


**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Miscellaneous Appeal No. 1870/2024

Rajasthan Rajya Vidyut Utpadan Nigam Limited, Having Its Registered Office At Vidyut Bhawan, Janpath, Jyoti Nagar, Jaipur-302005, Rajasthan, Through Its Authorized Signatory.

----Appellant

Versus

Parsa Kente Collieries Limited, Through Authorised Person Registered Office At S-20, Second Floor, Mahima Trinitiy, Plot No. 05, Swej Farm, New Sanganer Road, Sodala, Jaipur-302019, Rajasthan.

----Respondent

For Appellant(s)	:	Mr. R.K. Agarwal, Sr. Adv. with Mr. Adhiraj Modi
For Respondent(s)	:	Mr. Sudhir Gupta, Sr. Adv. with Mr. Anuroop Singhi Mr. Nilava Bandophadya Mr. Adhip Ray Ms. Shweta Chauhan Mr. Bhavya Kala Mr. Rachit Somani

**HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MR. JUSTICE BHUWAN GOYAL**

Judgment reserved on : **15/05/2025**

Judgment pronounced on : **23rd/05/2025**

AVNEESH JHINGAN, J:

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'Act of 1996') is filed aggrieved of dismissal of objections vide order dated 09.02.2024.

Facts

2. The appellant is Rajasthan Rajya Vidyut Utpadan Nigam Limited (hereinafter referred to as 'Nigam'). The respondent is Parsa Kente Collieries Limited (hereinafter referred to as

'company'), a joint venture company incorporated by Adani Enterprises Limited (for short 'AEL') and the Nigam.

3. The facts relevant to adjudicate the controversy in the present appeal are that the Nigam was allotted Coal Blocks by Government of India. The Nigam invited tenders to enter into joint venture ('JV') arrangement for development and operation of coal blocks, transportation and delivery of coal to the thermal power stations of the Nigam. AEL was the successful bidder, Letter of Intent dated 23.10.2006 was issued by the Nigam. An agreement dated 03.08.2007 was executed between the Nigam and AEL. The company was incorporated on 16.10.2007, AEL and Nigam have 74% and 26% stake respectively. On 16.07.2008, the Nigam and the company entered into Coal Mining & Development Agreement (for short 'CMDA') for the period of thirty years.

3.1 The allotment of coal blocks were cancelled in view of the Supreme Court directions vide orders dated 25.08.2014 & 24.09.2014. On re-allotment of the Coal Blocks to the Nigam, the company was asked to continue with the CMDA. The supplementary agreement dated 29.07.2016 was executed between the parties for continuity of operations in terms of the CMDA.

3.2 By the Finance Act, 2010 (for short 'Act of 2010'), Clean Energy Cess (CEC) was levied on the goods mentioned in the tenth schedule in which coal was mentioned. The cess was a duty of excise on the goods specified in tenth schedule. The cess was for the purpose of financing, promoting clean energy initiatives and funding research in that area.

3.3 The Nigam as per CMDA was paying the CEC. In the year 2017, the Goods & Services Tax Acts (for short 'GST') were implemented. The Goods & Services Tax (Compensation to States) Act, 2017 (for short 'Act of 2017') was enacted to compensate the State for loss of revenue arising due to implementation of GST. The CEC imposed by the Finance Act, 2010 was repealed by Taxation Amendment Act No.18 of 2017.

3.4. The dispute arose between the parties with regard to reimbursement of cess paid under Act of 2017 (hereinafter referred to as 'compensation cess').

3.5 The CMDA provided for dispute resolution through arbitration. The proceedings of arbitration culminated in interim award dated 23.06.2021 and final award dated 14.08.2021. The claim of the company that Nigam is liable to reimburse compensation cess on entire coal mined was allowed. By issuing injunction, Nigam was restrained from recovering the reimbursed compensation cess. The company was held entitled to interest on the amount awarded. The objections filed by the Nigam u/s 34 of Act of 1996 were rejected on 09.02.2024. The commercial court (for brevity 'court') held that the view taken by the arbitrator is plausible one. Hence, the present appeal.

Contention of Appellant:-

4. Learned senior counsel appearing on behalf of the appellant submits that impost under Act of 2010 and Act of 2017 is different. The Nigam is not liable to pay compensation cess on Coal Washery Rejects (hereinafter referred to as 'rejects'). It is argued that reliance on the fact that the Nigam was paying CEC cannot form basis to hold it liable to pay compensation cess. The

contention is that definition of reimbursable shall cover only the taxes which the Nigam is liable to pay under the taxing statute.

4.1 The argument is that the arbitrator has gone beyond the terms & conditions of the contract, the view is not plausible one and award is patently illegal.

4.2 As per the counsel for the Nigam, the arbitrator had to restrict to the definitions given in CMDA and can not go beyond it. Reliance in this regard is placed upon decision of Supreme Court in ***United India Insurance Co. Ltd. vs. Harchand Rai Chandan Lal*** reported in **(2004) 8 SCC 644**.

4.3 It is argued that clause 3.2.3 of CMDA is a specific provision whereby liability to pay sales tax on rejects is of the company and the general provision of clause 5.1.2(b) dealing with the reimbursable cannot be relied upon to hold that Nigam is liable to reimburse compensation cess. Reliance is placed upon decision of the Supreme Court in ***CIT vs. Yokogawa India Ltd.*** reported in **(2017) 2 SCC 1** to fortify the argument that specific provision shall prevail over general provision.

4.4 It is asserted that the Nigam and the company both are registered under the GST Act in the State of Chhatisgarh. Section 7(1), 7(1A) and Schedule II to the Central Goods & Services Tax Act, 2017 (for short 'CGST Act') are relied upon to contend that transaction between the company and Nigam falls within the definition of 'supply' and liability under the Act of 2017 is of the company.

4.5 Clause 3.4.1 is relied upon to contend that the rejects upto 29% is the property of the company and the liability to pay sales tax on rejects is of company. The definition of the 'coal' in CMDA is

relied upon to argue that the coal excludes rejects. Clause 3.2.1 is pressed into service to submit that in 'scope of work' it is mentioned that the liability is of the company to bear expenses.

4.6 The decision of the Supreme Court in ***Union of India vs. Mohit Mineral (P) Ltd.*** reported in **(2019) 2 SCC 599** is relied upon to argue that compensation cess is an increment over the GST and therefore the liability is of the company.

4.7 The challenge is posed that the court erred in holding that the parties could have gone for advance ruling under the CGST Act and that ruling was binding. The pleading is that the advance ruling is binding only on the party seeking ruling and on the jurisdictional officer, not on others.

4.8 The judgment of Supreme Court in ***Delhi Metro Rail Corporation Ltd. vs. Delhi Airport Metro Express Pvt. Ltd.*** reported in **2024 INSC 292** is relied upon to contend that inspite of dismissals of objections u/s 34 of Act of 1996, this court can interfere in appeal u/s 37 of the Act of 1996 in cases where the award is patently illegal.

Contention of respondent:-

5. Per contra, reading of Preamble & section 8 of Act of 2017 makes it clear that cess is leviable on interstate or intrastate supply of goods or services or both and in this case the goods is coal, the liability of cess is on entire coal mined.

5.1 To buttress the argument, the notification dated 26.07.2018 is relied upon wherein cess on rejects is 'NIL', in case compensation cess has been paid on the coal and no input tax credit is availed. As per the counsel, combined reading of the

provision of Act of 2017 and the notification of 2018 clarifies that the compensation cess is payable on entire coal mined.

5.2 The contention is that CMDA provides that liability arising with the change in law is to be borne by the Nigam. It is argued that in compliance of clause 3.2.3 the company is paying GST on the rejects sold by it.

5.3. The case is that clause 5.1.2(b) deals with 'reimbursables' and provides that other tax levied in future shall be reimbursable by the Nigam.

5.4. It is vehemently argued that the view taken by the arbitrator is a plausible view and this Court in limited jurisdiction u/s 37 of the Act of 1996, especially taking into consideration that there are concurrent findings should not interfere. Reliance is placed upon the decisions of the Supreme Court in ***Consolidated Construction Consortium Limited versus Software Technology Parks of India*** reported in **2025 INSC 574**, ***AC Chokshi Share Broker Private Limited versus Jatin Pratap Desai & Anr.*** reported in **2025 INSC 174** and ***MMTC Limited versus Vedanta Limited*** reported in **(2019) 4 SCC 163**.

Clause of CMDA and Statutory Provision:-

6. Before proceeding further relevant clause of CMDA, Section 83 (3) of Act of 2010, Preamble and Section 8 of the Act of 2017 are reproduced:

"1.1 Definitions:

"Applicable Laws" means any law, rule, regulation, ordinance, order, code, treaty, judgement, decree, injunction, permit or decision of any central, state, or local government, authority, agency, court, regulatory body or other body having jurisdiction over the matter in the question, as in effect from time to time.

“Change in law” means the enactment, adoption, promulgation, modification or repeal (including any change in interpretation or application by competent authorities). After the date of this agreement of any law applicable or enforceable in the State of Rajasthan, the State of Chhattisgarh or any other State through which Coal is transported to RVUNL after the effective date.

“Coal” means Coal as defined by the Colliery Control Order, 2000 but excludes washery rejects.

“Rejects” the waste remaining after washing of coal mined from the coal mines shall be rejects.

Clause 3.2.1: Scope of Work:-

The company shall perform the Scope of Work and undertake the obligations set out herein below (the “works”).

The scope of work of the company would be to carry out all the works from identification of techno-economically viable coal blocks to coal mining and delivering coal to RVUNL’s Thermal Power stations. All expenses incurred for the works shall be done by the Company, including all expenses in relation to the cost of acquisition of land/lease of land, fees and arranging all clearances, reports and licenses for the term of the agreements and all charges incurred for arranging mining data, geological data and reports and no expense/liabilities shall be borne/shared RVUNL at any stage.

Clause 3.2.3. Establishment of Coal Washery:-

The Company shall

(a) Establish a coal washery and deliver coal of the required specifications in accordance with the terms and conditions of this agreement. The rejects remaining after washing shall be the property the JV Company and shall be disposed off by the company as decide by its Board of Directors keeping the rights of RVUN reserved as contained in clause No.4.8 (Coal Security) of this agreement. However the company shall observe all the rules and regulations of the Govt. of India/State Govt./Local Authorities for timely disposal of rejects and its disposal and will be responsible for any consequences. Further, if sales tax is imposed on rejects the same shall be borne by JV Company and not by RVUNL.

(b) In case the mined coal is directly dispatched to RVUN TPS without washing, then the rejects will not be allowed to the JV Company. Accordingly, if the coal is of grade ‘D’ or ‘E’ which shall be mind and dispatched without washing, for such coal rejects shall not be allowed.

(c) Obtain all permits and clearances as necessary for setting up of the washery from the

concerned Governmental Authorities and to properly dispose off the rejects.

Clause 5.1.2 (b)

Reimbursables, which shall mean Railway Freight Charges for the delivered coal; service tax and other taxes to apply in future subject to furnishing documentary evidence. All reimbursables shall be paid on behalf of RVUNL and shall be recoverable at actuals subject to clause 5.5(i).

Clause 5.6

Any variation in service tax as a result of a change in law shall be reimbursable/recoverable based in actuals on submission of documentary proof. However, the variation in stowing excise duty & royalty, if any, shall be allowed after one year of the date of commencement of coal over and above the rates prevailing in the first year of supply of coal over and above the rates prevailing in the first year of supply on submission of documentary proof. This is as per Clause No.2.16.2 of tender specification.

Section 83 (3) of Act of 2010

83(3). There shall be levied and collected in accordance with the provisions of this Chapter, a cess to be called the Clean Energy Cess, as duty of excise, on goods specified in the Tenth Schedule, being goods produced in India, at the rates set forth in the said Schedule for the purposes of financing and promoting clean energy initiatives, funding research in the area of clean energy or for any other purpose relating thereto.

Preamble & Section 8 of Act of 2017

An Act to provide for compensation to the States for the loss of revenue arising on account of implementation of the goods and services tax in pursuance of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016.

Section 8. Levy and collection of cess.

(1) There shall be levied a cess on such intra-State supplies of goods or services or both, as provided for in section 9 of the Central Goods and Services Tax Act, and such inter-State supplies of goods or services or both as provided for in section 5 of the Integrated Goods and Services Tax Act, and collected in such manner as may be prescribed, on the recommendations of

the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act is brought into force, for a period of five years or for such period as may be prescribed on the recommendations of the Council:

Provided that no such cess shall be leviable on supplies made by a taxable person who has decided to opt for composition levy under section 10 of the Central Goods and Services Tax Act.

(2) The cess shall be levied on such supplies of goods and services as are specified in column (2) of the Schedule, on the basis of value, quantity or on such basis at such rate not exceeding the rate set forth in the corresponding entry in column (4) of the Schedule, as the Central Government may, on the recommendations of the Council, by notification in the Official Gazette, specify:

Provided that where the cess is chargeable on any supply of goods or services or both with reference to their value, for each such supply the value shall be determined under section 15 of the Central Goods and Services Tax Act for all intra-State and inter-State supplies of goods or services or both:

Provided further that the cess on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975), at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962 (52 of 1962), on a value determined under the Customs Tariff Act, 1975.

7. The only issue pressed in this appeal is with regard to reimbursement of compensation cess paid on rejects by the company.

8. The arbitrator framed following issues with regard to controversy in the present case:

“(1.1) Whether the Claimant is entitled to a declaration that the respondent is liable to pay Compensation Cess on the entire coal mined from the coal block and the claimant is not liable to bear any amount towards the Compensation Cess on the washery rejects and also a permanent injunction restraining the respondent from imposing any Compensation Cess on the claimant?”

(1.2) Whether the incidence of tax, that is on the extracted coal remain same under the Clean Energy Cess as payable under the Finance Act, 2010 and Compensation Cess as payable under the Goods and Services Tax (Compensation to States) Act, 2017?

(1.3) Whether the sales tax subsumed in Goods and Services tax with effect from 01.07.2017 and made the claimant liable for payment of Compensation Cess on coal rejects?

(2.) Whether the claimant is entitled to an award directing the respondent to reimburse the Compensation Cess levied on invoices raised by respondent relating to washery rejects amounting to Rs.312,85,46,222/- and all and any further amount in this regard?

(3.) Whether the claimant is entitled to an award towards release of withheld sum of Rs.114,86,45,986/- as alleged (calculated till 30th June 2020) on account of Compensation Cess deposited by the claimant on behalf of the respondent and refund of Rs.50,99,52,549/- allegedly deducted towards Compensation Cess levied on invoices related to washery rejects raised by the respondent on the claimant and all and any further amount in this regard?"

Outcome of Award and objections u/s 34 of the Act of

1996:-

9. The issue Nos.1.1 to 1.3 being interlinked were decided together. Issue Nos.2 & 3 were consequential upon the outcome of issue Nos.1.1 to 1.3. The arbitrator held that compensation cess paid on entire coal mined is to be reimbursed by the Nigam. The court held that the conclusion of the arbitrator is plausible.

Issue:-

10. The pin pointed dispute is, as per CMDA who has to bear the burden of compensation cess paid on rejects.

Scope under Section 34 and 37 of Act of 1996:-

11. The scope of interference u/s 34 & 37 of the Act of 1996 is settled. Only the grounds for setting aside the award u/s 34 of the Act of 1996 are available u/s 37. There cannot be re-appreciation of evidence to conclude that the award is illegal or erroneous in law. Another view being possible cannot be the ground for interference, unless view taken is perverse or the conclusion of the arbitrator is such that no reasonable person can take that view. In cases where an award has been upheld u/s 34 of the Act of 1996, scope of interference is circumscribed and cautious approach has to be adopted u/s 37 of the Act of 1996. An appeal lies against the orders mentioned in section 37 of Act of 1996. However, usage of word appeal does not equate the proceedings with the civil appeal.

12. In 2015, Section 34 was amended by insertion of Section 2A. Patent illegality appearing on face of the award was made a ground for setting aside the award. The proviso to newly added sub section restricted the scope by providing that the award shall not be set aside by re-appreciation of evidence or for erroneous application of law.

12.1 It would be fruitful to quote the paragraphs from following decisions of the Supreme Court:

The Supreme Court in **MMTC Limited versus Vedanta Limited** (supra) held:

“ As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37

cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.”

The Supreme Court in ***OPG Power Generation Pvt. Limited vs. Enexio Power Cooling Solutions India Private Ltd. & Anr.*** reported in 2024 INSC 711 held:

“45. The Amendment, 2015 by inserting sub-section (2-A) in Section 34, carves out an additional ground for annulment of an arbitral award arising out of arbitrations other than international commercial arbitrations. Subsection (2-A) provides that the Court may also set aside an award if that is vitiated by patent illegality appearing on the face of the award. This power of the Court is, however, circumscribed by the Proviso, which states that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.

The Supreme Court in ***AC Chokshi Share Broker Private Limited*** (supra) held:

“22. *Whether the arbitral award ought to have been set aside:* The limited supervisory role of courts while reviewing an arbitral award is stipulated in Section 34 of the Act, beyond whose grounds courts cannot intervene and cannot correct errors in the arbitral award. The appellate jurisdiction under Section 37 is also limited, as it is constrained by the grounds specified in Section 34 and the court cannot undertake an independent assessment of the merits of the award by reappreciating evidence or interfering with a reasonable interpretation of contractual terms by the arbitral tribunal. The court under Section 37 must only determine whether the Section 34 court has exercised its jurisdiction properly and rightly, without exceeding its scope.”

The Supreme Court in **Consolidated Construction Consortium Limited versus Software Technology Parks of India** (supra) held:

“23. Scope of Section 34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the arbitral tribunal. If two views are possible, there is no scope for the court

to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the arbitral tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has perforce to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement.

24. Therefore, the role of the court under Section 34 of the 1996 Act is clearly demarcated. It is a restrictive jurisdiction and has to be invoked in a conservative manner. The reason is that arbitral autonomy must be respected and judicial interference should remain minimal otherwise it will defeat the very object of the 1996 Act.”

Analysis of clauses of CMDA

13. A joint venture (company) was incorporated by the Nigam and AEL for providing services to the Nigam to develop, carry operation of the Coal Blocks allotted to the Nigam and provide services to ensure supply of coal to the thermal power stations of the Nigam.

13.1 The CMDA defines 'applicable laws' to mean rules, regulations, court decisions and law over the matter in question as effective from time to time.

13.2 The definition of 'change in law' covers, law enacted, modified, repealed including the change of interpretation by competent authorities after enforcement of CMDA. It includes the law applicable in State of Chhatisgarh or other States through which the coal is transported.

13.3 The definition of 'coal' in Colliery Control Order, 2010 has been adopted but excludes rejects.

13.4 'Rejects' is defined as remains after washing the coal mined from the coal mines.

13.5 The 'scope of work' is dealt with in clause 3.2.1 and obligates the company to identify techno-economically viable coal blocks for coal mining and delivery. The expenses for work mentioned in scope of work has to be incurred by the company and includes cost of acquisition of land, fee, arranging all clearances, licenses and expenses incurred for arranging mining data, geological data and reports. For these expenses, liability is not to be borne by the Nigam.

13.6 Under clause 3.2.3, the company is required to establish washery for ensuring supply of coal as per the specification in CMDA. The by product, rejects result of washing of coal is the property of the company and is to be disposed of as per decision of the Board of Directors. Timely disposal and to observe rules and regulations is the responsibility of the company. The sales tax if imposed on rejects shall be borne by the company. Sub-clause (b)

deals with the situation where the coal of Group 'D' and 'E' is dispatched directly without washing and in such circumstances, the coal rejects shall not be allowed.

13.7 Clause 5.1.2(b) defines 'reimbursables' to mean railway freight for delivery of coal, service tax and other taxes to apply in future.

13.8 Clause 5.6 contemplates variation of service tax consequent to change in law and shall be reimbursable on actual basis.

13.9 Reading of the clause mentioned above and CMDA as a whole, the position emerges that after the date of agreement, a new enactment or modified enactment is covered under the definition of change in law. The expenses mentioned in the clause of 'scope of work' are to be incurred by the company and not to be shared by the Nigam. For ensuring required specification of the coal to be delivered, the company had to establish washery and the rejects received on washing becomes the property of the company. The obligation to dispose of the rejects in compliance with the rules and regulations is of the company. The tax on sales if imposed on rejects is to be shouldered by the company. The taxes to apply in future are to be reimbursed by the Nigam under clause 5.1.2 (b) so is the case in variation in service tax as per clause 5.6.

Discussion

14. It is an admitted fact that CEC under the Act of 2010 was change in law and duly reimbursed by the Nigam. The company had to pay cess on behalf of the Nigam and thereafter sought

reimbursement. In the year 2017, Act of 2010 was repealed and Act of 2017 was enforced with an object to levy cess for compensating the state for loss of revenue due to implementation of GST. The company paid cess under the Act of 2017 and got reimbursement. At later stage the Nigam started reversing entry vis-à-vis the compensation cess paid on rejects, resultantly the arbitration proceedings were invoked.

15. The contention of the counsel for the appellant that the arbitrator went beyond the terms and conditions of CMDA and the view taken is not plausible, lacks merit. The case of the appellant is that under clause 3.2.3 sales tax, if imposed upon coal washery rejects was to be shouldered by the company and this clause specifically deals with the issue. The contention is raised by reading clause 3.2.3 in isolation and the definition of change in law, reimbursable and applicable laws are not taken into consideration. There cannot be a quarrel with the proposition that document as a whole is to be construed. It has been specifically mentioned in clause 1.2.9 that clauses of CMDA are to be harmoniously construed.

16. The company under clause 3.2.3 shall be liable in case of imposition of sales tax on rejects. The Act of 2017 is covered under definition of 'change in law'. The compensation cess was enforced after executing CMDA and falls within the ambit clause 5.1.2(b) wherein the definition of reimbursable includes other taxes to apply in future.

17. The argument that the view taken by the arbitrator is not plausible as impost under the Acts of 2010 & 2017 is different,

does not enhance the case of the appellant. It is not the case set up and rightly so that compensation cess is a tax on sale of rejects. The incident of levy of cess under the Act of 2010 being mining of the coal and under the Act of 2017 is intrastate or interstate supply of the goods or services. The arbitrator after detailed discussion held that cess under Acts of 2010 & 2017 was on entire coal mined.

18. The court referred to the provision of advance ruling under the CGST Act to fortify that in absence of contrary view, the conclusion arrived at by the arbitrator was plausible one. More so, when one of the party could have approached advance ruling authority for determination of liability under Act of 2017 for payment of cess. We may hasten to add caveat that liability under the statute for payment of cess shall not determine that the burden is to be borne by Nigam or the company as per the CMDA.

19. The language of Section 8 of the Act of 2017 is unambiguous that cess shall be levied on intrastate or interstate supplies of goods or services or both, as provided u/s 9 or 5 of CGST or IGST Act, respectively. The incidence of levying cess is intrastate or interstate supply of goods or services and in this case, coal. Schedule to the Act of 2017 mentions coal, briquettes, ovoids and similar solid fuels manufactured from coal and cess of Rs.400/- per ton is levied but rejects does not find mention therein.

20. During course of the argument, on pin pointed query it has not been disputed that there was intrastate movement of coal from mines to the washery. The incidence of levy of cess had occurred with the intrastate supply of coal. The rejects was

separated only on washing of the coal i.e. the service being provided by the company to ensure that coal to the specification is delivered to the Nigam. The cess is not on the sale of rejects and shall not be covered in the clause dealing with the establishment of washery wherein, liability of the company is in case of imposition of sales tax on rejects.

21. Another angle is that on 18.01.2018, the GST council recommended levy of 5% GST on rejects but this recommendation was never acted upon by issuance of notification. On the other hand, the notification dated 26.07.2018 was issued in exercise of power u/s 8 of the Act of 2017 wherein, the cess payable on the rejects is 'NIL' subject to condition that cess has been paid on the coal and no input tax credit is availed thereof.

22. In case the contention of learned counsel for the appellant that Nigam shall pay cess only on coal delivered is accepted, the conclusion arrived at would be anomalous, contrary to CMDA and causing loss to the revenue. The cess is to be paid on intrastate and interstate supply of goods i.e. coal in this case. If liability of the Nigam is only for the coal supplied, obligation of the company is to pay sales tax on rejects meaning thereby that on the unsold rejects no cess shall be paid.

23. For example 100 Metric Tonnes (MT) of coal is mined. On washing 20 MT rejects is generated, which contains coal, mud, ash, water and other carbon ingredients. 12 MT of rejects is sold and sales tax on it is paid by the company. 8 MT of the rejects generated shall be liability of none thereby causing loss to the revenue.

24. The contention of the counsel for the appellant that the arbitrator erred in not adopting the definitions given in CMDA has fallacy. The arbitrator gave harmonious construction to the clauses of CMDA defining coal, rejects, reimbursable, change in law, clause for establishment of coal washery and held that compensation cess shall be covered by clause 5.1.2.(b) in phrase 'other taxes to apply in future'. The decision of Supreme Court in the case of United India Company vs. Harichand Rai Chandan Lal (supra) relied upon is of no avail.

25. The decision of the Supreme Court in CIT vs. Yokogawa India Ltd. (supra) pressed in service to argue that clause 3.2.3 was a specific provision dealing with the sales tax liability and shall prevail over general provisions of clause 5.1.2(b) defining 'reimbursable' does not help the case of the appellant. Two clauses are dealing with two different eventualities. The liability of sales tax is dealt under clause 3.2.3 whereas 'reimbursable' deals with service tax and other tax to apply in future. The compensation cess is dealt by clause 5.1.2(b) being a cess imposed after the date of CMDA and in view of clause 3.2.3. this clause shall not cover sales tax if imposed on rejects.

26. The submission that the Nigam and the company are registered under the GST Act in State of Chhatisgarh and the transaction between two falls within the definition of 'supply' under Act of 2017, rather supports the view taken by the arbitrator. The incident of levy of cess under the Act of 2017 in this case is on the intra-state supply of coal, at that stage the coal rejects had not come into being and was part of coal. It was for

getting coal of the specification as provided, that washing was necessitated to comply with the clauses of CMDA.

27. Reliance placed upon Section 7 and schedule II of the CGST Act, 2017 does not support the case of the appellant for two reasons. Firstly, the determination of liability to pay cess under the Act of 2017 was not subject matter of arbitration proceedings and the taxation authorities are only competent authority to determine it. Secondly, section 9 of CGST Act subject to provision of sub-section (2) provides for levy of CGST on intrastate supply of goods, services or both and exception being alcoholic liquor for human consumption. Section 7 of the CGST Act deals with the scope of supplies and is widely worded. Sub-section 1A of section 7 relied upon by the counsel for the appellant to buttress the argument that the transaction was of supply lends support to the conclusion of arbitrator that compensation cess is on the mined coal. To say it differently the incident for levy of compensation cess is on supply of coal mined.

28. The argument that reimbursable shall include only those taxes for which the Nigam has a statutory liability to pay has lacuna. This shall result in adding words to clause 5.1.2(b). The language is clear that service tax and other taxes to apply in future are to be paid by the company on behalf of the Nigam and shall be reimbursable.

29. Reliance on the decision of Union of India vs. Mohit Mineral (P) Ltd. (supra) to argue that compensation cess is nothing but is an increment on GST, is misplaced. It is trite law that a decision is an authority on an issue being dealt by the Court. The Supreme

Court was dealing with challenge to vires of the Act of 2017 and with a submission that CEC paid be set off against the compensation cess, which was rejected. The issue in the case in hand is factually different.

30. The challenge that the court erred in holding that the advance ruling under the GST was binding on parties as it was only on the party seeking ruling and the jurisdictional officer is noted to be rejected. The court derived support to conclude that there is no contrary view and one of which could have been by an order of advance ruling, the view taken by the arbitrator was plausible.

31. There is no quarrel with the proposition canvased by relying upon case of Delhi Metro Rail Corporation (supra) that in case of patent illegality or perversity or the view of the arbitrator not being plausible one, the Court can set aside the award u/s 37 of the Act of 1996.

32. In view of the above discussion, the conclusion of the arbitrator is based upon reasonable construction of terms of CMDA and is plausible. There is no patent illegality calling for interference by this Court in the concurrent findings recorded by the arbitrator and the court.

33. The appeal is dismissed.

(BHUWAN GOYAL),J

(AVNEESH JHINGAN),J

Simple Kumawat/ Chandan/reserve

Whether Reportable: Yes