Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No.13732 of 2014

(Arising out of OIA-AHM-CUSTM-000-APP-272-14-15 passed by Commissioner of CUSTOMS-AHMEDABAD)

Hindalco Industries Limited ....**Appellant**
Po Dahej,
Po Dahej,
Bharuch, Gujarat- 392130.

VERSUS

C.C., Ahmedabad ....**Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Sh. T. Vishwanathan, Sh. Manish Jain, Ms. Shruti Advocate for the Appellant
Sh. T. G. Rathod, Joint Commissioner (AR) appeared for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 12368 /2019

DATE OF HEARING: 25.11.2019
DATE OF DECISION:16.12.2019

RAJU

This appeal has been filed by M/s. Hindalco Industries Limited against demand of customs duty arising by denial of the benefit of Notification No. 24/2011-Cus dated 01.03.2011.

02. Learned Counsel for the appellant pointed out that the Notification No. 24/2011-Cus exempts from Customs Duty on Copper Concentrate to the extent of duty on the value of Gold and Silver contained in such Copper Concentrate. He said exemption is subject to the condition that an Assay Certificate from the Mining Company specifying separately the value of Gold and Silver content of such Copper Concentrate is produced. Learned Counsel pointed out that at the time of import Provisional assessment is done under Section 18 of the Customs Act pending production of final original documents, LME Price and the Test Results to ascertain quantity of Copper, Gold & Silver contained in the imported goods. He pointed out that in the instant case the imported Copper Concentrate was cleared on payment of duty based on the Provisional Invoice of the foreign supplier. The appellant received the final invoice from the foreign supplier indicating the price payable for the imported goods and the appellant sought final assessment

claiming exemption under Notification No. 24/2011-Cus on the strength of the said final invoice issued by this supplier. The appellant also submitted the provisional assay certificate issued by the Mining Company, as the Copper Concentrate was procured by them from a supplier other than Mining Company. The Original Adjudicating Authority denied the benefit of Notification No. 24/2011-Cus on the ground that the Assay Certificate of the Mining Company submitted at the time of provisional assessment is not co-relatable with the import documents submitted by the appellant.

2.1 Learned Counsel pointed out that in normal course when they import Copper Concentrate from Mining Company the Assay Certificate is provided by the Mining Company and assessment is done on that basis. He pointed out that sometimes appellants procure Copper Concentrate from sources other than Mining Company and in such circumstances Provisional Assay Certificate is given by the Mining Company. In such cases, the price is finalized with the supplier and not with the Mining Company. He argued that Notification No. 24/2011-Cus merely requires that an assay certificate of Mining Company should be produced and does not state if the same needs to be final. He argued that in such circumstances even provisional certificate produced by them at the time of provisional assessment is also good enough for claiming the benefit of Notification No. 24/2011-Cus. In a decision in their own case reported in 2015 329 E.L.T. 395 (Tri.-Ahmedabad). It was held that exemption under Notification No. 24/2011-Cus was available even on basis of provisional assessment of Mining Company. He also pointed out that the said decision was upheld by Hon'ble Apex Court vide Order dated 31.8.2015 reported in 2016 331 E.L.T. A38 (S.C.). Learned Counsel also relied on the decision of Tribunal in case of Edelweis Metals Limited 2019 366 E.L.T. (539).

03. The Learned Authorized Representative relied on the impugned order.

04. We have gone through rival submissions, we find that the issue in dispute is if the appellants are entitled to benefit of Notification No. 24/2011-Cus. The said Notification reads as under:

> *"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts copper concentrates falling under the tariff item 2603 00 00 of the First Schedule to the Customs Tariff Act, 1975(51 of 1975), when imported into India, from so much of the duty of customs as is equivalent to the duty of customs leviable on the value of gold and silver contained in such copper concentrate, subject to the*

condition that the importer produces as the case may be, an assay certificate from the mining company specifying separately, the value of gold and silver content in such copper concentrate.

Illustration:- If the total value of copper concentrate is Rs.100 and the value of gold and silver in that copper concentrate is Rs.40, basic customs duty shall be computed on the value of Rs.60 only. However, the total value of Rs.100 shall be taken into account, for the purposes of levy of additional duties of customs leviable under section 3 of the Customs Tariff Act, 1975."

05. The appellants have produced a provisional assay certificate from the mining Company at the time of import. They have finalized the price with the supplier who is not a mine. Tribunal in the appellants own case reported in 2015 329 E.L.T. (395) has observed as follows;

"6. *Notification No. 24/2011-Cus., dated 1-3-2011 does not contemplate an option to be given by an importer to either stick to provisional assay certificate percentage or final assay report. However, it is correctly pointed out by learned AR that Notification No. 24/2011-Cus. only talks of an assay certificate from the mining company to specify separately the contents of silver & gold. There is no objection by the department for accepting final assay certificate when imports are directly from the mining company when final assay certificate of the mining company is accepted both for finalising provisional assessments and for allowing exemption under Notification No. 24/2011-Cus. However, it will be unfair if appellant is disallowed exemption when final assay certificate is given by an agency other than the mining company, but Notification No. 24/2011-Cus. does not provide for such acceptance. Under the circumstances Revenue could have also got the contents in the copper concentrate determined by getting the samples tested either from Central Revenue Laboratory or any other approved testing agency. Appellant will be eligible to the exemption in such imports also. For a feasible solution it will be appropriate to take the value content of gold & silver, either in the provisional assay certificate or in the final assay certificate produced by the appellant, whichever is less, for allowing the benefit of Notification No. 24/2011-Cus. when final assay certificate is given by an agency other than the mining company. The directions contained in the OIA dated 21-1-2014 passed by the first appellate authorities are accordingly modified to that extent for the purpose of remand proceedings."*

The said decision of tribunal has been approved by Hon'ble Apex Court as reported in 2016 331 E.L.T. A38 (S.C.). In view of the clear cut finding of tribunal approved by Hon'ble Apex Court, it cannot be said that the Notification can be denied just because final assay certificate has not been produced from the

Mining Company and a provisional assay certificate has been produced.

06. It is seen that vide Order-In-Original disputes the provisional assay certificates itself on the ground that the said certificate does not contain the Customer no. and Sales Order No. The said issue has not been dealt with by the First Appellate Authority.

07. Thus, the impugned Order is set aside and matter is remanded to First Appellate Authority to examine if the provisional assay certificate produced by the appellant relates to the disputed consignment. If it is found to be the same, then assessment may be done in terms of the Tribunal Order in the appellants case reported in 2015 329 E.L.T. 395 as approved by the Hon'ble Apex Court as reported in 2016 331 E.L.T. A38 (S.C.).

08. Appeal is allowed by way of remand.

(Pronounced in the open court on 16.12.2019)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul