

## Excise Duty is leviable on Coal Clearances from the Sister Concern Units

The CESTAT, Kolkata in the case of *M/s. Mahanadi Coalfields Limited v. Commissioner of Central Excise & Service Tax, BBSR [Excise Appeal No. 75329 of 2023 dated October 10, 2023]* upheld that the imposition of excise duty applies to the clearance of coal from the sister unit, however, the Show Cause Notice (“SCN”) was not adjudicated as demand was issued by invoking extended period of limitation.

### Facts:

The Mahanadi Coalfields Limited, (“**the Appellant**”), is engaged in the business of production and sales of coal and is located in the state of Odisha, having ten units (generally referred to as Area Offices). Representations were made by the Appellant seeking a waiver from the Central Excise Department (“**the Respondents**”) for various procedural requirements for the movement of goods from one Area Office to another without the issuance of an excise invoice. Effective from April 2015 onwards, the Appellant obtained a single Centralized Registration with the Central Excise Act, 1944 (“**the Central Excise Act**”) for a company at its Sambalpur Headquarters.

Coal was made subject to levy of Clean Energy Cess for the first time w.e.f. July 2010. Further, Central Excise Duty was imposed for the first time w.e.f. March 2011. The Appellant at its Area Offices has removed coal to another area office (within the same legal entity) from where coal has been ultimately sold to buyers through Railway sidings. The transferred area while removing coal has not deposited Central Excise Duty and Clean Energy Cess. However, the said duties have been duly paid by the transferee Area Office which has issued an excise invoice to the ultimate coal buyer while making dispatch through Rail mode on the basis of Railway receipt. In the ER-1 Returns filed by the transferee area, necessary disclosures have been made. The aforesaid practice with regard to the payment of duty by the transferee Area was always in the knowledge of the Central Excise Authorities.

During the course of the Audit undertaken for the period of October 2014, the non-payment of duty on coal removed by the transferor Area was pointed out by the Responded. Hence, the SCN dated April 19, 2016, (“**the Impugned Order**”) was issued demanding Central Excise Duty and Clean Energy Cess for the period March 2011 to March 2015 (“**the Impugned Period**”). It was alleged that, duty is required to be paid at the time of removal by the transferor Area.

**Issue:**

Whether the liability required to pay on Central Excise Duty and Clean Energy Cess for the period March 2011 to March 2015 on coal transferred to their sister units without payment of duty?

**Held:**

The CESTAT, Kolkata in the case of ***Excise Appeal No. 75329 of 2023***, held as under:

- Recognised that the Appellant has cleared the goods from their unit without payment of duty to their sister unit and the said sister unit cleared the said coals on payment of duty. Although it is a situation of revenue neutrality, the Appellant was monthly required to pay duty at the time of clearance from the transferor unit, otherwise, the Central Excise Act will become redundant. At the time of clearance of goods, the Appellants were liable to pay duty.
- Concluded that, clearance of coals from the transferor unit without payment of duty was in the knowledge of the respondent as various correspondences were made during the impugned period and the SCN has been issued to the Appellant by invoking an extended period of limitation, in those circumstances, the demand is barred by limitation, and thus, the SCN is failed. Hence, the demand confirmed in the Impugned Order is not sustainable and needs to be set aside.

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