

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I**

APPEAL No.E/2735/2010-EX[DB]

(Arising out of Order-in-Original No.MP(Dem-35/2009) 24 of 2010 dated 20/05/2010 passed by Commissioner, Central Excise & Service Tax, Allahabad)

APPEAL No.E/2889/2011-EX[DB]

(Arising out of Order-in-Appeal No.149/CE/APPL/ALLD/2011 dated 07/09/2011 passed by Commissioner (Appeals), Central Excise, Allahabad)

M/s Hindalco Industries Ltd.

Appellant

Vs.

Commissioner, Central Excise, Allahabad

Respondent

Appearance:

Shri Atul Gupta (Advocate) & Shri Utkarsh Malviya (Advocate)
for Appellant

Shri Assistant Deputy/Additional Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Ajay Sharma, Member (Judicial)

Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of Hearing/ Decision : 28/03/2019

FINAL ORDER NO.**70683-70684/2019**

Per: Coram

Appellants have filed these appeals directed against the Order-In-Original No. (Dem-35/2009) 24 of 2010 dated 20/05/2010 passed by Commissioner, Central Excise & Service Tax, Allahabad and the Order-in-Appeal No.149/CE/APPL/ALLD/2011 dated 07/09/2011 passed by Commissioner (Appeals), Central Excise, Allahabad. By both

the orders Cenvat Credit has been disallowed to the appellant in respect of inputs such as Alumina Hydrate received by them during the period April, 2008 to October, 2009. The ground for denial of such credit was that whereas the goods in respect of which Cenvat Credit was claimed as per the invoices mentioned goods/ inputs were described as Alumina Hydrate but in the records the same was mentioned as Calcined Alumina and quantity of Calcined Alumina was mentioned against the Alumina Hydrate mentioned in the invoices. Thus both description and quantities mentioned did not matched in the invoice and the CENVAT credit Account.

2. Two show cause notices were issued to the appellants and after taking into consideration the submissions made matter stands adjudicated as stated in Para No.1.

3.1 We have heard learned advocate Shri Atul Gupta on behalf of the appellants and Shri Rajeev Ranjan on behalf of the Revenue.

3.2 Learned counsel submitted that it is a fact on record that they had received Alumina Hydrate and for which he can produce documents like invoices, transportation documents, weighment slip, octroy slips etc. In his submission the verification report submitted by the Jurisdictional Range Officer confirms the receipt of the goods till the point of weighment. It is not the case of the Revenue in his view that

this Alumina Hydrate has been diverted from the weighment point elsewhere nor it is the case of the Revenue that they had received Calcined Alumina clandestinely and accounted the same as Alumina Hydrate. They emphasized that Alumina Hydrate has been used by them in their process of manufacture and the credit in respect of the same should be allowed to them.

3.3 Arguing for the Revenue, learned A.R. retreated the submissions made in the Order. He further emphasized that the case can be looked from the point of view of verification of records vis-à-vis the receipt issued and utilization of the Alumina Hydrate received by the appellants. In case appellants can show from the records that these goods were actually received, Cenvat Credit can be allowed, but all this requires a proper verification.

4. We have considered the submissions made during the course of argument and in the appeal to the query from the Bench learned counsel hold through the Chartered Engineers Certificate dated 24.02.2010 describing the process of conversion of Bauxite to Calcined Alumina and Finally to Alumina as follows:-

PROCESS DESCRIPTION OF EXTRACTION OF ALUMINA FROM BAUXITE

The Bayer's process adopted for extraction of alumina from Bauxite is the only commercially viable process. Other methods are not commercially feasible.

Bauxite contains alumina, oxides of iron, silicon, titanium and to a small extent phosphorus and vanadium. Bauxite is crushed in three stages through cone crushers, hammer mills and ball mill. The wet grinding of bauxite to slurry is practiced in the ball mills.

Bauxite slurry is the product of grinding circuit. In digestion section bauxite slurry reacts with caustic soda solution in order to form sodium aluminate solution. In this process solid alumina is extracted in liquor at high temperature and high pressure. The digested bauxite slurry is clarified in clarified section having high rate decanter wherein impurities are settled down and aluminium rich liquor is taken out from overflow of decanter. The undissolved oxide of iron, titanium and silica do not react with caustic soda are separated by settling and filtration and disposed as "Red Mud". Alumina rich liquor is sent to precipitation section where alumina is precipitated. Precipitator is filled with pregnant liquor and then calculated quantity of "seed" alumina hydrate is added. The tank contents are kept under agitation for about 50 hours. During this period the hydrate from the slurry is precipitated and then further classified with the help of hydrocyclones, gravity thickeners, and filtration. This filtered slurry is then pumped to hydrate filter at calciner.

The hydrate slurry is fed by means of pump to a rotary horizontal filter, which works under vacuum. Here the hydrate is washed free from all caustic with the help of condensate. A special cloth of polypropylene is used at this stage. The free moisture is removed and the hydrate cake is then discharged with the help of a scroll feeder to a conveyor for feeding to the calciner.

The filtered hydrate of Alumina ($Al(OH)_3$) needs to be calcined at a high temperature of over 1050 deg C so as to drive away the combined water known as the water of crystallization. For this purpose it is fed into the calciner, which is continuously being fired by fuel oil. Fuel oil alone will be able to function in the calciner as other media of heating would contaminate the product Alumina. During calcining the Alumina Hydrate is converted to pure Alumina in the form of a white powder and fuel oil gets burnt and consumed completely. The hot gasses are exhausted from the feed end of the kiln by an induced draft fan. The hot alumina discharged at the other end is cooled through fluxo cooler and conveyed for storage into silos for feeding to the pots at the smelter end.

C.P. MALVIYA, FIE
B.Sc.Engg. (Elect.)
Fellow Institution of Engineers.(India)
Charter Engineer (F-017224-5)

Brief Description of manufacturing process for Aluminium

Slurry of the crushed *Bauxite* ore in *Caustic Soda* solution is processed in a Digester unit to produce *Sodium Aluminate* solution. It is cooled and allowed to settle in settling tank. The settled residue is called "*Red Mud*". The liquid is filtered to remove remaining fine particles of impurities. The crystallization of the liquid produces crystals of *Alumina Hydrate* (which is Alumina bonded with water molecules)

To remove water of crystallization *Alumina Hydrate* is calcined between 1050°C – 1,100°C and to produce Anhydrous (waterless) *Alumina* crystals).

Alumina is obtained after smelting of Aluminum Oxide (Calcined Alumina) by Hall-Heroult process.

Technical Aspects

Alumina Hydrate requires complete drying before feeding in smelter use. Therefore, it is necessary to calcine Alumina Hydrate, and then it fed in smelter to produce Aluminum.

Weight reduction during Calcination

When water from Alumina Hydrate is removed to obtain Alumina, the weight of the material is reduced. The conversion of Alumina Hydrate takes place according to the following reaction:



Molecular weight of the elements are Al = 27, H = 1 and O = 16.

Molecular weight of Water (H₂O) = 2x1+16=18

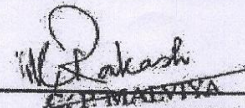
Molecular weight of alumina (Al₂O₃)=2x27+3x16=102

Molecular weight of Alumina Hydrate (Al₂O₃ · 3H₂O) = 2x27+3x16+3x2x1+16=156

Total water lost = 3x18 = 54

Therefore according to the law of conservation of mass 156 tonnes of Alumina Hydrate is converted in to 102 tonnes of Calcined Alumina and 54 tonnes of water is separated.

Hence, to get 1.0 tonnes of Calcined Alumina, amount of Alumina Hydrate required is = (156/102) = 1.53 tonnes.


C.P. MALVIYA
(Elect.)
Fellow Institution of Engineers (I) ①
Charter Engineer (F-017224-5)

SNH General Hospital, Audi, P.O. Anpara Distt. Sonbhadra-231225, U.P.
Phone:05446-272411, Mob:09918002055, E-mail ID cpmalviya@snh.com

From the said certificate it is very clear that Hydrated Alumina is used as seed material for processing Bauxite to Calcined Alumina. In any plant producing the

metal, certain production documents in the form of Mill charge report is prepared showing the quantum of various inputs/ingredients charged or any other production record which can establish the issuance of the inputs/ingredients for the production of the output goods can be a verifiable document.

5. In our view if appellants produced such documents establishing actual charging of these goods or their utilization in the process of production, the credit should not have been denied. Admittedly such documents were either not produced or considered/verified by the Original Adjudicating Authority. Thus in our view matter needs to go back to them for *de-novo* verification of such documents which appellant will produce for establishing actual utilization of the said goods.

6. In result both the appeals are allowed and matter remanded to Original Adjudicating Authority for De-novo consideration. Needless to say the matter is quite old, they may decide the issue within 4 months of the receipt of the order.

(Dictated & Pronounced in Court)

Sd/-
(Sanjiv Srivastava)
Member (Technical)

Sd/-
(Ajay Sharma)
Member (Judicial)

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