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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/553 - 554 /2009, E / 688 - 689 /2009 – SM[BR]   Date 16/11/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E ALLAHABAD   Appellant
Vs
M/S HINDALCO INDUSTRIES LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1263 – 1266 / 2010-SM[BR] dated 19.10.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S HINDALCO INDUSTRIES LTD.
   RENUKOOT, SONEBHADRA, (U.P.)
2. Adv. / Consult SHRI V.LAKSHMIKUMARAN ADV.
   B-6/10,SAFDARJUNG ENCLAVE NEW DELHI-29.

3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise, I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

3. M/S HINDALCO INDUSTRIES LTD.
   RENUKOOT, SONEBHADRA, (U.P.)
3. M/S HINDALCO INDUSTRIES LTD.
   RENUKOOT, SONEBHADRA.
4. M/S HINDALCO INDUSTRIES,
   RENUKOOT, SONEBHADRA,[U.P]

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 553-554 of 2009-SM(BR)

Commissioner of Central Excise, Allahabad (UP)	Appellants
Vs.	
M/s. Hindalco Industries Ltd.	Respondent

Excise Appeal No. 688-689 of 2009-SM(BR)

M/s. Hindalco Industries Ltd,	Appellants
Vs.	
Commissioner of Central Excise Allahabad (UP)	Respondent

[Arising out of Order-in-Appeal No. 115 to 118-CE/ALLD/2008 dated 18.12.2008 passed by the Commissioner of Central Excise (Appeals), Allahabad (UP)]

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

Appearance:
Shri K.P. Singh, SDR for the Appellants
Shri Hemant Bajaj, Advocate for the Respondent

Date of Hearing/decision : 19.10.2010

Final **ORAL ORDER NO. 1263-1266/2010 SM(BR)**

Per Ashok Jindal:

These are four appeals filed by the Revenue and two filed by the assessee. The assessee have filed the appeals against the confirmation of demand, interest and penalties under section 11AC and Rule 15(2) of Cenvat Credit Rules, 2004 and the Revenue has filed the appeal for imposition of additional penalty under Rule 15(1) of the Central Excise Rules, 2004.

2. The brief facts of the case are that during the course of investigation the Cenvat credit goods were found short on physical verification. Accordingly, a show cause notice was issued for demand of duty on short found inputs and proposal for penalty under section 11AC read with Rule 13,15 of Central Excise Rules, 2002 / 2004. Thereafter the original adjudicating authority confirmed the demand along with interest and penalty under section 11AC. On appeal, by both the sides, the Commissioner (Appeals) rejected the appeal of the assessee but he has further imposed penalty under rule 15 (2) of Cenvat Credit Rules apart from the penalty under section 11AC of Central Excise Act, 1944. Aggrieved from the said order, both sides are again in appeal before this Tribunal, Revenue is on the ground that that further penalty under Rule 15(1) of Central Excise

Rules, 2004 is to be imposed and the assessee is against the demand, interest and penalties.

3. Learned Advocate appearing for the assessee submits that the adjudicating authority has confirmed the demand relying on the decision in the assessee own case, vide order No. 610/CE/ Alld /04 dated 17.8.04. The said order of the adjudicating authority has been set aside by the Tribunal vide order No. 259/2009-Ex dated 23.3.09. Hence, the impugned order are liable to be set aside. He also submitted that as there is proposal of penalty under section 11AC of Central Excise Rules, 1944 read with Rule 13, 15 of Cenvat Credit Rules, 2002/ 2004 in the show cause notice, no separate penalties under various provisions is imposable on the assessee.

4. On the other hand, learned DR submitted that the penalties under section 11AC of the Central Excise 1944 can be imposed separately and penalties under various provisions of Rule 15 of Cenvat Credit Rules, 2004 can be imposed separately under various clauses of the contraventions made by the assessee in this case. With regards to the merits of the case, he submitted that the facts of this case are not identical to the earlier case and hence, the decision cannot be relied upon.

5. Heard both sides.

6. I have considered the submissions made by both sides. It is fairly agreed by both the sides that adjudicating authority had relied upon the earlier decision of the Commissioner (Appeals) in the appellants own case which have been set aside by the Tribunal. It is not denied by the learned DR that he has not relied upon the said decision. The contention of the DR

that the earlier decision of the Commissioner (Appeals) cannot be relied upon in the facts of this case also supports the contention of the assessee. Hence, when this Tribunal has set aside the decision on which the adjudicating authority has relied upon, ,that decision will be of no help in this case also hence, the same is to be set aside. But in the interest of justice, the matter is to be adjudicated afresh by the adjudicating authority as he had relied upon certain decision which has been set aside by this Tribunal. In that case, the matter needs fresh examination and hence the matter is sent back to the original authority to decide the matter afresh keeping all the issues open after giving reasonable opportunity of hearing to the appellants to defend their case.

7. With regard to the appeals filed by the Revenue, they are seeking imposition of penalty under Rule 15(1) of Cenvat Credit Rule 2004 apart from under section 11AC of Central Excise Rules, 2002 and penalty under Rule 15(2) of Cenvat Credit Rules, 2004. I find from the impugned show cause notice wherein the proposal of composite penalty has been made which has been reproduced as under:-

> '.... why penalty should not be imposed upon them under section 11AC of the Central Excise Act, 1944 read with Rule 13/15 of CENVAT Credit Rules, 2002/2004"

There is no specific provisions under which the Department wants to impose penalty under Rule 15 . There is no ~~pro~~ proposal for separate penalties in the show cause notice, no specific allegation for specific penalty has been made. Hence the penalties under Rule 15 are not imposable on the assessee and there is proposal for imposing penalty under section 11AC of the Central Excise Act read with Rule 15 of the Cenvat Credit Rules, 2002/2004. With these observations, I do not find any merit in the appeals filed by the Revenue and the same are rejected. With these observations, the assessees' appeals are allowed by way of remand and Revenue appeals are rejected.

(Ashok Jindal)
Member(Judicial)

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