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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/3616/2010 - EX[DB] WITH E/S/3418/10-EX Date **15/04/2011**

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

To :
M/S HINDALCO INDUSTRIES LTD.,
RENUKOOT, SNEBHADRA (UP)

M/S HINDALCO INDUSTRIES LTD., Appellant

Vs

C.C.E ALLAHABAD STAY ORDER NO. 449/2011-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No.344/** **2011 EX[DB]** dated 01-4-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file
15. HON'BLE PRESIDENT,

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:1.4.2011

Stay Application No.3418 of 2010 in
Central Excise Appeal No.3616 of 2010

Arising out of the order in original No.MP(Dem-106/2009) 28 of 2010 dated 10.8.2010 passed by the Commissioner , Central Excise, Allahabad.

M/s Hindalco Industries Ltd. .. Appellants

Vs.

C.C.E., Allahabad .. Respondent

Appearance:

Shri B.L. Narasimhan, Advocate for the appellants/applicants
Shri B.K. Singh, Authorised Departmental Representative (Jt.CDR) for the Revenue

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Mathew John, Technical Member

STAY Oral Order No. 449/2011-EX.

Per Shri Justice R.M.S. Khandeparkar:

Heard the Advocate for the appellants and the Jt.CDR for the respondent. As we propose to dispose of the appeal itself, the application is hereby disposed of without insisting for pre-deposit and directing the registry to place the appeal for final disposal forthwith.

(Justice R.M.S. Khandeparkar)
President

(Mathew John)
Technical Member

scd/

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:1.4.2011

Central Excise Appeal No.3616 of 2010

Arising out of the order in original No.MP(Dem-106/2009) 28 of 2010 dated 10.8.2010 passed by the Commissioner , Central Excise, Allahabad.

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Mathew John, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Hindalco Industries Ltd. .. Appellants

Vs.

C.C.E., Allahabad .. Respondent

Appearance:

Shri B.L. Narasimhan, Advocate for the appellants/applicants
Shri B.K. Singh, Authorised Departmental Representative (Jt.CDR) for the Revenue

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Mathew John, Technical Member

FINAL Oral Order No. 344/2011-EX

Per Shri Justice R.M.S. Khandeparkar:

Heard the Advocate for the appellants and the Jt.CDR for the respondent. This appeal arises from the order dated 10.8.2010 passed by the Commissioner, Allahabad. By the impugned order, the Commissioner has confirmed the demand of duty to the tune of Rs.1,01,077/- along with interest and equal amount of penalty. The confirmation of the demand is preceded by the following observation as under:

> " ***In respect of Anthracine Oil, the party have stated that while burning of Calcined Petroleum Coke and Hard Pitch, fumes and vapour get generated and when condensed anthracine oil comes out, it is collected in pipes and containers. I find that it is a new product arising from the cenvated input like Calcined Petroleum Coke, which also finds place in the Central Excise Tariff. As this product fulfills all the requirements of a manufactured excisable goods, I find that duty is payable on the clearance of Anthracine Oil.***
>
> ***Further, I find that although in respect of all other products the party's plea that the demand is hit by limitation may hold water as the clearance of these items was in the Departments knowledge as evidence from the previous adjudication order mentioned above, but in case of Anthracine Oil I find that it is a product which was not a part of previous adjudication order and that the fact was not in the Departments knowledge previously. As such the demand of duty on clearance of this product is not barred by time limitation. The total duty involved on Anthracine Oil during the period December 2004 to October 2009 is as under –***

Period	***Value of clearance (Rs.)***	***Rate of duty***	***Duty involved (Rs.)***	***Ed. Cess involved (Rs.***	***S & H.E. Cess involved (Rs.)***
Dec.'04 to Feb.'07	***158526***	***16%***	***25364***	***507***	***0***
Mar'07 to Feb'08	***257945***	***16%***	***41271***	***825***	***413***
Mar'08 to 6 – Dec'08	***162000***	***14%***	***22680***	***454***	***227***
24- Feb'09 to Oct'09	***113295***	***8%***	***9064***	***181***	***91***
Total	***691766***		***98379***	***1967***	***731***

Undisputedly, the impugned order nowhere discloses that the Commissioner has applied his mind to the aspect of classification of the product before quantification of the duty. It is settled law that the quantification of duty cannot be done without the process of classification is completed. On this ground alone without dealing with the other aspect of the matter, the impugned order confirming the demand and imposing penalty cannot be sustained and is liable to be set aside. Accordingly, leaving all the issues open , the impugned order is hereby set aside on the said ground and the matter is remanded to the Commissioner to decide the same afresh in accordance with the provisions of law. The appeal accordingly stands disposed of.

(Justice R.M.S. Khandeparkar)
President

(Mathew John)
Technical Member

scd/