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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10564 of 2015

(Arising out of OIA-MUN-CUSTM-000-APP-031-033-14-15 dated 03/02/2015 passed by Commissioner of CUSTOMS-MUNDRA)

Hindalco Industries Ltd **.........Appellant**
Unit Birla Copper Po Dahej
Bharuch, Gujarat

VERSUS

C.C.-Mundra **.........Respondent**
Office Of The Principal Commissionerate Of Customs, Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

WITH

- **Customs Appeal No.10565 of 2015 (HINDALCO INDUSTRIES LTD)**
- **Customs Appeal No.10566 of 2015 (HINDALCO INDUSTRIES LTD)**
- **Customs Appeal No.11020 of 2015 (HINDALCO INDUSTRIES LTD)**
- **Customs Appeal No.11021 of 2015 (HINDALCO INDUSTRIES LTD)**
- **Customs Appeal No.11022 of 2015 (HINDALCO INDUSTRIES LTD)**
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- **Customs Appeal No.11032 of 2015 (HINDALCO INDUSTRIES LTD)**

- **Customs Appeal No.11033 of 2015 (HINDALCO INDUSTRIES LTD)**
- **Customs Appeal No.11254 of 2015 (HINDALCO INDUSTRIES LTD)**
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- **Customs Appeal No.11256 of 2015 (HINDALCO INDUSTRIES LTD)**
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- **Customs Appeal No.11261 of 2015 (HINDALCO INDUSTRIES LTD)**
- **Customs Appeal No.11262 of 2015 (HINDALCO INDUSTRIES LTD)**
- **Customs Appeal No.11263 of 2015 (HINDALCO INDUSTRIES LTD)**
- **Customs Appeal No.11302 of 2015 (HINDALCO INDUSTRIES LTD)**
- **Customs Appeal No.11303 of 2015 (HINDALCO INDUSTRIES LTD)**
- **Customs Appeal No.11304 of 2015 (HINDALCO INDUSTRIES LTD)**
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- **Customs Appeal No.11391 of 2015 (HINDALCO INDUSTRIES LTD)**

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- **Customs Appeal No.11401 of 2015 (HINDALCO INDUSTRIES LTD)**
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- **Customs Appeal No.11995 of 2015 (HINDALCO INDUSTRIES LTD)**
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- **Customs Appeal No.10047 of 2016 (HINDALCO INDUSTRIES LTD)**
- **Customs Appeal No.10048 of 2016 (HINDALCO INDUSTRIES LTD)**
- **Customs Appeal No.10049 of 2016 (HINDALCO INDUSTRIES LTD)**

(Arising out of OIA-MUN-CUSTM-000-APP-001-014-15-16 dated 06/04/2015 passed by Commissioner of CUSTOMS-MUNDRA)

(Arising out of OIA-MUN-CUSTM-000-APP-045-054-15-16 dated 19/05/2015 passed by Commissioner of Central Excise, Customs and Service Tax-MUNDRA)

(Arising out of OIA-MUN-CUSTM-000-APP-058-091-15-16 dated 02/06/2015 passed by Commissioner of CUSTOMS-MUNDRA)

(Arising out of OIA-MUN-CUSTM-000-APP-129-156-15-16 dated 21/08/2015 passed by Commissioner of CUSTOMS-MUNDRA)

(Arising out of OIA-MUN-CUSTM-000-APP-162-194-15-16 dated 08/09/2015 passed by Commissioner of CUSTOMS-MUNDRA)

(Arising out of OIA- MUN-CUSTM-000-APP-197-245-15-16 dated 15/10/2015 passed by Commissioner of CUSTOMS-MUNDRA)

APPEARANCE:

Shri Manish Jain, Advocate for the Appellant
Shri Tara Prakash, Deputy 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/ 10535-10704 /2023

DATE OF HEARING: 22.02.2023
DATE OF DECISION: 24.03.2023

RAMESH NAIR

These appeals are directed against order of the Commissioner (Appeals) whereby, the assessment of bills of entry enhancing the value of the goods namely copper scrap on the basis of LME price has been upheld.

02. Shri Manish Jain, learned counsel appearing on behalf of the appellant at the outset submits that the learned counsel has rejected the appeal not on merit but mainly on the ground that the appellant have accepted the enhancement of the price through assessment of bills of entry therefore, the

appellant cannot file appeal before the Commissioner (Appeals). It is his submission that the appellant have not accepted the enhancement of the value on the contrary they have not accepted the enhancement of the value by giving the letter to the Assistant/Deputy Commissioner of Customs, Mundra and also requested for passing a speaking order in terms of Section 17(5) of the Customs Act, 1962 therefore, the ground on which the Commissioner (Appeals) has passed order is baseless and without any evidence.

2.1 Without prejudice, he further submits that against the self assessed bill of entry, the appeal can be filed under Section 17(5) of the Customs Act, 1962. He placed reliance on the following judgments:-

- ITC Limited Vs. Commissioner of Central Excise- 2019 (9) TMI 802-SC
- NEYYELI LIGNITE CORPORATION INDIA LTD.-2022 (4) TMI 1374-Madras High Court
- BRIGHTPOINT INDIA PRIVATE LIMITED- 2022 (97) TMI 882- CESTAT Ahmedabad

2.2 He further submits that the value for the purpose of customs duty shall be the transaction value i.e. the price actually paid or payable for the goods exported to India hence, in terms of Section 14(1) of the act, transaction value is to be accepted. He further submits that the LME price cannot be relied upon to reject the declared value because the LME bulletin gives the indicative price at which the goods are traded in the international trade. He placed reliance on the following judgments:-

- PAWAN GOEL- 2001 (135) ELT 1425 (Tri.)
- PUSHPAK METAL CORPORATION- 2014 (312) ELT 381 (Tri.-Ahmd.)
- GURU RAJENDRA METALLOYS INDIA PRIVATE LIMITED- 2020 (374) E.L.T. 617 (Tri.-Ahmd)
- TEEKAY FLOWFLEX PVT. LTD.- 2017 (357) ELT 977 (Tri.-Mumbai)

It is his submission that in absence of evidence to show the remittance about the invoice value, foreign supplier, declared value cannot be rejected. Without prejudice to the above, he also submits that advance license cannot be debited at enhanced value when there is no evidence that the appellants have paid additional consideration to the foreign supplier. Reliance in this regard is placed on the following decisions:-

- UMA SONS- 1996 (88) ELT 540 (Tri.)
- MANJUSHREE MINERALS LTD.- 1993 (68) E.L.T. 273 (Cal.)

03. Shri Tara Prakash, learned Deputy Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that the appeal can be disposed of only on the threshold point that whether the appellant have accepted the enhancement of the value or otherwise without going into other issues. We find that the learned Commissioner (Appeals) rejected the appeal only on the ground that the appellant during assessment of bill of entry have accepted the enhancement of the value of imported scrap. We find that contrary to this, the appellant invited our attention to the letter written by them to the assessing authority, one of the sample letter is scanned below:-

Annexure - B
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ADITYA BIRLA
HINDALCO

Date: 24th Dec, 2014

To,
The Asst./Dy.Comissioner of Customs,
Mundra Customs House,
Mundra.

Subject: Speaking order in terms of Section 17(5) of Customs Act.
Ref: Bill of Entry No. 7778129 Dt. 22.12.2014

Dear Sir,

We have filled Bill of Entry No. 7778129 Dt. 22.12.2014 towards import of 306.0326 Mt at rate of US$ 5977.97/MT of copper scrap and said bill of entry assessed on 22.12.2014.

While assessed the said Bill of Entry your good self has enhanced the value from US$ 5977.97/MT to 6347 US$/MT in the bill of entry without giving any opportunity of clarification. It is submitted that such enhancement is contrary to law and same is not acceptable to us.

Thus you are kindly requested to pass speaking order in terms of section 17(5) of the customs Act, 1962.

Thanking You,

Yours Faithfully,
For Hindalco Industries Ltd
(Unit: Birla Copper)

Ravi Tak
Dy. Manager (Commercial)

OFFICE OF THE
JT. CUMMR.
OF CUSTOMS
29 DEC 2014
6415
MP & SEZ, MUNDRA

HINDALCO INDUSTRIES LIMITED
(UNIT : BIRLA COPPER)
P.O. : Dahej, Dist. Bharuch,
Gujarat-392 130, INDIA.
Telephone +91 2641 256004-6

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Website www.hindalco.com
Email hindalco@adityabirla.com
Corporate Identity No. L27020MH1958PLC011238

From the above letter, it is clear that the appellant have not accepted the enhancement of the value, moreover, they have requested for passing a speaking order in terms of Section 17(5) of the Customs Act, 1962. The Commissioner (Appeals)'s finding that the appellant have accepted the enhancement of value is absolutely contrary to the facts in the above letter. Moreover, the Commissioner (Appeals) has not adduced any evidence in support of his finding that the appellant have accepted the enhancement of the value of the goods. In this position, we are of the view that as per the principles of natural justice, the assessing authority is required to pass a speaking order, considering all the submissions to be made by the appellant.

4.1 Accordingly, we set aside the impugned orders and remand the matter to the assessing authority for passing a speaking order. Needless to say that the appellant shall be given sufficient opportunity for presenting their defence and also personal hearing be given before passing a speaking order.

05. The appeals are allowed by way of remand to the assessing officer.

(Pronounced in the open court on 24.03.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Mehul