FAX : 0532-2400149 **REGISTERED / AD**

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 05/12/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71858-71861/2017-EX[DB] dated 01/08/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/1516/2010	**HINDALCO INDUSTRIES LTD.** Renukoot, Sonebhadra (UP)
	E/2322/2011	**HINDALCO INDUSTRIES LTD** Renukoot, Distt-Sonbhadhra(UP)
	E/2323/2011	**HINDALCO INDUSTRIES LTD** Renukoot, Distt-Sonbhadhra(UP)
		SHRI VIJAY SHANKAR PANDEY, RATTANGANJ, MIRZAPUR (OWNER OF TRUCK UHA 4777) C/O M/S HINDALCO INDUSTRIES LTD. RENUKOOT, SONBHADRA. (U.P.)
		Name and Address of Respondent
		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad
		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad
		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad
		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad

Other Appellants and Respondents as per Annexure

Copy To
9Advocate(s) / Consultant(s):

Ms. Natasha Sarkar,
(Advocate), ALD
3/1A/3 OPP AUTO
SALES,Above the Office Of
Blue Dart/DHL Courier,
COLVIN ROAD, LOHIA
MARG ALLAHABAD-211001

10 Bar Association, CESTAT, Allahabad

11 Director Publications, Customs, Excise. I.P. Estate, Delhi

12 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

13 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

14 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

15 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

16 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

17 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

18 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

19 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

20 C.D.R.   21 Office Copy   22 Second Folder Copy   23 Guard File

Asstt. Registrar

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH: ALLAHABAD

DIVISION BENCH

Appeal No. E/1516/2010-EX(DB), E/2322/2011, E/2323/2011 & E/2558/2011

Dated of Hearing/decision: 01/8/2017

[Arising out of Order-in-Original No. MP (Dem-78/2009 15 of 2010 dated 15.03.2010 passed by Commissioner of Central Excise, Allahabad]

Hindalco Industries Ltd. — Appellant

Vs.

C.C.E.-Allahabad — Respondent

Appearance:
Present for the Appellant: Ms. Natasha Sarksar (Advocate)
Present for the Respondent: Shri Rajeev Ranjan (Joint Commissioner) A.R.

Coram: Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

Final Order No. 71858-71861/2017

Per: Anil Choudhary

That the common issue involved in the instant appeals bearing appeal nos. E/1516/2010, E/2322-2323/2011 & 2558/2011 is whether 'aluminium dross and skimmings' which is a waste product arising in the course of manufacture of Aluminium products is liable to excise duty.

2. Brief facts of the case are that the Appellant is engaged in the manufacture and sale of Aluminium products falling under Chapter

Heading No. 76 of the First Schedule to the Central Excise Tariff Act, 1985. During the process of manufacture of Aluminium products, Aluminium dross and skimmings were produced and the same were cleared without payment of duty being waste products. Show Cause Notices for consecutive periods were issued to the Appellant seeking recovery of duty on clearance of Aluminium Dross on the ground that the same was excisable as Aluminium Dross was 'marketable' in terms of the explanation added to section 2(d) of the Central Excise Act, 1944 (w.ef. 10.05.2008) and had been accorded a distinct entry under chapter heading No. 26204010 (w.e.f. 1.03.2005). The demands in the respective Show Cause Notices were confirmed by the Adjudicating Authorities and appeals before this Hon'ble Tribunal have been preferred against the said Adjudicating Orders. Details of the respective appeals are provided hereafter:

S.No	Appeal No.	Show Cause Notice	Impugned Order
1.	E/1516/2010 (Hindalco Industries)	SCN No. 22/Commr. Alld/2009 dated 19.10.2009 was issued for the period October, 2008 – June, 2009 for an amount of INR 1,65,76,925.53	OIO No. MP (Dem-78/2009)15/2010 dated 12.03.2010 was passed wherein the entire demand was confirmed.
2.	E/2322/2011 (Hindalco Industries)	SCN No. V (a) (15) Seizure/Hindalco/MZP /351/09/800 dated 19.03.2010 was issued for an amount	OIO No. 03/RNKT-1/Seiz/2010 dated 13.09.2010 was passed wherein the seized Aluminium Dross was

		of INR 4,709 on account of alleged clandestine removal of the seized Aluminium Dross weighing 11.43 MT	confiscated and a penalty of INR 4,709/- was also imposed. The same was confirmed vide OIA No. 88-90/CE/ALLD./2011 dated 30.06.2011.
3.	E/2558/2011 (Vijay Shankar Pandey-Transporter)	SCN No. V (a) (15) Seizure/Hindalco/MZP /351/09/800 dated 19.03.2010 was issued proposing to confiscate the truck in which Aluminium Dross for M/s Hindalco Industries Ltd. was allegedly being clandestinely removed.	OIO No. 03/RNKT-I/Seiz/2010 dated 13.09.2010 was passed wherein the truck was confiscated and a penalty of INR 4,000/- was imposed. OIO was confirmed vide OIA No. 88-90/CE/ALLD./2011 dated 30.06.2011.
4.	E/2323/2011 (Hindalco Industries)	SCN No. VI(MP) Dem (12) Adj-02/2010/4142 dated 9.03.2010 was issued for an amount of INR 26,33,781 for the period from July 2009 to 22.10.2009	OIO No. MP (Dem-32/2010) 62/2010 dated 12.08.2010 was passed wherein the entire demand was confirmed OIA No. 88-90/CE/APPL/ALLD./2011 dated 30.06.2011 was passed wherein the OIO was confirmed.

SUBMISSIONS

by counsel

3. It is most humbly submitted that the issue involved in the present case has already been settled in favour of the Appellant by the

Arr

Hon'ble Bombay High Court, in the Appellant's own case – **Hindalco Industries Ltd. Vs. UOI reported as 2015 (315) E.L.T. 10 (Bom.),** wherein, it has been held that aluminium dross, not being a result of any process, is not covered within the definition of manufacture under section 2(f) of the Central Excise Act, 1944.

4. Further, the Hon'ble Supreme Court in the matter of **Union of India & Ors. Vs. DSCL Sugar Ltd. 2015 (322) ELT 769 (S.C.),** has held that waste product/residue, which itself is not the result of any process, cannot be treated as falling within the definition of Section 2(f) of the Act and in the absence of manufacture, there cannot be any excise duty.

5. It is further submitted that the repeated reliance has been placed by the Adjudicating Authority upon CBEC Circular No. 904/24/09-Cx dated 28.10.09, wherein it was stated that waste products arising in the course of manufacture and capable of being sold for a consideration would be excisable. It is to be noted that subsequently, in view of the judgment of the apex court in Union of India & Ors. Vs. M/s DSCL Sugar Ltd. and by the Hon'ble Bombay High Court in M/s Hindalco Industries Ltd. Vs. Union of India, as detailed earlier, a CBEC Circular bearing **No. 1027/15/2016-CX, dated 25.04.2016** has been issued which has rescinded, *inter alia* earlier CBEC Circular No. 904/24/09-Cx dated 28.10.09. The relevant part of the Circular is reproduced below for ready reference:

"Excisability of bagasse and similar other by-products or wasdtes arising during the course of manufacture of an excisable product has been an issue under dispute. Following circulars/instruction have been issued from time to time on the subject:-

*(a) **Circular No. 904/24/2009-CX, dated 28-10-2009** [2009 (243) E.L.T. T9)]*

(b) Circular No. 941/02/2011-CX, dated 14-2-2011 [2011 (264) E.L.T. (T21)],

(c) Instruction F. No. 17/02/2009-CX (Pt.), dated 12-11-2014 [2014 (309) E.L.T. (T16)].

2. The issue came before the Hon'ble Supreme Court in a case of M/s Union of India and Ors. Vs. M/s DSCL Sugar Ltd. [2015-TIOL-240-SC-CX = 2015 (322) E.L.T. 769 (S.C.)], dated 15-7-2015. Hon'ble Supreme Court examined the issue and reaffirmed that bagasse is not a manufactured product. The Judgement applies to both periods, before and after the insertion of explanation in Section 2 (d) of the Central Excise Act, 1944 by the Finance Act, 2008. It may also be noted that Hon'ble High Court of Bombay in case of M/s. Hindalco Industries Ltd. Vs. Union of India [2015 (315) E.L.T. 10 (Bom.)] came to similar conclusion in relation to dross and skimming of aluminium, zinc or other non-ferrous metal.

*3. **In the light of the above judgments, circulars of the Board on the subject viz, 904/24/2009-CX, dated 28-10-***

2009, 941/02/2011-CX, dated 14-2-2011 and instruction issued vide F. No. 17/02/2009-CX(Pt.), dated 12-11-2014 have become non est and are hereby rescinded. Cases kept in Call Book on the above issue may be taken out and adjudicated."

6. Thus, in view of the aforesaid orders of the Hon'ble Supreme Court and Bombay High Court, and also CBEC Circular No. 1027/15/2016-CX, dated 25.04.2016, the issue now stands settled in favour of the Appellant as it becomes abundantly clear that Aluminium dross, being a waste product produced during the manufacture of Aluminium products, cannot be subject to excise duty and therefore, the Impugned Orders are liable to be set aside.

Accordingly we set aside the Impugned Orders and the appeals are allowed in full with consequential relief to the appellants.

(Dictated and pronounced in the Open Court)

-Sd/-	-Sd/-
(ANIL G. SHAKKARWAR)	(ANIL CHOUDHARY)
Member (TECHNICAL)	Member(JUDICIAL)

(K. Gupta)

प्रमाणित प्रति/Certified True Copy
05/01/18
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
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