THE BURNING COAL - III

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From the speech of the Finance Minister which triggered this issue has made it would be amply clear that the said exemption has been issued with an intention **to ease the stress faced by the domestic power producers.** In other words, the exemption is intended for coal which is used for the generation of power. By these intrepretative wars, the department is only trying to deny the benefit intended to be extended by the legislature.

In this connection, reference is drawn to the decision of the Hon'ble Supreme Court in the case of **UOI Vs Martin Lottery Agencies Ltd** as reported in **2009 (14) STR 593 (SC)**, wherein it is held as under:

> ***"28.*** *There cannot be any doubt whatsoever that speech of the Hon'ble Finance Minister in the House of the Parliament may be taken to be a valid tool for interpretation of a statute. It was so held in K.P. Varghese v. Commissioner of Income-tax, Ernakulam & Anr. [(1981) 4 SCC 173 at 184], in the following terms:*

"Now it is true that the speeches made by the Members of the Legislature on the floor of the House when a Bill for enacting a statutory provision is being debated are inadmissible for the purpose of interpreting the statutory provision but the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted.

Last but not the least, it is also a material fact that the importers have been importing coal as "steam coal" over a period of time. In fine, it has been a long standing and established practice to classify the same as "Steam Coal", which has been accepted by the department prior to the said notification.

In this connection, kind reference is drawn to the following decisions of the Tribunal, wherein it is held that, any demand of duty due to any change of departure from an established and long standing practice could be enforced only prospectively from the date of issuance of the SCN.

1. **Steel Authority of India Ltd Vs CCE, Calcutta- 1985 (22) ELT 487 (Tri) – Maintained in Supreme Court- 1991 (51) ELT A 42 (C).**

2. **Inarco Ltd, Bombay Vs CCE, Bombay- 1987 (31) ELT 469 - Approved in 1996 (87) ELT 3(SC).**

3. **Indian Oxygen Ltd Vs CCE - 1990 (47) ELT 449 – Approved in 1991(51)ELT A 36 (SC).**

4. **CCE Vs Swastik Coaters Pvt Ltd** as reported in **1999 (107) E.L.T 533**

In view of the above legal position and considering the established and long standing practice, the demand of duty, if any, on account of the proposed re-classification, shall be only prospective i.e., from the date of issuance of the SCN and not retrospectively.

Before Parting…

Notwithstanding the above, kind reference is also drawn to the decision of the Hon'ble Supreme Court of India in the case of **Commissioner of Central Excise & Customs, Bhubaneswar –I Vs Tata Iron & Steel Co., Ltd.,** as reported in **2003 (154) ELT 343 SC**, wherein, it has been held that the levy of Additional Duty of Customs would be applicable only to the goods produced or manufactured and not to the coal which is raised from the ground of collieries. Does this mean the Customs has been illegally collecting CVD on the coal, all these days?