

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

REGIONAL BENCH - COURT NO.2

**Excise Appeal No.76646 of 2016  
And  
Excise Cross Objection No.75905 2016**

(Arising out of Order-in-Appeal No.26/KOL-IV/2016-17 dated 24.06.2016 passed by Commissioner of Central Excise, Appeal-II Commissionerate, Kolkata.)

**Commr., CGST & CX, Kolkata-IV**

(15/1, Strand Road, Custom House, M.S. Building, Kolkata-700001.)

**...Appellant**

*VERSUS*

**M/s. Saraogi Udyog Pvt.Ltd.**

**.....Respondent**

(J.L. No.10, Mouza Chatra, NH-2, Delhi Road, Serampore, Distt.Hooghly, West Bengal, Pin-712223.)

**WITH**

**Excise Appeal No.75250 of 2018  
And  
Excise Cross Objection No.77293 of 2018**

(Arising out of Order-in-Appeal No.188/HWH/CE/2017-18 dated 17.10.2017 passed by Commissioner of CGST & CX, AppealS-II Commissionerate, Kolkata.)

**Commr., CGST & CX, Howrah Commissionerate**

(15/1, Strand Road, Custom House, M.S. Building, Kolkata-700001.)

**...Appellant**

*VERSUS*

**M/s. Saraogi Udyog Pvt.Ltd.**

**.....Respondent**

(J.L. No.10, Mouza Chatra, NH-2, Delhi Road, Serampore, Distt.Hooghly, West Bengal, Pin-712223.)

**APPEARANCE**

Shri S.K.Dikshit, Authorized Representative for the Revenue  
Shri Saurabh Bagaria & Shri Indranil Banerjee, Advocates for the Respondent

**CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)  
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)**

**MISCELLANEOUS ORDER NO. 75470-75471/2025**  
**FINAL ORDER NO. 76599-76600/2025**

DATE OF HEARING : 18.06.2025  
DATE OF DECISION : 18.06.2025

**Per : R. MURALIDHAR :**

The Appellant is registered with the Central Excise department as a 'Dealer'. They imported Steam Coal and have sold the same to their buyers. Show Cause Notice was issued on 02.05.2014 for the period 2011-12, 2012-13 and 2013-14 on the ground that the Appellant has not brought the coal cleared from the ports to their godown, but has directly diverted the coal to the buyer's place. Therefore, they have contravened the relevant provisions of Cenvat Credit Rules, 2004. After due process, the Adjudicating authority imposed a penalty of Rs.7,45,01,114/-. He has also suspended their registration as a 'Dealer'.

2. The Department issued one more Show Cause Notice on 22.07.2014 for the period 2011-12, 2012-13, 2013-14 by invoking the extended period provisions. The allegations were same except to say that the Appellant has also given different description of Central Excise Tariff while dispatching the goods from their end to their customers. This Show Cause Notice was adjudicated by the Adjudicating authority wherein he imposed penalty of Rs.1,95,74,821/-.

3. Being aggrieved, the Appellants have taken up their Appeals before the Commissioner(Appeals) against these orders. The Commissioner(Appeals) vide the impugned Orders-in-Appeal has set aside penalties confirmed in the respective proceedings. He has also set aside the suspension order of the Appellant's Dealer Registration in the first adjudication order. Being aggrieved, the Revenue has filed these Appeals.

4. The Ld.AR for the Revenue reiterates the detailed grounds of Appeals filed by the Revenue and submits that the Commissioner(Appeals) is in error in setting aside the penalties imposed and in setting aside the order of the suspension of their Dealer's registration.

5. The Ld.Counsel appearing for the Revenue submits that in the first case there is no allegation that the Appellant has changed the Tariff Heading. Even for a moment if it were admitted to be so, the same has no revenue implication at all. He draws our attention to Circular No.713/29/2003-CX dated 07.05.2003, wherein the CBIC has clarified that the goods are not required to be necessarily brought in and unloaded at the godown of the Dealer. This Circular clarifies that goods can also be directly transferred to the premises of the buyer under proper documentation. He further submits that in both the Show Cause Notices there is no allegation that the Appellant has cleared the goods without proper documentation. He relies on the detailed findings of the Commissioner(Appeals) and prays that the Appeals filed by the Revenue may be set aside. He also points out that the second Show Cause Notice was issued by invoking the extended period provisions, though this was done even while issuing the first Show Cause Notice. Therefore, on this ground itself the proceedings are vitiated in view of the Supreme Court's decision in the case of **Nizam Sugar Factory v. Commissioner of Central Excise, A.P. [2006 (196) ELT 465 (SC)]**. He submits that the Commissioner(Appeals) has also relied on this case law while deciding the second Order-in-Appeal.

6. Heard both sides and perused the Appeal papers and submissions made by both the sides.

7. We find that in the first Show Cause Notice there is no allegation that there has been any revenue loss. It is an admitted fact that the Appellant has directly cleared the goods from the port to buyer's premises. As pointed out by the Ld.Counsel, the Board's Circular No. 713/29/2003-CX dated 07.05.2003 has clarified that Dealer can do so.

8. Coming to the second Show Cause Notice proceedings we find that the Department could not have invoked extended period provisions once again after having invoked this provision in the first Show Cause Notice proceedings. The Hon'ble Supreme Court in the case of **Nizam Sugar Factory** , cited supra, has held 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.”*

9. In view of the above discussions, we do not find any merits in the Appeals filed by the Revenue. We dismiss both the Appeals. Both the Cross Objections, filed by the Respondent, also get disposed of.

(Dictated and pronounced in the open Court.)

Sd/  
**(RAJEEV TANDON)**  
**MEMBER (TECHNICAL)**

Sd/  
**(R. MURALIDHAR)**  
**MEMBER (JUDICIAL)**