IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA
Court No.1

Excise Appeal No.77250 of 2018

(Arising out of Order-in-Appeal No.202/DGP-C.Ex./2018 dated 19.03.2018 passed by Commissioner of CGST & Central Excise, Siliguri)

M/s Durgapur Projects Limited
(Dr.B.C.Roy Avenue, Durgapur-713201)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Bolpur
(Nanoor Chandidas Road, SIAN, Dist.Birbhum, Bolpur-731204)

Respondent

WITH

Excise Appeal No.76928 of 2018
Excise Appeal No.76929 of 2018

(Arising out of Order-in-Appeal No.168-169/DGP-C.Ex./2018 dated 28.02.2018 passed by Commissioner of CGST & Central Excise, Siliguri)

M/s Durgapur Projects Limited
(Dr.B.C.Roy Avenue, Durgapur-713201)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Bolpur
(Nanoor Chandidas Road, SIAN, Dist.Birbhum, Bolpur-731204)

Respondent

Appearance:
Shri Arnab Chakraborty, Advocate for the Appellant
Shri P.Das, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

DATE OF HEARING : 12 JUNE 2026
DATE OF DECISION : 12 JUNE 2026

FINAL ORDER NO.75946-75948/2026

Per Ashok Jindal :

The appellants are in appeal against the impugned orders.

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2. The facts of the case are that during the period in dispute from March 2011 to March 2013, the appellate authority held that the appellant had undervalued the coal gas supplied to the Alloy Steel Plant of Steel Authority of India Ltd. for the purposes of determination of the amount payable under Rule 6(3) of the Cenvat Credit Rules, 2004 and, on such basis, sustained the findings recorded by the adjudicating authority. Consequently, the appellate authority upheld the demand of Rs.15,64,411/- under Section 11A of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, together with applicable interest under Section 11AA of the Act, and further upheld the imposition of penalty of an equivalent amount of Rs.15,64,411/- under Section 11AC of the Act.

2.1 During the period from March 2011 to March 2013, coal gas emerged as an inevitable by-product in the course of manufacture of coke by the appellant. The said coal gas, attracting nil rate of duty, was supplied by the appellant pursuant to contractual arrangements with Alloy Steel Plant, Durgapur, a unit of Steel Authority of India Ltd. The appellant, treating the said coal gas as exempted goods, discharged its obligations under Rule 6(3) of the Cenvat Credit Rules, 2004 by paying an amount equivalent to the prescribed percentage of the value thereof, adopting for such purpose the value stipulated under the relevant contractual arrangements. The dispute in the present proceedings arises from the Department's allegation that the appellant had undervalued the said coal gas while computing the amount payable under Rule 6(3) of the Cenvat Credit Rules, 2004 and had consequently short-paid an amount aggregating to Rs.15,64,411/-.

2.2 The matter was adjudicated. The demand was confirmed. Against the said order, the appellant is before us.

3. The ld.Counsel for the appellant submits that there was no application of Rule 6(3) in relation to inevitable by-products. He submits that the demand confirmed against the appellant proceeds on the fundamental assumption that Rule 6(3) of the Cenvat Credit Rules, 2004 is attracted in respect of coal gas arising during the manufacture of coke. Such assumption is ex facie contrary to the settled position of law. The Hon'ble Supreme Court in Union of India v. Hindustan Zinc Ltd., 2014 (303) E.L.T. 321 (S.C.), while considering the applicability of Rule 57CC of the erstwhile Central Excise Rules, 1944 and Rule 6 of the Cenvat Credit Rules, 2004 to sulphuric acid arising as an inevitable by-product during manufacture of zinc and copper, held that Sulphuric acid was only a by-product and that conversion of sulphur dioxide to sulphuric acid could not elevate sulphuric acid to status of final product. The Hon'ble Supreme Court further held in paragraph 20that "there was no necessity and indeed it is impossible to maintain separate records" in respect of the inputs and consequently that recovery of the prescribed percentage of the sale price of the exempted by-product was unsustainable. He further submits thatmost significantly, the Hon'ble Supreme Court in Hindustan Zinc (supra) observed that Rule 57CC/Rule 6 could not be interpreted in a manner which would equate a by-product with a final product and thereby

obliterate a distinction consciously recognised by the statutory scheme itself.

3.1 It is further submitted that the ratio of the aforesaid judgment has thereafter been applied by the Kolkata Bench of this Tribunal in Sai Sulphonate (P) Ltd. v. Commissioner of Central Excise, Kolkata-III, 2017 (345) E.L.T. 156 (Tri.-Kolkata), wherein it was held that spent Sulphuric Acid is not a final product but a by-product generation of which is inevitable, therefore an amount equal to 6% value of such by-product was not payable. The Tribunal further recognised that Rule 6(3)(1)(b) of the Cenvat Credit Rules, 2004 is pari materia with Rule 57CC of the erstwhile Central Excise Rules, 1944 and accordingly followed Hindustan Zinc and the connected line of authorities.

3.2 Further, he submits that in the present case, coal gas arises inevitably during the process of manufacture of coke and is not independently manufactured as a final product. Consequently, the very foundation of the impugned demand fails, inasmuch as Rule 6(3) itself is inapplicable to an inevitable by-product and no amount could have been demanded there-under irrespective of the value adopted for such clearances.

3.2 He further submits that without prejudice to the aforesaid contention, it is now well settled that the notional percentage-based amount for reversal prescribed under Rule 6(3)(i) cannot be mechanically imposed by the Department merely because an assessee has not maintained separate accounts or has allegedly failed to comply with the prescribed procedure. In *Tiara Advertising v. Union of India*, 2019 (30) G.S.T.L. 474 (Telangana), as affirmed and relied upon by the Hon'ble Calcutta High Court in *Commissioner of Service Tax-I, Kolkata v. Surya VistacomPvt. Ltd.*, 2022 (66) G.S.T.L. 290 (Cal.), it was held that Rule 6(3) of the Cenvat Credit Rules, 2004 merely provides options to an assessee for reversing notional amounts calculated at a prescribed percentage of input tax credit, and that the Department cannot choose one such option on behalf of the assessee. The Hon'ble High Court expressly approved the proposition that, if according to the Department an assessee has failed to comply with Rule 6(3)(i), it is open to the authorities to reject the assessee's claim regarding the disputed Cenvat credit, but it is impermissible to mechanically invoke the prescribed percentage demand. The Hon'ble Calcutta High Court further held that the Department cannot mechanically require an assessee to pay 6% of the value of exempted goods or services without demonstrating why the statutory methodology for determination of the attributable credit has been disregarded. The Court specifically disapproved the practice of mechanically applying the prescribed percentage to the entire turnover without undertaking the exercise contemplated by the Cenvat Credit Rules, 2004 read with the Central Excise Act, 1944 and Finance Act, 1994. This position has been adopted and applied by this Hon’ble Tribunal in Vinline Engineering Pvt. Ltd. V. Commissioner of CGST & CX, Howrah, (2025) 27 Centax 99 (Tri-Cal) at paragraph 23 thereof.

3.3 He further submits that the aforesaid principle applies with greater force in the present case, where the Department has proceeded directly to quantify a demand under Rule 6(3)(i) by disputing the valuation adopted by the appellant, without first establishing the actual quantum of common credit attributable to the exempted clearances or demonstrating why the statutory mechanism for attribution of credit was unavailable. There was no examination of the CENVAT credit register, or identification of invoices against which any alleged irregular credit was taken resulting in any short payment of tax. Notwithstanding the stated deficiencies, Rule 14 of the Cenvat Credit Rules, 2004 has been invoked by the Department in a manner patently contrary to the settled principles enunciated hereinabove. The impugned demand thus proceeds on a fundamentally erroneous understanding of Rule 6 of the Cenvat Credit Rules, 2004 and is liable to be set aside on this ground alone.

3.4 It is further submitted that the findings of the lower authorities are contrary to the settled position of law and unsustainable both on facts and in law. The authorities below failed to appreciate that coal gas arising during the manufacture of coke constitutes an inevitable by-product, rendering Rule 6(3) of the Cenvat Credit Rules, 2004 inapplicable. In any event, the Department could not have mechanically invoked the percentage-based demand contemplated under Rule 6(3)(i) without adhering to the statutory scheme governing attribution and reversal of common credit. The impugned demand of Rs.15,64,411/-, together with interest and penalty, is therefore liable to be set aside in its entirety. He, therefore, prays for setting aside the impugned order by allowing their appeal with consequential benefits.

3.5 The ld.A.R. for the Revenue has justified the impugned order.

4. Heard both the parties and considered the submissions.

5. We find that it is not in dispute that the appellant is manufacturing coke and in respect of manufacture of coal gas, the appellant is paying duty on the clearance of coal gas on the value arrived as per the contract of the principal manufacturer, who supplied the raw materials to the appellant. Therefore, the issue arises whether the coal gas emerges during the course of manufacture of coal being a by-product, the appellant is liable to pay duty in terms of Rule 6(3) of the Cenvat Credit Rules, 2004 or not ?

6. The said issue has been examined by the Hon'ble Apex Court in the case of Union of India Vs. Hindustan Zinc Ltd. reported in 2014 (303) ELT 321 (S.C.), wherein it has been held that the by-product cannot be said as a final product. Admittedly, the appellant is engaged in the manufacture of coke and coal gas, which emerges during the course of manufacture of coke. Therefore, the coal gas cannot be said as a final product. Therefore, the appellant is not liable to pay Excise duty in terms of in terms of Rule 6(3) of the Cenvat Credit Rules, 2004.

7. In view of this, we do not find any merit in the impugned order and the same is set aside.

8. In the result, the appeal is allowed with consequential relief, if any.

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9. Both the appeals are arising out of a common order with a common issue, therefore, both are disposed of by a common order.

10. The facts of the case are that it is alleged against the appellants that they were under-valued the coke on job work basis and cleared to M/s Usha Martin Limited for the purposes of payment of Central Excise duty and therefore, the demand duty has been raised.

10.1 The appellant entered into an agreement with M/s Usha Martin Limited and undertook conversion of coking coal supplied by the latter into lam coke on job-work basis. The said coke so manufactured by the appellant was cleared to M/s Usha Martin Limited on payment of duty.

10.2 The appellant is paying duty in terms of Clause 15(d) of the said agreement on the basis of the cost of production or the market value, whichever was higher. In arriving at such value, the landed cost of the coking coal supplied by M/s Usha Martin Limited, was taken into account together with the appellant's conversion charges including profit with due adjustment in respect of the value realised from the by-products arising in the course of such manufacture and such valuation was also supported by a Cost Accountant's Certificate and paid duty thereon. Therefore, the Revenue alleged that the value adopted by the appellant was not in accordance with Section 4 of the Central Excise Act, 1944 read with Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (Valuation Rules) and that the appellant ought to have determined the assessable value by adopting the method contemplated under Rule 10A read with Rule 8 thereof, on which basis the aforesaid differential demand of duty was sought to be recovered from the appellant.

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

11. The ld.Counsel for the appellant submits that Rule 10A read with Rule 8 of Valuation Rules, are not applicable to the facts and circumstances of the present case. It is his submission that the appellant entered into an agreement with M/s Usha Martin Limited manufactured lam coke on job work basis out of coking coal supplied by the latter and cleared the goods on payment of duty. He further submits that it is not the case of the Revenue that the subject goods at the stage of their clearance by the appellant, were sold by the appellant to third party/independent buyers or that the said goods were transferred to any depot , consignment agent or any other premises from where they were to be sold in the manner contemplated under Rule 10A(i) or Rule 10A(ii) of the said Valuation Rules. He further submits that the sole basis on which the differential duty demands came to be raised and sustained us the Department's contention that since the goods has been manufactured by the appellant on job-work basis and were cleared to the principal manufacturer, valuation shall to be taken under Rule 10A(iii) read with Rule 8 of the said Valuation Rules by adopting 110% of the cost of production. It is his submission that the said approach is ex facie erroneous. To support his contention, the relies on the decisions of the Hon'ble Apex Court in the cases of Ujagar Prints Vs Union of India reported in 1989 (39) ELT 493 (SC) and Commissioner Vs. Rolastar

Pvt. Ltd. reported in 2013 (298) ELT A-186 9SC), which was followed by this Tribunal in the case of Indian Extrusions Vs. Commissioner of Central Excise, Mumbai reported in 2012 (283) ELT 209 (Tri.-Mumbai). He also relies on the Board's Circular F.No.6/15/2009-CX.1 dated 31.03.2010. He, therefore, prays that the impugned order is to be set aside.

12. The ld.A.R. for the Revenue has justified the impugned order.

13. Heard both the parties and considered the submissions.

14. We find that the facts are not in dispute that the appellant is manufacturing lam coke on job work basis out of coking coal supplied by the latter and cleared the said goods to M/s Usha Martin Limited and they are paying duty in terms of the agreement between the parties i.e. the cost of production or the market value, whichever is higher. In arriving at such value, the landed cost of the coking supplied to M/s Usha Martin Limited, was taken and thereafter, the conversion charges were included along with products and after adjustment in respect of the value realised from the by-products arising in the course of such manufacture and pay duty thereon. The said payment of duty on such value has been supported by a Cost Accountant's Certificate. Therefore, it is to be seen that the appellant is liable to pay duty in terms of Rule 10A (iii) read with Rule 8 of the Valuation Rules, or not ?

15. The said issue has been examined by this Tribunal in the case of Advance Surfactants India Ltd. Vs. Commissioner of Central Excise, Mangalore reported in 2011 (274) ELT 261 (Tri.-Bang.),wherein this Tribunal has held that where the goods manufactured are returned to

the principal manufacturer and thereafter, used by the principal manufacturer in further manufacture, the case would not fall under Rule 10(i) and Rule 10(ii) and Rule 8, would also have no application since the goods were not being consumed by the assessee or on its behalf. This Tribunal held that by applying the Ujagar Prints (supra) principle and not by forcing the case into Rule 8 merely because the principal manufacturer consumed the goods after their receipt from the job worker. The same view has expressed in Rolastar Pvt. Ltd. Vs. Commissioner of Central Excise reported in 2012 (276) ELT 87 (Tri.-Ahmd.), wherein this Tribunal held that in a case where the goods manufactured on job work basis were sent back to the principal manufacturer and used by the latter in further manufacture, Rule 10A(i) and Rule 10A(ii) were not applicable, Rule 8 was not attracted since the goods were not consumed by the assessee or on his behalf and valuation has to be proceeded on the basis of cost of raw materials plus job work charges.

16. Therefore, we hold that the demand cannot be raised against the appellant in terms of Rule 10A (iii) read with Rule 8 of the Valuation Rules , 2000 and the appellant has paid the duty correctly.

17. In view of the above, we do not find any merit in the impugned order and the said is set aside.

18. In the result, both the appeals are allowed with consequential relief, if any.

19. In view of the discussions hereinabove, all the three appeals are allowed, with consequential relief, if any.

(Operative part of the order was pronounced in the open Court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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