CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 01

CUSTOM Appeal No. 10937 of 2021

[Arising Out Of OIA-AHM-CUSTM-000-APP-000-APP-249-21-22 Dated-30/06/2021 Passed By Commissioner of CUSTOMS-AHMEDABAD]

HINDALCO INDUSTRIES LIMITED .....**Appellant**
UNIT BIRLA COPPER VILLAGE LAKHIGAM PO DAHEJ TALUKA VAGRA
BHARUCH, GUJARAT

VERSUS

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

APPEARANCE:
Shri. Manish Jain, Advocate for the Appellant
Shri. Himanshu P Shrimali, Superintendent (Authorized Representative) for the Appellant

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

FINAL ORDER NO.A / 11675 /2023

DATE OF HEARING:08.08.2023
DATE OF DECISION:08.08.2023

RAJU

The appeal has been filed by HINDALCO INDUSTRIES LIMITED against demand of Customs duty.

2. Learned counsel pointed out that they had imported Copper Anodes. The assessment was made provisional because as per agreements with the supplier the final quantity and the final price were to be determined after

measurement of weight at the place of import and after determination on the London Metal Exchange (LME) price published at the time of import. The supplier issued a provisional invoice initially indicating a certain quantity however, a final invoice was issued on the basis of the quantity measured at the place of import and the LME price prevailing at the material time. The revenue has sought to demand duty at the assessable value based on the LME prevailing at the time of import, however, taking the quantity as per the provisional invoice issued by the exporter. Learned Counsel pointed out that this stand of revenue is contrary to the circular issued by CBEC vide F. No 467/30/2008-Cus V dated 27.08.2008. Moreover, he pointed out the difference in the weight is of the order of 0.01% and that can arise on account of margin of error in measuring instruments.

3. Learned AR relies on the impugned order. He pointed out that there are numerous imports of this kind. The learned counsel pointed out that the circular is not applicable because this said circular was issued in respect of import of 'copper concentrate' whereas in the instance case the imports are of "copper anodes".

4. We have considered the rival submissions. We find that the circular in para 3 observed as follows:-

> *"3) As per the valuation provisions under the customs Act, Transaction value which in this case is the Final Invoice price, arrived at as per the terms & condition of the contract, should be acceptable, unless there are cogent reasons to doubt the transaction. In the absence of the rejection of the Transaction value on substantive grounds, arriving at a notional value on the basis of the test reports would not be legal & proper. The chemical test in the present case cannot be used for determination Final value; particularly when it is not a case that the Final payment made by the importer is not as per the Final Invoice of the Supplier. The issue of Valuation of metal concentrate has also been decided by the Tribunal in the case Binani Zinc Vs Commissioner of Customs, Cohin, [2001 (135)*

E.L.T. 563, Tri - Chennai] Supreme Court dismissed the department appeal against the aforesaid CESTAT order J"

4.1 In the instance case, learned counsel has pointed out that the difference in weight between the provisional of final invoice for the order of 0.01%. The said difference can arrive on account of the margin of error in the measuring instruments. In any case the agreement between the buyer and the seller in this case is that the weight at the place of import will be taken as the final weight and the LME price prevailing at the material time will be taken as the final assessable value. The final invoice is based on the weight measure at the place of import and the LME price at the time of import in term of the agreement between buyer and the seller.

5. In these circumstances, we find that the circular mentioned above dated 27.08.2008 is squarely applicable to the appellant's case. Consequently, the impugned order is set aside, the appeal is allowed

(Dictated and pronounced in the open Court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)