IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Excise Appeal No.743 of 2012

(Arising out of Order-in-Appeal No.18/CE/B-II/2012 dated 14 September 2012 passed by Commissioner(Appeals) of Central Excise, Customs & Service Tax, Bhubaneswar.)

M/s. Hindalco Industries Ltd.
(Hirakud Complex, At/PO-Hirakud,
Dist. Sambalpur-768016,
Odisha)

...Appellant

VERSUS

Commr. of Central Excise, Customs & Service Tax, BBSR-II

.....Respondent

(C.R. Building, Rajaswa Vihar,
Bhubaneswar-751007, Odisha)

WITH

Excise Appeal No.72085 of 2013

(Arising out of Order-in-Appeal No.30/CE/BBSR-II/2012 06 November 2012 passed by Commissioner(Appeals) of Central Excise, Customs & Service Tax, Bhubaneswar.)

M/s. Hindalco Industries Ltd.
(Hirakud Complex, At/PO-Hirakud,
Dist. Sambalpur-768016,
Odisha)

...Appellant

VERSUS

Commr. of Central Excise, Customs & Service Tax, BBSR-II

.....Respondent

(C.R. Building, Rajaswa Vihar,
Bhubaneswar-751007, Odisha)

APPEARANCE

Shri Dipro Sen (Advocate) & Ms.S.Mundra (C.A.) for the Appellant (s)
Shri H.S.Abedin, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI P. ANJANI KUMAR, MEMBER(TECHNICAL)
HON'BLE SHRI P. DINESHA, MEMBER(JUDICIAL)

FINAL ORDER NO. 76167-76168/2019

DATE OF HEARING : 27 August 2019
DATE OF DECISION : 27 August 2019

P. ANJANI KUMAR :

The appellants are engaged in the manufacture of aluminium products. During the process aluminium dross/skimming is generaged. The department has contended that the said dross and skimming emerging as residual product during manufacture of aluminium products is excisable and have issued two show cause notices dated 18 September 2009 and 3 June 2010 covering the period January 2009 to January 2010. The show cause notices were confirmed by the Orders-in-Original dated 24 September 2010 and 29 August 2011. Commissioner(Appeals) had upheld the orders vide impugned orders No. 18/CE/B-II/2012 dated 14 September 2012 and 30/CE/BBSR-II/2012 06 November 2012. Duty of Rs.3,57,643/- and Rs.3,04,220/- has been confirmed and penalty of Rs.1.00 Lakh each has been imposed. Hence these Appeals E/743/2012 and E/72085/2013 are filed.

2. Learned Counsel for the appellants submits that the issue is no longer *res integra* and has been settled in their favour. He submits that larger Bench of the Tribunal in their own case 2014 (308) ELT 472(Tri-LB) decided the issue holding that aluminium dross and skimming arising during the process of manufacture of aluminium/non-ferrous metal are manufactured goods and are deemed to be marketable. Hon'ble High Court of Bombay has quashed the above order 2015 (315) ELT 10(Bom.) holding that the skimming and dross arising during the manufacture of aluminium products are not excisable and thus cannot be subjected to duty. After this decision the department has clarified, pursuant to a tariff conference, vide Circular No.1027/15/2016-CX dated 25 April 2016 that the aluminium dross/skimming are non-excisable goods. Learned Counsel further submits that in the subsequent cases Hon'ble Tribunal has decided the issue in their favour

in the cases 2019 (4) TMI 1458-CESTAT-KOLKATA and 2018-TIOL-488-CESTAT-ALL. Lastly he submits that as the duty itself is not recoverable, interest and penalty are not recoverable.

3. Learned Authorized Representative for the department has reiterated the findings of Orders-in-Original and Orders-in-Appeal.

4. Heard both sides and perused the records of the case.

5. We find that the issue is no longer *res integra.* This Bench in the case of appellants themselves (supra) has held that :-

> *"6. Thus, in view of the aforesaid orders of the Hon'ble Supreme Court and Hon'ble High Court of Bombay 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 emerging during the manufacture of Aluminium products, cannot be subject to excise duty. Therefore, the impugned order is liable to be set aside."*

6. In view of the above, the appeals are allowed with consequential relief, if any.

(Operative part of the order was pronounced in the open Court.)

SD/

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

SD/

(P. DINESHA)
MEMBER (JUDICIAL)

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