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

REGIONAL BENCH–COURT NO. 03

Excise Appeal No. 11887 of 2019

[Arising out of OIA-CCESA-SRT-APPEAL-PS-032-2019-20 dated 26/04/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Hindalco Industries Ltd **.....Appellant**
Survey No. 111/1, Foil Division,
Khanvel- Dudhani Road,
Village Khutli,
Khanvel, Silvassa,
Dadra And Nagar Haveli

VERSUS

C.C.E. & S.T.-Daman **.....Respondent**
3rd Floor...Adarsh Dham Building,
Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat - 396191

APPEARANCE:
Shri Ishan Bhatt, Advocate for the Appellant
Shri Dharmendra Kanjani, Superintendent (AR) for the Respondent

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

FINAL ORDER NO.A / 10240 /2022

DATE OF HEARING: 03.03.2022
DATE OF DECISION: 03.03.2022

RAMESH NAIR

The issue involved in the present case is that whether the appellant is entitled for cenvat credit in respect of outward GTA for period prior to 01.04.2008.

2. Shri Ishan Bhatt, Learned counsel appearing on behalf of the appellant submits that from 01.04.2008 in the main clause of the definition of the input, the service related to removal of inputs was "from the place of removal", which was amended as "up to place of removal". Therefore, prior

to 01.04.2008 the cenvat credit on outward GTA was available. He placed reliance on the following judgments:

- Commissioner of Central Excise, Belgaum v. Vasavadatta Cements Ltd- 2018 (11) GSTL 3 (SC)
- Affirmed by Hon'ble High Court in CCE & ST v. ABB Limited 2011 (23) STR 97 (kar.)
- CCE v. parth Poly Woven Pvt. Ltd. 2012 (25) STR 4 (Guj.)
- M/s Lumino Industries Ltd. v. CCE, Haldia 2020-VIL-456-CESTATE-KOL-ST
- M/S Landis + GYR Ltd. v. CCE, Kolkata 2021 (3) TMI 480-CESTATE-KOLKATA

3. Shri Dharmendra Kanjani, Learned Superintendent (Authorized Representative) appearing on behalf of the the Revenue reiterates the findings in the impugned order. He submits that even prior to 01.04.2008 certain criteria to fulfill for allowing the Cenvat Credit on Outward GTA was prescribed in Board Circular No. 97/8/2007-ST dated 23.08.2007. He submits that the appellant have not submitted the documents to satisfy the criteria for allowing credit as prescribed in aforesaid Board Circular. He also placed reliance on the following judgments:

- Lafarge India Ltd. Vs. Commissioner of Central Excise, Raipur [2014 (307) E.L.T. 7 (Chattisgarh)]
- Inox India Pvt. Ltd. Vs. CCE & ST, Vadodara-II [Final Order No. A/11290/2021 dated 25.03.2021]

4. I have carefully considered the submissions made by both sides and perused the records. I find that prior to 01.04.2008, the services related to removal of the goods was amended with effect from 01.04.2008 and allowed "up to the place of removal". Therefore, the Cenvat credit prima facie is

available in case of outward transportation for the services availed from the place of removal up to the customers place. However, I also agree with Learned Authorized Representative that Board has prescribed certain conditions for allowing credit which need to be satisfied. Since the adjudicating authority have not verified the fact that, whether the said conditions of Board Circular have been complied with or not, the matter needs to be reconsidered.

5. Therefore, the impugned order is set aside. Appeal is allowed by way of remand to the Adjudicating Authority for passing a fresh order after verifying the documents whether the appellant has fulfilled the condition as prescribed in the Board of Circular No. 97/8/2007-ST dated 23.08.2007. The appeal is allowed by way of remand to the Adjudicating Authority.

(Dictated & Pronounced in the open court)

RAMESH NAIR
MEMBER (JUDICIAL)

Palak