

"184. Domestic producers of thermal power have been under stress because of high prices of coal. I propose to ease the situation by providing full exemption from basic customs duty and a concessional CVD of 1 per cent to Steam coal for a period of two years till March 31, 2014."

- Hon'ble FM in his Budget Speech 2012

To give effect to the FM's commitment to power producers in 2012, the Board issued a Notification No.12/2012 - Customs, Dt: March 17, 2012, wherein "Steam coal" falling under Chapter Heading 27011920 of the Customs Tariff, was given a preferential rate of 1% BCD vide SL. NO. 123 of the said Notification.

Time immemorial, coal intended for thermal power production, has been imported into India as "steam coal" and being cleared so. So, even after the exemption, the coal importers continued to classify the imported coal as "steam coal" as they were intended only for thermal power production. All along, the Customs were also merrily clearing such imported coal as "steam coal" and allowing the preferential rate, till the DRI sleuths of Ahmedabad initiated an investigation against a major coal importer and allege mis-classification based on the technical parameters set out in the said Chapter Note.

In Customs Tariff, under Chapter 27, there is a sub-heading Note 2, which reads as under:

"2. For the purposes of sub-heading 2701 12, "bituminous coal" means coal having a volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14% and a calorific value limit (on a moist, mineral-matter-free basis) equal to or greater than 5,833 kcal/kg."

Based on the above Chapter Note, numerous notices have been issued to various importers of coal, proposing to reclassify the coal imported by them as " bituminous coal" instead of "steam coal" by resorting to the twin parameters set out in the above Chapter Note, viz., Volatile matter (VM) exceeding 14% and Calorific value (CV) is equal of greater than 5833kcal/kg.

Now the entire coal clan is stashed with notices demanding several crores and alleging mis-classification based on the above technical parameters set out in the abovesaid Chapter Note.

As it could be seen from the FM's speech on the floor, the intention was to ease the stress the burden of the thermal power producers. If that be so, the exemption should have been with an end-use prescription to thermal power production. Instead, the exemption was given without any application of ground reality thus tangling the entire coal importers into a hazy maze of technical interpretation.

In the subsequent Budget speech in 2013, the Hon'ble FM observed as:

166. Steam coal is exempt from customs duty but attracts a concessional CVD of one percent. Bituminous coal attracts a duty of 5 percent and CVD of 6 percent. Since both kinds of coal are used in thermal power stations, there is rampant misclassification. I propose to equalise the duties on both kinds of coal and levy 2 per cent customs duty and 2 per cent CVD.

When both the steam coal as well as the bituminous coal were recognised to have been used in the thermal power production, what was genuinely expected from the then FM was a retrospective effect of the said exemption to the bituminous coal also, thus standing by the original speech and commitment of his predecessor. But, what came was a gross breach of promise, by way of a duty imposition to the steam coal too, which was against the commitment given to provide full exemption from BCD and 1% CVD till 31/3/2014!!!

Now, in a latest decision on the subject matter supra, the Bangalore bench of CESTAT has passed a detailed and reasoned final order in the case of **M/s Coastal Energy Pvt. Ltd & Ors vs CCE**, classifying the imported coal as “bituminous coal” based on the technical parameters spelt out in the Chapter Note, which had literally turned the burning coal into ashes.

What we need in this Budget is a retrospective exemption for the "bituminous coal", thus undoing the gross damage cause by the earlier Government which would be a real life saving Phoenix for the beleagured!!!