the case that the CENVAT Credit used by the Appellant to pay the excise duty during the period in dispute was never disputed in the impugned Show Cause Notice. The Appellant submits that they have used their legitimate credit available in their CENVAT account. Hence, the Appellant submits that the orders passed by the lower authorities have traversed beyond the allegations made in the Show Cause Notice and hence they are not sustainable.

6.5. The Appellant further submits that vide their letter dated 18.02.2016, they have submitted the correct figures that should have been treated as their liability of excise duty during the period November 2015 and December 2015 in the format of ER-1 return; the provisions of Central Excise Rules were amended vide notification no. 8/2016- C.E. (N.T.) dated 01.03.2016 to provide for revision of ER-1 filed by an assessee and the said provisions were brought into effect w.e.f. 17.08.2016 vide notification no. 42/2016-C.E. (N.T.) dated 11.08.2016. In this regard, the Appellant submits that as there were no procedural means prescribed in law to revise the returns to rectify the mistakes, they have submitted the details manually vide letter dated 18.02.2016. The Appellant submits that the Ld. Assistant Commissioner has erred while holding the details submitted by the appellant vide the said letter dated 18.02.2016 to be invalid. It is also their contention that the Ld. Commissioner (Appeals) in the impugned order has also merely upheld the findings of the adjudicating authority without giving any findings on the facts of the case. Accordingly, the Appellant submits that the revised details submitted by the Appellant manually can be considered to arrive at the actual duty payable and paid by them during the relevant period.

7. The Ld. Authorized Representative of the Revenue reiterated the findings of the Ld. Assistant Commissioner/adjudicating authority and the ld. appellate authority in the impugned order. He submits that the appellant has not produced documentary evidence to substantiate their claim of excess payment of duty and accordingly supported the impugned order rejecting the refund claim.

8. Heard both sides and perused the appeal documents.

9. I find that the Appellant has claimed that they have paid excess central excise duty for the months of November 2015 and December 2015 and submitted the refund claim. They have submitted the details of excise duty paid, the details of excise duty that was payable, copies of invoices that were issued in relation to clearances made during the period in dispute, copy of ER-1 returns and CA Certificate certifying that they

have paid excess excise duty of Rs. 25,47,909/-. I find that the appellant had submitted the details of errors in ER-1 returns filed and details of correct figures that should have been considered while verifying the correctness of total duty actually payable and refund claimed vide their letter dated 18.02.2016. They have also submitted the attested copies of invoices issued in relation to clearances made during the period in dispute vide letter dated 03.12.2016 which clearly supports the correct figures as submitted by the appellant vide letter dated 18.02.2016.

9.1. I find that the excess duty paid by the Appellant has been reflected as 'Advances and loans' in Note 18 of the Annual Accounts of 2015-16. However, the lower authorities have simply brushed aside the accounting entries available in the Annual Accounts for the year 2015-16 without giving any valid finding as to why they are not acceptable. The ld. adjudicating authority has made the observation that the said entries were made just for accounting purpose without ascertaining proper duty liability required to be paid by them. I find that the said observation shows complete non-application of mind inasmuch as the Appellant is a PSU and the accounts are duly audited and the bona fide of the entries made therein cannot be doubted. Moreover, the Appellant has also submitted a Chartered Accountant's certificate showing excess payment of duty the correctness of which has nowhere been disputed by the Ld. Assistant Commissioner. Thus, I find that the Appellant has submitted enough evidence to substantiate their claim of excess payment of duty.

9.2. I find that the Appellant had submitted the details of errors in ER-1 returns filled and details of correct figures that should have been considered while verifying the correctness of total duty actually payable and refund claimed vide their letter dated 18.02.2016. They have also submitted the attested copies of invoices issued in relation to clearances made during the period in dispute vide letter dated 03.12.2016 which clearly supports the correct figures as submitted by the Appellant vide letter dated 18.02.2016. On perusal of the Statements of excise duty actually payable, as submitted vide letter dated 18.02.2016, with the copy of invoices as submitted vide letter dated 03.12.2016, I find that the actual duty liability could be easily verified. However, the Ld. Assistant Commissioner has observed that on the basis of the bills/invoices submitted by the Appellant, it was not possible to verify the actual duty payable by the appellant during the months November 2015 and December 2015. I observe that on the basis of the Statements of excise duty actually payable, as submitted vide letter dated 18.02.2016, with the copy of invoices as submitted vide letter dated 03.12.2016, the actual duty liability could be verified. On correlating all the aforesaid documents, it can be verified whether there was an excess payment as claimed by the Appellant. Since, none of the information submitted by the Appellant regarding excess payment was disputed and there is no finding regarding the correctness of these statements, I hold that the documents submitted by the Appellant along with the Chartered Accountant submitted by them establishes that there was an excess payment of duty by the Appellant during the months of November 2015 and December 2015.

9.3. Regarding the issue of 'unjust enrichment', I find that the ld. adjudicating authority has made the following observation in the Order-in-Original: -

> *"4.1. .....*
>
> *.... These advances are not equivalent to "unspent advance deposits lying in balance in PLA " as such it cannot be kept out of the bar of unjust enrichment in absence of concrete documentary evidences."*

From the above, I find that the Appellant has not produced any documents regarding crossing of the bar of unjust enrichment. Accordingly, the matter is required to be remanded back to the adjudicating authority for the purpose of verification of the documents on the eligibility of refund from the unjust enrichment angle.

10. In view of the above discussion, I hold that the documents submitted by the Appellant establish that there was an excess payment of duty by the Appellant during the months of November 2015 and December 2015 and the Appellant is eligible for the refund, subject to verification of 'unjust enrichment'. Accordingly, the impugned order is set aside and the issue is remanded back to the adjudicating authority only for the limited purpose of verification of the issue of 'unjust enrichment' before he sanctions the refund claim. The Appellant is also directed to produce all relevant documentary evidence on the issue of applicability of unjust enrichment to this case. The appeal filed by the Appellant is thus disposed of by way of remand.

(Order pronounced in the open court on **17.01.2025**)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd