IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Excise Appeal No. 75103 of 2020

(Arising out of Order-in-Original No.PR.COMMR/BBSR/CE/10/2019 dated 23.12.2019 passed by Commissioner of CGST & CX, Bhubaneshwar)

M/s Jindal Stainless Ltd. **:**
Kalinga Nagar Industrial Complex, Duburi, Jaipur-755026. **Appellant/Assessee**

VERSUS

Principal Commissioner, CGST &CX,Bhubaneshwar **: Respondent**
C.R.Building, Rajsawa Vihar, Bhubaneshwar-751 007.

With

Excise Appeal No. 75223 of 2020

Principal Commissioner, CGST &CX,Bhubaneshwar **: Appellant**
C.R.Building, Rajsawa Vihar, Bhubaneshwar-751 007.

VERSUS

M/s Jindal Stainless Ltd.
Kalinga Nagar Industrial Complex, Duburi, Jaipur-755026.
:
Respondent/Assessee

APPEARANCE:

Shri Rahul Dhanuka, Advocate for the Assessee

Shri P.Das, Authorized Representative for the Revenue

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75392-75393/ 2026

DATE OF HEARING :09.03.2026

DATE OF DECISION:09.03.2026

Order : [Per Shri Ashok Jindal]

Both sides are in appeal against the impugned order.

2. The facts of the case are as under:

2.1. M/s. Jindal Stainless Limited (hereinafter referred to as "the Company"/"JSL"), having Central Excise registration no. AABCJ1969MXM008, is a public limited company inter-alia engaged in the manufacturing of excisable goods viz. Silico Manganese, Ferro Chrome, and other Stainless Steel products at its plant located at Kalinga Nagar Industrial Complex, Jajpur, Odisha (hereinafter referred to as "the said plant"). The Company also operates a coke oven facility within the premises of the said plant used for conversion of coal into coke.

2.2. JSL entered into an agreement with M/s. Stemcor India Pvt. Ltd. (hereinafter referred to as "Stemcor") on 24.04.2012 for conversion of coal into coke on a job work basis at the coke oven facility situated within its premises. In terms of the agreement, the coal imported by Stemcor was supplied to JSL's coke oven facility, where these coals were converted into coke and further cleared to the customers of Stemcor. Stemcor remained the absolute owner of the input coal and output coke and all its by-products and paid all the taxes, duties and charges except excise duty on clearance of coke. JSL, being the manufacturer of coke charged excise duty at the time of clearance/removal of coke to the customers of Stemcor from its plant. JSL also availed cenvat credit of the CVD paid by Stemcor on import of coals, on the strength of invoices issued by Stemcor as an importer.

2.3 Further, some portion of the coke so produced was captively consumed by JSL in its plant for manufacture of excisable goods availing the benefit of Exemption Notification No. 67/1995-CE dated

16.03.1995 (hereinafter referred to as "Notification No. 67/95"). For the quantity of coke captively consumed by JSL, Stemcor raised commercial invoices upon JSL charging VAT and Entry Tax. Stemcor was also registered with the Central Excise authorities as a dealer.

2.4 Pursuant to the audit conducted by the Department during 2015 and 2016 for the period 2012-13 to 2014-15 and multiple rounds of audit notices and pre-consultation, a Show Cause Notice dated 27.12.2017, invoking extended period of limitation was issued upon the Appellant by the Ld. Commissioner of CGST & Central Excise, Bhubaneswar proposing to demand:

i. Duty to the tune of Rs. 3,24,88,340/- along with interest and equivalent penalty on purported ground of clandestine removal of 30833.76MT of coke which was captively consumed by JSL within its plant availing the benefit of Exemption Notification No. 67/95.

ii. Cenvat credit of the CVD paid on imports of coal by Sterncor amounting to Rs. 20,33,28,566/- availed and utilized by the Company on the strength of invoices issued by Stemcor

2.5 The Company replied to the Notice vide its letter dated 06.06.2018 denying and disputing the allegations contained therein. However, disregarding the contentions of the Company, the Ld. Principal Commissioner of CGST & CX, Bhubaneshwar issued the impugned Order dated 23.12.2019 confirming tax demand of Rs. 3,24,88,340/- on account of issue

no. (i) and dropped the demand of Rs. 20,33,28,556/- for issue no. (ii).

2.6 Subsequently, an Order-in-Review dated 24.07.2020 was passed by Committee of Chief Commissioners wherein it held that the impugned Order is not legal and proper in so far as it dropped the demand of Rs. 20,33,28,566/-along with interest and penalty.

2.7 Pursuant thereto, the Company preferred appeal against the impugned Order before this Hon'ble Tribunal in so far as it confirmed the demand with respect to issue no. (i) and Department preferred appeal against the impugned Order in so far as it dropped the demand with respect to issue no. (ii).

3. The Ld. Counsel appearing on behalf of the assessee submitted that it is settled law that allegation of clandestine clearance is a very serious charge and burden of proving such allegation squarely lies upon the Department, which must discharge the same by adducing affirmative, positive and cogent evidence. Such a charge cannot be sustained merely on the basis of assumptions and presumptions in the absence of any concrete and corroborative material evidence. To support this contention he relied on the following decisions:

i. Continental Cement Company vs. Union of India [2014 (309) E.L.T. 411 (All.)]

ii. Commissioner of Customs, C.Ex. & ST, Ghaziabad vs. Auto Gollon Industries P. Ltd. [2018 (360) ELT 29(All)]

iii. Commissioner of C.Ex. & ST Udaipur vs. Mittal Pigment Pvt. Ltd. [2018 (16) GSTL 41(Raj)]

iv. M/s. Neo Metalliks Limited vs. Commissioner of CGST, West Bengal [2025 (11) TMI 1542-CESTAT, Kolata]

v. M/s. Micky Metals Limited versus Commissioner of Central Excise, Bolpur [2022 (7) TMI 1430-CESTAT KOLKATA]

4. It is further submitted that the appellant has submitted the following documents namely:

i. Purchase orders placed by JSL upon Stemcor.

ii. Commercial invoice issued by Stemcor for supply of coke, charging VAT and Entry Tax

iii. Material dispatch certificate issued by Stemcor

iv. Weighment slips indicating shifting of coke from coke oven facility to the factory for captive consumption.

v. Issue slips of the coke captively consumed by JSL in its shop floor.

5. For evidencing that the coke manufactured by the appellant has been captively consumed but the same has not been considered by the Adjudicating Authority. It is further submitted that the coke alleged to have been clandestinely cleared by the asseessee were used in manufacturing of final products cleared by the assessee on payment of duty and therefore the intermediate product, namely coke was eligible for exemption in terms of Notification No. 67/95.

6. He further submitted that the demand raised against the appellant is barred by limitation as the impugned period to demand duty from the appellant is from January, 2013 to January, 2014 and Show Cause Notice has been issued on 27.12.2017 whereas appellant has been regularly filing their ER-1 returns showing their claiming of benefit of exemption Notification No. 67/1995 dated 16.03.1995 . In that circumstances extended period of limitation is not sustainable.

7. With regard to the appeal filed by the Revenue the Ld. Counsel for the assessee submits that the contention of the Department is that the assessee could have availed Cenvat Credit prior 2014 on the basis of invoices issued by M/s. Stemcor is grossly erroneous in so far as an invoice issued by an importer is a valid document for availing credit in terms of Rule 9(1)(a)(ii) of CCR, 2004. Further the assessee is not required to obtain two separate registration both as a dealer and as an importer in light of Circular No. 1032/20/2016 CX dated 28.06.2016.

8. Therefore, the assessee has rightly availed the credit of the CVD paid by M/s. Stemcor as invoice issued by an importer is a valid document for availing the Cenvat Credit. To support this contention he relied on the decision of Goa Carbon Ltd. vs. CCE[2016 (343) E.L.T. 1140(Tri-Del.) and M/s. Urvi T & Wedge Lamps Pvt. Ltd. vs. Commr. Of GST and C.Ex. [2018 (5) TMI 1118-CESTAT Mumbai]. It is further submitted that the Cenvat Credit of the duty paid on inputs having been availed by the job worker and not the principal

manufacturer, therefore, Rule 4(6) of the CCR, 2004 is not applicable to the facts of the case.

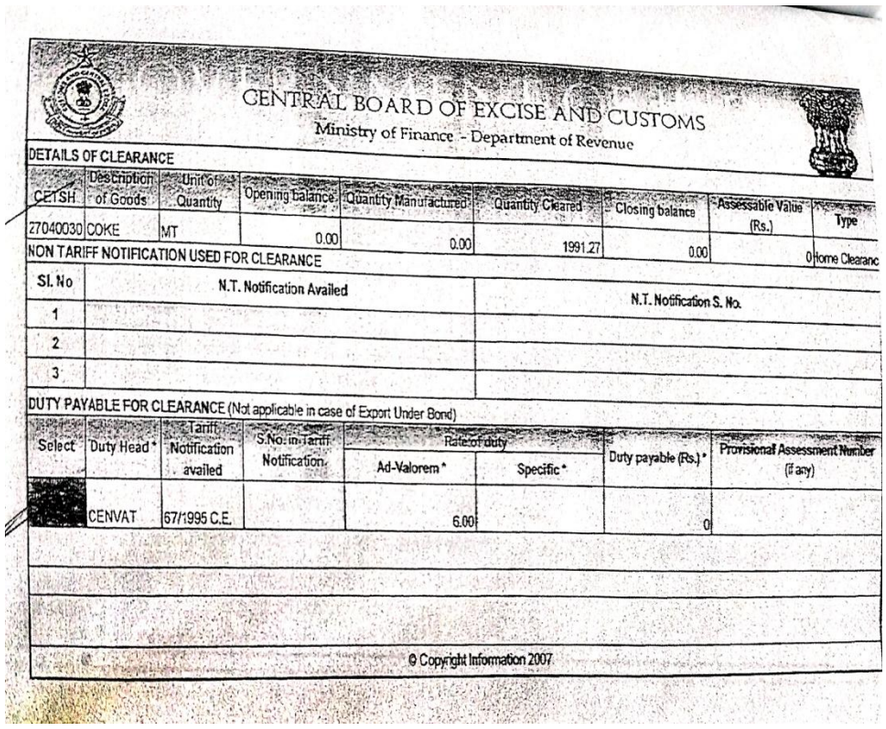
9. It is further submitted that the assessee having not availed exemption benefit under Notification No. 214/86 is not required to comply with the procedures and conditions prescribed therein and as such Rule 3 of CCR, 2004 is not applicable to the facts of the present case. Therefore, it is prayed that the appeal filed by the Revenue is dismissed.

10. On the other hand Ld. Authorized Representative submitted that the appellant is not entitled for benefit of exemption notification 67/1995 as the appellant is a job worker and converting coal into coke on behalf of the principal manufacturer, M/s.Stemcor India Pvt. Ltd. on which they have not paid the duty. Therefore, the duty is rightly demanded from the appellant. It is further submitted that the assessee is not entitled to take Cenvat Credit in terms of Notification No. 8/2014 Central Ex. (NT) dated 28.02.2014 as the M/s. Stemcor was not a registered dealer prior to said amendment and they are required to obtain separate registration as importer for issuing invoices.

11. Heard the parties. Considered the submissions.

12. We find that the demand of Rs. 3,24,88,340/- has been raised against the assessee alleging clandestine removal of coke, being a job worker, manufacturing on behalf of M/s. Stemcor India Pvt. Ltd. without payment of duty. On that issue we find that the period involved is January, 2013 to January, 2014 and the Show Cause Notice has been issued by invoking extended period of limitation on

27.04.2017. As the appellant was regularly filing their ER-1 returns and claiming the benefit of Notification No. 67/1995-CE dated 16.03.1995 in their return. The sample copy of return claiming the benefit of exemption notification is extracted below:



CENTRAL BOARD OF EXCISE AND CUSTOMS
Ministry of Finance - Department of Revenue

DETAILS OF CLEARANCE

CETSH	Description of Goods	Unit of Quantity	Opening balance	Quantity Manufactured	Quantity Cleared	Closing balance	Assessable Value (Rs.)	Type
27040030	COKE	MT	0.00	0.00	1991.27	0.00	0	Home Clearanc

NON TARIFF NOTIFICATION USED FOR CLEARANCE

Sl. No	N.T. Notification Availed	N.T. Notification S. No.
1		
2		
3		

DUTY PAYABLE FOR CLEARANCE (Not applicable in case of Export Under Bond)

Select	Duty Head *	Tariff Notification availed	S.No. in Tariff Notification	Rate of duty		Duty payable (Rs.) *	Provisional Assessment Number (if any)
				Ad-Valorem *	Specific *		
[redacted]	CENVAT	67/1995 C.E.		6.00		0	

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13. As the fact of availment of benefit of Notification No. 67/1995-CE dated 16.03.1995 was already in the knowledge of the Revenue while filing their ER-I returns. Therefore, extended period of limitation is not invokable. Admittedly, the Show Cause Notice has been issued to the assessee by invoking extended period of limitation. Therefore, we hold that whole of the demand is failed on account of limitation. Accordingly, the demand confirmed against the assessee amounting to Rs. 3,24,88,340/- is set aside. Consequently, no penalty is imposable on the assessee.

14. With regard to the appeal filed by the Revenue the Cenvat Credit sought to be denied in view of the Notification No 8/2014 Central Ex. (NT) dated 28.2.2014 wherein the supplier of goods was required to take separate registration as an importer for issuing cenvatable invoices. The said notification came into effect from 01.04.2014 and admittedly whole of the demand pertains to prior to that. The notification is applicable prospectively not retrospectively. In that view, the Ld. Adjudicating Authority has rightly allowed Cenvat Credit to the assessee.

15. In view of this we do not find any merit to the appeal filed by the Revenue. Accordingly, same is dismissed.

16. In view of the above discussions, the appeal filed by the assessee is allowed and the appeal filed by the Revenue is dismissed.

(Operative part of the order was pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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