

GAHC010005822014



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/674/2014

MAHALAXMI ASSOCIATES PVT. LTD. and 2 ORS
A COMPANY HAVING ITS REGISTERED OFFICE AT N.H. 37, BELTALA,
GUWAHATI, AND IS REP. BY ONE OF ITS DIRECTOR SRI NAVEEN KUMAR
GUPTA.

2: MAHALAXMI CONTINENTAL LTD.
A COMPANY HAVING ITS REGISTERED OFFICE AT N.H. 37
BELTALA
GUWAHATI
AND IS REP. BY ONE OF ITS DIRECTOR SRI NAVEEN KUMAR GUPTA.

3: M/S MAA KAMAKHYA COKE INDUSTRIES
A PARTNERSHIP FIRM
HAVING ONE OF ITS OFFICE AT IIT COLLEGE ROAD
AMINGAON
GUWAHATI AND IS REP. BY ONE OF ITS PARTNER SRI NAVEEN KUMAR
GUPTA

VERSUS

THE NORTH EASTERN COALFIELDS LIMITED and 3 ORS.
THROUGH ITS CHAIRMAN CUM MANAGING DIRECTOR, NORTH EASTERN
COALFIELDS LTD., CHRISTIAN BASTI, G.S. ROAD, GUWAHATI, DIST.-
KAMRUP M, ASSAM.

2: THE GENERAL MANAGER S and M
NORTH EASTERN COALFIELDS LTD.
TINSUKIA
ASSAM.

3: COAL INDIA LTD.
NETAJI SUBHASH ROAD
KOLKATA
THROUGH ITS CHAIRMAN.

4:CHIEF GENERAL MANAGER
NORTH EASTERN COALFIELDS
MARGHERITA
ASSAM- 786181.

5:THE UNION OF INDIA

REP. BY ITS SECRETARY
MINISTRY OF FINANCE
NEW DELHI

Advocate for the Petitioner : MS.B GOGOI, MR.A J HAZARIKA,MRS.B GOYAL

Advocate for the Respondent : MR.A M DUTTA, MR. C.K.S. BARUAH, SC, C.G.C.,SC, COAL
INDIA ,MR.M Z AHMED

Linked Case : WP(C)/6151/2013

VIRTIGO IMPEX PVT. LTD.
A COMPANY REGD. UNDER THE COMPANIES ACT
1956 AND HAVING ITS REGD. OFFICE AT PUNJABI BAGH
NEW DELHI
IS REPRESENTED BY AUTHORISED REPRESENTATIVE R.K. BANSAL

VERSUS

THE NORTH EASTERN COALFIELDS LIMITED and 3 ORS
THROUGH ITS CHAIRMAN CUM MANAGING DIRECTOR
NORTH EASTERN COALFIELDS LTD.
NORTH EASTERN COALFIELDS LTD.
CHRISTIAN BASTI
G.S. ROAD
GUWAHATI
DIST- KAMRUP METRO
ASSAM

2:THE GENERAL MANAGER SandM
NORTH EASTERN COALFIELDS LTD.
TINSUKIA
ASSAM

3:COAL INDIA LTD
NETAJI SUBHASH ROAD
KOLKATA
THROUGH ITS CHAIRMAN

4:CHIEF GENERAL MANAGER
NORTH EASTERN COALFIELDS
MARGHERITA
ASSAM
PIN-786181

Advocate for : MSQ DUTTA
Advocate for : SC
COAL INDIA appearing for THE NORTH EASTERN COALFIELDS LIMITED and 3
ORS

Linked Case : WP(C)/6129/2013

ANMOL INDIA LTD.
A COMPANY REGD. UNDER THE COMPANIES ACT
1956 AND HAVING ITS REGD. OFFICE AT BASISTHAPUR
GHY.

VERSUS

THE NORTH EASTERN COALFIELDS LIMITED and 3 ORS
THROUGH ITS CHAIRMAN CUM MANAGING DIRECTOR
NORTH EASTERN COALFIELDS LTD.
CHRISTIAN BASTI
G.S. ROAD
GUWAHATI
DIST- KAMRUP METRO
ASSAM

2:THE GENERAL MANAGER SandM

NORTH EASTERN COALFIELDS LTD.
TINSUKIA
ASSAM

3:COAL INDIA LTD.
NETAJI SUBHASH ROAD
KOLKATA
THROUGH ITS CHAIRMAN

4:CHIEF GENERAL MANAGER
NORTH EASTERN COALFIELDS
MARGHERITA
ASSAM
PIN-786181

Advocate for : MR.M K CHOUDHURY
Advocate for : appearing for THE NORTH EASTERN COALFIELDS LIMITED and
3 ORS

Linked Case : WP(C)/7062/2013

ANANT INDUSTRIAL SALES CORPORATION
A PROPRIETORAL FIRM HAVING ITS REGD. OFFICE AT SECTOR-4
BLOCK -B RAILWAY MAAL GODOWN ROAD
MANDI GOVINDGARH
PUNJAB AND IS REPRESENTED BY ITS PROPRIETOR
SRI BHARTHARI PRASHAR

VERSUS

THE NORTH EASTERN COALFIELDS LIMITED and 3 ORS.
THROUGH ITS CHAIRMAN CUM MANAGING DIRECTOR
NORTH EASTERN COALFIELDS LTD.
CHRISTIAN BASTI
G.S. ROAD
GUWAHATI
DIST- KAMRUP METRO
ASSAM

2:THE GENERAL MANAGER SandM
NORTH EASTERN COALFIELDS LTD.
TINSUKIA
ASSAM

3:COAL INDIA LTD.
NETAJI SUBHASH ROAD
KOLKATA
THROUGH ITS CHAIRMAN

4:CHIEF GENERAL MANAGER
NORTH EASTERN COALFIELDS
MARGHERITA
ASSAM
PIN-786181

Advocate for : MR.A J HAZARIKA
Advocate for : MR.M Z AHMED appearing for THE NORTH EASTERN
COALFIELDS LIMITED and 3 ORS.

Linked Case : WP(C)/6154/2013

BHEL COAL FUEL PVT. LTD.
HAVING ITS REGISTERED OFFICE AT TULSI NAGAR
HOSHIARPUR
PUNJAB AND IS REPRESENTED BY ITS AUTHORIZED REPRESENTATIVE
SRI NARESH KUMAR.

VERSUS

THE NORTH EASTERN COALFIELDS LIMITED and 3 ORS
THROUGH ITS CHAIRMAN CUM MANAGING DIRECTOR
NORTH EASTERN COALFIELDS LTD. CHRISTIAN BASTI
G S ROAD
GHY
DIST. KAMRUP M
ASSAM.

2:THE GENERAL MANAGER SandM
NORTH EASTERN COALFIELDS LTD. TINSUKIA
ASSAM.

3:COAL INDIA LTD.
NETAJI SUBHASH ROAD
KOLKATA
THROUGH ITS CHAIRMAN.

4:CHIEF GENERAL MANAGER

NORTH EASTERN COALFIELDS
MARGHERITA
ASSAM. PIN- 786181.

Advocate for : MSQ DUTTA
Advocate for : appearing for THE NORTH EASTERN COALFIELDS LIMITED and
3 ORS

Linked Case : WP(C)/6148/2013

KALYANI INDIA PVT. LTD.
HAVING ITS REGISTERED OFFICE AT RAILWAY MALL GODOWN ROAD
P.O.- MANDI GOBINDGARH
FATEHGARH SAHIB
PUNJAB AND IS REP. BY ITS DIRECTOR
SRI NARESH KUMAR.

VERSUS

THE NORTH EASTERN COALFIELDS LIMITED and 3 ORS
THROUGH ITS CHAIRMAN CUM MANAGING DIRECTOR
NORTH EASTERN COALFIELDS LTD.
CHRISTIAN BASTI
G.S. ROAD
GUWAHATI
DIST.- KAMRUP M
ASSAM.

2:THE GENERAL MANAGER S and M
NORTH EASTERN COALFIELDS LTD.
TINSUKIA
ASSAM.

3:COAL INDIA LTD.
NETAJI SUBHASH ROAD
KOLKATA
THROUGH ITS CHAIRMAN.

4:CHIEF GENERAL MANAGER
NORTH EASTERN COALFIELDS
MARGHERITA
ASSAM- 786181.

Advocate for : MS.B GOGOI

Advocate for : SC

COAL INDIA appearing for THE NORTH EASTERN COALFIELDS LIMITED and
3 ORS

Linked Case : WP(C)/6155/2013

M/S SHRI SHIV SHAKTI COAL TRADERS
A PROPRIETORAL FIRM
HAVING ONE OF ITS OFFICE AT N.H. 37
BELTOLA

GUWAHATI
AND IS REPRESENTED BY ITS AUTHORIZED REPRESENTATIVE SRI
SUDHIR KUMAR MANDAL

VERSUS

THE NORTH EASTERN COALFIELDS LIMITED and 3 ORS
THROUGH ITS CHAIRMAN CUM MANAGING DIRECTOR
NORTH EASTERN COALFIELDS LTD. CHRISTIAN BASTI
G.S. ROAD
GUWAHATI
DIST- KAMRUP
ASSAM

2:THE GENERAL MANAGER SandM
NORTH EASTERN COALFIELDS LTD.
TINSUKIA
ASSAM

3:COAL INDIA LTD
NETAJI SUBHASH ROAD
KOLKATA
THROUGH ITS CHAIRMAN

4:CHIEF GENERAL MANAGER
NORTH EASTERN COALFIELDS
MARGHERITA
ASSAM
PIN-786181

Advocate for : MSQ DUTTA
Advocate for : MR.M Z AHMED appearing for THE NORTH EASTERN
COALFIELDS LIMITED and 3 ORS

Linked Case : WP(C)/6150/2013

M/S PANKAJ COAL ENTERPRISES
HAVING ITS OFFICE AT R.K. MISSION ROAD
TINSUKIA AND IS REP. BY ITS AUTHORIZED REPRESENTATIVE SRI AJAY
CHETRI.

VERSUS

THE NORTH EASTERN COALFIELDS LIMITED and 2 ORS

THROUGH ITS CHAIRMAN CUM MANAGING DIRECTOR
NORTH EASTERN COALFIELDS LTD.
CHRISTIAN BASTI
G.S. ROAD
GUWAHATI
DIST.- KAMRUP M
ASSAM.

2:THE GENERAL MANAGER S and M
NORTH EASTERN COALFIELDS LTD.
TINSUKIA
ASSAM.

3:COAL INDIA LTD.
NETAJI SUBHASH ROAD
KOLKATA
THROUGH ITS CHAIRMAN.

4:CHEIF GENERAL MANAGER
NORTH EASTERN COALFIELDS
MARGHERITA
ASSAM- 786181.

Advocate for : MS.B GOGOI
Advocate for : appearing for THE NORTH EASTERN COALFIELDS LIMITED and
2 ORS

Linked Case : WP(C)/6443/2013

M/S SOOD COAL TRADERS and 3 ORS.
A PROPRIETORAL FIRM HAVING ITS OFFICE
AMONGST OTHERS AT GURUDWARA ROAD
TOWNSHIP
RAJPURA
PUNJAB

2: M/S PUNJAB COAL SALES
A PROPRIETORAL FIRM HAVING ITS OFFICE
AMONST OTHERS AT GURUDWARA ROAD
TOWNSHIP
RAJPURA
PUNJAB

3: M/S HARI KRISHAN and SONS
A PROPRIETORAL FIRM HAVING ITS OFFICE
AMONST OTHERS AT GURUDWARA ROAD

TOWNSHIP
RAJPURA
PUNJAB

4: M/S VINOD COAL TRADERS
A PROPRIETORAL FIRM HAVING ITS OFFICE
AMONST OTHERS AT GURUDWARA ROAD
TOWNSHIP
RAJPURA
PUNJAB

ALL THE PETITIONERS ARE REPRESENTED BY THEIR AUTHORIZED
REPRESENTATIVE SRI SANJEEV KUMAR SOOD
VERSUS

THE NORTH EASTERN COALFIELDS LIMITED and 3 ORS.
THROUGH ITS CHAIRMAN CUM MANAGING DIRECTOR
NORTH EASTERN COALFIELDS LTD. CHRISTIAN BASTI
G.S. RAOD
GUWAHATI
DIST- KAMRUP METRO
ASSAM

2:THE GENERAL MANAGER SandM
NORTH EASTERN COALFIELDS LTD.
TINSUKIA
ASSAM

3:COAL INDIA LTD.
NETAJI SUBHASH ROAD
KOLKATA
THROUGH ITS CHAIRMAN

4:CHIEF GENERAL MANAGER
NORTH EASTERN COALFIELDS
MARGHERIATA
ASSAM
PIN-786181

Advocate for : MSQ DUTTA

Advocate for : SC

COAL INDIA appearing for THE NORTH EASTERN COALFIELDS LIMITED and
3 ORS.

Linked Case : WP(C)/6147/2013

M.K. SHAH EXPORTS LTD

A COMPANY REGD. UNDER THE COMPANIES ACT
1956
HAVING ITS REGD. OFFICE AT M.K. HOUSE
2/2 JUSTICE DWARKANATH ROAD
KOLKATA AND IS REPRESENTED BY ITS AUTHORIZED SIGNATORY
SRI SANJIT CHALIHA

VERSUS

THE NORTH EASTERN COALFIELDS LIMITED and 3 ORS
THROUGH ITS CHAIRMAN CUM MANAGING DIRECTOR
NORTH EASTERN COALFIELDS LTD.
CHRISTIAN BASTI
G.S. ROAD
GUWAHATI
DIST- KAMRUP
ASSAM

2:THE GENERAL MANAGER Sand M
NORTH EASTERN COALFIELDS LTD.
TINSUKIA
ASSAM

3:COAL INDIA LTD.
NETAJI SUBHASH ROAD
KOLKATA
THROUGH ITS CHAIRMAN

4:CHIEF GENERAL MANAGER
NORTH EASTERN COALFIELDS
MARGHERITA
ASSAM
PIN-786181

Advocate for : MR.A J HAZARIKA
Advocate for : SC
COAL INDIA appearing for THE NORTH EASTERN COALFIELDS LIMITED and
3 ORS

Linked Case : WP(C)/639/2014

M/S BANUR CEMENT STORE
A PROPRIETORAL FIRM HAVING ITS OFFICE AT FAUJI COLONY
BANUR
TEHSIL - RAJPURA

PATIALA
PUNJAB AND IS REP. BY ITS AUTHORIZED REPRESENTATIVE
SRI NAVEEN MITTAL.

VERSUS

THE NORTH EASTERN COALFIELDS LIMITED and 3 ORS.
THROUGH ITS CHAIRMAN CUM MANAING DIRECTOR
NORTH EASTERN COALFIELDS LTD.
CHRISTIAN BASTI
G.S. ROAD
GUWAHATI
DIST.- KAMRUP M
ASSAM.

2:THE GENERAL MANAGER S andM
NORTH EASTERN COALFIELDS LTD.
TINSUKIA
ASSAM.

3:COAL INDIA LTD.
NETAJI SUBHASH ROAD
KOLKATA
THROUGH ITS CHAIRMAN.

4:CHIEF GENERAL MANAGER
NORTH EASTERN COALFIELDS
MARGHERITA
ASSAM- 786181.

Advocates for the petitioners: Ms. BS Goyal

Mr. AJ Hazarika

MSQ Dutta

Ms. B Gogoi

Ms. B Chauhan

Advocates for the respondents : Mr. MZ Ahmed

Senior Advocate

Mr. AM Dutta
Ms. B Dutta
Mr. CKS Baruah
Central Govt. Counsel

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date : 05-11-2024

JUDGMENT & ORDER(ORAL)

Heard Ms. B S Goyal, the learned counsel appearing on behalf of the writ petitioners in the batch of writ petitions. Also heard Mr. MZ Ahmed, the learned senior counsel assisted by Mr. AM Dutta, the learned counsel appearing on behalf of the Coal India Ltd., (for short, the CIL) as well as Mr. CKS Baruah, the learned Central Government Counsel appearing on behalf of the Union of India.

2. The present batch of writ petitions have been filed assailing the actions on the part of the respondent CIL in issuance of respective debit notes and thereby demanding the petitioners in the batch of writ petitions to pay amounts on account of arrears of central excise duty and corresponding VAT/CST from 01.03.2011 to 28.02.2013 against the coal purchase from the CIL by the petitioners during the said period.

3. The case of the petitioners herein is that the petitioners in terms with the Spot E-Auction Scheme 2007 had purchased coal by making due payment of the bid price, statutory levies, surface transport charges, sizing/beneficent charges,

taxes, cess, royalty etc., at the time of delivery of the coal during the period from 01.03.2011 to 28.02.2013. However, some time in the month of April 2013 onwards, the petitioners in the batch of writ petitions were issued debit notes respectively asking the petitioners to make payments on account of the arrear of central excise duty and corresponding VAT/CST for the period from 01.03.2011 to 28.02.2013.

4. Ms. BS Goyal, the learned counsel appearing on behalf of the petitioners submitted that the said demand so sought to be made is without any basis and vague material particulars had been arbitrarily imposed upon the petitioners. She further submits upon perusal of the debit notes as well as the enclosures thereto would show that the respondent CIL at their whims and fancies made those calculations in respect to the period of sales. The learned counsel submitted that by issuance of the debit notes, the respondent CIL are trying to make recovery through other extra judicial means. Elaborating, the learned counsel submitted that the petitioners, who are in the business of purchase from the respondent CIL and thereafter selling it is trying to appropriate their demands through appropriation from other transactions.

5. On the other hand, Mr. MZ Ahmed, the learned senior counsel appearing on behalf of the CIL submitted that the CIL came within the purview of the Central Excise Act, 1944 (for short, 'the Act of 1944') w.e.f. 01.03.2011. Earlier to that, there was no central excise duty on coal. He further submitted that at the time of filing of the returns under the Act of 1944, the Central Excise Department did not agree to the interpretation of the CIL that the royalty and stowing excise duty would not come within the purview of the transaction value and, as such,

imposed the additional amount upon the CIL in view of the increase in the transaction value on account of inclusion of the stowing excise duty as well as the royalty. This increase in the central excise duty which the CIL had to pay is sought to be recovered by way of issuance of these debit notes.

6. This Court had duly heard the learned counsels appearing on behalf of the parties and have given an anxious consideration to the submissions made.

7. The petitioners in the instant batch of writ petitions have assailed the actions of the respondent CIL on the ground that they have resorted to an illegal and arbitrary means to recover certain amounts not only without providing details, but also by appropriating from other transactions carried out between the CIL and the petitioners. Be that as it may, one aspect is very clear that the petitioners herein have not assailed as to whether the stowing excise duty as well as the royalty would form a part of the transaction value on which the central excise duty is liable to be paid. Under such circumstances, what transpires from the materials on record, as well as the submissions so made by the learned counsels appearing on behalf of the parties is that the CIL is trying to recover certain amounts from the petitioners by issuance of these debit notes along with the enclosures. It further appears from the enclosures to the debit notes issued to the petitioners that the same are vague and lacks material particulars as regards how the said demanded amount is arrived at against the various transactions carried out during the period from 01.03.2011 to 28.02.2013.

8. Be that as it may, it is relevant to take note of the submissions of the learned counsel for the petitioners wherein it was emphasized that basing upon the debit notes and the enclosures, the respondent CIL is trying to recover from other transactions carried out by the petitioners with the CIL. This Court is of the opinion that the issuance of the debit notes along with the enclosures can at best be construed to be demands made by the CIL upon the petitioners. If such demands are rejected and the petitioners refuse to pay, the same would result in a dispute between the respondent CIL and the petitioners. Clause 11.12 of the Spot E-Auction Scheme 2007 categorically mandates that if disputes arise, the same is to be resolved by way of Arbitration as per the provisions of the Act of 1996. Additionally, nothing could be shown by the Senior Counsel appearing for the CIL that in respect to some other sale transactions, amounts can be appropriated or forfeited from some other transaction. In fact, Clause 11.11 of the Spot E-Auction Scheme 2007 would show that sale under each e-auctions shall be individual, independent, unique and complete transaction.

9. Accordingly, this Court is of the opinion that by issuance of a debit note, the CIL cannot recover such amounts from other transactions. However, in terms with Clause 11.12 of the Spot E-Auction Scheme 2007, it is the opinion of this Court that if the CIL wants to recover such amounts, the said amounts can be recovered by the process mandated in the said Scheme i.e. by way of Arbitration. Accordingly, the instant batch of writ petitions stand disposed of with the following observations and direction(s):

(i). The petitioners herein have not assailed as to whether the stowing excise duty as well as the royalty would form a part of the transaction value

for levying central excise duty.

(ii). The debit notes which have been issued and the enclosures therewith would merely be demands made for realization of amounts. If the petitioners disputes the said demands, it would result in respective dispute, coming within the ambit of Clause 11.12 of the Spot E-Auction Scheme 2007, and, such disputes can be only resolved by way of Arbitration.

(iii). The CIL is given the liberty to initiate proceedings for recovery, if they wish to recover such amounts by following the due procedure i.e. by way of Arbitration in terms with Clause 11.12 of the Spot E-Auction Scheme 2007.

(iv). This Court had also taken note of that the demands so made vide impugned debit notes were sub-judice before this Court. Accordingly, the period from the date of filing of the writ petition by each of the petitioners till date be excluded while computing the period of limitation.

10. With the above, the instant batch of writ petitions stand disposed of.

JUDGE

Comparing Assistant