

SATURDAY | 09 NOVEMBER 2024

## Case Update



# APTEL HOLDS ROYALTY AND STOWING EXCISE DUTY SHALL BE CONSIDERED IN THE EXCISABLE VALUE OF COAL



The Appellate Tribunal for Electricity (“APTEL”) issued a judgment on October 23, 2024, in Appeal No. 391 of 2017, dismissing the appeal filed by Madhya Pradesh Power Management Company Limited (“MPPMCL”) and ruling in favour of Sasan Power Limited (“Sasan”). The APTEL’s order holds that royalty and stowing excise duty shall be considered in excisable value of coal. This decision was based on a clarification received from the Central Excise Department, which confirmed the inclusion of these elements as per Section 4 of the Central Excise Act, 1944.

In this case, Sasan is a Super Critical Ultra Mega Power Project based on linked coal mine at Sasan in Sanghrauli District, Madhya Pradesh that entered a Power Purchase Agreement (“PPA”) with MPPMCL on 07.08.2007.

In 2013, Sasan approached the Central Electricity Regulatory Commission (“CERC”), with regarding certain Change in Law events under the PPA, causing an increase in the operational costs incurred by them. The CERC, in its order held that the increase in royalty of coal, imposition of clear energy cess on coal and imposition of excise duty on coal are covered under the events of change in law in terms of the Article 13 of the PPA. Subsequently, the CERC passed another order in a compliance petition by Sasan on 19th February 2016 directing a payment of 347 Crores to Sasan on account of said change in law events and directed Sasan to approach the Central Excise Department for clarification on whether royalty and stowing excise duty are included in excisable value of coal for the purpose of calculating excise duty on coal.

The Central Excise Department, in a communication dated 29.09.2016 provided a clarification stating royalty and stowing excise duty are to be included for arriving at excisable value of coal for payment of excise duty. Pursuant to this clarification, Sasan Approached the CERC again for appropriate directions – and the CERC issued an order dated 22.06.2017 – where the royalty and stowing excise duty was to be considered in excisable value of coal.

Aggrieved by the orders passed by the CERC dated 19.02.2016, MPPMCL approached the APTEL in an appeal against the said order. MPPMCL argued that including royalty and stowing excise duty would constitute a “tax on tax” and was therefore impermissible. However, this argument was nullified by a recent Supreme Court judgment in Civil Appeal Nos. 4056-4064 of 1999, which held that royalty cannot be considered a tax.

The Tribunal found no basis to interfere with the Commission’s order and dismissed the appeal, citing the Central Excise Department’s clarification and the Supreme Court’s ruling as key factors in its decision.

This judgment is a significant victory for Sasan Power, as it affirms their entitlement to compensation for the inclusion of royalty and stowing excise duty in the excise duty calculation.

[Click here](#) to read the APTEL’s order in Appeal No. 391 of 2017

*Sasan Power Limited was represented in the Appellate Tribunal for Electricity by Shri Venkatesh, Managing Partner; Bharath Gangadharan, Counsel; and Kartikay Trivedi, Associate of the SKV Law Offices Team*