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HIGH COURT OF CHHATTISGARH AT BILASPUR

Reserved for orders on : 08.01.2026

Order passed on : 23.01.2026

TAXC No. 83 of 2019

1 - The Principal Commissioner Cgst And Central Excise, Gst Bhavan, Dhamtari Road, Tikrapara, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

... Appellant

versus

1 - M/s Bharat Aluminium Company Limited Post Office Balco Nagar Korba, Chhattisgarh - 495684., District : Korba, Chhattisgarh

... Respondent(s)

(Cause-title is taken from Case Information System)

For Appellant	:	Mr. Ashutosh Singh Kachhawaha, Advocate assisted by Ms. Shruti Parmar, Advocate
For Respondent	:	Mr. Bhishma Ahluwalia, Advocate

(Division Bench)

Hon'ble Shri Justice Sanjay S. Agrawal

Hon'ble Shri Justice Amitendra Kishore Prasad

CAV Judgment

Per, Amitendra Kishore Prasad, Judge

1. The Revenue has preferred the present appeal under Section 35-G(1) of the Central Excise Act, 1944, being aggrieved by the impugned Final Order No. A/50671/2019-EX(DB) dated 07.01.2019 (Annexure-A/1) passed by the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi (hereinafter referred to as "CESTAT"), in Appeal No. E/51058/2018 (Annexure-A/4), arising out of Order-in-Original No. RPR/EXCUS/000/COM/024/2018 dated 30.01.2018 (Annexure-A/3) passed by the Commissioner, Central Excise and Customs, Raipur, Chhattisgarh.

2. Facts of the case, as projected, are that the M/s Bharat Aluminium Company Limited, P.O. Balco Nagar, Korba, Chhattisgarh-495684 (hereinafter referred to as "the respondent/assessee"), holding Central Excise Registration No. AAACB1290NXM002, is engaged in the manufacture of aluminium and aluminium products classifiable under Chapter 76 of the Central Excise Tariff Act, 1985. In the course of its manufacturing activities, the respondent was availing CENVAT credit on inputs, capital goods and input services in terms of the CENVAT Credit Rules, 2004. The respondent was procuring coal from South Eastern Coalfields Limited (SECL), a subsidiary of Coal India Limited, which coal was used as an essential input in the manufacture of aluminium. On the basis of intelligence gathered, the Department initiated proceedings against SECL alleging undervaluation of coal supplied to its customers by not including statutory levies such as

royalty, stowing excise duty, clean energy cess, transit fees and other charges in the assessable value, despite such levies being statutorily payable. Accordingly, a show cause notice was issued to SECL, Bilaspur, demanding differential excise duty on the alleged undervaluation of coal by invoking the extended period of limitation on allegations of suppression of facts and proposing imposition of penalty under Section 11AC of the Central Excise Act, 1944. The Commissioner, Central Excise, Raipur, vide Order-in-Original No. COMMISSIONER/RPR/CEX/37/2014 dated 29.09.2014 (Annexure-A/7), confirmed the demand of duty on royalty, stowing excise duty and other statutory levies, along with applicable interest and penalty under Section 11AC of the Act. Being aggrieved, SECL preferred an appeal before CESTAT, which was disposed of vide Final Order No. A/56448-56449/2017-EX(DB) dated 04.09.2017 (Annexure-A/6). The Tribunal observed that an identical issue was pending consideration before the Hon'ble Supreme Court in Mineral Area Development Authority vs. Steel Authority of India Ltd. and, therefore, disposed of the appeal granting liberty to SECL to revive the matter after the final verdict of the Hon'ble Supreme Court. Pursuant thereto, SECL paid the differential excise duty under protest pertaining to royalty, stowing excise duty, clean energy cess, transit fees and other charges. After making such payment, SECL issued supplementary invoices to its customers, including the respondent-assessee, in respect of the differential duty so paid under protest on coal supplied earlier.

Thereafter, the Department alleged that the respondent had availed CENVAT credit on the basis of the supplementary invoices issued by SECL for the differential excise duty paid by it. It was alleged that such availment of credit was barred under Rule 9(1)(b) of the CENVAT Credit Rules, 2004, as the supplementary invoices were issued on account of non-levy or short-levy of duty arising out of suppression of facts by the supplier. Accordingly, a show cause notice dated 20.03.2017 (Annexure-A/2) was issued to the respondent proposing disallowance and recovery of CENVAT credit amounting to Rs. 6,51,22,158/- along with interest and imposition of penalty. The said notice was adjudicated by the Commissioner, Central Excise and Customs, Raipur, who vide Order-in-Original No. RPR/EXCUS/000/COM/024/2018 dated 30.01.2018 (Annexure-A/3), disallowed the CENVAT credit of Rs. 6,51,22,158/-, ordered recovery thereof with interest and imposed an equal amount of penalty on the respondent.

3. Aggrieved by the said Order-in-Original dated 30.01.2018, the respondent preferred an appeal before CESTAT. The Tribunal, vide the impugned Final Order No. A/50761/2019-EX(DB) dated 07.01.2019 (Annexure-A/1), allowed the appeal and set aside the Order-in-Original. The Tribunal held that in identical matters it had already been decided that there was no element of fraud, collusion, wilful misstatement or suppression of facts with intent to evade payment of duty on the part of SECL and, therefore, the bar under Rule 9(1)(b) of the CENVAT Credit Rules, 2004 was not

attracted. Consequently, the respondent was held entitled to avail CENVAT credit on the basis of the supplementary invoices. Being aggrieved by the aforesaid impugned final order dated 07.01.2019, passed by the CESTAT, the Revenue has preferred the present appeal before this Hon'ble Court under Section 35-G(1) of the Central Excise Act, 1944, raising substantial questions of law for consideration.

4. Learned counsel appearing on behalf of the appellant–Revenue submits that the impugned final order passed by the learned CESTAT is legally unsustainable, as the Tribunal has failed to consider and adjudicate upon the core and determinative issue involved in the present case, namely, the availability of CENVAT credit on the strength of supplementary invoices in terms of Rule 9(1)(b) of the CENVAT Credit Rules, 2004, where a statutory bar is expressly created. It is submitted that Rule 9(1)(b) of the CENVAT Credit Rules, 2004 clearly provides that CENVAT credit shall not be admissible on supplementary invoices where the additional amount of duty has become recoverable from the manufacturer or importer of inputs on account of non-levy or short-levy by reason of fraud, collusion, wilful misstatement or suppression of facts, or contravention of statutory provisions with intent to evade payment of duty. The said provision squarely applies to the facts of the present case. Learned counsel contends that, in the present matter, the charges of suppression of facts and intent to evade payment of duty were conclusively

proved and confirmed against M/s South Eastern Coalfields Limited (SECL), the supplier and issuer of the supplementary invoices. The differential duty was paid by SECL only pursuant to confirmation of demand by the adjudicating authority by invoking the extended period of limitation and by imposing penalty under Section 11AC of the Central Excise Act, 1944. Thus, the foundational requirement for attracting the bar under Rule 9(1)(b) stood fully satisfied. It is further submitted that the real issue before the Tribunal was not whether there was any fraud or suppression on the part of the respondent–assessee (BALCO), but whether CENVAT credit could be availed when the supplier/issuer of the supplementary invoices had paid duty on account of fraud and suppression. The statutory bar under Rule 9(1)(b) operates with reference to the conduct of the supplier or issuer of the supplementary invoice, and not the recipient of inputs. This crucial legal position has been completely overlooked by the Tribunal. Learned counsel submits that the Tribunal, without discussing the detailed findings recorded by the Commissioner in the Order-in-Original, has mechanically concluded that there was no fraud or suppression on the part of the respondent and, on that basis alone, allowed the CENVAT credit. Such reasoning is wholly contrary to law and reflects a misdirection in addressing the issue, rendering the impugned order perverse. It is further argued that the impugned order is a non-speaking and cryptic order, inasmuch as the Tribunal has

reversed a well-reasoned and detailed Order-in-Original without meeting, analyzing or rebutting the specific findings recorded therein, particularly those relating to confirmation of demand against SECL, invocation of extended period, and imposition of penalty under Section 11AC. The Tribunal was duty-bound to deal with these findings before setting aside the Order-in-Original. Learned counsel also submits that the Tribunal has erroneously relied upon the pendency of an altogether different issue, namely, whether royalty is a tax, which is pending consideration before the Hon'ble Supreme Court. The said issue has no nexus with the controversy involved in the present case, which solely concerns the statutory embargo under Rule 9(1)(b) of the CENVAT Credit Rules. Reliance on such pendency is therefore wholly misconceived. It is further submitted that, in similar matters arising out of identical facts, the Tribunal itself has adopted a contrary approach. In the case of M/s Trimula Industries Ltd., Singrauli, the Tribunal adjourned the matter sine die awaiting the verdict of the Hon'ble Supreme Court, whereas in the present case, on the same set of facts, the Tribunal has straightaway allowed the credit. Such inconsistent treatment by the Tribunal demonstrates arbitrariness and renders the impugned order unsustainable.

5. Learned counsel points out that the Department has already challenged similar orders before this Court in the cases of M/s UltraTech Cement Ltd., M/s Century Cement, and M/s Nalwa Steel & Power Ltd., where identical questions of law are pending

adjudication. The impugned order, therefore, has wide ramifications and warrants interference by this Court. It is lastly submitted that the Commissioner, in the Order-in-Original, has rightly relied upon statutory provisions, admissions of the respondent's authorised representative, and binding judicial precedents to hold that CENVAT credit availed on supplementary invoices issued pursuant to duty demands confirmed on grounds of fraud and suppression is inadmissible. The Tribunal, without dislodging these findings, could not have lawfully set aside the Order-in-Original. In view of the aforesaid submissions, learned counsel for the appellant–Revenue prays that the impugned Final Order dated 07.01.2019 passed by the CESTAT be set aside and the Order-in-Original dated 30.01.2018 passed by the Commissioner be restored, as the Tribunal has committed a manifest error of law in allowing the CENVAT credit in contravention of Rule 9(1)(b) of the CENVAT Credit Rules, 2004.

6. Learned counsel appearing on behalf of the respondent–BALCO submits that the learned Tribunal has rightly appreciated the facts and law applicable to the present case and has correctly arrived at the conclusion that the respondent was entitled to avail CENVAT credit on the basis of supplementary invoices issued by M/s South Eastern Coalfields Limited (SECL). It is submitted that there is no violation of Rule 9(1)(b) of the CENVAT Credit Rules, 2004, and therefore the impugned order of the Tribunal calls for no interference. It is submitted that the entire dispute revolves

around the denial of CENVAT credit availed by the respondent on supplementary invoices issued by SECL towards payment of differential Central Excise duty. The sole basis of the appellant–Department for denying the credit is the alleged applicability of the bar contained under Rule 9(1)(b) of the CENVAT Credit Rules, 2004. The said contention is misconceived and unsustainable in law. Learned counsel submits that Rule 9 of the CENVAT Credit Rules, 2004 prescribes the documents on the basis of which CENVAT credit can be availed, and a supplementary invoice is specifically recognized as a valid document for availing such credit. Rule 9(1)(b) permits availment of CENVAT credit on supplementary invoices except in a narrowly carved out situation, namely, where the additional amount of duty becomes recoverable from the manufacturer or importer by reason of fraud, collusion, wilful misstatement, suppression of facts or contravention of statutory provisions with intent to evade payment of duty. It is further submitted that a plain and harmonious reading of Rule 9(1)(b) makes it abundantly clear that the said provision is attracted only when the ingredients analogous to those required for invoking the extended period of limitation under Section 11A of the Central Excise Act, 1944, including the existence of mens rea or intent to evade duty, are clearly established against the manufacturer issuing the supplementary invoices. In the present case, the appellant–Department proceeded against SECL on the issue of valuation of coal under

Section 4 of the Central Excise Act, 1944 by seeking inclusion of royalty and other charges as additional consideration. The dispute between the Department and SECL was purely interpretational and legal in nature, concerning whether royalty and allied charges formed part of assessable value for levy of excise duty. Learned counsel submits that, contrary to the allegations of the appellant, SECL had openly disclosed the collection of royalty and other charges in its original invoices and had also declared that the assessable value under Section 4 was less than the total amount charged. Thus, there was complete transparency and no suppression of facts or wilful misstatement on the part of SECL. It is an admitted position that SECL had paid the entire differential excise duty on 14.03.2013, even prior to issuance of the demand notice dated 05.03.2014 by the Department. The subsequent proceedings were only for adjudication of the legal issue relating to valuation. This factual position itself demolishes the allegation of intent to evade payment of duty. Learned counsel further submits that the valuation issue was directly and substantially dependent upon a complex and debatable question of law pending consideration before the Constitution Bench of the Hon'ble Supreme Court in Mineral Area Development Authority v. Steel Authority of India Ltd., Civil Appeal No. 4056–4064 of 1999, concerning the nature of royalty under the Mines and Minerals (Development and Regulation) Act, 1957. At the relevant time, there existed divergent views of the Hon'ble Supreme Court in

India Cements Ltd. v. State of Tamil Nadu and State of West Bengal v. Kesoram Industries Ltd. on the nature of royalty. In view of such conflicting judicial opinions, SECL, under a bona fide belief, did not include royalty and ancillary levies in the assessable value of coal for excise purposes. It is submitted that, in order to avoid accrual of interest and without conceding liability, SECL chose to pay the differential duty while contesting the issue on merits. Such payment, made under protest and in the backdrop of a pending constitutional and legal controversy, cannot be equated with payment arising out of fraud, suppression or wilful misstatement with intent to evade duty. Learned counsel submits that the Order-in-Original dated 29.09.2014 passed against SECL does not record any clear or conclusive finding establishing intent to evade payment of duty, which is a sine qua non for invoking Rule 9(1)(b). Mere confirmation of demand does not automatically attract the statutory bar unless mens rea is unequivocally established. It is well-settled law that where duty becomes payable pursuant to resolution of conflicting judicial views or interpretation of law, mens rea cannot be attributed to the assessee. Consequently, allegations of fraud or suppression cannot be sustained in such circumstances. Reliance in this regard has been rightly placed on binding judicial precedents. Learned counsel further submits that SECL being a Public Sector Undertaking, allegations of fraud or intent to evade payment of duty cannot be casually attributed in the absence of identification

of any beneficiary of such alleged fraud. Reliance is placed on the judgment in CCE v. Rajasthan Renewable Energy Corporation Ltd., 2018 (15) GSTL 661 (Raj), wherein it has been held that mala fide intent cannot be readily presumed in the case of a PSU. In view of the above, it is submitted that the differential duty paid by SECL cannot be said to have been paid on account of fraud, collusion, wilful misstatement or suppression of facts with intent to evade duty. Consequently, the exception carved out under Rule 9(1)(b) is not attracted, and the respondent was fully entitled to avail CENVAT credit on the supplementary invoices. Learned counsel submits that the learned CESTAT has correctly appreciated these aspects and, following consistent judicial precedents, has rightly held that the respondent is entitled to CENVAT credit on the supplementary invoices in question. The impugned order is reasoned, legal and based on correct interpretation of Rule 9(1)(b) of the CENVAT Credit Rules, 2004. It is therefore submitted that no substantial question of law arises for consideration in the present appeal. The appeal filed by the appellant–Revenue is devoid of merit and is liable to be dismissed, affirming the final order passed by the learned CESTAT.

7. We have heard learned counsel appearing for the respective parties at length and have carefully perused the entire record. The present appeal was admitted on the following substantial question of law:

"Whether the Customs, Excise and Service Tax Appellate Tribunal was justified in allowing the CENVAT credit availed on the invoices by the respondent by recording a finding which is perverse to the material available on record?"

8. In order to properly appreciate the rival contentions advanced on behalf of the parties and to adjudicate upon the aforesaid substantial question of law, it is necessary to examine the statutory framework governing the issue. The controversy in the present case essentially revolves around the interpretation and applicability of Rule 9(1)(b) of the CENVAT Credit Rules, 2004, which prescribes the circumstances under which CENVAT credit may be availed on the basis of supplementary invoices and also delineates the exceptions thereto. Accordingly, Rule 9(1)(b) of the CENVAT Credit Rules, 2004, being germane and pivotal for deciding the present appeal, is reproduced hereunder for ready reference :

*"**RULE 9. Documents and accounts -***

(1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-
(a) xxx xxx xxx

(b) a supplementary invoice, issued by a manufacturer or importer of inputs or

capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made thereunder with intent to evade payment of duty.

Explanation. - For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or

xxx xxx xxx"

9. Likewise Section 4(1) of the Central Excise Act, 1944 speaks as under :

*"**4. Valuation of excisable goods for purposes of charging of duty of excise**.---*

xxx xxx xxx
xxx xxx xxx

(3) For the purposes of this section -

(a) "assessee", means the person who is liable to pay the duty of excise under this Act and includes his agent;
(b) persons shall be deemed to be "related" if -

(i) they are inter-connected undertakings;"
(ii) they are relatives;'
(iii) amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or
(iv) they are so associated that they have interest, directly or indirectly, in the business of each other.

Explanation. - In this clause -
(i) "inter-connected undertakings" shall have the meaning assigned to it in clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969); and
(ii) "relative" shall have the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956 (1 of 1956);

(c) "place of removal" means -

(i) a factory or any other place or premises of production or manufacture of the excisable goods;
(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without [payment of duty;]
(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;]

from where such goods are removed;

(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods."

10. Further, Section 11AC of the Central Excise Act, 1944 reads as under :

SECTION 11AC. Penalty for short-levy or non-levy of duty in certain cases. - *(1) The amount of penalty for non-levy or short-levy or non-payment or short payment or erroneous refund shall be as follows:-*

(a) where any duty of excise has not been levied or paid or short-levied or short-paid erroneously refunded, by reason of fraud or collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as

determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined;

(b) where details of any transaction available in the specified records, reveal that any duty of excise has not been levied or paid or short-levied or short-paid or erroneously refunded as referred to in sub-section (5) of section 11A, the person who is liable to pay duty as determined under sub- section (10) of section 11A shall also be liable to pay a penalty equal to fifty per cent of the duty so determined;

(c) where any duty as determined under sub-section (10) of section 11A and the interest payable thereon under section 11AA in respect of transactions referred to in clause (b) is paid within thirty days of the date of communication of order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty- five per cent of the duty so determined;

(d) where the appellate authority or tribunal or court modifies the amount of duty of excise determined by the Central Excise Officer under sub-section (10) of section 11A, then, the amount of penalties and interest payable shall stand modified accordingly and after taking into account the amount of duty of excise so modified, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall

> *also be liable to pay such amount of penalty or interest so modified.*
>
> ***Explanation -*** *For the removal of doubts, it is hereby declared that in a case where a notice has been served under sub-section (4) of section 11A and subsequent to issue of such notice, the Central Excise Officer is of the opinion that the transactions in respect of which notice was issued have been recorded in specified records and the case falls under sub-section (5), penalty equal to fifty per cent of the duty shall be leviable.*
>
> *(2) Where the amount as modified by the appellate authority or tribunal or court is more than the amount determined under sub-section (10) of section 11A by the Central Excise Officer, the time within which the interest or penalty is payable under this Act shall be counted from the date of the order of the appellate authority or tribunal or court in respect of such increased amount."*

11. From a perusal of the record, it appears that the respondent–assessee, M/s Bharat Aluminium Company Limited (BALCO), is engaged in the manufacture of Aluminium and Aluminium products, which fall under the First Schedule to the Central Excise Tariff Act, 1985. BALCO was duly registered under the Central Excise law and, in the course of its manufacturing activities, was availing CENVAT credit on inputs, capital goods and input services in accordance with the provisions of the CENVAT Credit

Rules, 2004. Coal constituted a principal input for its manufacturing process and was procured by BALCO from M/s South Eastern Coalfields Limited (SECL). It further emerges that the Central Excise Department, Headquarters at Bilaspur, conducted verification and found that BALCO had availed CENVAT credit on the basis of supplementary invoices issued by SECL against the original invoices. These supplementary invoices were raised consequent upon payment of differential central excise duty by SECL on additional consideration received in respect of coal supplied, such as royalty, stowing excise duty, forest cess, terminal tax, Chhattisgarh Vikas Upkar, Chhattisgarh Paryavaran Upkar, transit fees and other similar charges.

12. The record further shows that proceedings were initiated by the Department against SECL by issuance of show cause notices alleging non-payment and short-payment of central excise duty on the aforesaid additional consideration, which had been collected from customers but was not included in the assessable value of coal. The said notices invoked the extended period of limitation on allegations of suppression of material facts with intent to evade payment of central excise duty. During the course of investigation, the Assistant Commissioner, Central Excise, Bilaspur, addressed a communication to the General Manager of SECL seeking information regarding supplementary invoices issued by area offices of SECL at various locations under Bilaspur jurisdiction during the period from 2010–11 to 2014–15.

13. In response thereto, SECL furnished details indicating that it had deposited central excise duty on the aforesaid additional consideration and had thereafter issued supplementary invoices to its customers, including BALCO. On the basis of such supplementary invoices, BALCO availed CENVAT credit aggregating to Rs. 6,51,22,158/-, comprising basic CENVAT credit of Rs. 6,32,25,374/-, education cess of Rs. 12,64,527/- and secondary and higher education cess of Rs. 6,32,257/-, under the CENVAT Credit Rules, 2004. It is also borne out from the record that the Department had issued separate notices to M/s SECL for non-payment of central excise duty on royalty, stowing excise duty, clean energy cess, transit fees and other charges, which, according to the Department, were collected from customers but excluded from the assessable value, resulting in evasion of duty. The Department alleged that SECL had suppressed material facts with intent to evade payment of central excise duty and, accordingly, penalty was imposed upon SECL under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002. Subsequently, SECL deposited the demanded central excise duty on such additional consideration and issued supplementary invoices to its customers after finalization of the proceedings. Consequent upon the above, BALCO was also issued notices by the Department proposing reversal of the CENVAT credit availed on the ground that the supplementary invoices issued by SECL were hit by the restriction

contained under Rule 9(1)(b) of the CENVAT Credit Rules, 2004. The Department alleged that BALCO had availed inadmissible CENVAT credit in contravention of the said provision. The record further reflects that BALCO contested the proceedings by, inter alia, contending that SECL, being a Public Sector Undertaking, could not be attributed with mala fide intent to evade duty and that the differential duty had been paid subsequently, whereupon supplementary invoices were issued to customers including BALCO.

14. From the perusal of the Order-in-Original dated 30.01.2018 passed by the Principal Commissioner, Central Excise and Customs, Raipur, it appears that BALCO was afforded due opportunity of personal hearing and was permitted to place its submissions on record. Upon examination of the material available, the adjudicating authority noted that there was no dispute regarding the fact that CENVAT credit had been availed by BALCO on the strength of supplementary invoices issued by M/s SECL, which had been issued pursuant to payment of differential duty confirmed by invoking the extended period of limitation. The authority also recorded that the collection of additional charges by SECL from its customers without inclusion in the assessable value formed the basis for invocation of extended limitation, indicating non-payment and short-payment of duty on such consideration.

15. From a perusal of the record, it is evident that the Commissioner, Central Excise and Customs, Raipur, has passed a detailed and reasoned order, comprehensively examining each and every facet of the controversy. The adjudicating authority has categorically held that the respondent had illegally availed the benefit of CENVAT credit, which it was otherwise not entitled to. The Order-in-Original elaborately discusses, in considerable detail, the merits of the case and records a clear finding that the respondent/company was not eligible to avail CENVAT credit on the strength of supplementary invoices issued by M/s South Eastern Coalfields Limited (SECL).

16. The core issue relating to the admissibility of CENVAT credit on the basis of supplementary invoices issued under Rule 9(1)(b) of the CENVAT Credit Rules, 2004, was conclusively decided against the respondent–company. The Commissioner recorded a specific finding that the supplementary invoices had been issued consequent upon non-levy and short-levy of duty attributable to suppression of facts on the part of the issuer of the supplementary invoices. It was further held that, in view of the express statutory embargo contained in Rule 9(1)(b) of the CENVAT Credit Rules, 2004, CENVAT credit is impermissible where the additional duty becomes recoverable from the manufacturer or importer of inputs on account of fraud, collusion, wilful misstatement, suppression of facts or contravention of statutory provisions with intent to evade payment of duty. Accordingly, after an exhaustive consideration of

the factual matrix, statutory provisions and legal principles, the Commissioner held that the respondent–company was liable to pay central excise duty amounting to Rs. 7,50,88,571/- (Rupees Seven Crore Fifty Lakh Eighty Eight Thousand Five Hundred and Seventy One Only), comprising CENVAT credit of Rs. 7,29,01,526/-, education cess of Rs. 14,58,030/- and secondary and higher education cess of Rs. 7,29,015/-, under sub-section (5) of Section 11A of the Central Excise Act, 1944. The adjudicating authority further ordered appropriation of the said amount, recovery of interest thereon at the applicable rate under Section 11AA of the Act, and imposed a penalty of Rs. 3,75,44,286/- (Rupees Three Crore Seventy Five Lakh Forty Four Thousand Two Hundred and Eighty Six Only) under Section 11AC(1)(b) of the Central Excise Act, 1944.

17. However, when the respondent challenged the said Order-in-Original before the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi, the Tribunal, without adverting to or dealing with the detailed findings recorded by the Commissioner, proceeded to allow the appeal. The Tribunal placed reliance on earlier decisions purportedly involving similar issues and, without undertaking an independent examination of the facts or addressing the specific reasoning adopted by the adjudicating authority, held as under:

> *"4. Having considered the rival contentions of both the sides, we take notice that this Tribunal in connected*

matter of Ultra Tech Cement Ltd., Unit Aditya Cement Works vs. C.E. & S.T., Udaipur reported in 2018 (8) TMI 952 (CESTAT, New Delhi), wherein the pendency of similar matter before the Hon'ble Supreme Court in the case of South Eastern Coalfields Ltd. and others, and also other cases referred to therein, has been considered, and it has been held that it is an admitted position that the demand raised by the department against M/s SECL is under challenge before the Hon'ble Supreme Court and, therefore, the CENVAT credit can be availed by the manufacturer on the strength of supplementary invoices, as such amount of duty cannot be said to have been paid on account of any non-levy or short-levy by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any provision of the Central Excise Act/Rules with intent to evade payment of duty."

"5. Also, in Final Order No. 52625/2018 dated 23.07.2018 passed in Excise Appeal No. 51278/2018, titled M/s Birla Corporation Ltd. vs. CGST, CC & CE, Udaipur, this Tribunal, while allowing the appeal, held that there was no element of fraud or suppression on the part of the appellant and that the issue was recurring in nature. Accordingly, it was held that the appellant was entitled to avail CENVAT credit on the supplementary invoices."

18. Surprisingly, and without entering into the merits of the present case or dealing with the specific and cogent reasons recorded by the Commissioner in the Order-in-Original, the Tribunal, in a

cursory and summary manner, allowed the appeal by observing as under:

> *"6. Therefore, in view of the facts of the present case and in view of the various decisions of this Tribunal on identical set of facts, we set aside the impugned order and allow the appeal filed by the appellants holding that the appellant is entitled to take CENVAT credit on the supplementary invoices in question."*

19. From a perusal of the aforesaid order, it is apparent that the Tribunal has not meticulously examined the matter in its true perspective. The Tribunal has proceeded solely on the basis of earlier decisions, which it considered to be identical, without analysing whether the factual findings, statutory provisions and the specific reasons recorded by the adjudicating authority in the present case stood duly addressed or distinguished. In the considered opinion of this Court, such an approach is not in consonance with law.

20. Hon'ble Supreme Court in the matter of **Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota,** reported in **(2010) 4 SCC 785** has held as under :

> *"12. In exercise of the power of judicial review, the concept of reasoned orders/actions has been enforced equally by the foreign courts as by the courts in India. The administrative authority and tribunals are obliged to give reasons, absence whereof could render the order liable to judicial*

> *chastisement. Thus, it will not be far from an absolute principle of law that the courts should record reasons for their conclusions to enable the appellate or higher courts to exercise their jurisdiction appropriately and in accordance with law. It is the reasoning alone, that can enable a higher or an appellate court to appreciate the controversy in issue in its correct perspective and to hold whether the reasoning recorded by the court whose order is impugned, is sustainable in law and whether it has adopted the correct legal approach. To subserve the purpose of justice delivery system, therefore, it is essential that the courts should record reasons for their conclusions, whether disposing of the case at admission stage or after regular hearing."*

21. Further, in the matter of **Kranti Associates (P) Ltd. v. Masood Ahmed Khan**, reported in **(2010) 9 SCC 496**, Hon'ble Supreme Court has held that reasons are the heartbeat of every conclusion; without them, the order becomes lifeless. It was held as under :

> *"47. Summarising the above discussion, this Court holds:*
>
> *(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
>
> *(b) A quasi-judicial authority must record reasons in support of its conclusions.*
>
> *(c) Insistence on recording of*

reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All

these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to

record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

48. For the reasons aforesaid, we set aside the order of the National Consumer Disputes Redressal Commission and remand the matter to the said forum for deciding the matter by passing a reasoned order in the light of the observations made above. Since some time has elapsed, this Court requests the forum to decide the matter as early as possible, preferably within a period of six weeks from the date of service of this order upon it."

22. Likewise, in the matter of **CIT v. Chenniappa Mudaliar**, reported in **(1969) 1 SCC 591**, Hon'ble Supreme Court has held as under :

> *"7. The scheme of the provisions of the Act relating to the Appellate Tribunal apparently is that it has to dispose of an appeal by making such orders as it thinks fit on the merits. It follows from the language of Section 33(4) and in particular the use of the word "thereon" that the Tribunal has to go into the correctness or otherwise of the points decided by the departmental authorities in the light of the submissions made by the appellant. This can only be done by giving a decision on the merits on questions of fact and law and not by merely disposing of the appeal on the ground that the party concerned has failed to appear. As observed in Hukumchand Mills Ltd. v. CIT, [(1967) 63 ITR 232 : 1966 SCC OnLine SC 171] the word "thereon" in Section 33(4) restricts the jurisdiction of the Tribunal to the subject-matter of the appeal and the words "pass such orders as the Tribunal thinks fit" include all the powers (except possibly the power of enhancement) which are conferred upon the Appellate Assistant Commissioner by Section 31 of the Act. The provisions contained in Section 66 about making a reference on questions of law to the High Court will be rendered nugatory if any such power is attributed to the Appellate Tribunal by which it can dismiss an appeal, which has otherwise been properly filed, for default without making any order thereon in accordance with Section 33(4). The position becomes quite simple when it is remembered that the assessee or the CIT, if aggrieved by the*

orders of the Appellate Tribunal, can have resort only to the provisions of Section 66. So far as the questions of fact are concerned the decision of the Tribunal is final and reference can be sought to the High Court only on questions of law. The High Court exercises purely advisory jurisdiction and has no appellate or revisional powers. The advisory jurisdiction can be exercised on a proper reference being made and that cannot be done unless the Tribunal itself has passed proper order under Section 33(4). It follows from all this that the Appellate Tribunal is bound to give a proper decision on questions of fact as well as law which can only be done if the appeal is disposed of on the merits and not dismissed owing to the absence of the appellant. It was laid down as far back as the year 1952 by S.R. Das, J. (as he then was) in CIT v. Arunachalam Chettiar [(1952) 2 SCC 805 : (1953) 23 ITR 180] that the jurisdiction of the Tribunal and of the High Court is conditional on there being an order by the Appellate Tribunal which may be said to be one under Section 33(4) and a question of law arising out of such an order. The Special Bench, in the present case, while examining this aspect quite appositely referred to the observations of Venkatarama Aiyar, J. in CIT v. Scindia Steam Navigation Co. Ltd. [(1961) 42 ITR 589 : 1961 SCC OnLine SC 118] indicating the necessity of the disposal of the appeal on the merits by the Appellate Tribunal. This is how the learned judge had put the matter in the form of interrogation:

> *"….How can it be said that the Tribunal should seek for advice on a question which it was not called upon to consider and in respect of which it had no opportunity of deciding whether the decision of the Court should be sought."*
>
> *Thus looking at the substantive provisions of the Act there is no escape from the conclusion that under Section 33(4) the Appellate Tribunal has to dispose of the appeal on the merits and cannot short-circuit the same by dismissing it for default of appearance."*

23. The Order-in-Original passed by the Commissioner is a reasoned and speaking order, wherein each and every aspect of the matter has been examined in detail. Unless the findings recorded therein are re-appreciated on merits and each determinative issue is dealt with by assigning cogent reasons, the Tribunal could not have set aside the said order merely by relying upon earlier decisions. Judicial discipline requires that reasons given by the original authority be specifically met and rebutted. In view of the aforesaid, this Court is of the opinion that the matter deserves to be remanded to the Tribunal for fresh consideration.

24. In view of the fact that matter is remanded back to the CESTAT for fresh adjudication on merits, it is not desirable to decide the substantial question in any way.

25. Accordingly, while setting aside the impugned order passed by the Tribunal, the matter is remanded back to the CESTAT with a direction to decide the appeal afresh, in accordance with law, by

adjudicating upon each and every aspect dealt with by the Commissioner and by passing a reasoned and speaking order. The Tribunal shall be at liberty to afford an opportunity of rehearing to the parties, if so required.

26. It is made clear that this Court has not expressed any opinion on merits of the case and the CESTAT is required to pass orders on merits without being influenced by any observation made by this Court.

27. The concerned records shall be transmitted back to the Tribunal for the aforesaid purpose.

Sd/- **Sd/-**

(Sanjay S. Agrawal) (Amitendra Kishore Prasad)
Judge **Judge**

Shayna

Head-Note

Administrative and quasi-judicial decisions affecting rights must be supported by cogent and intelligible reasons. Reasoned orders sustain public confidence in the justice delivery system and form an integral part of due process and the rule of law. In the absence of a reasoned order, the decision remains incomplete and unsustainable in law.