

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

REGIONAL BENCH- COURT NO. 3

**Excise Appeal No. 10587 of 2015**

(Arising out of OIO-BH-EXCUS-BHARUCH-COM-012-14-15 dated 13/01/2015 passed by Commissioner of Central Excise, Customs and Service Tax-Bharuch)

**Hindalco Industries Limited**

Lakhigam,  
Dahej,  
Bharuch, Gujarat

**.....Appellant**

*VERSUS*

**C.C.E-Bharuch**

Vadodara-II,GST Bhavan,Subhanpura,Vadodara  
Vadodara  
Gujarat – 390023

**.....Respondent**

**APPEARANCE:**

Shri Anand Nainawati, Advocate for the Appellant

Shri Ghanasyam Soni, Additional Commissioner (AR) for the Respondent

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

**HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR**

**Final Order No. A/ 11306 /2023**

DATE OF HEARING: 03.03.2023  
DATE OF DECISION: 21.06.2023

**RAMESH NAIR**

The background of this case is that the appellant had cleared imported goods under VKGUY/DEPB licence/ authorizations issued by DGFT and purchased from one M/s. Padmavati Agencies Private Ltd. which was subsequently found to be forged licences. After knowing this fraud the appellant deposited the custom duty foregone by clearing the goods at the time of assessment under forged VKGUY and DEPB licences. In respect of the customs matter show cause notice was issued, the same has been decided by appropriating the duty already paid. However, the penalties were set aside. In the present case the appellant have availed the cenvat credit in respect of bills of entry which was initially assessed on the basis of forged VKGUY and DEPB licences. The case of the department is that since the bills

of entry were assessed on the basis of forged licences the same is not valid document for the purpose of availing cenvat credit. Being aggrieved by the order-in-original, the appellant filed the present appeal.

2. Shri Anand Nainawati, Learned Counsel appearing on behalf of the appellant submits that the cenvat credit was denied on the ground that there was forgery and fraud in respect of licenses under which the imported goods were cleared. He submits that in the customs case the learned Commissioner customs has categorically held that the appellant was not the party to the forgery of licence committed by the seller of the licences. Therefore, the penalties were dropped. On the query from the bench he clarified that the proceedings of adjudication in the customs case was not considered by the adjudicating authority in the present case. In support of his submission he placed reliance on the following judgments:-

- CCE Vs. Ambuja Cement Eastern Ltd – 2005 (191) ELT 480 (T)
- Essar Oil Ltd Vs. CCE - 2014 (303) ELT 255(T)
- PI Industries Ltd Vs. CCE – Final Order No. A/10905/2016 dated 01.09.2016
- CCE Vs. Philips India Ltd – 2008 (224) ELT 44 (Guj.)
- Tata Engg & Locomotive Co. Ltd Vs. CCE – 2006 (205) ELT 1045 (T)
- Varanasi Domestic Appliances (P) Ltd Vs. CCE – 2007 (213) ELT 286 (T)
- Lakshmi Automatic Looms Works Ltd Vs. CCE – 2010 (259) ELT 545 (T)
- CCE vs. HMM Ltd - 1995 (76) ELT 497 (SC)
- Continental Foundation Jt. Venture Vs. CCE -2007 (216) ELT 177 (SC)
- Padmini Products Vs. CCE – 1988 (35) ELT 543 (T)
- Padmini Products Vs. CCE – 1989 (43) ELT 195 (SC)
- CCE Vs. Chemphar Drugs & Liniments - 1989 (40) ELT 276 (SC)
- Pahwa Chemicals Pvt. Ltd Vs. CCE – 2005 (189) ELT 257 (SC)

3. Shri Ghanasyam Soni, Learned Additional Commissioner (AR) appearing in behalf of the Revenue reiterates the finding of the impugned order. He placed reliance on the following the judgments:-

- Munjal Showa Ltd Vs. CCE , Delhi-IV – 2022 (382) ELT 145 (SC)
- Munjal Showa Ltd Vs. CCE, Delhi – IV Faridabad – 2009 (246) ELT 18 (P&H)
- CC (Preventive ) Vs. Aafloat Textile (I) P Ltd -2009 (235) ELT 587 (SC)
- CCE, New Delhi Vs. Hari Chand Shri Gopal – 2010 (260) ELT 3(SC)
- Motiram Tolaram VS. Union of India – 1999 (112) ELT 749 (SC)
- CC vs. Presto Industries – 2001 ( 128 ) ELT 321 (SC)
- Mysore Metal Industries VS. CC, Bombay – 1988 (36) ELT 369 (SC)
- Union of India Vs. Rainbow Silks - 2011 (274) ELT 510 (Bom)
- Fedco P Ltd Vs. S N Bilgrami – 1999 (110) ELT 92 (SC)
- G L Metallica P Ltd Vs. CCE, Jaipur-I – 2010 (262) ELT 995 (Tri.Del)
- CC, Kandla Vs. Essar Oil Ltd – 2004 (172) ELT 433 (SC)
- Blue Blends (I) Ltd VS. CC, Mumbai – 2001 (136) ELT 411 (Tri.- Mum)
- ICI India Ltd Vs. CC (Port), Calcutta – 2005 (184) ELT 339 (Cal)
- ICI India ltd Vs. Commissioner – 2005 (187) ELT A31 (SC)

4. We have carefully considered the submission made by both sides and perused the records. We find that in the present case the cenvat credit was denied mainly on the allegation that there is a mala fide on the part of the appellant since there was forgery in the licenses under which the bills of entry were filed accordingly the said bills of entry are not valid documents for availing cenvat credit. We observed that the genesis of this case is the fraudulent obtainment of VKGUY & DEPB licences in regard to that custom matter the appellants were issue show cause notice dated 05.11.2012 which was adjudicated vide order-in-original passed by customs commissioner. However, the adjudication order in the customs matter was not considered

by the Adjudicating Authority in the present case. Therefore, this matter needs to be remitted back to the adjudicating authority for re-consideration after considering the customs adjudication order dated 28.02.2014 passed in the show cause notice F No. DRI/ AZU/ INQ-03/2010 dated 05.11.2012.

5. Accordingly the impugned order is set aside and appeal is allowed by way of remand to the Adjudicating Authority for passing a de-novo order within a period of 2 months from the date of this order. Appeal is allowed by way of remand.

(Pronounced in the open court on 21.06.2023 )

**RAMESH NAIR**  
**MEMBER (JUDICIAL)**

**C.L.MAHAR**  
**MEMBER (TECHNICAL)**

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