

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**I.A. No. 55/2016
in Petition No. 19/RP/2016**

Subject : Petition seeking review of the order dated 19.2.2016 in Petition no. 153/MP/2015.

Date of hearing : 14.2.2017

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner : Sasan Power Limited.

Respondents : M.P. Power Management Company Limited and others.

Parties present : Shri Vishrov Mukherjee, Advocate, SPL
Ms. Raveena Dhamija, Advocate, SPL
Shri G. Umopathy, Advocate, MPPMCL
Shri Abhijeet Rastogi, Advocate, BRPL & BYPL
Shri M.G.Ramachandran, Advocate, Rajasthan & HPPCL
Shri Shubham Arya, Advocate, Rajasthan & HPPCL

Record of Proceedings

Learned counsel for SPL submitted that the present Interlocutory Application (IA) has been filed pursuant to the Commission's direction dated 22.9.2016 in Petition No.19/RP/2016 directing the petitioner to approach the appropriate authority in the Central Excise Department for clarification regarding whether excisable value of coal for the purpose of computation of excise duty would include royalty and stowing duty. Accordingly, the petitioner approached the Central and Service Tax Department, Singrauli, Madhya Pradesh for seeking a clarification in this regard. In response, the Central and Service Tax Department, Singrauli, Madhya Pradesh vide its letter dated 26.9.2016, clarified that royalty, stowing excise duty, transit fee and MPGATSVAs were to be added for arriving at the assessable value of coal for payment of excise duty. Learned counsel for the petitioner further submitted as under:

(a) The petitioner has sought compensation based on actual excise duty of coal being incurred in accordance with the law. No benefit is accruing to the petitioner in relation to the excise duty of coal as the petitioner is including the statutory levies as part of excisable value of coal..

(b) Any failure by the petitioner in meeting its obligation towards excise duty on coal can lead to penal consequences under Section 9AA of the Central Excise Act, 1944. The petitioner has also placed on record audited accounts certifying the total amount being incurred by it.

(c) If the procurers are aggrieved by the demand made by statutory authorities, they should challenge the same in a court of law and indemnify the petitioner against any penal consequences arising out of non-compliance/ non-payment. The petitioner is neither expected to nor permitted to judge the legality of a demand or a statute.

2. In its rebuttal, learned counsel for Rajasthan and HPPCL submitted as under:

(a) The petitioner has relied on letter dated 26.9.2016 issued by the Office of the Superintendent, Central Excise, Singrauli allegedly clarifying that royalty, stowing excise duty, transit fee and MPGATSVAs shall be added for arriving the assessable value of coal for payment of excise duty. The said letter is not law and if the same is contradictory to the Central Excise Act, Rules framed thereunder or well settled principles of law, the same cannot be relied upon by the petitioner to claim relief from the Respondents.

(b) There has to be a statutory basis for inclusion of royalty, stowage duty, transit fee and MPGATSVAs in the assessable value of coal to claim relief thereof. It is a well settled principle that there cannot be any tax on a tax.

(c) As the royalty, stowing excise duty, transit fees and MPGATSVAs are taxes or compulsory exactions/levy, the same cannot be considered for computation of excise duty. Even if the above are not taxes, the same have to be related to value of coal. Therefore, taxes cannot be considered as part of the assessable value of coal. In support of his arguments, learned counsel relied upon the judgment of the Hon'ble Supreme Court in Commissioner of Central Excise, Meerut v. M/s Kisansahkari Chinni Mills Ltd. [(2001) 6 SCC 697].

(d) Royalty is a compulsory exaction or levy and therefore, is tax within the meaning of Section 4 of Central Excise Act, 1944 as it is a levy by a statutory authority. In support of his arguments, learned counsel relied upon the following judgments of the Hon'ble Supreme Court:

- i. India Cement Ltd. Vs. State of Tamil Nadu (1990) 1 SCC 12
- ii. State of West Bengal Vs. Kesoram Industries Ltd. And Others (2004) 10 SCC 201
- iii. Mineral Area Development Authority Vs. Steel Authority of India (2011) 4 SCC 450
- iv. Arpa Fuel Private Limited and others Vs. Coal India Limited and others (2014) 2 HCC (Cal) 483.

(e) Stowing excise duty is a tax which is clear from the nomenclature itself. It is a tax within the meaning of Section 4 of Central Excise Act, 1944 as it is a levy by statutory authority.

(f) Transit fee is a tax within the meaning of Section 4 of the Central Excise Act and therefore, does not form part of the assessable value of coal. The forest transit fees imposed for coal produced from forest land has been set aside by the Hon'ble High Court of Madhya Pradesh. The order of High court of Madhya Pradesh has been challenged before the Supreme Court and the same has been stayed but the matter is still pending before the Supreme Court.

(g) The petitioner has not provided any details of the value of MPGATSVVA claimed by it or provisions of law under which this falls. In the absence of the same, the respondents cannot consider whether the same may be considered as part of assessable value. The imposition under Section 3 of MPGATSVVA is clearly a tax and therefore, cannot be included in calculation of assessable value of coal. Further, the constitutionality of MPGATSVVA is under challenge before the Supreme Court.

(h) The petitioner is not entitled to claim any relief which is not otherwise provided in the PPA. The petitioner is required to prove the claim for impact on change in law.

(i) The petitioner is required to act in a prudent manner to examine the applicability of the excise duty and also merits of the claim made by the appropriate authority for payment of excise duty and take appropriate action in accordance with law. It is not open to the petitioner to simply claim the impact from the procurers.

(j) The quantum of coal to be considered is actual coal consumed or the coal requirement as per normative parameters of auxillary consumption and Station Heat rate, whichever is lower.

3. Learned counsel for MPPMCL adopted the submissions made by the learned counsel for Rajasthan and HPPCL.

4. After hearing the learned counsels for the parties, the Commission reserved order in the petition.

By order of the Commission

**Sd/-
(T. Rout)
Chief (Legal)**