

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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.75703 of 2022

(Arising out of Order-in-Appeal No.27/CEX/RKL-GST/2022 dated 09.06.2022 passed by Commissioner(Appeals), CGST, Central Excise & Customs, Bhubaneswar.)

M/s. Agrasen Sponge Pvt.Ltd.

(At-Mandiakudar, P.O. Chungimati, Dist.Sundargarh, Odisha, Pin-770034.)

...Appellant

VERSUS

Commr., CGST & CX, Rourkela Commissionerate

.....Respondent

(KK-42, Civil Township, Rourkela, Dist.Sundargarh, Odisha-769004.)

APPEARANCE

Ms. Ritika Kurmy, Advocate for the Appellant (s)
Shri D.Sue, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)

FINAL ORDER NO. 75229/2026

DATE OF HEARING : 29.01.2026

DATE OF DECISION : 13.02.2026

R. MURALIDHAR :

The Appellant has taken Cenvat Credit of Rs.23,36,700/- during the period April 2016 to March 2017. The credits were taken based on the supplementary invoices issued by M/s. Mahanadi Coalfields Ltd. (MCL). On the ground that the MCL has issued the supplementary invoices after detection of suppression towards non-inclusion of Cess in the valuation, a Show Cause Notice was issued. It was alleged that this contravened the provisions of Rule 9(1)(b) of the Cenvat Credit Rules and hence the Appellant is not eligible for Cenvat credit. After due process, the lower authorities confirmed the demand. Being aggrieved, the Appellant is before the Tribunal.

2. The Ld.Counsel appearing on behalf of the Appellant submits that there is no dispute that the goods in question were received by the Appellant. The issue as to whether royalty on mining of coal was required to be included in the valuation or not, was a matter of dispute before the Hon'ble Supreme Court. Therefore, after it was held that royalty is required to be included in the value, for the past clearances, MCL has paid the excise duty and raised supplementary invoice on the Appellant. Since the issue was clearly that of interpretation, it cannot be alleged that the supplementary invoices raised by MCL would attract the exclusion provision of Rule 9(1)(b) of the Cenvat Credit Rules, 2004. Therefore, she submits that on merits the Appeal is required to be allowed.

3. She further submits that the Show Cause Notice issued on 21.12.2018 for the credits taken by the appellant during the period April, 2016 to March 2017 is also hit by time bar. The Revenue has not come out with any evidence to the effect that the Appellant has suppressed any factual details while taking the Cenvat credit. These cenvat credits were properly reflected in the books of account and ER-1 Returns. Therefore, she submits that the confirmed demand for the extended period is liable to be set aside on account of time bar also.

4. The Ld.AR for the Department reiterates the findings of the lower authorities. He submits that the MCL has not included in the value of royalty while raising their invoices on the Appellant. Only after many years, in view of the investigation taken up by the Department, they paid the excise duty and raised the supplementary invoices. Therefore, he submits that the supplementary invoices are not eligible for taking Cenvat credit. He justifies the confirmed demand.

5. Heard both sides and perused the appeal papers and other documents submitted by both the sides.

6. On going through the Show Cause Notice I do not find that the Department has brought in any concrete evidence to the effect that Show Cause Notice was issued on MCL alleging suppression and demanding duty on account of non-inclusion of royalty charges. This aspect does not form part of the SCN issued to the present appellant. Further, there is nothing to indicate that there were any "recoverable duties" from MCL on account of such suppression. Except for a bland statement that there was a suppression on the part of the MCL, there is no documentary evidence to this effect. The exclusion specified under Rule 9(1)(b) of Cenvat Credit Rules, 2004 is clear to the effect that only when the supplementary invoices raised in respect of "recoverable duty amount" on account of suppression etc. on the part of the vendor, the Cenvat credit can be denied. In the present case no such factual details have been brought in by the Revenue. On his ground itself I hold that the provisions of Rule 9(1)(b) will not be applicable and hence the confirmed demand is not sustainable.

6. Secondly, I find that the issue as to whether the royalty is required to be added to the value or not was under a prolonged litigation and was before the Hon'ble Supreme Court. Only after the Hon'ble Supreme Court held that Royalty is includible in the assessable value for payment of Excise Duty, a clarity emerged about the value to be adopted for the coal. Therefore, this is an issue of interpretation rather than any case of suppression on the part of the coal vendors. On an identical issue of Cenvat credit taken on the supplementary invoice, which came up before the Delhi Bench in the case of **Birla Corporation v. CGST vide Final Order No.52486/2018 dated 03.07.2018 (Appeal No.E/50308/2018)**, the Tribunal has held as under:-

7. Having considered the rival contentions of both the sides, we take notice that this Tribunal in connected matter of South Eastern Coalfields Ltd. in Appeal No.52023-52026/2014-DB dated 3.4.2017 vide Final Order No.52723-52726/2017 dated 3.4.2017, taking notice of pendency of similar matter

before the Hon'ble Supreme Court in the case of South Eastern Coal Fields Ltd. and ors. and also other cases, referred to in the above case, disposed of the appeal of the South Eastern Coal Fields Ltd., granting liberty to them to come again after having final verdict from the Hon'ble Supreme Court. Moreover, we are satisfied that there is no element of fraud and suppression on the part of the appellant. The issue herein is recurring in nature. Accordingly, we allow this appeal and hold that the appellant is entitled to take cenvat credit on the supplementary invoices in question. Thus, the appeal is allowed with consequential relief to the appellant.

[Emphasis added]

7. The ratio laid down in the above case law is squarely applicable. Hence, I hold that the confirmed demand is not sustainable on merits.

8. I also find force in the arguments of the appellant that there is no suppression on their part when they have taken the Cenvat Credit based on the supplementary invoices issued by MCL. The Appellant has properly recorded the details in their ER-1 Returns. Therefore, allegation of suppression with intent to evade payment of Excise Duty cannot be sustained. Accordingly, I set aside the confirmed demand for the extended period even on account of time bar.

9. Thus, the Appeal stands allowed. The Appellant would be eligible for consequential relief, if any, as per law.

(Order pronounced in the open court on 13.02.2026.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)