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

REGIONAL BENCH – COURT NO. 1

Excise (Cross) Application No. 76842 of 2019

In

Excise Appeal No. 76590 of 2019

(Arising out of Order-in-Appeal No. 470/SLG-CE/2018-19 dated 22.03.2019 passed by the Commissioner (Appeals) Siliguri Appeal Commissionerate C. R. Building, Haren Mukherjee Road, Hakimpara, Siliguri-734001)

Commissioner of Central GST & Central Excise, Bolpur Commissionerate **: Appellant**
Nanoor Chandidas Road, Sian, Bolpur
District-Birbhum(W.B.) Pin-731204

VERSUS

M/s. Eastern Coalfields Ltd. **: Respondent**
(A subsidiary of Coal India Ltd.),
O/o the Managing Director, Barakar Road,
Purulia, Sanctoria, Dishergarh, Bardhaman-713333

<u>APPEARANCE</u>:

Shri S. K. Dikshit for the Revenue Authorized Representative

Shri Sanjay Dixit, Advocate for the Respondent

<u>CORAM</u>:

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

FINAL ORDER NO.<u>75785/2026</u>

DATE OF HEARING / DECISION: 22.06.2026

Order: [PER SHRI ASHOK JINDAL]

The Revenue is in appeal against the impugned order.

2. The facts of the case are as under: -

"In the instant case a Show Notice under No. V(18)18/Refund/ECL/KLT/ASN-III/16-17/722 dt.

11.04.2017 was issued against M/s Eastern Coalfields Ltd., (A subsidiary of Coal India Ltd.), holder of Central Excise Registration No. AAACE7590EEM001 alleging that they have contravened the provisions of Section 11B of Central Excise Act '44 read with para 2.4 of Chapter 9 of CBEC's Excise Manual of Supplementary Instructions, in as much as the said assessee have filed an online refund claim of an amount of Rs. 2,49,49,131/- dated 16.01.2017 on the ground of payment of inadvertent excess of debit of Central Excise duty in the month of March '16. It is noticed that the said claim is not supported by documentary evidence to establish the fact that incidence of excess payment of duty, claimed as refund in their refund application, has not been passed on to other persons.It was also further noticed that the documents submitted by the assessee appeared to be improper and insufficient to substantiate the said claim and hence the assessee's claim of refund of duty of Rs. 2,49,49,131/- appears to be untenable & hit by the bar of unjust enrichment. Thus, the total refund claim of Rs. 2,49,49,131/- of the assessee appears to be in contravention of Section 11B of the Central Excise Act'44 and hence appears to be inadmissible.

The adjudicating authority finds that the assessee failed to produce documents evidencing that incidence of duty had not been passed on to the other persons. Section 12B of the CEA, 1944 provides that every person who has paid the duty of excise on any goods under this Act shall unless the contrary is proved by him be deemed to have passed on the full incidence of such duty to the buyer of such goods.

Accordingly, the Adjudicating authority vide Order In Original No. 09/Ref/ECL/ASN-II/17-18/Central Tax dated 04.12.2017 has rejected the refund claim of Rs.2,49,49,131/- under the provisions of Section 11B of the Central Excise Act, 1944.

Being aggrieved, the assessee has filed the appeal before the Commissioner of Siliguri Appeal Commissionerate. The Appeal Commissioner vide his order under O-I-A No. 470/SLG-CE/2018-19 dated 22.03.2019 allowed the appeal by way of reliance on the Chartered Accountant's Certificate, *balance sheet and letter of the official of the company and held that the appellant has established that the amount of duty of excise paid on such duty in relation to which such refund is claimed was paid by them and the incidence of such duty had not been passed on by them to any other person which makes them entitled to the claim of refund. Accordingly, the appellant authority allowed the appeal filed by the appellant and rejected the impugned order passed by the adjudicating authority."*

3. Against the said order, the Revenue is in appeal before us.

4. The main ground of the Revenue to file this appeal is that the respondent has not provided the relevant documents to show that the bar of unjust enrichment has been cleared by the appellant; and therefore, the impugned order is to be set aside.

5. Heard the Ld. Authorized Representative of the Revenue, considered the submissions and also examined the impugned order.

6. We find that in the impugned order, the Ld. Commissioner (Appeals) has recorded that the respondent has filed documents and written submissions. The documents, namely: -

(a) Balance Sheet of M/s. Eastern Coalfields Ltd. (consolidated) and Balance Sheet of Kolkata Sales Office, a unit of M/s. Eastern Coalfields Ltd., for the year 2015-16;

(b) Certificate from Chartered Accountant regarding inclusion of refund receivable amounting to Rs.2.49 crore in the Books of Accounts of ECL and Kolkata Sales Office;

(c) Details of Item No. 7C of ER-1 for the month of March, 2016 duly certified by the Senior Manager;

(d) Certificate regarding non-issue of invoices to other parties on Performance Incentive, except the seven invoices suffering excise duty amounting to Rs.2,81,65,729/- duly certified by the Senior Manager;

(e) Reconciliation of excise duty liability as per ER-1 Return and Annual Accounts for the year 2015-16; and

(f) Extract of annual audited accounts of Kolkata Sales Office for the year 2015-16 showing the liability to excise duty on Performance Incentive of Rs.2.81 crore, from where the invoices were raised.

7. On the basis of these documents, the Ld. Commissioner (Appeals) examined the issue and observed as under: -

6. Discussions and FindingsSa:

(i) The refund has been rejected primarily on the grounds that: apart from the seven related invoices in respect of performance incentive amounting to Rs.2,81,65,729/- there. might have been other invoices issued which had not been reflected and the burden of proving that the duty incidence has not been passed on the ultimate customer was under suspect.

(ii) As mentioned in din para 5 supra, the Appellant has furnished a number of documentary evidences to substantiate their claim. These documents are certified authentic documents and needs to be taken into account. On careful examination of the said documents, I find that M/s M' Choudhury & Co, Chartered. Accountants, F.R.No 302186E has certified that the Central Excise duty refund receivable of Rs 2,49,49,131/- arising during 2015-16 due to excess payment of excise duty on performance incentive is included in Note 18 of Audited accounts of Eastern Coalfields, Limited (consolidated) for the financial year 2015-16 under the head 'SHORT TERM LOANS AND ADVANCES' - others of Rs.27.45 crores.

(iii) I find that the above amount has indeed been reflected in Note-18 under the head 'Short Term Loans & Advances'. I also find that the break-up of the said amount has been furnished by the Chartered Accountant as under

Advance Fringe benefit tax: Rs.15.15 crores

Advance royalty on sand: Rs. 2.25 crores

Advance Excise duty:: Rs. 4.39 crores

Advance for other statutory clues: Rs.4.18 crores

Advance others: Rs.1.53 crores

Total: Rs27.50 crores

Less provision for other dues: Rs.0.05 crores

Thus, the total of Rs. 27.45 crores is arrived at.

(iv) I find that the Chartered Accountant has certified that the 13. break-up of the above mentioned advance of Rs.4.39 crores in the following manner:

for Kajora area Rs. 1.69 crores

for Mugma area Rs.0.12 crores

for SP Mines Rs.0.08 crores, and

for Kolkata sales office (relating to excess payment of excise duty from PLA on account of performance incentive) Rs.2.49 crores.. It is seen that on adding these figures, the amount comes to Rs.4.39 crores which is in harmony with Note-18 under the head 'Short Term Loans & Advances'.

(v) I find that the Sr. Manger (F) of ECL, HQ, Sanctoria, has certified that only seven invoices bearing the numbers - Performance Incentive/15-16/01 to Performance Incentive/15-16/07 all dated 31.3.2016 have been issued wherein the duty liability amounted to Rs.2,81,65,730/- and further certified that no other invoices in respect of Performance incentive were raised during 2015-16 under Central Excise registration no AAACE7590EEM001 apart from the above Invoices.' In corroboration of the above facts, I find that in Note-20 of the Notes to Statement of Profit and loss for the period ending 31.3.2016, an amount of Rs.28,165 thousand has beens reflected corresponding to "Central Excise Duty under the heading 'Statutory Levies'.

(vi) The Appellant submitted a certified copy of the details of item 7(C) of ER-1 for the month of March 2016 detailing the invoices issued along with the computation of duty liability. On perusal of the same it is seen that the total duty involved is Rs.49,08,61,948/- (excluding the invoices issued under performance incentive). I find that this amount tallies with the figure as per serial no.4 of the ER-1 for the month of March, 2016.

(vii) On perusal of the ER-1 for the said month, I find that the Appellant in their Abstract of Account-Current (cash payment) has shown an amount of Rs.5,31,23,921/- in respect of utilization of other payments made during the month. On going I observe that a sum of through the respective PLA Rs. 5,31,14,860/- has been debited on account of Excise duty paid on performance incentive and an amount of Rs.9,061/-debited towards 'payment on the basis of Excise Audit EA-2000. These two sums adds up to Rs.5,31,23,921/. In this respect, I am satisfied with the correctness of the entries made. The crux of the matter is also embedded in the debit entry of Rs. 5,31,14,860/- which should have been Rs. 2,81,65,730/-, resulting in an excess payment of Rs. 2,49,49,131/- leading to the claim of refund on this amount.

(viii) I find that the Appellant has placed sufficient documents to substantiate their claim that excess debit had inadvertently been made by them. In the case of CCE v Flow Tech Power, 2006 (202) E.L.T. 404 (Mad.), a question arose whether the Commissioner (Appeals) and the Tribunal have not committed an error of law in holding that the respondent is entitled for refund since there was no unjust enrichment merely relying upon the certificate issued by the Chartered Accountant and the Profit and Loss Account submitted by the respondent?" While dismissing the appeal filed by revenue, the Hon'ble High Court held that 'The factual position is that the duty had been absorbed by the assessee and it was submitted that the Chartered Accountant's Certificate dated 8-7-2002 and the profit and 'oss account, also confirm that the duty paid on the impugned goods had been absorbed by the assessee and had been shown as expenditure in profit and loss account and had not been passed on to the customer.

ix) Thus, to sum up, I find that along, with the certificate of the Chartered Accountant, the Balance sheet, the certificate of the Senior Manager (F) of the Appellant regarding the duty liability and issuances of performance incentive invoices pertaining to the relevant period along with its duty calculation, I find that the provisions of Section 11B of the Central Excise Act, 1944; stand fulfilled. I am of the opinion that the provision of a statute must be construed having regard to the purpose and object it seeks to achieve. that those who are entitled to the benefit cannot be deprived therefrom by taking recourse to the doctrine of narrow interpretation simplicitor, although the purpose and object. thereof would be defeated thereby which was done by the lower Adjudicating. Authority while passing the impugned order. I observe that there is ample evidence in hand to conclude that the faux pas of debiting excess credit was committed without any malafide intention and the Appellant has not been unjustly enriched by such act.

(x) Once it is established that the Appellant had not passed the burden of duty to the ultimate buyer, such claim of refund cannot be turned down on the principle of unjust enrichment as held by the Hon'ble Apex Court in the case of Mafatlal Industries Ltd v UOI [1997 (89) E.E.T. 247 (S.G.)]

(xi) Recalling the provisions of Section 11B of the Central Excise Act, 1944; I observe that the Appellant had established that the amount of duty of excise, paid on such duty in relation to which such refund is claimed was paid by hirn and the incidence of such duty, if any, paid on such duty had not been passed on by him to any other person which makes them entitled to the claim of refund.

8. The documents supplied by the respondent have been examined by the Ld. Commissioner (Appeals) in detail and on the basis of those documents, it has been held that the respondent is entitled for the refund claim. We therefore do not find any infirmity in the findings of the Ld. Commissioner (Appeals) in the impugned order, which is based on the documents supplied by the respondent. The allegation of the Revenue, that the respondent has not supplied the relevant documents to the Ld. Commissioner (Appeals), is not sustainable.

9. Accordingly, the appeal filed by the Revenue is dismissed, upholding the impugned order.

(Operative part of Order was pronounced in Open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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