CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL PRINCIPAL BENCH, NEW DELHI.

COURT NO. II

Excise Appeal No.51255 OF 2019

[Arising out of Order-in-Original No.JOD-EXCUS-000-COM-0014-18-19 dated 26.02.2019 passed by the Commissioner, Central Goods & Service Tax and Central Excise, Jodhpur]

M/s. J.K. Lakshmi Cement Ltd. **Appellant**
Jaykaypuram, Distt.-Sirohi,
Rajasthan.

VERSUS

Commissioner of Central Excise & Central Goods & Service Tax, **Respondent**
Jodhpur.

WITH

Excise Appeal No.52536 of 2019 & Excise Cross Objection No.51330 of 2019

(on behalf of the assessee**)**

[Arising out of Order-in-Appeal No.710(CRM)CE/JDR/2019 dated 26.07.2019 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur]

Commissioner of Central Excise & Central Goods & Service Tax, **Appellant**
Jodhpur.

VERSUS

M/s. J.K. Lakshmi Cement Ltd. **Respondent/Cross Objection**
Jaykaypuram, Distt.-Sirohi,
Rajasthan.

APPEARANCE:

Shri A.K. Prasad, Advocate for the assessee.
Shri Sanjay Kumar Singh, Authorised Representative for the Department.

CORAM:

HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NOS.50961-50962/2022

DATE OF HEARING:05.04.2022
DATE OF DECISION:07.10.2022

ANIL CHOUDHARY:

The issue involved in these appeals including the cross objections filed by the assessee is whether the appellant /assesses have rightly taken cenvat credit of 'Clean Energy Cess', which was levied under Section 83 of Finance Act, 2010 read with Notification No.2/2010-CEC dated 22.06.2010 read with Clean Energy Cess Rules, 2016. Further, 'Clean Energy Cess' was discontinued and a new Cess in the name of 'Clean Environment Cess' was introduced w.e.f. 14.05.2016 vide Section 235 of Finance Act of 2016.

2. The brief facts are that M/s. J.K. Lakshmi Cement Ltd. (hereinafter referred to as 'the appellants') have their cement manufacturing unit located in the district of Sirohi, Rajasthan. Furnace (Kiln) is used in the manufacturing process. For heating the furnace, the appellants use imported coal.

3. For the first time in the year 2010, vide Section 83 of the Finance Act, 2010, a Cess, called the 'Clean Energy Cess', was imposed on goods produced in India and specified in the Tenth Schedule of the Finance Act, 2010.Coal was one of the items specified in the Tenth Schedule.

4. At the time import of coal during the disputed period, the appellants paid /bore the 'Clean Energy Cess' as additional duty of customs in terms of Section 3 of the Customs Tariff Act, 1975.

5. The appellants were bonafidely of the view that they were eligible for and accordingly, took Cenvat Credit on the said amount of Clean Energy Cess.

6. The Department, however, was of the view that under the Cenvat Credit Rules, 2004, credit could be availed only in respect of those Duties, Taxes or Cesses as were specified in Rule 3 (1) of the Cenvat Credit Rules, 2004. Since Clean Energy Cess was not specified in the Rules, the Department was of the view that the Cenvat Credit was not available.

7. Accordingly, the show cause notice dated 05.04.2018 was issued seeking reversal/recovery of Rs.2,92,98,910/- taken as Cenvat Credit in respect of Clean Energy Cess during the period April, 2016 to June, 2017. Penal provisions were also invoked under Rule 15(1) of the CEnvat Credit Rules, 2004, read with Section 11 AC (1)(a) of the Central Excise Act, 1944.

8. In the reply to the show cause notice, the appellants raised a number of issues including the fact that the dispute related to imported coal only and not for domestically procured coal. The appellant had also relied on the rulings in the case of **M/s.TVS Motor Co. Ltd. Vs. Union of India & Others -2015-TIOL-1478-HC-KAR-CX, CCE, Belgau Vs. M/s. Shree Renuka Sugars Ltd. – 2014 –TIOL-98-HC-KAR-CX.**

9. Ld. Commissioner distinguishing the judgments relied upon by the assessee confirmed the disallowance of cenvat credit of 'Clean Energy Cess' holding that there is no provisions for taking credit of CEC under Rule 3(1) of Cenvat Credit Rules. Further, penalty of Rs.29 lakhs was imposed under Rule 15(1) of Cenvat Credit Rules.

10. Being aggrieved, both the appellant and Revenue are in cross appeals.

11. A Miscellaneous Application was subsequently filed by the appellants to include additional grounds in the Appeal already filed. This application was allowed by the Tribunal vide Miscellaneous Order No.50027/2022 dated 01.02.2022.

12. The appellant /assessee urges the following grounds:-

(i) In the show cause notice dated 05.04.2018 cenvat credit in respect of Clean Energy Cess was proposed to be denied in respect of 9 bills of entry (covering 29 credit entries in RG-23 Part II). In fact the Annexure-A to the show cause notice itself reveals that all the Clean Energy Cess credit taken by the appellants was in respect of imported coal, as details of all the 9 Bills of Entry have been mentioned therein. In the reply dated 24.04.2018 to the show cause notice, it was clearly pointed out that the Clean Energy Cess had been paid/borne by the appellants in respect of imported coal only. In other words, the proposal in the show cause notice was to deny cenvat credit in respect of Clean Energy Cess paid on imported coal. However, the Adjudicating Authority, in para 19 of the impugned order, has confirmed the demand on the ground that the appellants had availed cenvat credit in respect of Clean Energy Cess paid on domestically manufactured coal. The Cenvat Credit of duty paid on domestically manufactured goods and on imported goods, are covered by different clauses of Rule 3(1) of the Cenvat Credit Rules, 2004. The Commissioner has, therefore, gone beyond the show cause notice, which is not permissible.

(ii) As per Section 83(3) of the Finance Act, 2010 (the charging section) the Clean Energy Cess was to be collected as 'duty of excise'. In the instant case, the Clean Energy Cess had been paid as additional duty of Customs under Section 3(1) of the Customs Tarrif Act, 1975. This section requires that every imported article should be subjected to an additional duty of Customs equal to the excise duty for the time being leviable on like artiles if produced or manufactured in India. This additional duty of Customs was, therefore, available as Cenvat Credit as per Rule 3(vii) of the Cenvat Credit Rules, 2004. Hence, there was no infirmity in the appellants taking Cenvat Credit in respect of Clean Energy Cess paid by the appellants in the form of additional duty of customs on the imported coal.

(iii) A similar matter had come up before the Hon'ble Karnataka High Court in connection with availment of Cenvat Credit in respect of Sugar Cess levied as duty of excise under the Sugar Cess Act of 1982. In the case of **CC Belgaun Vs. Shree Renuka Sugar Ltd. – 2014 (302) ELT 33 (Kar.),** the Karnataka High Court has held that Sugar Cess paid on imported sugar would be available as Cenvat Credit under the Cenvat Credit Rules, 2004.

(iv) In the case of **Ramco Cements Limited [2018(362) ELT 841 (T-Bang.)],** which was specifically related to Clean Energy Cess paid on imported coal, it was held that Cenvat Credit would be available under Rule 3(1) of the Cenvat Credit Rules, 2004.

(v) The show cause notice proposed to disallow Cenvat Credit on Clean Energy Cess on the imported coal on the following grounds, namely :-

(a) that Clean Energy Cess is not one of the duties or cesses specified in Rule 3(1) of the Cenvat Credit Rules, 2004;

(b) that utilization of credit of any duty or cess availed under the Cenvat Credit Rules, 2004, is not allowed for payment of Clean energy Cess, as per proviso six to Rule 3 (4) of the Cenvat Credit Rules, 2004; and

(c) that the decision of the High Court of Karnataka in the case of **CCE, Belgaum Vs. Shree Renuka Sugar Limited reported in 2014 (302) ELT 33 (Karnataka)** is not relevant as it relates to Sugar Cess and also that the Department has not accepted the judgement and an SLP has been filed before the Supreme Court.

(vi) The Adjudication order, however, has gone beyond the show cause notice and confirmed the demand on the additional ground, that all the provisions of Central Excise Act, particularly Section 37, under which the Cenvat Credit Rules, 2004 have been issued, have not been made applicable to Clean Energy Cess, as evident from Notification No.2/2010-Clean Energy Cess dated 22.06.2010. In this case also since the Commissioner has gone beyond the show cause notice, his adjudication order cannot be sustained.

(vii) Assuming that Section 37 of the Central Excise Act, 1944, have not been made applicable to Clean Energy Cess, it implies that Cenvat Credit Rules, 2004, which have been issued under the said Section 37 of the Central Excise Act, 1944, will also not apply to matters relating to Clean Energy Cess. In this context attention is invited para 7 of the show cause notice wherein the cenvat credit of Clean Energy Cess amounting to Rs.2,92,98,910/- has been proposed to be disallowed and

recovered under Rule 14 of the Cenvat Credit Rules, 2004. Interest has been proposed to be recovered under Rule 14 (1)(ii) of the Cenvat Credit Rules, 2004 and penalty has been proposed under Rule 15(1) of the Cevat Credit Rules, 2004. Thus, if Cenvat Credit Rules, 2004, are not applicable in respect of matters relating to Clean Energy Cess, the show cause notice itself is without basis as it invoked the very Cenvat Credit Rules, 2004, which the Department claims do not apply to Clean Energy Cess.

(viii) If Cenvat Credit Rules, 2004 do not apply to Clean Energy Cess, recovery of irregularly availed and /or utilized credit of Clean Energy Cess cannot also be made under the Cenvat Credit Rules, 2004. There is no other machinery provision under Central Excise Law for recovery of irregularly availed and/or utilized credit of Clean Energy Cess. Due to lack of machinery provisions the instant demand cannot sustain.

(ix) The demand in this case is in respect of Clean Energy Cess. However, as per Section 235 of the Finance Act, 2016 (effective from 14.05.2016) Clean Energy Cess no longer exists and has been substituted /replaced by 'Clean Environment Cess'. The Cess paid on the Bills of Entry from 14.05.2016 was Clean Environment Cess and not Clean Energy Cess. Hence, demanding reversal of Cenvat Credit in respect of Clean Energy Cess which was not paid from 14.05.2016 onwards is in any case not legally correct. Thus, the Commissioner's order directing recovery of Cenvat credit in respect of Cess for the whole period has gone beyond the show cause notice since the show cause notice refers to Clean Energy Cess only.

(x) In view of the above, not only is there no question of denying the Cenvat Credit but also there is no case for attributing any malafides to the appellant so as to invoke the penal provisions.

13. Opposing the appeals in support of the Revenue, ld. Authorised Representative makes the following submissions relying on the impugned order:-

(i) The eligibility of the appellant to avail Cenvat Credit is entirely based on the provisions of Rule 3 of the Cenvat Credit Rules, 2004, which specifies the duties/Tax/Cess , for which Cenvat Credit can be availed.

(ii) The logic of denying the Cenvat Credit for the Clean Energy Cess is based on, not being specified in Rule 3(1) of the said Rules.

(iii) That the goods are imported or domestically manufactured, has no bearing on the denial of the Cenvat Credit. Moreover, if the imported goods are differentiated from the domestically produced goods, the very principle of 'polluter pays' will become redundant and run against the intentions of the legislation.

(iv) The logic of the denial is also that Rules under the Central Excise Act including CCR, 2004 or Section 37 under which they are framed are not made applicable to Clean Energy Cess under the Finance Act, 2010.

(v) In the light of above submissions, the Respondent humbly prays that the Order-in-Original No.JOD-ECCUS-000-COM-0014-18-19 dated 26.02.2019 may kindly be upheld.

Further, relies on the rulings in the following cases:-

i) **ACC Limited Vs. Commissioner of CGST & Central Excise – 2019 (31) GSTL 103 (Tribunal-Delhi)**

ii) **Deccan Cement Ltd. Vs. Commissioner of Central Tax, Rangareddy [2020 (371) ELT 7959 (T-Hyd.)]**

14. Similarly for the precedent period, July, 2015 to March, 2016, show cause notice dated 29.07.2016 was issued proposing to disallow and recover the amount of cenvat credit of Rs.1,05,72,994/-. Vide order-in-original dated 2.3.2019, the proposed disallowance of cenvat credit was confirmed with respect to Clean Energy Cess along with interest and further penalty of Rs.10 lakh was imposed under Rule 15(1) of the Cenvat Credit Rules, 2004 read with Section 11 AC (1)(a) of the Central Excise Act.

15. Being aggrieved, the assessee appealed before the Commissioner (Appeals), who vide impugned order dated 26.07.2019, was pleased to allow the appeal of the assessee relying on the ruling of the Hon'ble Karnataka High Court in the case of **CCE, Bangalore Vs. Renuka Sugars and** also the ruling of the Single Member Bench of this Tribunal in the case of **Ramco Cement Ltd – 2018 (362) ELT 841 (T-Bang).**

16. Being aggrieved against the order-in-appeal dated 26.07.2019, Revenue filed appeal No.E/52536/2019. The appellant had filed cross objection no.51330 of 2019.

17. The grounds of appeal of Revenue are more or less on the aforementioned lines as defence taken by Revenue in the appeal by the

appellant /assessee. It is urged that Revenue had filed appeal before the Hon'ble Supreme Court, which has been admitted in the matter of **Renuka Sugar Ltd.** Evidently, the CEC has been imposed on coal/peat, which is a kind of carbon tax in order to finance and promote clean environment initiatives. The Clean Energy Cess, Assessment procedure has been notified by the Government being Clean Energy Cess Rules, 2009 vide notification no.6/2010 dated 22.02.2010. Rule 4 provides - every producer shall pay the cess leviable on the removal of the specified goods in the manner provided in Rule 6. Specified goods have been defined as raw coal, peat and lignite. 'Removal' has been defined as despatch of specified goods from mines and shall include such goods for captive consumption within that mine for any purpose, other than for raising of such goods. Further Rule 6 (6) provides that provision of Section 11 of the Central Excise Act shall be applicable for recovery of the cess as assessed under Rule 5 along with interest in the same manner as is applicable for recovery of the sum payable to the Central Government.

18. Further Explanation to Rule 6 (6) provides that the cess liability shall be deemed to be discharged only if the amount payable is credited to the account of the Central Government by the specified date. Further Rule 10 provides for cess to be shown separately by the producer in the bill or invoice. Evidently, Clean Energy Cess is not applicable on the clearance of the finished products of the appellant, which are cement and clinker. The cenvat credit of Clean Energy Cess has been consciously avoided by the Statute by not providing credit of the same under Rule 3 (1) of CCR. Further, Rule 3(4) of CCR read with proviso specifically provides that cenvat credit of any duty shall not be utilized

for payment of Clean Energy Cess. Thus, the Commissioner (Appeals) have erred in holding that the cenvat credit on Clean Energy Cess is available to the assessee.

19. It is further urged by Revenue that vide Section 3(4) of the Sugar Cess Act, 1982, the provisions of Central Excise Act, 1944 and the rules made hereunder including those relating to the refund and exemption from duty, have been made applicable to the levy and collection of sugar cess. Whereas in the case of Clean Energy Cess vide notification No.2/2010, only few sections of Central Excise Act have been made applicable relating to procedure of assessment, recovery, offences and prosecutions, penalty, appeals. Reliance is placed on the Division Bench ruling of this Tribunal in the case of **Deccan Cements Ltd. Vs. CCT, Rangareddy – 2020 (371) ELT 795 (T-Hyd.),** wherein under similar facts and circumstances, it has been held that cenvat credit of Clean Energy Cess is not available to the assessee.

20. Opposing the appeal of the Revenue, Shri Ajay Prasad, Counsel for the assessee urged that Clean Energy Cess is levied and collected as duty of excise and hence, covered under the purview of Rule 3 of Cenvat Credit Rules. Section 83 (3) of the Finance Act, 2010 stipulates that Clean Energy Cess shall be levied and collected as duty of excise on the goods produced and consumed in India for the purpose of financing and promoting Clean Energy initiatives.

21. Sub-section (7) of Section 83 provides that the Central Government, by notification in the Official Gazette declares that any provision of Central Excise Act relating to levy and exemption from duty of excise, refund, offences and prosecution, etc. with such

modifications and alternations, as it may consider necessary, be applicable in respect of Clean Energy Cess.

22. Sub section (4) of Section 83 provides that the Clean Energy Cess shall first be credited to the consolidated fund of India and the Government, after due appropriation made by Parliament in this behalf, utilized the fund for the specified purpose.

23. Further, vide notification No.1/2015-CEC dated 1.3.2015 exemption has been granted from Clean Energy Cess by the Central Government.

24. There is no denying that Clean Energy Cess was levied as duty of excise. Thus, without authority of the Central Excise Act, levy cannot be enforced. It is further urged that –

(a) That the stipulated Clean Energy Cess is being levied and collected as duty of excise.

(b) That the said levy was on the stipulated goods specified in First Schedule to the Central Excise Tariff Act, 1985 and produced in India.

(c) That goods subjected to the stipulated levy referred to in the Tenth Schedule to the Act of 2010 were specified with reference to their classification in the First Schedule to the Central Excise Tariff Act, 1985.

(d) That the "Notes" appended with the said Tenth Schedule very categorically directs the usage/invocation/application of the rules of interpretation envisaged in the First Schedule of the Cental Excise Tariff Act, 1985 for the purpose of interpretation of Section and Chapter Notes pertaining to said Tenth Schedule.

(e) That rates of 'Clean Energy Cess' initially incepted and induced vide said Tenth Schedule were simultaneously specified in the First Schedule to the Central Excise Tariff Act, 1985, vide Appendix –IIA, appended to the said First Schedule. Thus, 'Clean Energy Cess' is evidently levied and collected on the specified goods at the rates specified in the First Schedule to the Central Excise Tariff Act, 1985.

As the levy is incidental and ancillary to the event of manufacture and production in India, thus, is beneficial to levy under the Central Excise Act, 1944.

25. Further, Clean Energy Cess has been levied and collected on the goods - 'coal' imported into India as additional duty, leviable equal to the duty of excise on such goods manufactured or produced in India. Thus, Clean Energy Cess is nothing other than duty of excise. Reference is made to Section 3 of the Customs Tariff Act. It is further urged that during the course of assessment of duty on imported goods, the Revenue is collecting 'Clean Energy Cess' by virtue of Section 3 of the Customs Tariff Act, 1975, which though expressly and directly does not contemplates the levy of duty equal to 'Clean Energy Cess' for the time being leviable on a like article if produced or manufactured in India, but it directs the levy of duty equal to the duty of excise for the time being in force, which would be leviable on a like article if produced or manufactured in India. The 'Clean Energy Cess' was thus collected by Revenue on imported inputs/goods as 'Additional Duty' specified under Section 3 ibid, believing it to be the duty of excise leviable on like goods on the event of manufacture or production in India. From the very methodology adopted by the Revenue for the assessment of additional

duty on imported goods, it is evident that stipulated cess fundamentally and radically falls under the ambit of duty of excise levied under the Act of 1944, on the goods specified in the Central Excise Tariff Act, 1985.

26. Further, reliance is placed on 2 A of the Central Excise Act, which provides for, "reference to certain expression – in this Act, save as otherwise expressly provided and unless the context otherwise requires, references to the expressions "duty", "duties", "duty of excise" and "duties of excise" shall be construed to include a reference to "Central Value Added Tax (CENVAT)".

27. It is explicit from the foregoing provision that, the expression, 'duty, duties, duty of excise, and duties of excise' shall be construed to include a reference to Cenvat, i.e. Central Value Added Tax. Thus, levy of any cess whatsoever as a duty of excise is duly covered under the ambit of the Act of 1944.

28. Further, reliance is placed on the following rulings:-

(i) **In Barnagore Jute Factory Co. Vs. Inspector of Central Excise**

(ii) **In Collector of Central Excise, Patna Vs. Tata Engineering and Locomotive Co.**

(iii) **Banswara Syntex Ltd. VS. Union of India**

(iv) **CCE, Belgaun Vs. M/s. Shree Renuka Sugars Ltd.**

(v) **M/s.TVS Motors Co. Ltd. Vs. Union of India & Ors.**

29. Statutory constraint pertaining to the payment of 'Clean Energy Cess' using Cenvat credit account, cannot be extended to ascertain its

eligibility for cenvat credit on any eligible input used in the process integrated with the manufacture of final product : It is used that, Proviso to Rule 3 (4) of Cenvat Credit Rules, 2004 has no relevance whatsoever with reference to issue of availability of Cenvat Credit of the Duty of Excise suffered on eligible inputs, on account of 'Clean Energy Cess'.

30. Sub-rule (4) of Rule 3 ibid simply stipulates the conditions of utilization for payment, pertaining to the Cenvat Credit of the duties specified in sub-rule (1) of Rule 3 ibid. Merely for the reason that, Clean Energy Cess is contemplated to be paid through PLA and not through Cenvat credit account, need not necessarily and unquestionably imply that the duty incidence suffered as Clean Energy Cess is not available as Cenvat Credit for the payment of any other duty or duties leviable under the Act of 1944.

31. It is further urged that, if legislature would have *de facto* intended to curtail the cenvat benefit and not to extend the same for the incidence of the duty of excise suffered as Clean Energy Cess, it would have taken note of the same in sub-rule (1), as has been done in case of the additional duty leviable under sub-section (5) of Section 3 of the Customs Tariff Act, 1975. The credit of this very specific duty has been denied to the providers of output services by proviso to clause (viia) of sub-rule (1) of Rule 3 ibid.

32. It is equally important to note that, rule 3(4) ibid, at the very outset contemplates vide Clause (a) that, Cenvat credit may be utilized for the payment of – any duty of excise paid on final product. Thus if, this very phrase "any duty of excise paid on final product" stipulated at

clause (a) does not encompasses within, the incidence of 'Clean Energy Cess' levied and collected as 'Duty of Excise' on the episode of production and consumption in India, then there would have been utterly no requirement for the communication pertaining to exclusion of the same from the purview of sub-rule (4) by legislating the Sixth proviso expressly disallowing utilization of Cenvat Account for discharge of the liability of 'Clean Energy Cess'. Because, if 'Clean Energy Cess' does not qualified and counted under Clause (a), the contemplation for exclusion would be a futile exercise as it would then have been automatically as a matter of course fallen out of the premise of sub-rule (4). It for the reason that 'Clean Energy Cess' is the duty of excise administered and enforced under the sovereign command of the Act of 1944, the incorporation of sixth proviso was a legislative necessity for the intended exclusion of the same from purview and administration of sub-rule (4). For the similar reasons, for the exclusion of 'Clean Energy Cess' from the scope and purview of sub-Rule (1), the contemplation in respect thereof in the body, the very sub-Rule (1) was a prerequisite. There is no denying that, if legislature would have intended to exclude 'Clean Energy Cess' from scope and purview of sub-rule (1),it would have expressly done so, as it was done in the case of sub-rule (4) by making very specific contemplation by introducing a proviso to this effect. Since there is such contemplation identical to 'sixth proviso' of sub-rule (4), in the text of sub-rule (1), therefore, 'Clean Energy Cess' rationally and legitimately falls in the range of the said sub-rule (1).

33. Having considered the rival contentions, we find that the levy of Clean Energy Cess is evidently to promote and finance measures for Clean Energy initiatives by taxing coal, lignite and peat.

34. A plain reading of Rule 3 of CCR, 2004 shows that it did not provide for Cenvat credit of every duty of excise and cess but only of some, and this list does not include CEC imposed vide Finance Act, 2010. It is the case of the assessee that since CEC is also a form of excise, they are entitled to Cenvat credit even in the absence of an explicit provision under Rule 3 of CCR, 2004. It is also their assertion that following the ratio of the decision of the Hon'ble High Court of Karnataka in the case of *Shree Renuka Sugars* (supra) with respect to sugar cess, Single Member Bench of Tribunal-Bangalore in the case of *The Ramco Cements Ltd.* (supra), allowed credit of CEC. Therefore, the ratio may be followed and they may be allowed Cenvat credit. We proceed to decide this issue on merits. It is undisputed that a plain reading of Rule 3 of CCR, 2004 shows that Cenvat credit is admissible only in respect of some cesses and not in respect of all the cesses and duties of excise. The Hon'ble High Court of Karnataka gave benefit of credit of sugar cess in respect of *Shree Renuka Sugars* (supra) expanding the scope of Cenvat Credit Rules by taking a broader view and holding that sugar cess also being duty of excise, Cenvat credit may not be denied.

35. It is, however, now a well settled legal position laid down, after the aforesaid decision of Hon'ble High Court of Karnataka, that fiscal statutes must be interpreted strictly as per the letter of word and not the spirit of the law, ignoring any amount of hardship and eschewing any equity in taxation. However, in the event of ambiguity in taxation

liability, statute, the benefit should go to the assessee. From a plain reading of Rule 3 of CCR, 2004, we do not find any ambiguity. If the intention was to allow credit of all forms of duties of excise and cesses, the Rule would have said so. Instead, it only listed some forms of duties of excise, additional duties of customs and cesses on which credit will be admissible, and CEC is not one of them.

36**.** Although it is now settled that taxing statutes must be literally interpreted, we have also examined the spirit and purpose of levying the CEC. It is evident from Section 83 of Finance Act, 2010, that CEC has been levied on coal etc. to discourage use of the polluting forms of energy and encourage use of cleaner forms of energy. This is based on the principle of 'Polluter pays'. If the CEC collected by the Government is returned to the assessee through the backdoor in the form of Credit under CCR, 2004, we will be doing a great disservice to the country by replacing the principle of 'Polluter pays'. We will be encouraging use of polluting forms of energy by undoing the very purpose for which CEC has been levied.

37**.** It may be seen that the scope of this Tribunal may extend to testing the vires of rules, regulations, etc., but certainly does not extend to making the rules or modifying them. In the absence of any explicit provision to give Cenvat credit of CEC under Rule 3 of CCR, 2004, it is not for this Tribunal to enlarge its scope. To sum up :

(a) Rule 3 of CCR, 2004 does not provide for Cenvat credit of CEC.

(b) Rules under Central Excise Act including CCR, 2004 or Section 37 under which they are framed are not made applicable to CEC under the Finance Act, 2010.

(c) It is not open for this Tribunal to enlarge or modify the scope of Act or rules and they should be interpreted as they are drafted without any intendment.

(d) If Cenvat credit of CEC is allowed, it will undo the very purpose for which it is levied and vitiate 'polluter pays' principle.

(e) The ratio of the judgment of the Hon'ble High Court of Karnataka in the case of *Shree Renuka Sugars* (supra) does not apply to CEC.

38. Hence, we find that the assessees are not entitled to Cenvat credit of CEC under Rule 3 of CCR, 2004. We respectfully disagree with the Order of the Hon'ble Single Member in the case of *The Ramco Cements Ltd.* (supra) in view of the above, especially the inapplicability of Section 37 and by implication, the CCR, 2004 framed thereunder to the Clean Energy Cess.

39. Clean Energy Cess is levied as duty of excise on goods specified in Tenth Schedule. Thus, it is a cess in the nature of excise duty on the 'production' of coal and is collected at the time of removal of raw coal, raw ignite and raw peat from the mines to the factory. The intention of the levy of this cess is for the purposes of financing and promoting clean energy initiatives, fund the research in the area of clean energy or for any other purposes relating thereto.

40. We further take notice that under Clean Energy Cess Rules, the cess has to be deposited through cash /PLA and cannot be deposited through debit to cenvat credit account. Further, proviso to Rule 3(4) of Cenvat Credit Rules specifically debars the payment of Clean Energy Cess by use of cenvat credit taken under Rule 3(1) of Cenvat Credit

Rules. Thus, intent of legislature is evident that the Clean Energy Cess has been imposed for collection of cess on the polluting fossil fuels, so as to create additional funds for taking measures to reduce the carbon emissions/pollution. Thus, the intent of legislation is very clear not to allow the cenvat credit of Clean Energy Cess. This is evident as the Central Government is providing for maintaining separate accounts of Clean Energy Cess, to be utilized for specific purposes upon sanction by the Parliament.

41. In view of our findings and observations, we reject the appeal of the assessee and allow the appeal of the Revenue. Cross objections are also dismissed.

[Order pronounced on 07.10.2022.].

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Ckp