

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 75694 of 2015

(Arising out of Order-In-Appeal No. 16-18/COMMR/BOL/2015 dated 31/03/2015 passed by Commissioner of Central Excise, Bolpur)

M/s. Eastern Coalfields Ltd.

(Sanctoria, Post Office-Dishergarh, Dist. Burdwan, 713333)

Appellant

VERSUS

Commr. of Central Excise, Bolpur

(Nanoor Chandidas Road, Sian, Bolpur, Dist. Birbhum, West Bengal-731204)

Respondent

With

1. Excise Appeal No. 75695 of 2015 (M/s. Eastern Coalfields Ltd. Vs. Commr. of CX & ST, Bolpur) (2) Excise Appeal No. 75696 of 2015 (M/s. Eastern Coalfields Ltd. Vs. Commr. of CX & ST, Bolpur) (3) Excise Appeal No. 75911 of 2016 (Eastern Coalfields Vs. Commr. of CX & ST, Bolpur) (4) Excise Appeal No. 75912 of 2016 (Eastern Coalfields Vs. Commr. of CX & ST, Bolpur) (5) Excise Appeal No. 75060 of 2018 (Eastern Coalfields Vs. Commr. of CX & ST, Bolpur) (6) Excise Appeal No. 75061 of 2018 (Eastern Coalfields Vs. Commr. of CX & ST, Bolpur) (7) Excise Appeal No. 75062 of 2018 (Eastern Coalfields Vs. Commr. of CX & ST, Bolpur) (8) Excise Appeal No. 77239 of 2019 (Eastern Coalfields Vs. Commr. of CX & ST, Bolpur) (9) Excise Appeal No. 75506 of 2020 (Eastern Coalfields Vs. Commr. of CX & ST, Ranchi) (10) Excise Appeal No. 75507 of 2020 (Eastern Coalfields Vs. Commr. of CX & ST, Ranchi)

SI No. 1-2 (Arising out of Order-In-Appeal No. 16-18/COMMR/BOL/2015 dated 31/03/2015 passed by Commissioner of Central Excise, Bolpur)

SI No. 3-4 (Arising out of Order-in-Original No. 39-40/Commr./Bol/16 dated 29/02/2016 passed by Commr. of Central Excise & Service Tax, Bolpur)

SI No. 5-7 (Arising out of Order-In-Original No. 01-03/COMMR/BOL/17-18 dated 12/09/2017 passed by Commissioner of Central Tax, CGST, Bolpur)

SI No. 8 (Arising out of Order-in-Original No. 04/Commr/BOL/19-20 dated 26/06/2019, passed by Commr. of Central Excise, Bolpur)

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SI No. 9-10 (Arising out of Order-in-Original No. 22-39/Central Excise/Pr. Commr./RAN/2020 dated 31/07/2020 passed by Commr. of CGST & CX, Ranchi)

APPEARANCE :

Mr. Rajeev Agarwal & Sanjay Dixit, both Advocate for the Appellant
Mrs K. Kalpana, Mr. P. K. Ghosh & Mr. S. Dey, Authorized
Representative for the Respondent

CORAM:

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

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

FINAL ORDER NO.75656-75666/2025

Date of Hearing : 18 December 2024

Date of Pronouncement : 11.03.2025

PER R. MURALIDHAR:

The Appellant is engaged in the production and clearance of coal falling under Chapter heading 2701. Central Excise Duty @ 5%, ad-valorem was introduced on coal w.e.f. 01.03.2011 by the Finance Act, 2011, which was enhanced to 6%, ad-valorem, by the Finance Act, 2012. For arriving at the Assessable Value of the Coal, the appellant was not adding the components like "Royalty", 'Stowing Excise Duty' (SED), Rural Employment & Production Cess ("RE Cess" and/or "PE Cess"), Primary Education Cess, ("PED Cess"), PWD Road Cess, ("Road Cess"), Asansol Mines Board of Health Cess ("Health Cess"). On the ground that these components are not excludible, the Dept issues 11 periodical Show Cause Notices for the period March 2011 to June 2017. After due process of law, the Adjudicating Authority passed 6 Orders-in-Original, confirming the Excise Duty and interest thereon along with penalty. Being aggrieved by the impugned Orders-in-Original, the appellant has filed the present Appeals before the Tribunal.

2. The Ld. Counsel, appearing on behalf of the appellant takes a preliminary stand towards the delayed adjudication and passing of the Orders in Original, on the following grounds :

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2.1 At the outset, it is submitted that recently on 25.11.2024 the Principal Bench of Hon'ble CESTAT at New Delhi in the case of **Kopertek Metals Pvt Ltd vs. Com of CGST, New Delhi (Final Order no. 59511-59720 of 2024 in Excise Appeal no. 52178 of 2022)** has held that where the adjudication orders have not been passed within the timeline as prescribed in Section 11A(11) of the CEA, the same cannot be legally sustained.

2.2 The provisions contained in Section 11A(11) requires that the adjudication order to be passed within six months / one Year of the date of SCN issued under Section 11A(1) / Section 11A(4) respectively, as the case may be.

2.3 In the instant case, out of 11 nos. of periodical / unit-wise SCNs involved in all the present appeals, 8 nos. of SCNs have been adjudicated beyond the timeline prescribed in Section 11A(11) and hence, the Order-in-Original are legally not sustainable in view of the decision in the case of **Kopertek Metals (Supra)**. Only 3 nos. of SCNs being SCN dated 31.07.2014, SCN dated 18.09.2015 and SCN dated 16.03.2017 have been adjudicated within the prescribed timeline. Even out of these 3, in case of one OIO, the appellant has a case on account of time limit. The Appellant is submitting herewith a detailed chart inter-alia showing date of SCN, date of OIO which are subject matter in the present appeals.

2.4 Thus, the demand pertaining to 8 nos. SCNs. (as appearing mentioned in the Chart submitted herewith) cannot be legally sustained on this ground alone.

3. Without prejudice to above submissions, in respect of all the Show Cause Notices, including in respect of 3 SCNs, which are not covered by the decision of **Kopertek Metals**, the Ld Counsel submits that Section 11A is not invocable inasmuch as there is no short payment of 'duty'.

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3.1 Section 4(3)(d) of the CEA stipulates that the 'transaction value' of goods chargeable to excise duty would not include "***the amount of duty of excise, sales tax and other taxes, actually paid or payable on such goods***".

3.2 It is submitted that, admittedly after the Supreme Court 9 Member Bench's decision in the case of **Mineral Area Development Authority vs. Steel Authority of India (2024) 21 Centax 378 (SC), pronounced on 25.07.2024 [MADA 2024 in short]**, it is quite clear that the royalty being not a 'tax' is includible in the assessable value. However, the important issue that needs to be addressed is whether the Appellant had undervalued the excisable goods *during the material period*, so as to invoke recovery provisions under Section 11A, particularly considering the fact that the clarity came out of the Supreme Court's decision in 2024. In other words, the issue that arises for consideration is *whether there was a short levy or short payment of duty during the material period so as to initiate proceedings by issuing the impugned SCNs*.

3.3 The Appellant, in the adjudication proceedings had relied on the Hon'ble Seven Judges judgment of the Supreme Court in **India Cement Limited v State of Tamil Nadu, (1990) 1 SCC 12** ('India Cement') to contend that Royalty is the nature of 'tax' and therefore not includible in transaction value. The Appellant further submitted that SED is recovered as a 'duty of excise' and therefore not includible in transaction value. Further, all other levies on which demand has been raised were in the nature of 'tax' and hence not includible. It was submitted during the adjudication proceedings that the decision of the Hon'ble Supreme Court in the case of **India Cements (supra)** wherein it was held that royalty is a tax was pronounced by a Seven Judges Bench whereas the judgement in **Kesoram Industries** was pronounced by a Five Judges Bench and therefore the Larger Bench

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judgment in India Cement's case would be binding on all the authorities below.

3.4 The Ld. Commissioner in his adjudication orders observed that Royalty and other levies are not 'taxes' and therefore includible in the transaction value. With respect to Royalty, reliance has been placed by the Ld. Commissioner on the judgment of Hon'ble Five Judges Bench of the Supreme Court in **State of West Bengal vs. Kesoram Industries Limited (2004) 10 SCC 201 (hereinafter referred to as "Kesoram")** to hold that Royalty is not a tax. The Hon'ble Supreme Court in Kesoram held that Royalty is an amount which is paid under a contract of lease by a lessee to the lessor and is commensurate with the quantity of minerals extracted.

3.5 The Appellant submits the legal position, as it stood during the relevant point of time (i.e. the date manufacture as well as date of removal of goods), there could not be any case of non-payment/short payment of duty / under-valuation inasmuch as the Ld. Commissioner was duty bound to follow the judgment of the Hon'ble Seven Judges Bench in India Cement, the very recovery provision under Section 11A could not have been invoked for the purpose of raising the impugned demand. The Appellant also submits that the provisions contained in Section 3 (Charging provisions), Section 4 (Valuation provisions as applicable on the date of removal) have to be read together with Section 11A (recovery provisions to be invoked within 1 year /5 years) to ascertain as to whether there was any case of undervaluation when the Seven Judges decision in India Cements was holding the field. *Thus, the very initiation of proceedings by issuance of the impugned SCN's was bad in law ab-initio.* Consequently, the impugned OIO passed pursuant to the SCN's are bound to fail since they are contrary to the settled legal jurisprudence. The entire demand deserves to be set aside.

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3.6 The Appellant submits that the deviation in the principle of law pronounced by the Ld. Seven Judges Bench in India Cement case and that pronounced by Ld. Five Judges Bench in Kesoram's case was noted by the Three Judges Bench of Hon'ble Supreme Court in the case of ***Mineral Area Development Authority and Ors. v. Steel Authority of India and Ors. (2011) 4 SCC 450 (judgment pronounced on 30th March 2011)***. The Hon'ble Bench requested reference to a Bench of Nine Judges by noting that normally a Bench of Five Learned Judges, in case of doubt, has to invite the attention of the Hon'ble Chief Justice and request that the matter be placed before a Bench of Larger quorum than the Bench whose decision has come up for consideration and doubted placing reliance on the judgment of **Central Board of Dawoodi Bohra Community v State of Maharashtra, (2005) 2 SCC 673**.

3.7 It is submitted that this judgment was pronounced on **30th March 2011** (before the issuance of the SCN's impugned in the present appeals) and duly noted that a Bench of smaller quorum, if it doubts the judgment of the Bench of Larger quorum, it has to request the Chief Justice of the Hon'ble Supreme Court to place the matter before a Larger quorum than the Bench whose decision has come up for consideration and doubted.

3.8 The Ld. Adjudicating Authority neither considered the judgment in case of ***Mineral Area Development Authority and Ors., (2011) 4 SCC 450*** nor the judgment of judgment of **Central Board of Dawoodi Bohra Community v State of Maharashtra, (2005) 2 SCC 673** relied therein.

3.9 In **Central Board of Dawoodi Bohra Community (supra)**, the Five Judges Bench of the Hon'ble Supreme Court explained in detail the course available to the Smaller Bench of the Supreme Court in case it doubts the view taken by the Larger Bench. The relevant

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observations made in Para 12 of the judgment are reproduced hereinunder:

***12.** Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:*

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.

***(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum.** In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration.*

3.10 It is submitted that the rule of judicial discipline and propriety by observing that the Doctrine of Precedents has a merit of promoting certainty and consistency in judicial decisions providing assurance to individuals as to the consequences of their actions.

3.11 The principle of judicial discipline was explained by the Hon'ble Supreme Court in **Union of India vs. Kamlakshi Finance Corporation Ltd, 1991 (55) E.L.T. 433 (S.C.)**. In this case, the brief facts were that in this case Assistant Collector, by an order, not only ignored the order of the Collector (Appeals) by remanding the matter, but also distinguished the decision of the Tribunal by observing that the decision of the Tribunal had not been agreed to by the Department as an appeal had been filed in the Supreme Court.

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The Hon'ble Supreme Court observed that as the Assistant Commissioner had not followed the decision of the Tribunal merely because an appeal had been filed by the Department before the Supreme Court, the High Court had rightly criticized the conduct of the Assistant Collector since it resulted in harassment to the assessee caused by the failure to give effect to the order passed by the Tribunal. The Supreme Court also observed that the order of the Tribunal is binding upon the Assistant Collectors who functions under the jurisdiction of the Tribunal and that the principles of judicial discipline require that the orders of higher appellate authorities are unreservedly followed by the subordinate authorities.

3.12 In **East India Commercial Co. Ltd, Calcutta and Another v Collector of Customs, Calcutta reported in 1962 SCC Online SC 142 in Civil Appeal No 383 of 1960** decided on 4th May 1962 the Ld. Three Judges Bench of the Hon'ble Supreme Court gave paramount importance to the principle of judicial discipline and held that any notice issued by an Authority signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction. The relevant observations made in Para 31 are reproduced hereunder:

Section 167(8) of the Sea Customs Act can be invoked only if an order issued under s. 3 of the Act was infringed during the course of the import or export. The division Bench of the High Court held that a contravention of a condition imposed by a licence issued under the Act is not an offence under s. 5 of the Act. This raises the question whether an administrative tribunal can ignore the law declared by the highest court in the State and initiate proceedings in direct violation of the law so declared. Under Art. 215, every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Under Art. 226, it

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has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under Art. 227 it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercise jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the sub-ordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. **It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working** : otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer. **We, therefore, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction.**

3.13 In **Air Conditioning Specialists (P.) Ltd. V Union of India, [1996] 221 ITR 739 (Gujarat)**, the Hon'ble Gujarat High Court has held that the Commissioner of Income Tax is a "Tribunal" subject to the supervisory jurisdiction of the High Court under article 227 of the

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Constitution and he is bound to obey the law declared by High Court. The relevant observations are reproduced hereunder:

*We may, however, add that it was not open to the second respondent to ignore the law laid down by this court when it was an inferior Tribunal subject to the supervisory jurisdiction of this court. **It was not proper on his part not to follow a binding decision of this court on the ground that the Department had not accepted that decision and had filed an appeal and the matter was pending in the Supreme Court.** It cannot be disputed and is not disputed that the second respondent is a "Tribunal" subject to the supervisory jurisdiction of this court under article 227 of the Constitution. Hence, he is bound to obey the law declared by this court.*

*The apex court of the country in no uncertain terms held that the law declared by a High Court is binding on all subordinate courts and Tribunals within the territory to which it exercises the jurisdiction. **In Bhopal Sugar Industries Ltd. v. ITO [1960] 40 ITR 618 (SC), the Income-tax Officer (subordinate authority) refused to carryout clear and unambiguous directions of the Income-tax Appellate Tribunal (superior authority).** Deprecating it, their Lordships of the Supreme Court observed (page 622):*

"Such refusal is in effect a denial of justice, and is furthermore destructive of one of the basic principles in the administration of justice based as it is in this country on a hierarchy of courts. If a subordinate Tribunal refuses to carry out directions given to it by a superior Tribunal in the exercise of its appellate powers, the result will be chaos in the administration of justice...."

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3.14 In this context they rely on the judgment of the Hon'ble Bombay High Court in **M/s United Sprits Limited v State of Maharashtra, W.P. (Lodging) No 10092 of 2020 pronounced on 29th April 2022 reported in 2022 SCC Online Bom 941**. The issue before the Hon'ble Court was in reference to the Maharashtra VAT Act.

48. The questions that arise for consideration of this Court are as under:

*(i) ******

(ii) Whether transaction between the petitioner and M/s ASK Agencies and others were governed by the provisions applicable on the date of transaction and also the principles of law laid down by the Hon'ble Supreme Court in a case of Hotel Ashoka (Indian Tourism Development Corporation Ltd.) Vs. Assistant Commissioner of Commercial Taxes and another reported in 2012 (276) ELT 433 (SC) or would be governed by the later decision of the Supreme Court in a case of M/s Nirmalkumar Parsan Vs. Commissioner Commercial Taxes and others reported in (2020) (1) TMI 800 SC and also judgment of this Court in a case of Commissioner of Sales Tax Maharashtra Vs. M/s Radhasons International [(2019) 64 GSTL 404 (Bom)] ?

The relevant observations made by the Hon'ble Bench in Para 66 and 67 are reproduced herein below:

*66. It is not in dispute that transaction between the petitioner and the said M/s ASK Agencies was undertaken in the financial year 2015-2016. **Since this Court is of the view that the impugned transaction in question was governed by law prevailing on the date of such transaction declared by the Hon'ble Supreme Court in a case of Hotel Ashoka (Indian Tourism Development Corporation Ltd.) Vs. Assistant Commissioner of Commercial Taxes and another (supra), the subsequent judgment of the Supreme Court in a case***

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of M/s Nirmalkumar Parsan Vs. Commissioner Commercial Taxes and others (supra) cannot be pressed in service by the assessing officer. *The Supreme Court in a case of Ram Bai Vs. Commissioner of Income Tax (supra) considered a situation where the revenue had pressed in service the subsequent judgment delivered much after reopening of the assessment taking a view different than the view taken by the Full Bench of Andhra Pradesh High Court and was holding the field.*

67. The Supreme Court held that Income Tax Officer could not have applied the tax different than held by the said Full Bench for determination whether land in that case was an agricultural land. In our view, the principles laid down by the Hon'ble Supreme Court in the said judgment would apply in the facts of this case. Merely because the Supreme Court in a case of M/s Nirmalkumar Parsan Vs. Commissioner Commercial Taxes and others (supra) and this Court in a case of Commissioner of Sales Tax Maharashtra State Vs. M/s Radhasons International (supra) took different view much later, on the basis of such different view taken subsequently the assessing officer could not press in service the later judgment. We are respectfully bound by the principles laid down by the Hon'ble Supreme Court in a case of Ram Bai Vs. Commissioner of Income Tax (supra).

3.15 The Appellant submits that based on the advice of Coal India Limited, the holding company of the Appellant, the differential excise duty amounting (including Edu Cess and SHE Cess) was paid under protest on the value pertaining to 'Royalty' and 'Stowing Excise Duty' for the prior period from March 2011 to February 2013 and thereafter from March 2013 excise duty was being regularly paid on royalty and SED, reflected in the excise invoices and such duty was reported in monthly ER-1 returns but under protest.

4. Submissions on observations made in the impugned Order w.r.t.
SED

4.1 Stowing Excise Duty (hereinafter referred to as 'SED') is levied under The Coal Mines (Conservation and Development) Act, 1974 (hereinafter referred to as the 'CMCD Act') read with The Coal Mines (Conservation and Development) Rules 1975 (hereinafter referred to as the 'CMCD Rules').

4.2 The demand has been confirmed on the observation that such 'Stowing Excise Duty' does not appear to be a 'tax' and hence the excise duty on such 'Stowing Excise Duty' collected, by the assessee from their buyers, appears to be payable.

4.3 In this connection, it is submitted that the said Act was enacted to provide for the conservation of coal and development of coal mines and for matters connected therewith or incidental thereto. Section 6 of the said Act deals with imposition of Excise Duties. Sub-Section 1 of Section 6 provides that:

*"With effect from the appointed day there shall be levied and collected on all coke raised and dispatched, and on all coal manufactured and dispatched, from the collieries in India, **such duty of excise, not acceding Rupees ten per tonne** as may be fixed from time to time by the Central Government by notification, and different rates of duty may be levied on different grades or description of coal or coke."*

4.4 Section 8 of the said Act provides that the duty of excise levied under Section 6 shall be collected by such agencies and in such manner as may be prescribed. Section 9 of the said Act deals with utilisation of proceeds of duties levied and collected under Section 6 and Section 7 of the said Act. Further, Rule 8 and Rule 9 contained in

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Chapter III of The Coal Mines (Conservation and Development) Rules 1975 deal with collection of Excise Duty.

4.5 In this connection we place reliance on the judgment of the Hon'ble Supreme Court in **Commissioner of C.Ex. & Cus, Bhubaneswar-I v Tata Iron and Steel Co. Ltd reported in 2003 (154) ELT 343 (SC)**. The Hon'ble Apex Court has dealt with the levy under the aforesaid Act wherein it has been considered to be in the nature of duty of excise. That being the legal position, SED collected by the appellant for depositing with the Coal Controller under the Act would qualify under the expression used in the definition of transaction value "*but does not include the amount of duty of excise, sale tax and other taxes*" as defined in Section 4(3)(d) of the CEA.

4.6 Thus, it is humbly submitted that the Stowing Excise Duty is a duty of excise which is clearly in nature of a "tax" and clearly not includible in transaction value for the purpose of computation of excise duty.

5. Submissions on RE Cess, PE Cess and PED Cess, Road Cess being included in computation of Transaction Value

5.1 The Appellant is collecting above levies from their buyers on account of 'Rural Employment and Production Cess', Primary Education Cess', 'PWD Road Cess' and 'Asansol Mines Board of Health Cess' which are not included in the transaction value for the purpose of assessment and payment of Central Excise Duty.

5.2 'Rural Employment (RE Cess) and Production Cess (PE Cess) is collected at specific rate on the annual value of 'coal bearing land' under the provision of West Bengal Rural Employment and Production Act, 1976.

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5.3 'Primary Education Cess' (PED Cess) is collected at specific rate on the value of 'coal bearing land' under the provision of West Bengal Primary Education Act, 1973'.

5.4 The PWD Road Cess (Road Cess) is collected under the Cess Act 1880.

5.5 The appellant submits that RE Cess, PE Cess and PED Cess, Road Cess are all State levies legislated by the Government of West Bengal under the taxing powers conferred by Entry 49 and Entry 50 of State List under Schedule VII of the Constitution of India and therefore are in the nature of 'tax' and not includable in the transaction value for payment of excise duty.

5.6 In this connection, they place reliance on the judgment of the Hon'ble Five Judges Bench of the Supreme Court in **State of West Bengal v Kesoram Industries Limited & Others, (2004) 10 SCC 201 (SC)** where one of the issues emanated from a Division Bench judgment of the Calcutta High Court reported in Kesoram Industries Ltd. (Textile Division) v Coal India Ltd, AIR 1993 Cal 78 whereby the Hon'ble Calcutta High Court had struck down certain levies by way of cess on coal as unconstitutional for want of legislative competence of the State Legislature. **The levies which were under challenge were levied under the Cess Act, 1880, the West Bengal Primary Education Act 1973 and the West Bengal Rural Employment and Production Act, 1976.** (the latter two as amended by the West Bengal Taxation Laws (Amendment Act) 1992 w.e.f. 01.04.1992).

By majority, the Hon'ble Apex Court held that:

".....*The Result - individual cases*

(A) *Coal Matters*

xxxxxxxxxxxxxx **The cess is levied on the land. The method of quantifying the tax is by reference to the annual value**

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thereof. xxxxxxxxxxxxxxxxxxxx. Being a tax on land it is fully covered by Entry 49 in List II. Assuming it to be a tax on mineral rights it would be covered by Entry 50 in List II. Taxes on mineral rights lie within the legislative competence of the State Legislature "subject to" any limitation imposed by Parliament by law relating to mineral development. xxxxxxxxxxxx
The Central Legislation has taken over regulation and development of mines and mineral development in public interest. By reference to Entry 50 of List II and Entry 54 in List I, the Central legislation has not cast any limitations on the State Legislature's power to tax mineral rights, or land for the matter of that. **The impugned cess is a tax on coal-bearing and mineral-bearing land. It can at the most be construed to be a tax on mineral rights. In either case, the impugned cess is covered by Entries 49 and 50 of List II. The West Bengal Taxation Laws (Amendment) Act 1992 must be and is held to be intra vires the Constitution."**

5.7 The above judgment has been reaffirmed by the Nine Judges Bench of the Hon'ble Supreme Court in **Mineral Area Development Authority vs. Steel Authority of India (2024) 21 Centax 378 (SC)** on **25.07.2024.**

5.8 In view of the above submissions, we submit that the demand of excised duty on RE Cess, PE Cess, PED Cess and Road Cess is not sustainable in law.

6 Submissions on 'Asansol Mines Board of Health Cess'

6.1 The 'Asansol Mines Board of Health Cess' (Health Cess) is collected under West Bengal Mining Settlement (Health and Welfare) Act, 1964.

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6.2 AMBH Cess (Health Cess) is charged @ Rs 1/- per ton as per provisions is laid down under Section 23(2)(i) of West Bengal Mining Settlements (Health & Welfare) Act, 1964, which extends to the whole of West Bengal as per Section 1(2) of the Act. It is a statutory levy which is collected from the customers on coal sales bills and deposited with state Government and is liable to be considered as classified under "other taxes".

6.3 Further, the Hon'ble Supreme Court in Kesoram supra has held that Taxes on mineral rights lie within the legislative competence of the State Legislatures "subject to" any limitation imposed by Parliament of Law, relating to mineral development.

7. Without prejudice to above submissions, it is further submitted that there is no case for invocation of extended period of limitation in absence of fraud or suppression. On the same count, penalty is also not imposable.

8. The Ld Authorized Representative of the Revenue makes the following submissions :

8.1 The present case is the main issue that whether "Royalty" is a Tax or not has been decided by the Apex Court in the case of **Mineral Area Development Authority Vs Steel Authority of India (2024) 21 Centax 313(SC)**. The Apex court held that- Royalty is not a tax. Royalty is a contractual consideration paid by the mining lessee to the lessor for enjoyment of mineral rights. The liability to pay royalty arises out of the contractual conditions of the mining lease. The payments made to the Government cannot be deemed to be a tax merely because the statute provides for their recovery as arrears. Accordingly, such amount realized as Royalty by the appellants is includible in the Assessable value. Accordingly, the case is clearly in favour of revenue on merit.

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8.2 Hon'ble Tribunal being a creature of a statute cannot interpret a provision which clearly is recommendatory in nature to be a mandatory one. The main argument of the appellant that the impugned order passed beyond the timeline prescribed in Section 11A (11) of the CEA is legally not sustainable, is not acceptable. The decision of Hon'ble Tribunal in the case of **M/s. Kopertek Metals Pvt. Ltd. Vs Commissioner OF CGST (WEST) NEW DELHI (2024 (12) TMI 269-CESTAT NEW DELHI** cannot be applied in this case due to following reasons:

8.3 In the case of Mis. Kopertek Metals Pvt. Ltd. supra, all the adjudication orders were passed after a considerable period of more than five years. Annexure A of the above order of Hon'ble Tribunal may be referred. Where as in the present appeals most of the orders are passed within a short period after issuing show cause notices. The details are given below for reference.

Appeal no.	SCN date	Order date	Order was passed within
E-75694/2015	19.06.2013	31.03.2015	1 year 10 months
E-75695/2015	01.08.2013	31.03.2015	1 year 8 months
E-75696/2015	31.07.2014	31.03.2015	8 months
E/95911/2016	25.02.2015	29.02.2016	1 year I month
E/95912/2016	18.09.2015	29.02.2016	6 Months
E/75060/2018	14.02.2016	12.09.2017	1 year 7 months
E/75061/2018	18.10.2016	12.09.2017	11 Months
E/75062/2018	16.03.2017	12.09.2017	6 Months
E/77239/2019	07.08.2018	26.06.2019	11 Months
E/75506-75507 / 2020	10.03.2014	31.07.2020	6 years 4 months
	24.03.2014	31.07.2020	6 years 4 months
	11.03.2014	31.07.2020	6 years 4 months

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	25.03.2014	31.07.2020	6 years 4 months
	23.12.2015	31.07.2020	4 years 7 months
	16.03.2016	31.07.2020	4 years 4 months
	18.03.2016	31.07.2020	4 years 4 months
	04.02.2016	31.07.2020	4 years 5 months
	02.02.2016	31.07.2020	4 years 5 months
	04.02.2026	31.07.2020	4 years 5 months
	14.08.2014	31.07.2020	5 years 11 months
	14.08.2014	31.07.2020	5 years 11 months
	14.08.2014	31.07.2020	5 years 11 months
	14.08.2014	31.07.2020	5 years 11 months
	23.04.2014	31.07.2020	6 years 3 months
	14.08.2014	31.07.2020	5 years 11 months
	26.09.2014	31.07.2020	5 years 10 months

8.4 Above table unmistakably shows that inordinate delay has not occurred in respect of most of the above appeals. Even, in many cases, the timeline of Section 11A (11) of the CEA was strictly followed.

8.5 The Hon'ble Bench should have referred the matter in M/s Kopertek Metals Pvt. Ltd to a larger bench only after acknowledging disagreement with their own orders. Accordingly, the decision in Kopertek Metals Pvt. Ltd, passed violating judicial disciplines, is bad in law and cannot be relied upon.

8.6 The notices were issued on the basis of facts and laws prevailing during the point of time. Moreover, the appellant did not challenge the notices before any judicial forum to make such notices non-est. They participated in the adjudication process and thereby admits the power to issue such notices by a proper officer. Such question cannot

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be raised before a statutory court like CESTAT. Legality of show cause notices cannot be challenged before any appellate forum except before High Court through a Writ Petition and Hon'ble High Court may give relief on such petitions in exercising power under Article 226 of the Indian Constitution. Hon'ble Tribunal has no such power to hold the notice non-est at the appellate stage.

9. Heard both sides. Considered the Appeal papers and written submissions made by both the sides.

10. We first turn to the preliminary objection raised by the appellant about the delayed adjudication. The details provided by them in respect of the present appeals with summary of the SCNs issued and OIOs passed is as per the following Table :

Sl. No.	Appeal No.	SCN dated	Period of dispute	Duty Amount	OIO No.	Total Duty Amount	Beyond Sec 11A(11) (covered by Kopertex Metal)
1	E- 75694 of 2015	19.06.2013	March, 2011 to June, 2012	1,13,20,08,745	16-18/COMMR/BOL/15 dt. 31.03.2015	2,97,28,33,151	Yes
2	E- 75695 of 2015	01.08.2013	July, 2012 to March, 2013	76,75,66,049			Yes
3	E- 75696 of 2015	31.07.2014	April, 2013 to March, 2014 [Extended period invoked]	1,07,32,58,357			To be decided by the Tribunal
4	E- 75911 of 2016	25.02.2015	April, 2014 to Sept, 2014	54,15,51,044	39-40/COMMR/BOL/15 dt. 29.02.2016	99,90,88,884	Yes
5	E- 75912 of 2016	18.09.2015	Oct, 2014 to March, 2015	45,75,37,840			No
6	E- 75060 of 2018	04.02.2016	April, 2015 to Sept, 2015	47,82,21,967	01-03/COMMR/BOL/17-18 dt. 12.09.2017	1,50,08,61,545	Yes
7	E- 75061 of 2018	18.10.2016	Oct, 2015 to March, 2016	56,53,71,353			Yes

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8	E- 75062 of 2018	16.03.2017	April, 2016 to Sept, 2016	45,72,68,225			No
9	E- 77239 of 2019	07.08.2018	Oct, 2016 to June, 2017	89,44,62,210	04/COMMR/BOL/19-20 dt. 26.06.2019	89,44,62,210	Yes
10	E- 75506 of 2020	14.08.2014	March, 2011 to Feb, 2013	5,35,68,495	22-39/Central Excise/Pr. Commr/RAN/2020 dt. 31.07.2020	5,35,68,495	Yes
11	E- 75507of 2020	26.09.2014	March, 2011 to Feb, 2013	5,53,09,019	22-39/Central Excise/Pr. Commr/RAN/2020 dt. 31.07.2020	5,53,09,019	Yes
					Grand Total	6,47,61,23,304	

11. As per the appellant, the ratio laid down in the case of **Kopertek Metals Pvt Ltd Vs CCGST – Final Order No.59511-59720/2024 dated 25.11.2024**, is required to be applied in case of most of the adjudicated SCNs. By doing so, the confirmed demand in respect of 8 or 9 SCNs would get set aside on this count / ground alone and only the confirmed demands in respect of the balance 3 or 2 SCNs would be required to be taken up for deciding the appeals on merits.

12. It would be important to go through the relevant portions of the Kopertek Metals Final Order, which are extracted below :

Kopertek Metals Pvt. Ltd. Vs Commissioner of CGST (West) - FINAL ORDER NO. 59511-59720/2024 dated 25.11.2024

7. Sub-section (11) of section 11A, was thrice amended, and is reproduced, as it stood during the relevant period:

From 28.04.15 to 13.05.2015

11A(11) The Central Excise Officer shall determine the amount of duty of excise under sub-section (10) –

- (a) within six months from the date of notice where it is possible to do so, in respect of cases falling under sub-

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section (1);

- (b) within one year from the date of notice, where it is possible to do so, in respect of cases falling under sub-section (4) or sub-section (5).

From 14.05.2015 to 13.05.2016

11A(11) The Central Excise Officer shall determine the amount of duty of excise under sub-section (10) –

- (a) within six months from the date of notice where it is possible to do so, in respect of cases falling under sub-section (1);
- (b) within one year from the date of notice, where it is possible to do so, in respect of cases falling under sub-section (4).

From 14.05.2016 upto 29.03.2018

11A(11) The Central Excise Officer shall determine the amount of duty of excise under sub-section (10) –

- (a) within six months from the date of notice where it is possible to do so, in respect of cases falling under sub-section (1);
- (b) within two years from the date of notice, where it is possible to do so, in respect of cases falling under sub-section (4).

9. The show cause notice in this appeal was issued on 28.04.2015 by the Principal Additional Director General. It was adjudicated on 14.06.2022 by the Adjudicating Authority. As the

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notice was issued on 28.04.2015, it would be governed by the provisions of sub-section (11) of section 11A, as it stood during the period from 28.04.2015 to 13.05.2015. Sub-section (11) of section 11A, as it stood during this period, provided that the Central Excise Officer shall determine the amount of duty within six months from the date of notice, where it was possible to do so, in respect of cases falling under sub-section (1). However, in respect of cases falling under sub-section (4) or sub-section (5), the Central Excise Officer shall determine the amount of duty within one year from the date of notice, where it is possible to do so. The show cause notice in this appeal was issued under sub-section (4) of section 11A. Thus, the Central Excise Officer had to determine the amount of duty within one year from the date of notice, where it was possible to do so.

11. What is important to note is that the show cause notice that was issued on 28.04.2015 was required to be adjudicated latest by 27.04.2016;

12. It was incumbent upon the Adjudicating Authority to determine the amount of duty within one year from 28.04.2015, where it was possible to do so. The discussion and findings in the impugned order start from paragraph 117 but no reason has been given in the impugned order by the Adjudicating Authority for not being able to determine the duty within the stipulated period of one year from the date of issuance of the show cause notice.

20. It would be seen from the aforesaid judgment of the Delhi

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High Court in **Swatch Group** that the High Court made it amply clear that the incorporation of words like “where it is possible to do so” merely give a certain degree of flexibility to the department where there are circumstances or insurmountable exigencies which make it impracticable or not possible for the authorities to adjudicate, and in such cases the authorities can deviate from the time limit provided in the Statute. The High Court further held that when the legislature has specifically provided flexibility only to the extent that it was not practicable/possible to adjudicate within the stipulated time, the period can be extended only on satisfaction of such circumstances. The Delhi High Court specifically observed that the phrase “where it is possible to do so” would only mean wherever it is not practicable/possible to do a certain act, the period can be extended but the same cannot provide endless time limit to the department without any plausible justification.

25. It transpires from the aforesaid decisions that:

- (i) The phrases “*as far as possible*” and “*as far as practicable*” are more or less interchangeable along with the word “*feasible*”;
- (ii) Only when circumstances or insurmountable exigencies make it impracticable or not possible for the adjudication to take place within the stipulated period that the authorities

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may deviate from the time limit prescribed under the Statute;

- (iii)** The mandate of the legislature that the show cause notice should be adjudicated within six months or one year, as the case may be, only provides flexibility for extension of the period when it is not practicable or possible to adjudicate it within the said time limit. The time limit period cannot be extended endlessly without any plausible justification;
- (iv)** The indifference of the Adjudicating Authority to complete the adjudicating process within the statutory time limit cannot be condoned to the detriment of the assessee or detrimental to the interest of the exchequer;
- (v)** There is a definite purpose and intention of the legislature to prescribe such time limit. The legislature has clearly intended to avoid uncertainty, which otherwise can emerge; and
- (vi)** *Even if no time limit is prescribed for adjudication of a show cause notice, then too the adjudication has to be done within a reasonable period.* However, what would be a reasonable period would depend upon the

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nature of the Statute, rights and liabilities
thereunder and other relevant factors.

27. The show cause notice, in the present case, was issued on 28.04.2015. It called upon the noticees to show cause within thirty days from the date of receipt of notice, failing which it was specifically provided that the matter would be adjudicated ex parte without any further communication. It is seen that the period one year from 28.04.2015 expired on 27.04.2016. Even if cause was not shown by the noticees to the said notice, the Adjudicating Authority should have proceeded to decide the matter ex parte, but what is seen is that the Adjudicating Authority even let this statutory time limit of one year pass without even adhering to the stipulation contained in the show cause notice that the matter would be decided ex parte even if no cause is shown within thirty days. It appears that it is only on 07.09.2016 i.e. almost after a period of five months after the expiry of one year that the first hearing was fixed by the Adjudicating Authority on 07.09.2016.

42. The aforesaid discussion would lead to the inevitable conclusion that the impugned order would have to be set aside only for the reason that the adjudication was not completed within the time limit prescribed under sub-section (11) of section 11A of the Central Excise Act.

13. We find that similar matter in respect of Adjudication order in respect of Customs was before the Delhi High Court in the case of **VOS Technologies India Pvt Ltd Vs The Principal Addl**

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Director General decided vide **Judgement dated 10.12.2024.**

74. The meaning to be ascribed to the phrase "where it is possible to do so" was lucidly explained in Swatch Group. As the Court observed on that occasion, while the aforesaid expression did allow a degree of flexibility, it would have to be understood as being concerned with situations where the proper officer may have found it impracticable or impossible to conclude proceedings. Swatch Group had explained that expression to be applicable only where the proper officer were faced with "insurmountable exigencies" and further recourse being rendered "impracticable or not possible". It thus held that the leeway provided by the statute when it employed the phrase "where it is possible to do so", could not be equated with lethargy or an abject failure to act despite there being no insurmountable factor operating as a fetter upon the power of the proper officer to proceed further with adjudication.

85. The position which thus emerges from the aforesaid discussion and a review of the legal precedents is that the respondents are bound and obliged in law to endeavour to conclude adjudication with due expedition. Matters which have the potential of casting financial liabilities or penal consequences cannot be kept pending for years and decades together. A statute enabling an authority to conclude proceedings within a stipulated period of time "*where it is possible to do so*" cannot be countenanced as a license to keep matters unresolved for years. The flexibility which the statute confers is not liable to be construed as sanctioning lethargy or indolence. Ultimately it is incumbent upon the authority to establish that it was genuinely hindered and impeded in resolving the dispute with reasonable speed and dispatch. A statutory authority when faced with such a challenge would be obligated to prove that it was either impracticable to proceed or it was constricted by factors beyond its control which prevented it from moving with reasonable expedition. This principle would apply equally to cases falling either under the Customs Act, the 1994 Act or the CGST Act.

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86. When we revert to the facts that obtain in this batch, we find that the respondents have clearly failed to establish the existence of an insurmountable constraint which operated and which could be acknowledged in law as impeding their power to conclude pending adjudications.

14. It would also be important to compare the language used under the unamended Section 11A (11) of the Central Excise Act 1944, Section 28(9) of the Customs Act 1962 and Central Excise Manual.

Central Excise Act 1944 :

Section 11A(11) The Central Excise Officer *shall* determine the amount of duty of excise under sub-section (10) –

(a) within six months from the date of notice *where it is possible to do so*, in respect of cases falling under sub-section (1);

(b) within one year from the date of notice, *where it is possible to do so*, in respect of cases falling under sub-section (4) or sub-section (5).

Customs Act 1962 :

Section 28 (9) :The proper officer *shall* determine the amount of duty or interest under sub-section (8),—

(a) within six months from the date of notice, *where it is possible to do so* in respect of cases falling under clause (a) of sub- section (1);

(b) within one year from the date of notice, *where it is possible to do so* in respect of cases falling under sub-section (4).

Customs Act 1962

Section 128A(4A) The Commissioner (Appeals) *shall, where it is possible to do so*, hear and decide every appeal within a period of six months from the date on which it is filed.

Excise Manual (CBEC - Supplementary Instructions)

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DEMAND NOTICE/SHOW CAUSE NOTICE, ADJUDICATION, INTEREST, PENALTY, CONFISCATION, SEIZURE, DUTY PAYMENT UNDER PROTEST

4. Time limit for issue of adjudication orders: [\[Top\]](#)

The demands on account of short levy, non-levy or erroneous refund, by reason of fraud collusion, willful mis-statement or suppression of facts shall be adjudicated within a period of one year from the date of issue of show cause notice, where it is possible {Clause (a) of Sub-section 2A of Section 11A of Central Excise Act, 19 case, as far as possible, the case shall be adjudicated within a period of six months {Clause (b) of Sub-section 2A of Section 11A ibid }.

4.1 The adjudication order must be a speaking order giving clear finding of the adjudicating authority and he shall discuss each point raised by the defence a cogent reasoning in case of rebuttal of such points. The duty demanded and shall be quantified correctly and the order portion must contain the correct provision of law under which duty is confirmed and penalty is imposed. Adjudication order shall be issued under the signature of the adjudicating authority. If confiscation during adjudication proceedings, an option shall be given to the owner to redeem the goods on payment of a fine in lieu of confiscation.

15. We find that under both Central Excise and Customs Section and Manual provisions referred above, the words used are "Shall" and "Where it is possible to do so" and in the Manual "as far as possible"

16. The importance and significance of these words have been extensively dealt by the Delhi High Court in the case of **Swatch India** - 2023 (386) E.L.T. 356 (Del.). It may be useful to go through the relevant portion, which is extracted below :

32. The unamended Section 28(9) of the Customs Act, specifically provides that the proper officer 'shall' determine the amount of duty within six months or within one year, as the

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case may be, from the date of notice. It only provides certain degree of inbuilt flexibility by incorporating the words 'where it is possible to do so'.

33. The phrases "as far as possible" and "as far as practicable" appear in other statutes as well came up for consideration before the Apex Court in C.N. Paramasivam and Another v. Sunrise Plaza: (2013) 9 SCC 460/[2013] 30 taxmann.com 320 (SC). It is observed that the words "possible" and "practicable" are more or less interchangeable along with the other words such as feasible, performable etc. The incorporation of such words gives certain degree of flexibility to the Department such as if some circumstances or insurmountable exigencies arise, which makes the recourse unpracticable or not possible, the authorities can deviate from what was required to be done in terms of the statute. When the challenge is laid to the act of the authorities deviating from the rule, the onus shifts on the authority to prove that it was not practicable or possible to follow the rule. The same is to be adjudicated on the facts and circumstances of each case."

17. In the **Kopertek Metals Pvt Ltd.[Kopertek for short]**, decided by the Principal Bench – Delhi Tribunal, it has been held that non adjudication of the order, with no reason being given to the effect that the order could not be passed on time due to circumstance beyond control, the same would be fatal to the legality of the order. In **VOS judgement**, cited supra the Delhi High Court has also held so and has noted that the delay is required to be viewed from the facts of the case. As per these decisions, when the reason for delay is not explained by way of plausible reasons in the Order in question, it fails to prove that "*it was not possible to pass the authority*" within the time-frame.

18. The Revenue countering the claim of the appellant that **Kopertek Metals** case should be applied, has taken the stand that in

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that case, the delay in passing the Order in Original was very high whereas the delay in case of the OIOs passed in the present case are not that high and hence, this case law cannot be applied.

19. We find that if the time-frame given in a statute is not fulfilled, the decision as to whether it is correct or erroneous would not depend on the deviation period. The delay, whether it is for one day or one year or ten years are all taken as delay only. Similar is the situation even in case of time-frame given for filing of appeals. To take an example, the time frame for filing an appeal before the Commissioner (Appeals) is 60 days. He has the power to condone the delay if the appeal is filed within the next 30 days. However, if the appeal is filed even after One day after 90 days, there is no power to condone the delay. He cannot differentiate between the appeal filed with a delay of one or two days delay after 90 days and the appeal filed with higher delay. In all these cases, he has to hold that the condonation period thereon has expired and is required to dismiss the appeal on this ground itself. The Hon'ble Supreme Court in the case of **Singh Enterprises [Appeal Civil 5949 of 2007]**, has held that in case of such appeals, even the Tribunal and Courts have no power to condone the delay. On a factual matrix, we find that even in the present case in many cases the delay is to the extent to 5 to 6 years. Therefore, we do not find any merits in the arguments of the Revenue that delay by number of days should be the factor to be considered to apply or otherwise the Tribunal's order in the case of Kopertek Metals.

20. Another objection was on account of two more orders passed by the Delhi Tribunal on similar issue, in the case of M/s Picasso Digital Media Pvt Ltd Vs Commissioner. CGST, East Delhi [2024(2) TMI 1160-CESTAT-New Delhi] and M/s Citicorp Finance India Limited Vs Commissioner of Service Tax, Delhi-11 [2023 (11) TMI 891-CESTAT NEW Delhi, wherein the Tribunal has refused to entertain the request of the appellant to consider the delay in passing the Order in Original

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for setting aside the Order. As per Revenue, the Tribunal should have referred the matter to the Larger Bench rather than passing a different order on the same issue.

21. On going through the Picasso case, we find that the issue therein was Service Tax demand for the period April 2006 to March 2011 for which show cause notice dated 21.10.2011 was issued and the Order in Original dated 02.05.2022 was passed. We find that only by of amendment brought by Finance Act 2014 (with effect from 6.8.2014), the Section 73 (4B), was inserted to specify the time-frame for adjudication of the Service Tax matters. Hence, there was no time-frame applicable for Adjudication of the SCN issued in 2011. The appellant had only made a normal reference towards the delay without citing any statutory provisions or the case laws. In that context the decision was rendered by the Tribunal.

22. In the case of Citicorp, again the issue is that of Service Tax demand. The Show Cause Notice was issued on 23.04.2012. Therefore, even in this case, on the date of issue of SCN, the statutory provision with regard to the time-frame to complete the Adjudication had not come into force. The Adjudicating authority had confirmed demand holding that appellant has not appeared for Personal Hearing nor have they filed any reply. This was properly countered by the appellant before the Tribunal showing evidence of having filed the replies and also appearing for the Hearing. They raised the additional point about the delay in completion of the adjudication proceedings. The Tribunal did not negate this claim. But considering the overall factual details of the case, the Tribunal took the view that the matter requires to be remanded to the adjudicating authority to consider all the submissions including that of delay in passing the Order in Original.

23. On the other hand Kopertek Metals decision which was rendered later, had gone into all the factual details and the statutory provisions and has considered many of the decisions of High Courts including

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that of the jurisdictional High Court of Delhi and has come to a proper conclusion on the issue. Therefore, we do not find that the Kopertek Metals had taken a contrary view on the issue requiring any LB referral. Accordingly, we proceed ahead with the factual details in the present case to explore as to whether Kopertek can be applied or not.

24. In the present case, the Adjudication orders were required to be passed within 6 months, since the demand was raised for the normal period except in respect of one SCN, without alleging any suppression etc. Hence, as per Section 11 A (11), and instructions contained in the Central Excise Manual Chapter 13 – Para 4, the Adjudicating authority was required to pass the Order in Original within 6 months. It is seen from the Order in Original no plausible reason has been adduced by the Adjudicating authority for the delay in taking up the Adjudication proceedings and completing the same within the time-frame. The Personal Hearings granted and Order passing dates are given below :

Sl. No.	Appeal No.	SCN dated	Period of dispute	Beyond Sec 11A(11) (covered by Kopertex Metal)	PH Dated	Remarks	OIO No.
1	E- 75694 of 2015	19.06.2013	March, 2011 to June, 2012	Yes	25.02.2015	1st & 2 nd SCN called for PH after 2 years, which was duly attended	16-18/COMMR/BOL/15 dt. 31.03.2015
2	E- 75695 of 2015	01.08.2013	July, 2012 to March, 2013	Yes			
3	E- 75696 of 2015	31.07.2014	April, 2013 to March, 2014	No			
4	E- 75911 of 2016	25.02.2015	April, 2014 to Sept, 2014	Yes	04.02.2016		39-40/COMMR/BOL/15 dt. 29.02.2016
5	E- 75912 of 2016	18.09.2015	Oct, 2014 to March, 2015	No			
6	E- 75060 of 2018	04.02.2016	April, 2015 to Sept, 2015	Yes	05.09.2017		01-03/COMMR/BOL/17-18 dt. 12.09.2017
7	E- 75061 of 2018	18.10.2016	Oct, 2015 to March, 2016	Yes			
8	E- 75062 of 2018	16.03.2017	April, 2016 to Sept, 2016	No			
9	E- 77239 of 2019	07.08.2018	Oct, 2016 to June, 2017	Yes	28.05.2019		04/COMMR/BOL/19-20 dt. 26.06.2019

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10	E- 75506 of 2020	14.08.2014	March, 2011 to Feb, 2013	Yes	First PH 30.07.2020 (adjn prayed)	PH provided after 6 yrs. First Adjn also rejected & order passed next day	22-39/Central Excise/Pr. Commr/RAN/2020 dt. 31.07.2020
11	E- 75507 of 2020	26.09.2014	March, 2011 to Feb, 2013	Yes	First PH 30.07.2020 (adjn prayed)	PH provided after 6 yrs. First Adjn also rejected & order passed next day	22-39/Central Excise/Pr. Commr/RAN/2020 dt. 31.07.2020

25. In the OIOs there is nothing to indicate that the appellant has in any way delayed the proceedings necessitating the Adjudicating authority to delay the passing of the order at his end. From the above Table we also find that in some cases, the Personal Hearings were given after the Six month to two years period. Considering the factual matrix, we take the view the ratio laid down by the Tribunal in the case of Kopertek Metals, would be squarely applicable. Accordingly, in respect of SI Nos. 1,2,4,6,7,9, 10 and 11 of the above Table [Appeal Nos. E/75694/2015, E/75695/2015, E/75911/2016, E/75060/2018, E/75061/2018, E/77239/2019, E/75506/2020, E/75507/2020.] we apply the ratio of this case law and set aside the demands and allow the Appeals.

26. In respect of Appeal at SI No. 3 [E/75696/2016] of the above Table, the appellant has taken a stand that the Revenue has issued the Show Cause Notice on 31.07.2014 for the period April 2013 to March 2014, by invoking the extended period provisions. They submit that the earlier two show causes notices for the period March 2011 to June 2012 and July 2012 to March 2013 were issued in the normal course, without invoking the extended provisions. Because of these Show Cause Notices, the Revenue was aware about the exclusion of Royalty and other taxes while arriving at the Assessable Value by the appellant. Hence, the allegation of suppression with an intent to evade, cannot be fastened for the third SCN issued on 31.07.2014, which is merely a periodical notice. The extended period provisions have been invoked so as to cover up the failure of the Revenue to

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issue the SCN on a timely basis. On this ground itself, the demand in respect of the extended period is required to be set aside.

27. Further, once the demand under extended period becomes non-sustainable, the Adjudicating authority would not have One year's period to adjudicate the case. He would be allowed only 6 months' time to complete the proceedings. In this case, the Order in Original has been passed on 31.03.2015, thereby exceeding the time-frame of 6 months. Therefore, it is prayed that even in respect of the demand pertaining the normal period under this SCN, the ratio of *Kopertek* may be applied and the confirmed demand may be set aside.

28. We find force in the appellant's argument that having issued the first two SCNs in the normal course, the Revenue could not have resorted to invoking the extended provisions while issuing the third SCN, which is on identical issue, being on account of periodical demand. We find that similar issue was before the Hon'ble Supreme Court in the case of *Nizam Sugar Factory Vs Collector of Central Excise – Civil Appeal No.2747/2001= Judgement dated April 20, 2006 as reported in 2008 (9) STR 314 (SC)*. The Hon'ble Apex Court has held as under :

6. Without going into the question regarding Classification and marketability and leaving the same open, we intend to dispose of the appeals on the point of limitation only. This Court in the case of ***P & B Pharmaceuticals (P) Ltd. v. Collector of Central Excise reported in (2003) 3 SCC 599 = 2003 (153) ELT 14(SC)*** has taken the view that in a case in which a show cause notice has been issued for the earlier period on certain set of facts, then, on the same set of facts another SCN based on the same/similar set of facts invoking the extended period of limitation on the plea of suppression of facts by the assessee cannot be issued as the facts were already in the knowledge of the department. It was observed in para 14 as follows:

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"14. We have indicated above the facts which make it clear that the question whether M/s. Pharmachem Distributors was a related person has been the subject-matter of consideration of the Excise authorities at different stages, when the classification was filed, when the first show cause notice was issued in 1985 and also at the stage when the second and the third show cause notices were issued in 1988. At all these stages, the necessary material was before the authorities. They had then taken the view that M/s. Pharmachem Distributors was not a related person. If the authorities came to the conclusion subsequently that it was a related person, the same fact could not be treated as a suppression of fact on the part of the assessee so as to saddle with the liability of duty for the larger period by invoking proviso to Section 11A of the Act. So far as the assessee is concerned, it has all along been contending that they were not related persons, so, it cannot be said to be guilty of not filling up the declaration in the prescribed proforma indicating related persons. The necessary facts had been brought to the notice of the authorities at different intervals from 1985 to 1988 and further, they had dropped the proceedings accepting that M/s. Pharmachem Distributors was not a related person. It is, therefore, futile to contend that there has been suppression of fact in regard M/s. Pharmachem Distributors being a related person. On that score, we are unable to uphold the invoking of the proviso to Section 11A of the Act for making the demand for the extended period."

7. This judgment was followed by this Court in the case of ***ECE Industries Limited v. Commissioner of Central Excise, New Delhi reported in (2004) 13 S CC 719 = 2004 (164) ELT 236(SC)***. In para 4, it was observed:

"4. In the case of ***M/s. P&B Pharmaceuticals (P) Ltd. v. Collector of Central Excise reported in [2003 (2) SCALE 390]***, the question was whether the extended period of limitation could be invoked where the Department has earlier issued show cause notices in respect of the same subject-matter. It has been

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held that in such circumstances, it could not be said that there was any wilful suppression or mis-statement and that therefore, the extended period under Section 11A could not be invoked."

8. Similarly, this judgment was again followed in the case of ***Hyderabad Polymers (P) Ltd. v. Commissioner of Central Excise, Hyderabad reported in [2004 (166) ELT 151(SC)]***. It was observed in para 6:

"..... On the ratio laid down in this judgment it must be held that once the earlier Show Cause Notice, on similar issue has been dropped, it can no longer be said that there is any suppression. The extended period of limitation would thus not be available. We are unable to accept the submission that earlier Show Cause Notice was for a subsequent period and / or it cannot be taken into consideration as it is not known when that Show Cause Notice was dropped. If the Department wanted to take up such contentions it is for them to show that that Show Cause Notice was not relevant and was not applicable. The Department has not brought any of those facts on record. Therefore, the Department cannot now urge that findings of the Collector that that Show Cause Notice was on a similar issue and for an identical amount is not correct."

9. Allegation of suppression of facts against the appellant cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the assessee/appellant.

29. We find that the ratio laid down by the Hon'ble Supreme Court is squarely applicable in the present case in respect of Appeal No.E/75696/2016, SCN dated 31.07.2014 issued for the period April 2013 to March 2014. We hold that the confirmed demand for the

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extended period is legally not sustainable and we set aside the same and allow the appeal to this extent on account of time bar itself.

30. Now we come to the argument of the appellant that in respect of this SCN, the same should be treated as normal SCN, requiring the Adjudicating authority to pass the Order in Original within 6 months. While on the face of it, the point made seems to be attractive, we find that this argument cannot be entertained by us. The Adjudicating authority having issued the SCN by invoking the extended period provisions, could have carried bonafide belief that he has a time-frame of one year to pass the Order in Original. Only when the matter has reached us at Appeal stage, we have considered the applicable case law to hold that the extended period could not have been invoked. Therefore, we are not inclined to entertain the submission of the appellant that even in this case, the Kopertek decision should be applied to give full relief to them. We have already given the relief by way of setting aside the confirmed demand in respect of the extended period in this particular case (Appeal). We will take up the balance demand on merits along with the other SCNs, which do not get the benefit of application of kopertek decision.

31. Thus we have come to a conclusion that in respect of three SCNs and demands and Appeals [Appeal Nos. E/75696/2015, E/75912/2016 & E/75062/2018] thereof, we are required to consider the same on merits.

32. The appellant has mainly argued on the ground that in terms of Section 11 A, the Show Cause Notice could not have been issued, since there was no short payment when the goods were cleared. For this stand they submit they were relying on the case of the 7 Member Supreme Court Bench decision rendered in 1990, in the case of **India Cements**, wherein it was held that the 'Royalty' is a tax. Hence, the 'Tax' component is excludible while arriving at the Assessable Value. As per the appellants, the 5 Member Bench of the Supreme Court in

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the case of **Kesoram, rendered in 2004**, could neither have doubted the decision of the 7 Member Bench deciding the India Cements case, nor could have they over-ruled the same. The 5 Member Bench was required to follow the decision of 7 Member Bench's decision or if they were not in agreement, they should have referred the matter to the Chief Justice of India to constitute a larger Bench to decide the issue. Subsequently in **MADA case**, the 3 Member Bench of Supreme Court noted the divergent views taken in the 7 Member Bench of India Cements and 5 Member Bench of Kesoram, which resulted in the matter being referred to the 9 Member Bench for a final decision, which came to be pronounced in 2024. The appellant submits that the Revenue is in error in issuing the SCN based on the 2004 decision of Kesoram, which had no jurisdiction to over-rule the 7 Member decision of the India Cements. As per the appellant, with no Stay being granted, the India Cements decision was very much prevailing when the appellants adopted the AV by excluding the Royalty since India Cements judgement held that Royalty in a 'Tax'.

33. Prima facie, the argument of the appellant is quite attractive and also seems to be logical, since they have followed the prevailing decision during the period under dispute for arriving at the Assessable Value. We also agree that Kesoram judgement could not have found fault with the India Cements decision, since the quorum at Kesoram was less than that of India Cements case. Admittedly, this anomaly was noticed in the MADA judgement rendered by a 3 Member Bench, in 2011 who recommended constitution of 9 Member Bench. This 9 Member Bench has finally held that the Royalty is not a 'Tax'. Thus as on date, on merits the appellants would have no case.

34. But we find that this argument cannot be accepted for various reasons. For example, in case of every classification / valuation dispute, it is always the issue of interpretation. Just because the interpretation of the assessee is based on certain case law, the

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Revenue cannot be made to stop in tracks and not issue the SCN, if their interpretation is different. All the issues of classification / valuation usually get finally clarified at Supreme Court level only. But it is for any one of the parties [the assessee / the Revenue], to keep the matter alive by litigating till this stage. If the appellant's present argument is taken as correct, then in all these cases of classification / valuation, no SCN could be issued. In the present case, to justify their different interpretation, the Revenue had the *Kesoram* judgement favouring their view point, irrespective of the fact as to whether it is correct or erroneous. The Revenue would go by the simple logic that both the decisions are by Supreme Court. The first one being that of **India Cement rendered in 1989** and the second one of *Kesoram rendered in 2004*. The Revenue has applied the principle of '*latter the better*', without going into the details of the quorum of the Benches. Hence, holding the belief that they are following the correct case law, the Revenue has not considered the case law of Kamalakshi and other cited decisions about the effect of the binding precedents. Therefore, in this case, the balance weighs with the Revenue rather than with the appellant. This argument of the appellant would be useful towards their submissions only about bonafide belief and to overcome the extended period provisions. Upto that stage this will help the appellant but not for the very core issue of SCN proceedings. Therefore, we hold that the Revenue was not at fault in invoking the provisions of Section 11 A and issuing the SCN in view of their interpretation that the AV adopted had resulted in short-payment of Excise Duty.

35. As on date, the issue as to whether 'Royalty' is tax of not, stands clearly held against the appellant in view of the 9 Member Supreme Court decision in the case of **Mineral Area Development Authority Vs Steel Authority of India (2024) 21 Centax 313(SC) [MADA for short]**. Therefore, on merits the appellants do not have any case. Accordingly, we hold that the Royalty component is required to be added to arrive at the Assessable Value. This would

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be applicable in respect of the SI No.3 [Appeal No. E/75696/2015], SI No.5 [Appeal No. 75912/2016] and SI No.8 [Appeal No.75062/2018] of the above Table. The appeal in respect of these three appeals is dismissed in respect of Excise Duty on Royalty component.

36. Now we come to the component of the Stowing Excise Duty. The appellant has claimed that it is a 'Duty of Excise'. The relevant portion of the The Coal Mines (Conservation and Development) Act, 1974 [CMD Act for short]

6. Imposition of excise duties -

*(1) With effect from the appointed day there shall be levied and collected on all coke raised and dispatched, and on all coal manufactured and dispatched, from the collieries in India, **such duty of excise, not acceding Rupees ten per tonne** as may be fixed from time to time by the Central Government by notification, and different rates of duty may be levied on different grades or description or coal or coke."*

7. Imposition of customs duty - *During the period in which any duty of excise is being levied under section 6, the Central Government may, by notification, impose on all coal (including soft and hard coke) imported or brought into India from any place outside India, a duty of customs (which shall be in addition to any duty of customs for the time being leviable under any other law), as the rates equivalent to the rates of duty of excise levied under section 6.*

8. Collection of excise duties - *The duties of excise levied under section 6 shall be collected by such agencies and in such manner as may be prescribed.*

37. We find that the CMD Act describes the levy as 'Duty of Excise' and under Section 7 a reference is made to Customs Duty, wherein it

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is stated that the Excise Duty equivalent to the rate referred to at Section 6 may be imposed when the coal is imported. This shows the intent of the Central Govt to treat the levy as 'Duty of Excise' and 'Additional Duty of Excise' [CVD]. The Section 4 (3) (d) of the Central Excise Act 1944, reads as under :

(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.

38. We have seen the earlier paragraphs that the levy is being termed as 'Duty of Excise' and also being treated as such. It is also not disputed that in the case of the goods in question, the Stowing Excise Duty is being paid by the appellant. The Revenue cannot take a contorted and narrow view that only when the Duty of Excise is paid as Central Excise Duty, such exclusion is available. It is to be noted that the word used is 'duty of excise' along with 'sales tax' and 'other taxes', which would clarify that if these are paid to State Govt or to any other agency also, the transaction value should exclude the same. Considering these provisions, we set aside the confirmed demand in respect of the Stowing Excise Duty and allow the Appeals.

39. Now we turn to various cesses like Rural Employment & Production Cess ("RE Cess" and/or "PE Cess"), Primary Education Cess, ("PED Cess"), PWD Road Cess, ("Road Cess"), Asansol Mines Board of Health Cess ("Health Cess"). These are being paid to various agencies as per the rates specified under the respective statutes. In the present case, one of the major issue was that of Royalty.

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Therefore, it would be relevant to go through the relevant portions to these Supreme Court's decisions :

India Cement Ltd vs State Of Tamil Nadu Etc on 25 October, 1989

Civil Appeal No. 62 (N) of 1970 etc. The 7 Member Bench as under :

In any event, *royalty is directly relatable only to the minerals extracted and on the principle that the general provision is excluded by the special one, royalty would be relatable to entries 23 & 50 of list II, and not entry 49 of list II. But as the fee is covered by the Central power under entry 23 or entry 50 of list II, the impugned legislation cannot be upheld.* Our attention was drawn to a judgment of the High Court of Madhya Pradesh in Miscellaneous Petition No. 410/83--M/s Hiralal Rameshwar Prasad & Ors. v. The State of Madhya Pradesh & Ors., which was delivered on 28th March, 1986 by a Division Bench of the High Court. J.S. Verma, Acting Chief Justice, as His Lordship then was, held that development cess by s. 9 of the Madhya Pradesh Karadhan Adhinyam, 1982 is ultra vires. It is not necessary in the view taken by us, and further in view that the said decision is under appeal in this Court, to examine it in detail. In the aforesaid view of the matter, we are of the opinion that royalty is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State Legislature because s. 9 of the Central Act covers the field and the State Legislature is denuded of its competence under entry 23 of list II. In any event, we are of the opinion that cess on royalty cannot be sustained under entry 49 of list II as being a tax on land. Royalty on mineral rights is not a tax on land but a payment for the user of land.

39.1 This decision held that the Royalty is a 'Tax' and even the 'Cess' is also a 'Tax'. This gave rise to appellant's belief that Royalty as well as any other Cesses are not includible in the Transaction Value.

State Of West Bengal vs Kesoram Industries Ltd. And Ors on 15 January, 2004 Appeal Civil 1532 of 1993 and others – the Three Member Bench by way of Majority judgement held as under :

E/75694-75696/2015, E/75911-75912/2016, E/75060-75062/2018, E/77239/2019, E/75506-75507/2020

The Result: -

Individual cases

(A) Coal Matters The amendments incorporated by the West Bengal Taxation Laws (Amendment) Act 1992 w.e.f. 1.4.1992 into the provisions of the West Bengal Primary Education Act 1973 and the West Bengal Rural Employment and Production Act 1976 classify the land into three categories: (i) coal-bearing land, (ii) mineral bearing land (other than coal-bearing land) or quarry and (iii) land other than the preceding two categories. These three are well-defined classifications by reference to the user or quality and the nature of product which it is capable of yielding. The cess is levied on the land. The method of quantifying the tax is by reference to the annual value thereof. It is well-known that one of the major factors contributing to the value of the land is what it produces or is capable of producing. Merely because the quantum of coal produced and dispatched or the, quantum of mineral produced and dispatched from the land is the factor taken into consideration for determining the value of the land, it does not become a tax on coal or minerals. Being a tax on land it is fully covered by Entry 49 in List II. Assuming it to be a tax on mineral rights it would be covered by Entry 50 in List II. Taxes on mineral rights lie within the legislative competence of the State Legislature "subject to" any limitation imposed by Parliament by law, relating to mineral development. The Central legislation has not placed any limitation on the power of the States to legislate in the field of taxation on mineral rights. The challenge to constitutional validity of State legislation is founded on non-availability of legislative field to State; it has not been the case of any of the writ petitioners that there are limitations enacted by Central legislation and the State of West Bengal has breached or crossed those limits. Simply because incidence of tax is capable of being passed on to buyers or consumers by the mine owners with an escalating effect on the price of the coal, it cannot be inferred that the tax has an adverse effect on mineral development. Entry 23 in List II. speaks of regulation of mines and mineral developments, subject to the provisions of List I with respect to regulation and development under the control of the Union. The Central Legislation has taken over

E/75694-75696/2015, E/75911-75912/2016, E/75060-75062/2018, E/77239/2019, E/75506-75507/2020

regulation and development of mines, and mineral development in public interest. By reference to Entry 50 of List II and Entry 54 in List I, the Central legislation has not cast any limitations on the State Legislature's power to tax mineral rights, or land for the matter of that. *The impugned cess is a tax on coal-bearing and mineral-bearing land. It can at the most be construed to be a tax on mineral rights. In either case, the impugned cess is covered by Entries 49 and 50 of List II. The West Bengal Taxation Laws (Amendment) Act 1992 must be and is held to be intra vires the Constitution.*

39.2 This decision comes to a conclusion that 'Royalty' is not a tax and the cess on the same can be imposed by the State Govt. This decision was relied by the Revenue to take up the proceedings in the present litigation, wherein the Excise Duty has been demanded on the Royalty component.

Mineral Area Development Authority vs. Steel Authority of India (2024) 21 Centax 378 (SC) on 25.07.2024

342. In view of the above discussion, we answer the questions formulated in the reference in terms of the following conclusions:

(a) Royalty is not a tax. Royalty is a contractual consideration paid by the mining lessee to the lessor for enjoyment of mineral rights. The liability to pay royalty arises out of the contractual conditions of the mining lease. The payments made to the Government cannot be deemed to be a tax merely because the statute provides for their recovery as arrears;

(b) Entry 50 of List II does not constitute an exception to the position of law laid down in *M PV Sundararamier (supra)*. The legislative power to tax mineral rights vests with the State legislatures. Parliament does not have legislative competence to tax mineral rights under Entry 54 of List I, it being a general entry. Since the power to tax mineral rights is enumerated in Entry 50 of List II, Parliament cannot use its residuary powers with respect to that subject-matter;

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(e) The State legislatures have legislative competence under Article 246 read with Entry 49 of List II to tax lands which comprise of mines and quarries. Mineral- bearing land falls within the description of "lands" under Entry 49 of List II;

39.3 In the 9 Member Supreme Court judgement, it has finally been clarified that the Royalty is not a Tax.

40. As per the decision of the 9 Member Bench seen above, there is no case on merits for the appellants for not including the Royalty component for arriving at the Assessable Value. But this judgement also comes to the rescue of the appellant so far as the Cess issue is concerned. Since Royalty has been held not to be 'tax', the States are competent to levy Cess, which is also a tax, as held in India Cements Case cited supra. In the 9 Member judgement of MADA, there is nothing to suggest that Cess is not a 'Tax' and the entire decision is confined to the issue as to whether 'Royalty' is 'tax or not' and as to whether the State is eligible to impose Cess on Royalty. So far as other cesses are concerned, there is nothing to suggest that they have been litigated as not being 'tax' by nature at any other forum. No judicial pronouncement has been brought to our notice taking the contrary view in respect of the cesses.

41. Therefore, after harmoniously reading the above decisions, and applying the ratio thereon, we take the view that the Cesses are also a kind of tax imposed by the State Govt / Central Govt. Hence, the Cesses would meet the requirement of Section 4 (3) (d) under the category of other taxes, if any, actually paid or actually payable on such goods.

42. Accordingly, we hold that the confirmed demand on account of various cesses are not required to be considered while arriving at the Assessable Value / Transaction. We set aside the confirmed demand under these headings and allow the Appeals filed by the appellant.

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43. Coming to the interest payable by the appellant, we hold that they are liable to pay interest as per the applicable rates for the confirmed portion of the demands.

44. Coming to the issue of penalty imposed, we find that the issue was under litigation and matter finally got resolved by way of 9 Member Bench of the Hon'ble Supreme Court. The appellant while litigating the issue, has paid the entire amount demanded 'Under Protest'. The appellant is also a Public Sector Undertaking working under the Ministry of Coal. We are also given to understand that on identical issue in the case of Mahanadi Coalfields Ltd [whose appeal is before us], the Adjudicating authority has refrained from imposing penalty while confirming the Excise Duty of over Rs.186 crores. No appeal has been preferred by the Revenue against dropping of the penalty. This shows that the Revenue also has taken the view that no penalty is imposable in such cases. Considering these facts, we take the view that, no penalty is imposable on the appellant in all these appeals. We set aside the penalty imposed on them, including in respect of the demands which are held as payable by them along with interest.

45. To summarize our decision :

- (1) In respect of 8 Appeals, the same are allowed on the sole ground of Adjudication order being passed in a delayed manner. For this, we have relied on the Tribunal's decision of Kopertek Mataliks and other cited decisions.
- (2) In respect of One Appeal [Appeal No. E/75696/2015], we hold that the confirmed demand for the extended period is legally not sustainable. The appeal to this extent is allowed on account of limitation. In respect of merits, the decision

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would be on par with our decision in respect of the balance 2 Appeals [Appeal No. E/75912/2016 & E/75062/2018]

- (3) In respect of the 2 Appeals [Appeal No. E/75912/2016 & E/75062/2018] :
- (a) In respect of the confirmed demand on account of the Royalty component, the appellant is required to discharge the same along with interest, as per law.
- (b) In respect of the confirmed demand on account of different cesses, the same is set aside and appeals stand allowed to this extent.
- (4) Penalties imposed are set aside.
- (5) The appellants would be eligible for consequential relief, if any, as per law.

(Pronounced in the open court on 11.03.2025.)

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

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

Pooja