

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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.75094 of 2024

(Arising out of Order-in-Original No.28-35/Commr./CGST & CX/Kol/North/2023-24 dated 29.09.2023 passed by Commissioner of CGST & Central Excise, Kolkata North)

M/s Integrated Coal Mining Limited

(6, Church Lane, 1st Floor, Kolkata-700001)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Kolkata North

(180, Shantipally, Rajdanga Main Road, Kolkata-700107)

Respondent

APPEARANCE :

Shri Arvind Behati, Chartered Accountant for the Appellant
Shri S.K.Singh, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NO.76435/2025

DATE OF HEARING : 02 MAY 2025

DATE OF PRONOUNCEMENT : 04 JUNE 2025

Per Ashok Jindal :

The appellant is in appeal against the impugned order.

2. The facts of the case are that the appellant is engaged in the business of mining and sale of coal classifiable under Chapter Heading 27011200 of the Central Excise Tariff. Pursuant to allocation of a coal mine block by the Government of India, Ministry of Coal to mining of coal, the appellant was granted mining leases by the Government of West Bengal, in accordance with the relevant statutory provisions in this regard, for extraction of coal from the said block, known as the Sarshatali Coal Mine.

2.1 On August 14, 2002, the appellant entered into an agreement with CESC Ltd., Kolkata, to mine coal from the said mines and to sell

the same to CESC Ltd (CESC") for use in its power projects on terms and conditions specified in the agreement.

2.2 Similar agreement was subsequently entered into by the appellant with Crescent Power Ltd. ("CPL"), a wholly owned subsidiary of CESC on March 30, 2010, for sale of certain inferior quality coal, commonly known as "carbonaceous shale" or "shaly coal" (hereinafter referred to as "carbonaceous shale") from the said coal mine to CPL, on terms and conditions specified in the said agreement dated 30.03.2010.

2.3 The coal that comes directly from mines, after blasting, known as the run-of-mine coal ("ROM"), are of irregular sizes, including large fragments. In terms of the above-stated agreements, the appellant has to supply coal of specifications and quality, depending upon the intended use thereof, as specified. Since the ROM coal does not conform to the size and specification required to be delivered to the buyers and cannot be sold and transported as such, the said ROM coal has therefore to be prepared. Such preparation includes segregation of the coal from the stones, whereupon they are crushed/sized as per the desired requirement of the purchasers concerned in the mine area itself, through deployment of workers and using pay loaders and dozers. According to the appellant, the manufacturing job is only then completed and the coal becomes ready for sale and hence, sizing of coal is an integral part of coal manufacturing or production.

2.4 Central excise duty was paid by the appellant on the assessable value of coal determined by including the crushing and sizing charges, with effect from 24.03.2011, prior to which coal was subjected to zero excise duty.

2.5 In addition, since inception, on the sale price of the coal including the said sizing charges. Value Added Tax (VAT) and Central Sales Tax have been deposited as per the relevant statutes of the State and Central Governments respectively, by the appellant.

2.6 Various show-cause notices (1st Bucket of SCNs) have been issued to the appellant for the period 2008-2009 to June 2017 alleging non-payment of service tax on the provision of "Mining Services", non-payment of service tax on the provision of "Sponsorship Services" and for violation of Rule 6(3)(i) of the Cenvat Credit Rules, 2004 for having not paid the service tax on sale of solar power , which is exempted service, on the purported ground of having availed credit on common inputs without maintaining separate records.

2.7 Further, two show-cause notices (2nd Bucket of SCNs) were issued for the period for the period 2012-13 to 2013-14 and 2014-15 demanding service tax in respect of coal crushing/sizing charges and alleging that during the period 2012-13 to 2013-14 and 2014-15, the appellant was engaged in providing the services of sizing of coal to its customer (post-extraction activity), for which, it is allegedly recovered additional amount of money as consideration and since sizing of coal does not amount to manufacture within the meaning of Section 2(f) of the Central Excise Act, 1944, therefore, the said activity was covered by production of processing of goods for on behalf of the client under the category of "Business Auxiliary Service", on which service tax is payable.

2.8 As all the show-cause notices are having a common issue, therefore, all are adjudicated by the adjudicating authority by a

common order, wherein the service tax has been confirmed against the appellant on "Mining Services" amounting to Rs.260,32,44,804/- & Rs.26,02,179/- and on account of demand in terms of Section 6(3)(i) amounting to Rs.7,34,60,689/-, total demand amounting to Rs.267,93,07,672/- & penalty of Rs.161,50,05,669/-.

2.9 Against the said order, the appellant is before us.

3. The Id.Counsel for the appellant submits as under :

(i) There was duplication of demand in respect of this component having also been confirmed under the category "*Mining services*" in the first bucket of SCNs. That the Ld. Commissioner has dropped the service tax demand under second bucket of SCNs as the self-same issue stood decided by this Hon'ble Tribunal vide Final Order dated 05.01.2021 upholding the Order-in-Original dated 19.12.2013 for the earlier period i.e. 2007-08 to 2011-12 which *inter alia* held that (i) Sizing of coal is an incidental and ancillary process to make coal marketable and thus complete "manufacture" of coal and therefore, activity of raising of coal, including crushing thereof, carried out by the Appellant in the Sarshatali coal mine amounted to "*manufacture*" of excisable goods; (ii) the Appellant is duly registered under the central excise provisions with the jurisdictional Central Excise authorities and the Appellant was paying central excise duty upto June 2017; (iii) the Appellant was the owner of the coal mined from the said coal block with the transfer of title taking place only after completion of the sizing operation and the Appellant was paying VAT thereon; (iv) levy of VAT and service tax are mutually exclusive; (v) levy of excise duty and service tax are also mutually exclusive. [

(ii) He vehemently denied and disputed the allegations put forth in the first bucket of SCNs on various grounds which *inter alia* included the factum that they were paying VAT upto 31 March, 2015 while holding the mine lease in their own name and had paid excise duty on coal right from its imposition, viz. March 2011 to June 2017 and it is well settled that levy of VAT/excise duty and service tax are mutually exclusive and therefore, there can be no service tax demand. Further, in so far as Sponsorship services are concerned, it was submitted that the onus was on the Revenue to establish that the Appellant had received sponsorship service and the Revenue authorities had failed to discharge their burden. Moreover, there was no violation of Rule 6(3)(i) of CCR since the Appellant was maintaining separate books of accounts and had not claimed CENVAT credit in relation to exempted services and had also furnished CA certificates to this effect. However, without considering and appreciating the submissions of the Appellant, the Ld. Commissioner passed the impugned OIO with the following observations:

- (i) Non-payment of service tax on Provision of "*Mining Services*"
(Forward Charge)

Findings on levy of Service tax

- The scope of "*Mining Services*", defined u/s 65(105) (zzzy) of the Finance Act, is very wide and *inter alia* encompasses exploration and extraction of coal within its fold and therefore the activities of raising/mining of coal undertaken by the Appellant are services taxable under

the category of "Mining Services". Even when there was a regime change in the service tax law, on and from July 1, 2012, when the Negative List basis of levying service tax has been introduced, there has been no change in the position of levying service tax on such activities since these activities are not covered by any of the excluded activities mentioned u/s 65B(44) and 66D of the Finance Act.

- The service tax demand on sizing of coal under the 2nd bucket of SCN is different from this issue since it pertained to post-extraction activities (alleged to be "*Business Auxiliary service*") vis-à-vis activity of extraction of coal (alleged to be "*Mining service*") in the present issue. Hence, dropping of 2nd bucket of SCN does not have any effect on the present allegation (*although while quantifying demand under this bucket, even sizing charges were considered*).
- The activity conducted by the Appellant falls under "*Mining Service*" and is leviable to service tax even if Central Excise duty has been paid on the same activity. No ruling has been presented by the Appellant which holds that after Mining services were notified as Taxable services, the activities of mining would not be liable to Service Tax if appropriate Central Excise duty has been paid on the minerals, oil or gas so mined or extracted, or if the process of extraction or mining of minerals, oil or

gas is construed as amounting to manufacture. Such argument would render the "*Mining services*" notified by the Act of Legislature as redundant and inoperable. On this basis, the Ld. Commissioner rejected the applicability of various decisions relied upon by the Appellant.

- Further, the Ld. Commissioner observed that there are a number of judgements which categorically and consistently hold that after "*Mining services*" were notified as Taxable services, the activities of mining were liable to Service Tax under Mining services notwithstanding the fact that the minerals, oil or gas so mined may have been liable to Central Excise duty or the processes may have amounted to manufacture or production. Reliance was placed on:
 - Calcutta Industrial Supply Corpn. Vs. Commr. of S.T. [2019 (31) G.S.L.T. 487 (Tri.- Kol.)]
 - Kanak Khaniz Udyog Vs. CCE [2017 (52) S.T.R. 46 (Tri.-Del.)]
 - M. Ramakrishna Reddy Vs. Commr. of C. Ex. & Cus. [2009 (13) S.T.R. 661 (Tri.- Bang.)]
 - Sadbhav Engineering Ltd. Vs. Commr. of S.T. [2016 (43) S.T.R. 288 (Tri.- Ahmd.)]
 - Hazaribagh Mining & Engineering P. Ltd. Vs. CCE & ST [2017 (49) S.T.R. 289 (Tri.-Kol.)]

- M/s Engineering Projects India Ltd Vs. Commr. of S.T. [2023-TIOL-861-CESTAT-KOL]
- Avian Overseas Pvt Ltd. Vs. CCE [2009 (15) S.T.R. 540 (Tri. - Kolkata)]

Findings on Quantification of demand

- The Appellant has recovered additional consideration from its customers in the guise of cost of HSD oil and such HSD was meant for functioning of the machinery used in the mining operations. Since the Appellant has no license to sell diesel, hence, such recovery is nothing but additional consideration and hence, to be included in the taxable value.
- (ii) Although the Ld. Commissioner accepted that central excise duty, Clean energy cess and service tax should not form part of taxable value, however observed that no documentary evidence regarding payment of such amounts have been presented by the Appellant.
- (iii) Non-payment of service tax on Provision of Sponsorship Services (Reverse Charge) : No document have been submitted by the Appellant to demonstrate that the expenses incurred under the ledger "*Business Development and Advertising*" were not in the nature of sponsorship services. Further, the Appellant has paid service tax on few of such expenses treating them as "*Sponsorship service*".

(iv) Violation of Rule 6(3)(i) of CENVAT Credit Rules, 2004 (hereinafter referred to as "CCR") - (Issue 2 as per OIO):The Appellant is liable to pay amount under Rule 6(3)(i) of the CCR for having availed credit on common inputs used for providing both taxable as well as exempted activities (i.e. sale of solar power) without maintaining separate records. Not a single document/ register/record has been submitted by the Appellant evidencing maintenance of separate accounts in accordance with Rule 6(2) of the CCR.

Mining Service

(a) The Appellant was formed to develop and operate the Sarshatali Coal Block for the captive supply of coal to CESC Ltd and its associate companies

(b) The Appellant has been a manufacture/producer of coal from the said Coal Mine, throughout the relevant period i.e. April 2008 to June 2017. The mining lease in respect of the said Coal Block was held by the Appellant from the government of West Bengal in its own name upto March 2015 and thereafter by CESC pursuant to an auction by the government of India, consequent to the Hon'ble Supreme Court ruling in Manohar Lal Sharma vs. The Principal Secretary & Ors. [WP (CRL) No. 120 of 2012]. Therefore, the Appellant continued to operate and raise coal from the said coal block even after April 2015, albeit as a contractor.

(c) Since the activity of raising coal amounted to manufacture under Chapter heading 2701 of the CETA, the Appellant as a manufacturer/producer had been discharging central excise duty

on the activity of raising and supply of sized/crushed coal, right from its introduction in March 2011. Further, the Appellant was also discharging clean energy cess, which is also considered as a duty of excise, w.e.f. June 2010. Moreover, since the ownership of the coal raised from the said coal block was with the Appellant in terms of the mining lease prevalent upto 31 March 2015, the Appellant had also been discharging VAT/Sales Tax on the sized coal sold to CESC Ltd. and its group Company, under Agreement dated August 14, 2002 and to Crescent Power Ltd. (CPL) vide Agreement dated March 30, 2010. That the Appellant had been discharging VAT and excise duty on all the components of revenue is evident from the Final Order dated 05.01.2021 passed by this Hon'ble Tribunal in Appellant's own case reported in [2021 (1) TMI 179] and accepted by the Revenue authorities.

Grounds of Appeal

- (a) The issue relating to alleged "mining services" is no more *res integra* and stands settled in favour of the Appellant.
- (b) The allegations levelled against the Appellant in the First bucket of SCN in so far as the provision of alleged mining services are concerned, runs directly contrary to the findings of the Hon'ble Tribunal in the final order no. 75012/2021 dated 05.01.2021 passed in Appellant's own case. Although the Hon'ble Tribunal was dealing with the period upto F.Y. 2011-12, there are elaborate findings on the factum that (i) the activity of raising of coal, including crushing thereof, amounts to manufacture (ii) coal is an excisable product (iii) the Appellant was the owner of the coal

mined from the said coal block and paying VAT thereon (iii) the Appellant was paying central excise duty upto June 2017 (iv) levy of VAT and service tax are mutually exclusive (v) levy of excise duty and service tax are also mutually exclusive. Therefore, having dropped the service tax demand under the Second bucket of SCN, the learned Commissioner mis-directed himself in confirming the demand with respect to the provision of alleged mining services on superfluous grounds by ignoring the said binding decision of the Hon'ble Tribunal. It is a settled principle that the Revenue Department having accepted the principles laid down in the earlier case cannot be permitted to take a contrary stand in subsequent cases.

(c) VAT and service tax are mutually exclusive and cannot be simultaneously levied on self-same activity.

(d) The Appellant had paid VAT on the sale of sized coal to CESC/CPL upto March 2015 when it held the mining lease in its own name, which is evident from the Final Order dated 5 January 2021 of this Tribunal. It is a settled principle that levy of VAT and service tax are mutually exclusive levies and therefore, since VAT has already been levied on the entire sale value, there can be no levy of service tax on the same. The same has not been dealt with in the impugned OIO. Reliance is placed on:

- Imagic Creative Pvt. Ltd. v. Commissioner of Commercial Taxes [2008 (9) S.T.R. 337 (S.C.)]
- Bharat Sanchar Nigam Ltd. (BSNL) v. Union of India [2006 (2) S.T.R. 161 (S.C.)]

- C.C.E. &S.T., Bolpur v. M/s Integrated Coal Mining Ltd. [2021 (1) TMI 179]
- C.C.E. &S.T. v. Mahanadi Coalfields Ltd. [2017 (8) TMI 1625]

(e) The Excise duty and service tax are mutually exclusive levies and could not be demanded simultaneously on self-same activity.

(f) The Appellant was paying excise duty from March, 2011 onwards, when excise duty on coal was imposed as also clean energy cess since 2010. It is not in dispute that the Appellant continued to discharge excise duty on the activity of raising of coal including the sizing and transportation thereof and the same is also evidenced from the impugned 'O-I-O' dated 29.09.2023 as also from the Final Order dated 5 January 2021 of this Tribunal. It is a settled principle that if certain activity amounts to "manufacture" it cannot be contended to be "service", and vice versa, scheme of taxation under the Constitution of India providing for mutually exclusive levies, including with respect to the activity of extraction/raising of coal itself. However, the Ld. Commissioner has rendered a superfluous finding in the OIO. Reliance is placed on:

- C.C.E. &S.T., Bolpur v. M/s Integrated Coal Mining Ltd. (supra)
- Osnar Chemical Pvt. Ltd v. CCE [2009 (240) E.L.T. 115]
- Sri Rama Vilas Service v. Commr. of C. Ex. [2019 (25) G.S.T.L. 117]

(g) For the period March, 2011 to April, 2015, the proceedings were initiated against the Appellant by Central excise authorities alleging undervaluation of the transaction value of bituminous coal manufactured and cleared from the said mines and thereby alleged short payment of central excise duty. The proceedings culminated in 3 adjudication orders wherein it has been the consistent stand of the Central Excise Department that the subject work carried out by the Appellant in the said mines during the material period amounted to "manufacture" of excisable goods (sized coal) u/s Section 2(f) of the CEA. For the periods pertaining to F.Y. 2015-16, 2016-17 and 2017-18 (upto June 30, 2017), the assessments under the central excise provisions have also been finalized. In all the aforementioned proceedings, the Central excise officers have applied their mind independent of one another to arrive at the conclusion that there is "manufacture" of coal in the said mines. Since the activities undertaken by the Appellant in the said mines having been held as amounting to "manufacture" of goods on which central excise duty is being discharged, the same activities cannot be held to be "service" rendered by the Appellant and made taxable under the Finance Act.

(h) Activity conducted by the Appellant amounts to "manufacture" u/s 2(f) of CEA and is covered by the Negative list u/s 66D(f) of the Finance Act, 1944.

(i) The activity of raising of coal amounts to manufacture as per Section 2(f) of the CEA and the Appellant, as a manufacturer, had been discharging excise duty thereon which is not in dispute. Any process/activity amounting to manufacture is specifically covered in the Negative list under Section 66D(f) of the Finance Act, 1994 i.e. "services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption" and hence are outside the purview of the Act. The same has not been dealt with in the OIO.

(j) Demand pertaining to the period from 01/04/2008 to 31/03/2012 is barred by limitation.

(k) All relevant facts were known to the Revenue authorities at or prior to August 2012 itself, on the basis whereof the earlier show cause notice dated 21.08.2012, which culminated into Order dated 19.12.2013, was issued in the Appellant's own case. It is a settled principle that when on the self-same set of facts and materials a show cause notice has been issued earlier invoking extended period of limitation, there cannot be allegation of willful misstatement or suppression of any material fact or contravention of the provisions of the Act or the rules framed thereunder by an assessee to evade payment of tax and consequently there can be no invocation of the extended period of limitation under, inter alia, the Proviso to Section 73(1) of the Act, in subsequent show cause notice(s). Reliance is placed on *Nizam Sugar Factory v. Collector of Central Excise, A.P.* [2006 (197) ELT 465 (S.C.)]. Hence, the

demand pertaining to the period from 01/04/2008 to 31/03/2012 is barred by limitation.

(l) In light of the aforesaid discussion, the tax demand of Rs. 260 cr with respect to alleged Mining services cannot survive in respect of the following periods, as summarized hereinbelow:

Period	Amount (Rs. in cr)	Contentions for not levying Service tax
01/04/2008 to 31/03/2012	85.8	(i) The Appellant had paid VAT on the sale of sized coal to CESC/CPL.It is well settled that the levy of VAT and service tax is mutually exclusive and the same has not been dealt with in the OIO. (ii) The Appellant was also paying excise duty from March, 2011 onwards, when excise duty on coal was imposed as also clean energy cess since 2010. It is settled that the levy of excise duty and service tax are mutually exclusive. (iii) The demand is barred by limitation.It is a settled principle that when earlier notice has been issued invoking extended period of limitation on the self-same set of facts, subsequent notices cannot invoke extended period of limitation.
01/04/2012 to 31/03/2015	104.18	(i) Having paid VAT on the sale of coal to CESC/CPL, question of service tax does not arise. It is well settled that the levy of VAT and service tax is mutually exclusive. (ii) Activity of raising of coal amounts to manufacture as per Section 2(f) of the CEA and is specifically covered in the negative list under Section 66D(f) of the Finance Act, 1994. (iii) The Appellant was paying excise duty on the activity of raising of coal including sizing thereof. It is settled that the levy of excise duty and service tax are mutually exclusive including with respect to the activity of extraction/raising of coal itself.

Period	Amount (Rs. in cr)	Contentions for not levying Service tax
01/04/2015 to 30/06/2017	70.34	(i) Activity of raising of coal amounts to manufacture as per Section 2(f) of the CEA and the Appellant, as a manufacturer, had been discharging excise duty thereon albeit in the capacity of a contractor which is not in dispute. Any process/activity amounting to manufacture is specifically covered in the negative list under Section 66D(f) of the Finance Act, 1994. Therefore, outside the ambit of service tax. (ii) The Appellant was paying excise duty on the activity of raising of coal including sizing thereof. It is settled that the levy of excise duty and service tax are mutually exclusive and manufacturer need not necessarily be owner of coal. Reliance is placed on M/s Assam Air Products (P) Ltd Vs. CCE & ST [Para 6,6.2 - 2024 (3) TMI 72].

(m) Decisions relied upon by the Ld. Commissioner are not applicable to the facts of the present case.

(n) Decisions relied upon by the Ld. Commissioner have no application to the facts of the present case as those were rendered in different factual context. The assessee therein was not a manufacturer of excisable goods and was not discharging VAT and Excise duty (introduced on coal w.e.f. March 2011) on the self-same activity as is involved in the present case. The same can be demonstrated by the following:

Sl. No.	Decisions relied upon by the Department	Period of dispute	Activity involved therein
1.	Calcutta Industrial Supply Corpn. Vs. Commr. of S.T. (supra)	Upto March, 2007	Soil excavation, removal of over-burden, transportation,

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Sl. No.	Decisions relied upon by the Department	Period of dispute	Activity involved therein
			drilling and blasting of coal, etc.
2.	<i>Kanak Khaniz Udyog Vs. CCE (supra)</i>	07.06.2004 to 30.09.2007	Prospecting mineral deposit, dewatering of mineral, removal of over-burden, raising of china clay exposed after removal of over-burden and loading china clay.
3.	<i>M. Ramakrishna Reddy Vs. Commr. of C. Ex. & Cus. (supra)</i>	16.06.2005 to 30.06.2006	Excavation and removal of over-burden and Barytes Ore, loading, transportation, unloading and levelling.
4.	<i>Sadbhav Engineering Ltd. Vs. Commr. of S.T. (supra)</i>	15.06.2005 to 28.02.2006	Hiring of heavy earth-moving equipment for excavation and allied work at lignite mines
5.	<i>Hazaribagh Mining & Engineering P. Ltd. Vs. CCE & ST (supra)</i>	15.06.2005 to 31.03.2008	Site preparation, Dozing, Making holes, Excavating, Loading, transporting and dumping blast rejects to dump yard and handling of waste materials and mixed ore/hard ore.
6.	<i>M/s Engineering Projects India Ltd Vs. Commr. of S.T. (supra)</i>	16.06.2005 to 31.03.2008	Excavation, loading and transportation of overburden/top soil (within the mines area), dewatering of mines, excavation of benches for extraction of coal , drilling, blasting with explosives,

Sl. No.	Decisions relied upon by the Department	Period of dispute	Activity involved therein
			extraction of coal, backfilling of excavated area, loading of raw coal at face and transporting to surface, unloading and stacking at surface.
7.	<i>Avian Overseas Pvt Ltd. Vs. CCE (supra)</i>	Upto June, 2005	Various items of work covering integrated mining operations of coal mining including coal extraction and transportation from mine to power plant.

(o) Allegation in the SCN to the effect that only anthracite or bituminous coal are covered by Chapter 27 of the CETA is superfluous and devoid of any merit. In any event, the Appellant was only manufacturing bituminous coal, which stand confirmed in other parallel proceedings under the central excise law.

(p) The Show cause notices attempted to lay down a twisted interpretation of law by alleging that only anthracite or bituminous coal can be considered as excisable goods and any process that results in generation of agglomerated coal does not amount to manufacture. The said frivolous interpretation had been vehemently denied and contested by the Appellant in their reply to Show cause notices on *inter alia* the following grounds: (i) It is incomprehensible as to on what basis or reasoning coking coal falling under 27011990 and steam coal falling under 27011920

have been considered in the SCN as non-excisable goods. It has been completely mis-appreciated that coal comprises of two broad categories viz., hard coal and low rank coal, which, in turn, contain various sub categories. (ii) The SCN has completely lost sight of the fact that in the event the coal does not have the specified volatile matter limit and/or calorific value, it can be classified under other sub-headings (iii) The Appellant was involved in the manufacture of bituminous coal classifiable under Chapter heading 2701 of the CETA and was paying excise duty thereon, which also stands confirmed by the adjudication orders passed by the central excise authorities and assessments carried out under the central excise law during the relevant period. The Ld. Commissioner has rightly not paid heed to such twisted interpretation as alleged in the SCN, but on the contrary has asserted that payment of central excise duty does not take away the liability to pay service tax under the category of "*Mining Services*", which has been dealt with hereinabove.

Computational errors in the demand

(q) Without prejudice to the above, there are computational errors in the demands covered by impugned OIO. The following have not been excluded from the taxable value while computing the service tax demand with respect to mining services.

(r) Amounts pertaining to Central Excise Duty on coal, Cess on coal, service tax and cess as disclosed in the Notes to Accounts in the Financial Statements pertaining to the F.Y. 2015-16 and F.Y. 2016-17.

Transportation charges, viz. revenue earned for transportation of coal to railway siding and coal washery, on which Excise Duty and VAT/CST have been paid.

Washed Coal Transport Charges on which service tax has already been discharged.

- Sizing charges, contrary to the finding in the impugned OIO.

(s) There is no element of service involved in the recovery of HSD cost and hence, there can be no service tax demand on such HSD cost recovery. It has been alleged that such recoveries have been made from customers. However, contrary to the findings of the impugned OIO, there have been no recoveries from customers, rather the said recoveries were in the nature of recoveries made from sub-contractors on account of fuel consumption efficiencies or recovery of cost of HSD supplied by the Appellant to its group companies.

Amounts payable under Rule 6(3)(i) of the CCR

(t) The Appellant has not availed CENVAT credit on any common input which are attributable to both taxable and exempt activities.

(u) The Appellant has been engaged in the business of Coal mining (taxable) and solar power business (exempt), which are separate business verticals. The Appellant had installed solar panels in Gujarat in F.Y. 2011-12 and was supplying power to M/s. Gujarat Urja Vikas Nigam Ltd. The impugned OIO observes that the Appellant had used common inputs (and not input services) for providing both taxable and exempt activities, on which CENVAT credit has been availed. However, the Appellant has not availed CENVAT credit on any common input and the Ld. Commissioner has also failed to identify the common inputs which are attributable to both taxable and exempt activities and has passed the impugned Order arbitrarily and the same is devoid of any material particulars. The Ld. Commissioner has failed to consider the Chartered Accountant certificates evidencing maintenance of separate accounts. The impugned OIO has erred in observing that no documents evidencing maintenance of separate accounts have been furnished by the Appellant. The Appellant has obtained Chartered Accountant certificates for all the relevant periods who have examined and certified that the Appellant maintains separate accounts detailing the inputs used for taxable goods/services, and those for exempted goods/services, i.e. service of providing solar power in Gujarat and that the Appellant has not claimed CENVAT credit in respect of the transactions relating to solar power business. Further, the same was also submitted before the Ld. Commissioner at the time of adjudication. However, the said factum is conspicuously

missing in the impugned OIO and the said Order has been passed without considering the same. Further, it is settled that the certificate of an expert could not have been discarded without any specific and cogent evidence. Reliance is placed on the ruling of this Hon'ble Tribunal in M/s Harinagar Sugar Mills Limited [Para 7 - Final Order No. 75562/2020] and M/s Electro Steel Casting Ltd [Para 17 - Final Order No. 77070/2024].

Sponsorship Service

(v) The Revenue authorities have failed to discharge onus to prove taxability of Sponsorship service. Further, the Appellant has furnished documents to demonstrate that the payment was towards financial assistance and not sponsorship service.

Nowhere in the impugned OIO has it been shown that the expenses incurred by the Appellant towards business development are in any way related to sponsorship services within the meaning of the Finance Act. The entire demand made against the Appellant in this respect is presumptuous and erroneous. It is a settled principle that the burden to prove taxability of an activity is on the Revenue authorities, which they have failed to discharge, by raising demand arbitrarily and without furnishing any evidence to support such allegations. Reliance is placed on the ruling of this Hon'ble Tribunal in M/s India Steamship [Para 8 - Final Order Nos. 76064-76065/ 2024] and Hindustan Coca Cola Beverages Pvt. Ltd. [2016 (42) S.T.R. 696 (Tri. - Delhi)].

(w) It is a settled principle that manner of accounting does not determine legal effect of a transaction which is dependent on its

underlying nature and therefore, expenses booked under the head “*Business Development and Advertising*” could not have been taxed as Sponsorship service.

(x) Contrary to the observation made in the impugned Order, the Appellant has furnished sample evidences to demonstrate that the payment was towards financial assistance which includes letters from organizations seeking financial assistance and payment receipts. It is an admitted position in the Order that for the sponsorship services received by the Appellant, service tax has been duly discharged and disclosed in the Service tax returns. Since demand raised is itself unsustainable, there is no question of imposition of interest and penalty.

(y) He therefore, prays that the appeal be allowed.

4. Ld.A.R. for the Revenue has justified the impugned order.

5. Heard both the parties and considered the submissions.

6. After hearing the parties, the following issues emerge :

(a) Whether the appellant is liable to pay service tax under “Mining Services” for the period 2008-2009 to June, 2017 or not ?

(b) Whether the appellant is liable to pay service tax on “Sponsorship Services” as alleged or not ?

(c) Whether the appellant has violated the provisions of Rule 6(3)(i) of the Cenvat Credit Rules, 2004 for not having paid service tax on sale of solar power, which is exempted services and have availed cenvat credit on common inputs without maintaining separate records ?

(d) Whether the demand for the period 1st April, 2008 to 31st March, 2012, is barred by limitation or not ? As the show-cause notice

for the said period has been issued to the appellant on 24.04.2014 by invoking extended period of limitation ;

(e) Whether in the facts and circumstances of the case, the penalty can be imposed on the appellant or not ?

Issue (a)

Whether the appellant is liable to pay service tax under “Mining Services” for the period 2008-2009 to June, 2017 or not ?

7. The facts which are admitted are that the appellant was engaged in the business of mining and sale of coal classifying under Chapter Heading 27011200 of the Central Excise Tariff Act. The coal comes directly from mines after blasting known as the run-of-mine (ROM) coal, are of irregular sizes, including large fragments. The appellant has to supply coal of specifications and quality depending upon the intended use thereof. Since the ROM coal does not conform to the size and specification required to be delivered to the buyers and cannot be sold and transported as such, such ROM coal has therefore to be prepared.. Such preparation includes segregation of the coal from the stones, whereupon they are crushed/sized as per the desired requirement of the purchasers concerned in the mine area itself through deployment of workers and using pay loaders and dozers, then, the manufacturing coal becomes ready for sale.

Now, the issue arises whether the said activity amount to manufacture of coal or mining services.

The said issue has come before this Tribunal in the appellant’s own case, wherein the facts of the case are as under :

“The facts of the case in brief are

(a) ICML is engaged in the business of mining and sale of coal classifiable under Chapter Heading 27011200 of the Central Excise Tariff Pursuant to allocation of a coal mine block by the Government of India, Ministry of Coal, for mining of coal, ICML was granted mining leases by the Government of West Bengal, in accordance with the relevant statutory provisions in this regard, for extraction of coal from the said block, known as the Sarshatal Coal Mine.

(b) On August 14, 2002 ICML entered into an agreement with CESC Ltd, Kolkata, to mine coal from the said mines and to sell the same to CESC Ltd. ("CESC") for use in its power projects on terms and conditions specified in the agreement

(c) Similar agreement was subsequently entered into by ICML with Crescent Power Ltd. ("CPL"), a wholly owned subsidiary of CESC on March 30, 2010, for sale of certain inferior quality coal, commonly known as "carbonaceous shale" or "shaly coal" (hereinafter referred to as "carbonaceous shale") from the said coal mine to CPL. on terms and conditions specified in the said agreement dated 30.03.2010.

(d) The coal that comes directly from mines, after blasting, known as the run-of-mine coal ("ROM"), are of imegular sizes, including large fragments in terms of the above stated agreements, ICML has to supply coal of specifications and quality, depending upon the intended use thereof, as specified. Since the ROM coal does not conform to the size and specification required to be delivered to the buyers and cannot be sold and transported as such, the said ROM coal has therefore to be prepared. Such preparation includes segregation of the coal from the stones, whereupon they are crushed/sized as per the desired requirement of the purchasers concerned in the mine area itself, through deployment of workers and using pay loaders and dozers. According to ICML the manufacturing job is only then completed and the coal becomes ready for sale and, hence, sizing of coal is an integral part of coal manufacturing or production,

(e) Central excise duty was paid by ICML on the assessable value of coal determined by including the crushing and sizing charges, with effect from 24.03.2011, prior to which coal was subjected to zero excise duty

(f) In addition, since inception, on the sale price of the coal including the said sizing charges, Value Added Tax ("VAT") and Central Sales Tax have been deposited as per the relevant statutes of the State and Central Governments respectively, by ICML

(g) On 23.08 2012 a show cause notice was issued by the Commissioner requiring ICML to show cause as to why a sum of it under the Proviso to Section 73(1) of the Act, along with interest thereon under Section 75 of the Act and as to why penalties should not be imposed upon ICML under Sections 76, 77(2) and 78 of the Act, on the allegation that during the period from 2007-08 to 2011-12 ICML was engaged in providing the services of sizing of coal to its customers for which ICML recovered additional amount of money as consideration and since the said sizing of coal did not amount to "manufacture" within the meaning of Section 2(f) of the Central Excise Act, 1944 and Section Note I of Section V of the First Schedule to the Central Excise Tariff Act, 1985, the activity of sizing of coal was covered by the expression "production or processing of goods for or on behalf of the client" in the category of "Business Auxiliary Service" under Section 65(19) of the Act, which was applicable during the period from 2007-08 to 2010-11 and hence was chargeable to service tax as per Section 66 of the Act, as then in force."

In the said case, on going through the documents placed on record by the appellant, the Tribunal has observed as under :

"7. We find that under the Agreement dated August 14, 2002 between ICML and CESC, there is binding obligation Leon ICML, part to sell and CESC to purchase coal in the quantities and

having the qualities specified on the terms and conditions set forth therein. It is further seen that in terms thereof

(a) ICM, is responsible for delivery and loading of coal into the railway wagons at the railway siding, which is to be considered as the delivery point. The alternative route is by road, in which case the delivery point is the mine end and the delivery would be completed by loading the coal into the trucks after weighing at that point. Both these situations arise after completion of sizing of coal

(b) The ownership of the coal and risk of loss of the coal sold and purchased would pass on from ICML to CESC at the said delivery point and, hence, property in the coal remains with ICML until the same get passed on at the delivery point

(c) ICML is required to supply crushed coal of size not exceeding 100 mm.

(d) The contracted price comprises of five elements, one of which is sizing charges. Sizing charges, therefore, forms a part of the price of the coal.

(e) The contract is therefore for supply of sized coal, all processes undertaken on such coal prior to delivery thereof as sized coal as per the specification in the Agreement is at all material point of time on ICML's account as owner of the said goods and not for and on behalf of CESC or anybody else.

7.1 Similarly in the case of sale of carbonaceous shale (inferior quality of coal) by ICML to CPL under the Agreement dated March 30, 2010, it is seen that the sale and purchase of carbonaceous shale takes place on delivery of the goods at the designated place within the power plant premises of CPL, when title/ownership and risk of loss passes from ICML to CPL. Until then ICML continues to be responsible for transportation and delivery of the goods to the said designated place. The contracted price in this case also includes sizing charges.

7.2 Section 65(19)(v) of the Finance Act includes, as "Business Auxiliary Service", production or processing of goods "for and on behalf of client". The requirement for application of this clause is

that the goods in question has to belong to the client of the appellant assessee, on which production or processing which does not amount to manufacture of goods within the meaning of Section 2(f) of the Central Excise Act is carried out by the appellant assessee. This requirement is not satisfied in the instant case. At the time when the sizing of coal takes place, they continue to remain ICML's property and not that of either CESC or CPL. The sale of coal and consequently the title thereof passes on to CESC/CPL only at the delivery point specified in the respective agreements, which is after completion of sizing of the coal. There is therefore no production or processing of goods for and on behalf of any client or customer, as required under Section 65(19)(v) of the Act.

8. In terms of Section 65(19) of the Finance Act, 1994 any activity that amounts to manufacture within the meaning of Section 2(f) of the Central Excise Act is excluded therefrom. Section 2(f) of the Central Excise Act defines the term "manufacture" to include, inter alia, any process "Incidental or ancillary to the completion of a manufactured product. This Bench of the Tribunal in the case of Avian Overseas Pvt. Ltd Vs. CCE C&ST, 88SR-1 2000 (15) STR 540 (T-Kol) has held that activity of mining and producing coal is covered under the definition of "manufacture" under Section 2(f) of the Central Excise Act and demand of service tax thereon under the Act is not sustainable.

8.1 Sizing of coal is an incidental and ancillary process to make coal marketable and thus complete "manufacture of coal and to make it into "excisable goods" as per Section 2(d) of the Central Excise Act. The process of sizing of coal is also therefore outside Section 65(19) of the Act since it is a process in the manufacture of the final product, sized coal.

8.2 We also find from the records of the present proceedings that in respect of exactly the same work undertaken by ICML at the said mines right from the beginning when central excise duty became payable, ICML has been paying central excise duty on the coal manufactured/produced in the mine, upon determination of

assessable value/transaction value by including all expenses incurred, including sizing and transportation right up to the place of removal, as per the provisions of the Central Excise Act, for which it was duly registered under the provisions of the Central Excise Act with the jurisdictional Central Excise authorities. Returns under the Act have also been submitted by ICML, which have been finally assessed and differential duty, if any assessed, have also been paid by ICML

8.3 Further, in case of the period from March 24, 2011 to April 24, 2015 proceedings by issuance of show cause notices were initiated by the jurisdictional Commissioner/Principal Commissioner of Central Excise against ICML alleging undervaluation of the transaction values declared for the said period, of bituminous coal manufactured and cleared from the mine, by non-inclusion of elements, namely, royalty, stowing excise duty, primary education cess, rural employment cess, public works cess, road cess and AMBH fees and thereby short paying "central excise duty" to the extent contained in the show cause notices The proceedings under the said show cause notices have resulted in adjudication orders, passed by the Commissioner of Central Excise, Kolkata-1 Commissionerate/Principal Commissioner of Central Excise. Kolkata-1, dated 16.12.2014, 14.10.2015 and 27.05.2016 respectively There the stand of the Central Excise Department is that ICML is engaged in the manufacture of bituminous coal classifiable under Chapter Sub-Heading 27011200 of the First Schedule to the Central Excise Tariff Act, 1985, for which it is holder of central excise registration number, and that ICML had manufactured and cleared the said goods on payment of central excise duty computed on the assessable value/transaction value that included the base price, sizing charges, washing charges and transportation charges, but had not paid central excise duty by not including cesses/fees, royalty and stowing excise duty, resulting in short payment of excise duty payable of amounts confirmed by the respective adjudication orders. Even for the periods pertaining to years

2015-16. 2016-17 and 2017-18 (upto June 30, 2017) the assessments under the Central Excise provisions have been finalised by the jurisdictional proper officer and differential central excise duty, as finally assessed, along with interest, were demanded and paid by ICML

9. It is also not disputed that all along ICML has paid value added tax or Central Sales Tax on the coal and shale sold by it to CESC and CPL respectively.

10. In such circumstances, applying the principle laid down by the Supreme Court in *Bharat Sanchar Nigam Ltd. Vs UOI*, 2006 (2) STR 161 (SC), since scheme of taxation under the Constitution of India provides for mutually exclusive levies, if certain activity amounts to "manufacture", it cannot become or be contended to be service. This issue is no more res integra.

10.1 in the case of *Commr of CE&ST Vs. Mahanadi Coalfields Ltd.*, Final Order No. 76585/2017 dated 21.08.2017 passed in Appeal No. STA/75816/2014, this Bench of the Tribunal, dealing with the self same issue, has held as follows:

"2. Brief facts of the case are that during the period under consideration, the appellant was engaged in the crushing/sizing of the coal in its own mines. While receiving the consideration from the buyer in addition to the base price, the department is of the view that the crushing/sizing of the coal by the respondents for sale attracts the service tax under the business auxiliary service as per Section 65(19) of the Finance Act, 1994. But by the impugned order, the Commissioner dropped the demand. Being aggrieved, the Department has filed the present appeal.

3.....

4. After hearing both the parties it appears that the appellants had paid the sales tax/val and total amount of sale includes crushing charges as well as other charges eg. silo loading charges and the same was shown in the profit and loss account.

The Hon'ble Supreme Court in the case of Bharat Sanchar Nigam Ltd. Vs. UOI reported in 2006 (2) STR 161 (SC) observed that sales tax and service tax cannot be made applicable on the same transaction as the same is includible to each other.

5. In the instant case undisputedly, the appellant has paid the sales tax/vat when it is so crushing charges are not leviable. Regarding the payment of sales tax/vat, the Ld. Counsel for the appellant has shown proof to the Ld. Counsel for the Department.

6. By following the ratio laid down by the Hon'ble Supreme Court, we find no reason to sustain the impugned order."

10.2 This decision has since been followed by the Principal Bench of the Tribunal, in cases involving the same issue

(i) Northern Coalfields Ltd. Vs. Commissioner, CGST, CE&C, 2020-TIOL-338-CESTAT-DEL

(ii) South Eastern Coalfields Ltd. Vs. CCE&ST, 2018-TIOL-1691-CESTAT-DEL

(iii) Northern Coalfields Ltd. Vs. CGST, CC&CE, 2018 (8) TMI 1742-CESTAT-DELHI.

11.3 In this regard reference is also made to the decision of a coordinate bench of the Tribunal in CCE Vs. Spectron Engineers Pvt. Ltd., 2020 (33) GSTL 223 (T) In para 4 of the order it has been observed as follows:

"4. Having heard both sides, we find ourselves confronted with a dispute in which the jurisdictional central excise authorities seek to levy duties under Central Excise Act, 1944 while respondent claims leviability under Finance Act, 1994. That the

respondent had been discharging service tax liability on 'job work and had been paying VAT on the material component is not in doubt. The original authority has placed reliance on the decision of the Tribunal in Osna Chemical Pvt. Ltd. V. Commissioner of Central Excise, Bangalore-II [2009 (240) ELT 115 (Tri-Bang.)] to hold that discharge of tax liability under one law precludes the invoking of another law merely for gaming revenue that has thereby escaped one of the jurisdictions. By discharging the tax liability on the job work charges as well as by discharge of VAT liability on 'brought out' items used for fabrication at site, the scope for considering the activity as manufacture is eclipsed entirely. In this context of mutually exclusive levies under the scheme of taxation in the Constitution, the activity of the respondent is works contract and hence not leviable to duty under Central Excise Act, 1944"

7.1 Admittedly, in this case, the appellant is paying excise duty w.e.f. 24.03.2011 and prior to which, as no excise duty was payable but the appellant was paying VAT/Central Sales Tax as per Statute of State/Central Government respectively, which is evident from the records where the appellant has raised the invoices showing payment of Central Excise duty and VAT during the impugned period. For better appreciation of facts, the said invoice raised by the appellant and the VAT Returns are extracted herein below :

Exhibit - W
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EXCISE CUM TAX INVOICE
(For removal of Exciseable goods under Rule 11)

Seller's Copy

Name , Address & Details of Consignee : CESC Limited CESC House Chowringhee Square Kolkata 700 001. E.C.C No. VAT No. 19580009012 CST RC No. 19580009206	Invoice No. :	19 T 1314
	Invoice Date :	19-04-2013
	Time of Issue of Invoice :	00 : 00 : 00
	R.C./E.C.C No. :	AAACI5584LEM001
	Range & Address :	Superintendent, Central Excise, Range - IV, Central - III Division, Kolkata - 1
	Central Excise Division :	Deputy Commissioner, Central Excise, Central- III Division, Kolkata - 1
Commissionerate :	Kolkata - 1	
Mode of Delivery :	As per Annexure	VAT No. 19200869069
Vehicle No. :	As per Annexure	WBST RC No. 19200869186
Time of Removal of Goods	As per Annexure	CST RC No. 19200869283
Exciseable Commodity :	Bituminous Coal	
Excise Tariff Sub-Heading No. :	27011200	

Particulars	Qty (MT.)	Rate(Rs./MT)	Amount (Rs.)
Product Description : <u>Coal</u>	<u>2,287.29</u>		
Base Price		Rs.640.00	1,463,666
Sizing Charges		Rs.61.00	139,525
Transportation Charges		Rs.77.00	176,121
Assessable Value for Excise Duty		Rs.778.00	1,779,512
Excise Duty @ 6% on Assessable Value			106,771
Education Cess on Excise Duty @ 2%			2,135
S & H E Cess on Excise Duty @ 1%			1,068
Primary Education Cess @ 5% on Base Price			73,193
Rural Employment Cess @ 20% on Base Price			292,773
Royalty @ Rs. 2.50 per MT			5,718
Stowing Excise Duty @ Rs.10 per MT			22,873
Public Works Cess @ Rs.0.50 per MT			1,144
Road Cess @ Rs. 0.50 per MT			1,144
AMBH Fees @ Rs.1.00 per MT			2,287
Clean Energy Cess @ Rs.50.00 per MT			114,350
Taxable Value for VAT			2,402,968
Add : West Bengal VAT @ 5% on Taxable Value for VAT			120,146

Net Invoice Amount 2,523,116

Net Invoice Amount (In Words) : Rupees Twenty Five Lacs Twenty Three Thousand One Hundred Sixteen Only
Excise Duty (In Words) : Rupees One Lacs Six Thousand Seven Hundred Seventy One Only
Edu. Cess (In Words) : Rupees Two Thousand One Hundred Thirty Five Only
S & H E Cess (In Words) : Rupees One Thousand Sixty Eight Only
VAT (In Words) : Rupees One Lacs Twenty Thousand One Hundred Forty Eight Only

We certify that the amount indicated above represents the price actually charged by us and there is no additional consideration flowing directly or indirectly from such sale over and above what has been declared.

For Integrated Coal Mining Limited

Authorised Signatory

End : Weighbridge Printout

Kolkata Office : 6, Church Lane (1st Floor), Kolkata - 700 001, India
Telephone Nos : (033) 2210 9358-62 (5 Lines), Fax : (033) 2210 9356, E-mail : icml.kolkata@rp-sg.in, Website : www.icmlindia.com
Regd. Office : CESC House, Chowringhee Square, Kolkata - 700001

689
1. [Signature]
10/11/2014

Recd
18/8/2014

THE WEST BENGAL VALUE ADDED TAX RULES, 2005
FORM 27

Notice of demand of tax assessed under *section 46/section 48, penalty imposed under sub-section (1) of section 46, late fee determined under section 53A and interest determined / re-determined under *section 50/51 of the West Bengal Value Added Tax Act, 2003.
[See sub-rule (1) of rule 59 and clause (b) of sub-section (1) of section 67]

To

INTEGRATED COAL MINING LTD.
1 ST. PL. 6CHURCH LANE KOLKATA 700001

Holding Registration Certificate Number (if any) 19200869089
Assessment Case No.: 2011-2012/20/14/V/10
Assessment Period: 01-APR-11 To 31-MAR-12

*In continuation of notice in *Form 25/Form 26 under section *46/48 of the West Bengal Value Added Tax Act, 2003, issued to you on 11-FEB-14, you are hereby informed that upon assessment and for determination for the aforesaid period turnover of sales, turnover of purchase, etc., as mentioned in col. (2) against serial Nos. I to XIII in col. (1) of the Table below have been determined for the amounts as specified in col. (3) and / or col. (4) of the said Table :-

Particulars	Amount (Rs.)	Output Tax (Rs.)
I : Turnover of sales on which tax is payable and output tax thereon	3,259,640,018.00	130,385,601.00
II : Taxable turnover of purchase and output tax thereon	4,563,512.00	389,703.00
III : Taxable contractual transfer price and output tax thereon	0.00	0.00
IIIA : Deferred Tax Allowed	0.00	0.00
Total Output Tax Payable by you { I+II+III+IIIA }		130,775,304.00
IV : (A) Net Tax Credit allowed u/s 22(17)		0.00
(B) Amount of ITC adjusted with tax payable under C.S.T. Act, 1956	0.00	
(C) Amount of input tax credit already refunded u/s 61/22 (8A)	0.00	
(CA) Amount of ITC surrendered U/s 22(8A)	0.00	
(D) Net tax credit carried forward to next period	0.00	
(E) Amount of ITC to be adjusted with output tax for this period [V(A)-V(B)-V(C)-V(D)-V(CA)]	0.00	
VI : *Net Tax Payable / Further unadjusted Net Tax Credit [IV - V(E)]	130,775,304.00	
VII : Add: Penalty payable, if any, under section 46(2)	0.00	
VIII : Add: Late fee payable, if any, under section 32(2)	0.00	
IX : Add: Interest payable (if any):		
(a) Interest under section 33	9,030,441.65	
(b) Interest under section 34 / 34A	0.00	
Total IX (a+b)	9,030,441.65	
X : TOTAL AMOUNT PAYABLE { VI+VII+VIII+IX }	139,805,745.65	
XI : Less: Tax, interest and late fee paid as evident from the challan(s) furnished	101,938,281.00	
XII : Less: Tax deducted at source as evident from Form 18 furnished	0.00	
XIII : Total amount of tax, interest, penalty and late fee paid [XI+XII]	101,938,281.00	
XIV : *Amount yet to be paid [X - XIII]	37,867,464.65	

Amount of demand yet to be paid --- Rs. 37,867,464.65 (In figures)

Ruppes Three Crore Seventy Eight Lac Sixty Seven Thousand Four Hundred Sixty Four and Sixty Five Paise Only (In words)

Payment is to be made on or before :- 15-SEP-14 in Government Treasury at Pay & A/Cs Kolkata

*Now, you are hereby directed to pay the sum as shown above into the appropriate on or before the date specified above and to produce the receipted challan in proof of the payment before the undersigned not later than 15 days from the due date of payment as specified above failing which the said

Signature
Designation
Charge Section



18/08/2014
Sd/- Joint Commissioner
Commercial Taxes, W.B.
Corporate Division

In that circumstances, the excise duty has been accepted by the Revenue in the activity of manufacture in terms of Section 2 (f) of the Central Excise Act, 1944. In that circumstances, it cannot be termed that the appellant is engaged in the activity of providing mining services of coal. Crushing/sizing of coal itself was held by this Tribunal as manufacturing activity. In that circumstances, we hold that the extraction of coal from the mine including crushing/sizing thereof, are activity of manufacture, on which, the appellant has paid VAT/Excise duty. In that circumstances, no service tax is payable by the appellant under "Mining Service".

7.2 We further take note of the facts that in the case of Sri Rama Vilas Service Limited Vs. Commissioner of Central Excise, Trichy reported in 2019 (25) GSTL 117 (Tri.-Chennai), this Tribunal has held as under :

"5. From the above, it is clear that the activity is a manufacturing activity. The said activity cannot be treated under activity of service merely because the excisable goods manufactured are exempted from excise duty. The department has issued the show cause notice on erroneous understanding of both Central Excise law as well as Finance Act, 1994. The impugned order cannot sustain and requires to be set aside which we hereby do. The appeal is allowed with consequential relief, if any."

7.3 Admittedly, in the appellant's own case as reported in 2021 (1) TMI 179-CESTAT, Kolkata, this Tribunal observed that the activity undertaken by the appellant, amounts to manufacture. In that circumstances, no service tax is payable by the appellant.

7.4 In view of this, we hold that as the activity undertaken by the appellant amounts of manufacture, therefore, no service tax is payable by the appellant under the category of "mining service".

7.5 We further take note of the fact that for the period 1st April, 2008 to 31st March, 2012, the appellant has paid VAT on the sale of sized coal to CESC/CPL. It is settled position that the levy of VAT and

service tax is mutually exclusive and the appellant is paying excise duty from March, 2011 onwards and also clean energy cess since 2010, therefore, the service tax cannot be demanded.

7.6 We further take note of the fact that the activity of raising of coal amounts to manufacture as per Section 2 (f) of the Central Excise Act, 1944, therefore, the appellant is a manufacturer and have been discharging excise duty thereon since 2011 onwards. Therefore, it cannot be said that prior to March, 2011, the activity undertaken by the appellant does not amount of manufacture and is liable to pay service tax. As the activity undertaken by the appellant amounts to manufacture, then, no service tax is payable by the appellant.

7.7 In view of this, the Issue No.(a) is answered in favour of the appellant that the appellant is not liable to pay service tax under the category of "mining service" or under "negative list regime" as the said process/activity amounting to manufacture is specifically covered in the negative list under Section 66D(f) of the Finance Act, 1944.

Issue (b)

Whether the appellant is liable to pay service tax on "Sponsorship Services" or not ?

8. The contention of the Id.Counsel for the appellant is that the appellant has made certain donations and financial assistance, which are not sponsorship services.

8.1 To that extent, the appellant has produced certain sample copies of letters received from the various organizations, which shows financial assistance and payment receipts evidencing that the expenses booked under Business Development expenses were not in the nature of sponsorship services.

8.2 For better appreciation of facts, the said letters are extracted herein below :

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MONEY RECEIPT

Received Rs. 10,000/- (Rupees Ten thousand only) from M/s. Integrated Coal Mining Ltd. vide Cheque no. 005123 Dated 31.07.2015 drawn on Bank of India, Domohani Branch.

On behalf of Chaturanga Sangaskrik Manch

Bablu Das
Signature

Name: Bablu Das

Date: 08/08/15



बैंक ऑफ इंडिया
दोमोहानी शाखा
दोमोहानी बर्धमान पश्चिम बंगाल - 713334
IFSC: BKID0004235

BANK OF INDIA
DOMOHANI Branch
Domohani, Burdwan WEST BENGAL - 713334

VALID FOR THREE MONTHS FROM THE DATE OF ISSUE

31072015
D D M M Y Y Y Y

Chaturanga Sangaskrik Manch

या धारक को Or Bearer

Rupees Ten thousand only.

अदा करें

₹ 10,000/-

च. सं.
च. सं.

423520100000035

INTEGRATED COAL MINING LTD

PAYABLE AT ALL OUR BRANCHES IN CLEARING

Sumit Chakraborty

Alley
Please sign above

⑈005123⑈ 713013502⑈ 000739⑈ 11

888

Date: 24.07.15

For Approval

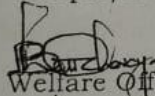
"Chaturanga (Joutha Sanskritik Manch)", Jamgram : Madanpur, Dist: Burdwan is going to organize Cultural Programme on 25.07. 15

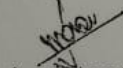
They have approached us for financial assistance for the said purpose.

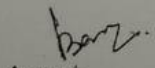
Last year i.e. in 2014 we had subscribed Rs. 10,000/- (Rupees Ten thousand only) for this purpose.

The same amount of Rs. 10,000/- (Rupees Ten thousand only) may kindly be approved for this year also.

Cheque/DD may be issued in favour of "Chaturanga Sangaskrik Manch"


Welfare Officer


Assistant Manager


Agent

Chief Executive

889

CHATURANGA JOUTHA SANSKRITIK MANCHA
JAMGRAM/MADANPUR

To

The Agent,

ICML, Sarishatali Project,

Dear Sir,

Most respectfully we beg to state that as usual we are going to organise oneday annual coference & cultural function of our above organisation on 25th July 2015 commences from 9 A.M. Large no of people of this locality attend this function and have their appreciation towards this event.

You are therefore requested to please take necessary step for extending your financial help as Y O Y or more from past to meet expenditure of the above celebration to some extent.

Hope you will kind enough to consider our above prayer and oblige.

Joint Secretary
Chaturanga Joutha Sanskritik Manch
Yours faithfully
B. K. B. B.

Secretary

Chaturanga Joutha sanskritik Manch

Date 13.7.2015

[illegible]



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ASANSOL MARATHON 2013.
ASANSOL DURGAPUR POLICE
 (TELEFAX: 0341 2257260)

(Website: www.asansoldurgapurpolice.in or www.asansoldurgapurmarathon.in)

No. 41 /ORG.COM/ CP/ASN MARATHON/2013.

Dated: 05/06/2013.

To
 Shri Sumit Ghosh,
 General Manager,
 Integrated Coal Mines Limited,
 Sarisathali, Kapista,
Barabani.

SUB : ASANSOL MARATHON 2013.

We are pleased to inform that Asansol Marathon Run 2013 got overwhelming support from the people of Asansol and turned out to be a grand success.

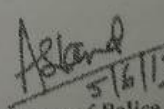
I take this opportunity to express my heartfelt thanks and gratitude to you and your organization for extending support in organizing this big event.

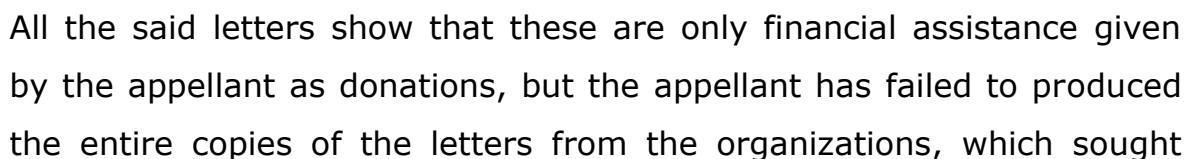
We look forward for your continued support. This year the budget exceeded marginally as compared to the contribution received.

I would request you to extend an additional financial assistance of Rs. 1 (one) Lakh to meet up the expenditure.

The A/C Payee Cheque/DD may kindly be issued in favour of Asansol- Durgapur Runner Association, Evelyn Lodge, Asansol, PIN - 713304.

Thanking You,


 5/6/13
 Commissioner of Police,
 Asansol - Durgapur &
 Chairman,
 Asansol Durgapur Runner
 Association.



financial assistance from the appellant and the adjudicating authority had no opportunity to examine the said aspects whether the expenses booked by the appellant under Business Development expenses are in the nature of sponsorship services or mere donation., therefore, to examine the said aspects, the matter needs to examine at the end of the adjudicating authority. Therefore, to examine the facts that whether the expenses booked under Business Development expenses are only donation or sponsorship services, the adjudicating authority shall examine the same based on the documentary evidences and shall give specific finding that how based on documents shown by the appellant, the said expenses are covered under "sponsorship services" or not ?

Issue (c)

Whether the appellant has violated the provisions of Rule 6(3)(i) of the Cenvat Credit Rules, 2004 for not having paid service tax on sale of solar power, which is exempted services and have availed cenvat credit on common inputs without maintaining separate records ?

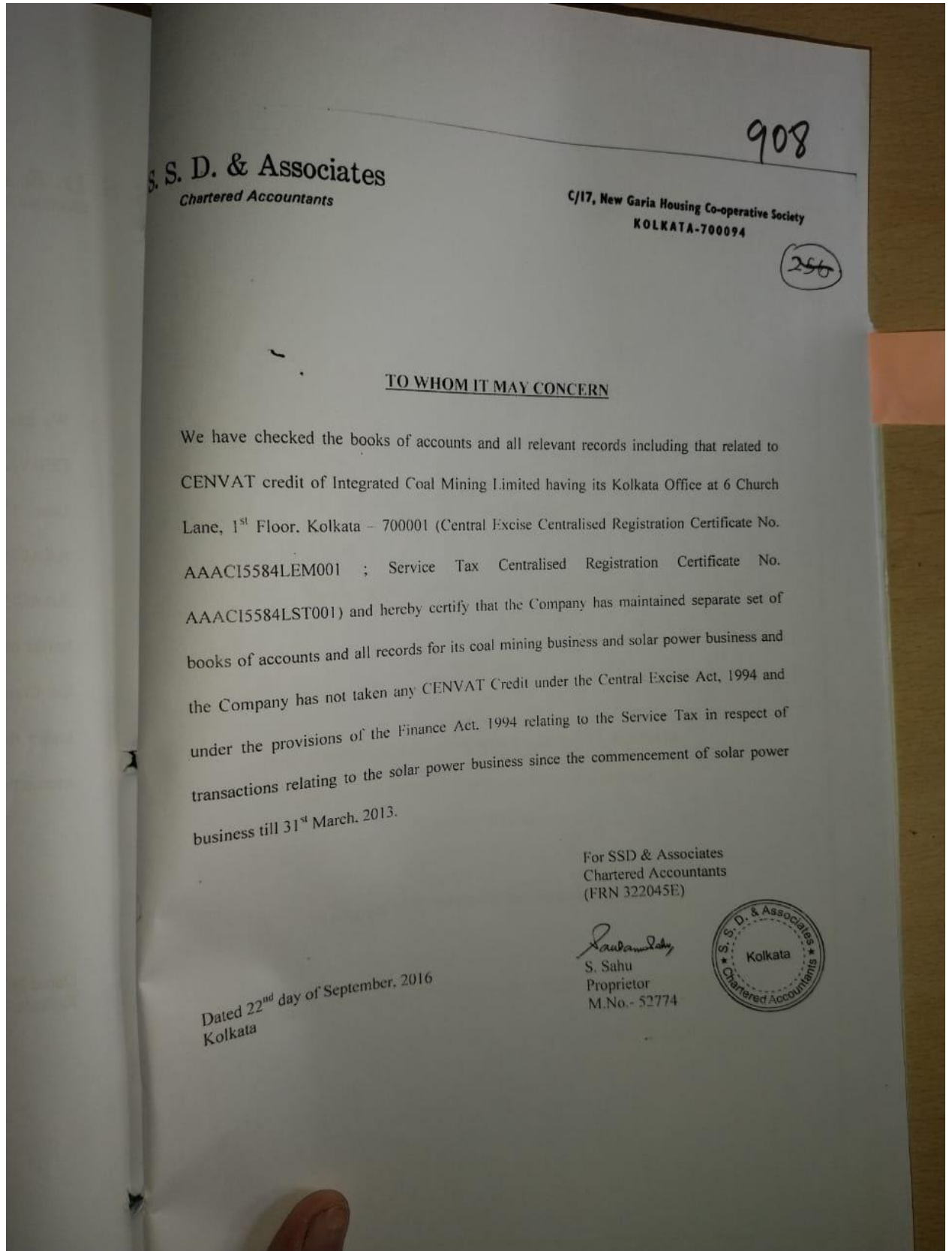
9. The allegation of the Revenue is that the appellant is not maintaining separate accounts of input/input services with regard to activity of extraction of coal and sale of solar power business, which is exempted from payment of excise duty, whether the appellant is liable to pay the amount equal to 6%/8% of the value of sale of solar power under Rule 6(3)(i) of the Cenvat Credit Rules, 2004 or not ?

9.1 In fact, it is contention of the appellant that they have not availed the cenvat credit on common inputs, which are attracted dutiable as well as exempted activity. To that effect, the appellant has produced a Chartered Accountant's Certificate evidencing maintenance of separate accounts. In the circumstances, we hold that as the appellant is maintaining separate accounts of input, which has gone in manufacturing of dutiable as well as exempted goods, therefore, the demand under Rule 6(3)(i) of the Cenvat Credit Rules, 2004, is not maintainable.

9.2 We have seen that the appellant has produced a Certificate issued by the Chartered Accountant.

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9.3 For better appreciation, the said Certificate is extracted herein below :



It is evident that from the said Certificate issued by the Chartered Accountant certifying that the appellant is maintaining set of books of accounts and all records for its coal mining business and solar power business and the appellant has not taken any cenvat credit under Central Excise Act, 1944 and under the provisions of the Finance Act, 1944 relating to the service tax in respect of transactions relating to the solar power business since the commencement of the solar power business. In that circumstances, the demand raised on account of violation of Rule 6(3)(i) of the Cenvat Credit Rules, 2004, is not sustainable. Accordingly, the demand confirmed on this account, is set aside.

9.4 Therefore, the Issue No.(c) is answered in favour of the appellant.

Issue (d)

Whether the demand for the period 1st April, 2008 to 31st March, 2012, is barred by limitation or not as the show-cause notice for the said period has been issued to the appellant on 24.04.2014 by invoking extended period of limitation.

10. We find that during the period from 1st April, 2008 to 31st March, 2012, the show-cause notice has been issued to the appellant by invoking extended period of limitation on 24.04.2014 on the basis of the show-cause notice issued to the appellant on 21.08.2012 wherein the demand of service tax was sought to be recovered from the appellant under the category of "Business Auxiliary Service". As all the facts were known to the department prior to impugned period itself. In that

circumstances, the show-cause notice issued to the appellant by invoking extended period of limitation is not sustainable as held by the Hon'ble Apex Court in the case of Nizam Sugar Factory Vs. Collector of Central Excise, A.P. reported in 2006 (197) ELT 465 (S.C.), wherein the Hon'ble Apex Court has observed as under :

“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.”

Therefore, we hold that the demand for the period 01.04.2008 to 31.03.2012, is barred by limitation.

10.1 Therefore, the said issue is also answered in favour of the appellant.

Issue (e)

Whether in the facts and circumstances of the case, the penalty can be imposed on the appellant or not ?

11. As we held that no demand is sustainable against the appellant, therefore, in the facts and circumstances of the case, no penalty is imposable on the appellant.

12. In view of the above, the following order is passed :

(i) No demand is sustainable against the appellant under the category of "Mining Service" as the activity undertaken by the appellant amounts to manufacture ;

(ii) No demand is sustainable against the appellant for violation of Rule 6(3)(i) of the Cenvat Credit Rules, 2004 as the appellant is maintaining separate accounts and not taken cenvat credit on common inputs ;

(iii) The demand for the period 1st April, 2008 to 31st March, 2012, is barred by limitation ;

(iv) In the facts and circumstances of the case, no penalty is imposable on the appellant ;

(v) In respect of demand of service tax under "sponsorship services", the matter is remanded back to the adjudicating authority to verify from the records, whether the expenses booked under Business Development expenses, were in the nature of "sponsorship service" or not ?

13. In view of the above, the appeal is disposed off.

(Pronounced in the open court on **04.06.2025**)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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