IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH – COURT NO. I

APPEAL NO.E/85601 of 2017

(Arising out of Order-in-Original No. 31/CE/NGP-II/2016/C dated 30.12.2016 passed by the Commissioner of Central Excise Nagpur)

M/s. Western Coalfields Ltd : **Appellant**

Versus

Commissioner of Excise & Service Tax : **Respondent**

Appearance

Shri H. G. Dharmadhikari Advocate for the Appellant

Shri R. K. Dwivedy, ADC, Authorised Representative for Respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Shri P Anjani Kumar, Member (Technical)

ORDER NO. A/85685/2019

Date of hearing : 12/03/2019
Date of decision : 12/03/2019

Per : **Shri P Anjani Kumar**

Heard both sides and perused the records of the case.

2. Brief Facts of the case are that the Appellants M/s. Western Coalfields have deposited clean energy Cess 06.05.2015. However, they have quoted wrong assessee code. They have quoted their centralized registration code No.AAACW1578LEM080, obtained by them for production of coal, instead of the assessee code No.AAACW1578LEM082, obtained for payment of Clean Energy Cess. They have requested Commissioner vide their letter 07.11.2015, to

rectify the mistake. The Department issued a SCN dated 4.10.2016 alleging that Clean Energy Cess of Rs.15,76,90,502 be treated as not paid and be recovered from them as the goods cleared on the strength of wrong payment be treated as not duty paid and proposing to impose penalty. The Show Cause Notice was adjudicated by Commissioner of Central Excise, Nagpur, vide order No.31/CE/NGP II/2016/C dated 30.12.2016, confirming the duty demanded, imposing equal penalty under Section 11AC and a penalty of Rs.10,000 under Rule 12 of CE Rules 2010. The said order is under challenge to the present appeal.

3. Learned Counsel for the appellants submitted that the mistake was not deliberate, they have on their own informed the commissioner of the mistake and requested for rectification. They have relied upon the following cases.

(a) Kirloskar Pneumatic Company Limited u/s. UOI 2014 (310) ELT 282 (Bom.)
(b) Auro Pumps Pvt. Ltd v/s. UOI 2017 (383) ELT 7 (Guj)
(c) Devang Paper Mills Pvt. Ltd. v/s. UOI 2016 (41) STR 418 (GUJ)
(d) Coats Vivella India Ltd v/s. CCE Madurai III 1999 (111) ELT 90
(e) Singh Enterprises v/s. UOI 2016 (45) STR 508 (Jharkhand)
(f) CCE, Bhopal v/s. K. K. Kedia 2014 (35) STR 383
(g) Sahara India TV Network v/s. CCE Noida 2016 (41) STR 145
(h) Air Company Corporation India Pvt. Ltd. v/s. CCE Thane 1 2018-TIOL-284 CESTAT-MUM

4. The Learned authorized representative has submitted para wise comments on the ground of appeal. He submitted that the Appellant’s contention that CBEC Circular 9/2009 was to be followed is incorrect. The case law submitted by them is not applicable due to the facts that in those cases Central Excise dues had been paid in the assessee codes of defunct registration which merged in the centralized registration. As the Appellants have not paid clean energy cess dues for the period August 2014 to September 2015 extended period is invocable and therefore penalty is also impossible.

5. We find that in the instant case the Appellants have paid clean energy cess while paying the cess they have mentioned the assessee code applicable to Central Excise Registration instead of the assessee code applicable to clean energy cess. We find that in the case laws cited by them i.e. M/s. Kirloskar Pneumatic Company Limited 2014 (310) ELT 282 (BOM.) and Auto Pumps Private Limited 2017 (353) ELT 7(GUJ.), the Hon'ble Courts have delivered the Judgements in exercise of the Writ jurisdiction. We find that vide Office Memorandum No.Coord. II/6-9/EASeR/07/153 dated 12.01.2010, the Principal Chief Controller of Accounts, CBEC, have stated that maintenance of assessee code and return is not managed in their office; therefore, no changes in this regard can be made / required in challans already accounted for. The circular has left the matter to the Commissioners to decide the modalities to follow while keeping the track of such type of cases in their end.

5.1 In the instant case it is not denied the appellants have not paid Clean Energy cess. The only mistake was the wrongful mention of the assess code. The assessee code mentioned also pertains to the appellants themselves. It is not the case of the department that the code used is not in existence or is in defunct. We find that the tribunal has held that payment of tax is a wrong code will not make the payment null and void as in the cases of CCE & ST V/S.K.K. Kedia 2014 (35) STR 383 (Tri-Del.) and Sahara India TV Network v/s. CCE & ST Noida 2016 (41) STR 145 (Tri- Del.). We also find that Gujarat High Court has held similarly in the case of Devang Paper Mo;;s Pvt. Ltd. V/s. Union of India 2016 (41) STR 418 Hon'ble High Court of Gujarat held that "whatever be the accounting difficulty, when undisputed fact is that the petitioner did pay a certain excise duty, merely mentioning wrong code in the process, cannot result into such harsh consequence of entire payment not being recognized as valid, incurring further liability of repayment of the basic duty with interest and penalties. Such amount was deposited in the petitioner with the Govt. of India, and it was duly credited in the Government Account. We also find that Calcutta High Court in the case of Affluent Water Treatment Engineers Private Limited v/s. Union of India 2016 (41) STR 790 (Cal.) has held similarly and upheld by the Supreme Court in the case of Commissioner v/s South Asian Petrochem Limited 2010 (252) ELR A73 (SC)

6. In view of the above, we find that there is no case made out by the department against the appellant. As long as the duty is paid and credited duly to the Govt. of India account, procedural infractions which are curable in nature will not nullify such payments. Demanding such duty second time is certainly harsh and has no sanction of law, more so along with interest and penalty. Therefore we set aside the impugned order.

(Operative portion of the order pronounced in open court)

(Dr. D.M. Misra)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

Ramasuri