

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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 75775 of 2018

(Arising out of Order-in-Original No.34-36/Commissioner/CE/Haldia/Adjn/2017 dated 29.11.2017 passed by Commissioner of Central GST & Central Excise, Haldia Commissionerate)

M/s. Bengal Energy Ltd.

(32, J. L. Nehru Road, 3rd Floor, Room No. 301, "Om Tower",
Kolkata-700071, West Bengal)

Appellant

VERSUS

Commr. of CGST & Central Excise, Haldia

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

Respondent

With

Excise Appeal No. 75864 of 2018

(Arising out of Order-in-Original No.34-36/Commissioner/CE/Haldia/Adjn/2017 dated 29.11.2017 passed by Commissioner of Central GST & Central Excise, Haldia Commissionerate)

Commr. of CGST & Central Excise, Haldia

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

Appellant

VERSUS

M/s. Bengal Energy Ltd.

(Mouza-Dauka, P. O.-Tentulmuri, P. S. -Narayangarh, Dist.- West Midnapur,
Pin-721437)

Respondent

And

Excise Appeal No. 75290 of 2021

(Arising out of Order-in-Original No.34-36/Commissioner/CE/Haldia/Adjn/2017 dated 29.11.2017 passed by Commissioner of Central GST & Central Excise, Haldia Commissionerate)

Commr. of CGST & Central Excise, Haldia

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

Appellant

VERSUS

M/s. Bengal Energy Ltd.

(Mouza-Dauka, P. O.-Tentulmuri, P. S. -Narayangarh, Dist.- West Midnapur,
Pin-721437)

Respondent

APPEARANCE:

Mr. Prasad Paranjape & Mr. Aditya Joglekar, both Advocates for the Appellant/Respondent

Mr. S. K. Dikshit Authorized Representative for the Respondent/Appellant

CORAM:

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

HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER No.76992-76994/2025

Date of Hearing : 15th July 2025

Date of Decision : 15th July 2025

PER R. MURALIDHAR

The Assessee is engaged in the manufacture of Hard Coke of Coal (Coke) and in the said process uses Coking Coal as a principal input for the said manufacture. During the manufacturing process, Coking coal is heated at a very high temperature in the Coking oven to convert it into final product – Coke. During this process, a large quantity of hot flue gas at a temperature between 950-1050 degree Celsius is released as waste product (waste gas). This generation of waste product is inevitable in the process of manufacture of Coke. This waste gas so generated is captively consumed in its integrated power plant for production of electricity which is captively consumed as also sold to West Bengal State Electricity Distribution Co Ltd. The waste gases are byproducts of the manufacturing process and generation of waste gases is completely involuntary and inevitable during the manufacturing process. The Appellant has a choice of either letting the waste gases in the atmosphere or convert them into either electricity or put it for some such purpose.

2. During the excise audit conducted it was observed that the Appellant is engaged in the manufacture of dutiable goods (Coke) and exempt products (electricity) and have not maintained separate books of account for receiving consumption and inventory of input (Coking Coal). Therefore, it was observed that the Appellant is required to pay an amount equivalent to 6% of the value of exempted goods, i.e., electricity, in terms of Rule 6(3)(i) of the Credit Rules. The Show Cause

Notices came to be issued for the period April 2011 to February 2016 [demand Rs.11,60,62,456], March 2016 to December 2016 [demand Rs. 2,01,62,182]. The same were adjudicated vide Order-in-Original dated 29.11.2017, wherein he dropped the demand of Rs.11,60,62,456 in respect of the first SCN and dropped Rs.49,88,771 in respect of the second SCN. In respect of this OIO, the appellant is in appeal for the confirmed demand of Rs.1,51,73,411 and the Revenue is in appeal against the dropped demand of Rs.11,60,62,456. In the meanwhile, one more SCN [third SCN] came to be issued for the period March 2016 to June 2017 for Rs.1,07,188. Vide OIO dated 31.05.2019, the Adjudicating authority confirmed the same. On appeal before the First Appellate Authority, he set aside the OIO vide Order-in-Appeal dated 21.12.2020. Against this OIA, the Revenue is in Appeal before us.

3. We have taken up all the three appeals together since the issue is same in respect of the same assessee.

4. The Ld Counsel, appearing for the Bengal Energy Ltd. [Appellant in one appeal and Respondent in two appeals – BEL for short], makes the following submissions :

4.1 The following Table clarifies the details of the present appeals

Sr.	Appeal No.	Period	Filed by	Duty (in Rs.)
1.	E/75775/2018	Mar 2016 to Dec 16	Assessee	(*)1,51,73,411
2.	E/75864/2018	Apr 2011 to Feb 16	Revenue	11,60,62,456
3.	E/75290/2021	Mar 16 to Jun 17	Revenue	1,07,37,188
4.	Total			14,19,73,055

4.2 The Assessee is engaged in the manufacture of Hard Coke of Coal (Coke) and in the said process uses Coking Coal as a principal input for

the said manufacture. The waste gases are byproducts of the manufacturing process and generation of waste gases is completely involuntary and inevitable during the manufacturing process. The Appellant has a choice of either letting the waste gases in the atmosphere or convert them into either electricity or put it for some such purpose.

4.3 There are no specific inputs which are used for generation of waste gases. While there are some inputs used exclusively for generation of electricity out of waste gases, the Assessee never claimed Cenvat credit on the same. The Ld. Commissioner has discussed this in Para 10.33 (Page 167) and Para 10.40 (Page 169) of his order.

4.4 The principal input, *i.e.*, Coking Coal is used in the manufacture of final product Coke, and no one can identify as to what percentage of it is used in the generation of waste gases. In fact, the Appellant never intends to use Coking Coal for generation of waste gases and as mentioned earlier waste gases are generated as inevitable and involuntary outcome, *i.e.*, by-product of the manufacturing process.

4.5 With the above background when Rule 6 of the Credit Rules is understood and interpreted, the whole proceedings of issuing demand against the Assessee will prove to be incorrect and the Orders granting relief to the Assessee will be found to be sustainable in law

4.6 Rule 6(1) of the Credit Rules stipulates that CENVAT credit shall not be allowed on such quantity of inputs which is used in the manufacture of exempted goods. In this case, no input is used in the manufacture of exempted goods *i.e.*, waste gases. The input *i.e.*, Coking Coal is used for manufacture of Coke. Therefore, the Appellant is in compliance with Rule 6(1) of the Credit Rules.

4.7 Furthermore, Rule 6(2) of the Credit Rules which requires a manufacturer to maintain separate accounts for receipt, consumption and inventory of input meant for use in the manufacture of dutiable and exempt goods is also being complied with, as there are no specific inputs that are used in generation of waste gases and the entire quantity of inputs are used by the Appellant for manufacture of Coke, which is dutiable commodity.

4.8 In view of the above, the requirement of payment of an amount equivalent to 6% (where the assessee has not maintained separate accounts as mentioned above), will not arise in the present case. Even after the insertion of Explanation 1 to Rule 6(1) of the Credit Rules *vide* Notification No.13/2016 – CE(NT) dated 01.03.2016, the demand as confirmed in the Impugned Order will not be sustainable and dropping of the same by the lower authority is in conformity with law.

4.9 This is because the Explanation seeks to include non-excisable goods cleared for a consideration in the definition of final or exempted goods. Waste gases are not final products of the Assessee. Further, the fact remains that in the there are no inputs which are specifically used, or no quantity of any other inputs can be identified to have been used towards generation of waste gases, which is a by-product which is inevitably generated during the manufacturing process. This fact has also been admitted at para 10.33 of the Order-in-Original dated 29.11.2017 (page 167 of the Appeal No. E/75775/2018).

4.10 The Assessee in support of its contention for dropping of the demand and to support the orders which have already dropped the demand, relies upon the following:

- a) **Union of India vs. Hindustan Zinc Ltd.** [2014 (303) E.L.T. 321 (S.C.) dated 06.05.2014]

- b) **Gularia Chini Mills vs. Union of India** [2014 (34) S.T.R. 175 (All.) dated 04.07.2013] - Affirmed by the Hon'ble Supreme Court in **Union of India vs. DSCL Sugar Ltd.** [2015 (322) E.L.T. 769 (S.C.) dated 24.07.2015]
- c) **Commissioner of C.E, Pondicherry vs. EID Parry (I) Ltd.** [2013 (293) E.L.T. 10 (Mad.) dated 11.03.2013]
- d) **Harinagar Sugar Mills Ltd. vs. Commissioner, CGST & CE, Patna-II Commissionerate** [2020 (11) TMI 663 – CESTAT Kolkata dated 09.10.2020]
- e) **Balrampur Chini Mills Ltd. vs. Union of India** [2019 (368) E.L.T. 276 (All.) dated 12.04.2019]
- f) **Hindalco Industries Ltd. vs. Commissioner of CE & ST, Vadodara-II** [2023 (11) TMI 1070 – CESTAT Ahmedabad dated 02.11.2023]
- g) **Trimula Industries Ltd. vs. Commissioner of CGST, ST, CE & Customs, Bhopal** [2019 (4) TMI 2119 – CESTAT New Delhi dated 26.04.2019]

4.11 Revenue in its appeal has relied on certain judgements in which cenvat credit on inputs used in generation of electricity is held to be inadmissible when the electricity so generated is used outside factory premises. In the present case, it is admitted in the Impugned Order itself (Para 10.33 – Page 167) that no additional inputs are used in generation of waste gas or electricity. Further, the question in the cited judgements was that of eligibility for cenvat credit on inputs whereas in the present case the dispute is whether the assessee is required to pay 6% of exempted by-product. Thus, the cited judgements do not support Revenue's case in any manner.

4.12 With respect to limitation, it is submitted that in the given facts and circumstances, where by-product is generated during the manufacturing process where no specific inputs are used for the said manufacture, there is no question of the Appellant having misstated or suppressed any facts. In any case considering the issue being pure question of law, the allegation of suppression of facts is not sustainable.

4.13 Thus, even on limitation certain period will be barred by limitation. Similarly, levy of penalties would not be sustainable.

5. In view of the above, it is prayed that, the Assessee's appeal be allowed and Revenue's appeals be dismissed.

6. The Ld A R, representing the Revenue, submits that the appellant was manufacturing both dutiable and exempted goods but was taking the Cenvat Credit on all the common inputs. Therefore, it is submitted that the appellant, having not opted to reverse the Cenvat credit on proportionate basis, was required to pay 6% /8% of the value of the exempted goods. Hence, as per the Ld AR, the demand is required to be confirmed, which the Adjudicating authority / Commissioner (Appeals) have failed to do so. Finally, he reiterates and relies on the grounds taken by the Revenue while filing their Appeal. In view of these submissions, he prays that the appeals filed by the Revenue may be allowed and the Appeal filed by the assessee [BEL] may be dismissed.

7. We have heard both the sides and perused through the appeal and the written submissions made by BEL.

8. We find that the core issue to be decided is as to whether the coal gas emanating in the process of manufacture of the Hard Coking Coal is a manufactured product or not. The appellant has claimed that the same gets generated as an unavoidable, unintended by-product which is a waste generated. It is observed that instead of wasting the same, they are usefully utilizing the same for generation of electricity.

9. We find that the Tribunals and Courts have been consistent in taking the view that if any by-product emerges on its own, without any choice

being available to the assessee, the same cannot be subjected to the restrictions under Rule 6 (3) of the Cenvat Credit Rules 2004.

10. On the very issue of Coke oven gas, the Hon'ble Kolkata High Court in the case of **Commissioner of Central Excise, Bolpur Vs. Indian Iron and Steel Co. Ltd., (2023) 4 Centax 41 (Cal)**, has held as under :

2.Considering the technical process involved in the production of coke oven gas including subsequent derivation of by-products from it, we are convinced that the impugned inputs have no role in the production of the coke oven gas and these are merely used in the production of the by products. Hence, the impugned order passed by the authorities below demanding an amount of 20% and 8% of the value in respect of coke oven gas, which is otherwise chargeable to nil rate of duty under the tariff, is not justified . Accordingly, we set aside the impugned order and allow the appeal with consequential benefit to the appellants.

11. On an identical issue, our Bench relying on the above case law and other decided issues, in the case of **Durgapur Projects Ltd. Vs Commissioner of Central Excise, Durgapur vide in Appeal No.E/75960 /2016, vide FINAL ORDER NO. 76895/2025 Dated 13.06.2025**, has held as under :

The Appellant, Durgapur Projects Limited, a Government of West Bengal Enterprise, is engaged in generation, transmission and distribution of electricity . They are also involved in manufacture of Metallurgical Coke, Crude Coal Tar and Naphthalene Sludge, etc., falling under Chapter 27 of Central Excise Tariff Act, 1985.During the manufacture of coke, the final product, certain by-products emerge. One such by-product is Coal Gas which attracts NIL rate of duty under the Central Excise Tariff.

8. It is observed that admittedly the exempted goods in question necessarily emerges as a by-product in the course of manufacture of the finished goods of the appellant. In view of the practical difficulties, the appellants cannot separately account for the inputs going into the manufacture of the finished goods and the exempted goods. As a matter of fact, the alleged exempted goods are not manufactured goods but are the by-products emerging in the manufacturing process.

9. *We find that the issue is no more res integra. We have gone through the relevant case laws :*

**Commissioner of Central Excise, Bolpur
Vs. Indian Iron and Steel Co. Ltd.
(2023) 4 Centax 41 (Cal)**

.....XXXXXXXXXXXXX

**2018 (14) G.S.T.L. 20 (Chhattisgarh)
COMMISSIONER OF C. EX. & CUS., RAIPUR
Vs JAYASWAL NECO INDUSTRIES LTD.**

7. The Learned Tribunal also noticed that coke fines are not the final product of the manufacturing process of the respondent and it could be treated only as byproduct, which is nothing but in the form of waste and so much so, the respondent is not liable to be visited with any liability on account of Rules 6(3)(b) of the CENVAT Credit Rules having regard to the law laid down in Hindustan Zinc Ltd. (supra).

8. Adverting to the provisions contained in Rule 6(2) of the CENVAT Credit Rules and the concept of input and output as emerging out of the definition clause of those Rules, it is evident that the Tribunal had not misdirected itself in arriving at conclusion that coke fines are part of waste resulting out of the manufacturing process in the establishment of the respondent and cannot be subjected to levy or be required to be accounted in term of [Rule] 6(2) or 6(3)(b) of CENVAT Credit Rules.

9. For the aforesaid reasons, we hold that, on the facts and in the circumstances of the case, the question of law framed in this appeal has to be answered against the Revenue. We do so. Resultantly this appeal fails.

10. We find that the decision of the Kolkata Tribunal is on the very same product and the High Court judgement deals with by-product emanating the course of the manufacture of the finished goods. The ratio of these case laws is squarely applicable to the facts of the present appeal. Therefore, we set aside the impugned order and allow the appeal on merits.

12. Based on our discussions on factual details of the present case, applying the ratio of the cited case laws, we set aside the confirmed demand of Rs.1,51,73,411 and allow the appeal filed the assessee BEL. We dismiss the Appeals filed by the Revenue.

13. The assessee BEL would be eligible for consequential relief, if any, as per law.

(Operative part of the order was pronounced in the open court.)

Sd/-
(Rajeev Tandon)
Member (Technical)

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

Pooja