IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Excise Appeal No.77902 of 2018

(Arising out of Order-in-Appeal No.72/HWH/XAP-59/2017-18 dated 28.03.2018 passed by Commissioner (Appeals) of CGST & Excise, Kolkata North)

M/s Hindalco Industries Limited
39, G.T.Road, P.O.Belurmath-711202, Dist.-Howrah

Appellant

VERSUS

Commissioner of CGST & Excise, Howrah
15/1, Strand Road, Kolkata-700001

Respondent

APPERANCE :

Shri S.P.Majumdar, Advocate for the Appellant
Shri A.Roy, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.75528/2022

DATE OF HEARING : 06.04.2022
DATE OF PRONOUNCEMENT : **16 SEPTEMBER 2022**

PER P.K.CHOUDHARY :

The instant appeal has been filed by the assessee, M/s Hindalco Industries Limited, whereby the demand of Central Excise duty of Rs.8,72,523/- has been confirmed by disallowing Cenvat Credit for the period from 2005-06 to 2008-09 and equivalent penalty imposed vide adjudication Order dated 18.02.2011. The said adjudication order has been upheld in Appeal by the Ld. Commissioner (Appeals), CGST, Kolkata North Commissionerate, vide Order-in-Appeal dated 28.03.2018, which is under challenge in the present Appeal.

2.1 The Appellant is engaged in the manufacture of excisable goods viz, aluminium foil and plates, etc. on which applicable Central Excise Duty is being paid. The Appellant supplied aluminium waste and scrap free of cost to the conversion agents, namely M/s. H. Madanlal (Aluminium) Ltd. and M/s. Premier Metals Products, on principal-to-principal basis for conversion of said goods into aluminium ingot. The said conversion agents were entitled to conversion charges as per the written agreement with the Appellant. Further, the normal melting loss of 4.5% was also allowed for such conversion process. The said conversion agents are charging Central Excise Duty on the converted aluminium ingot after doing completion of conversion process. The Excise Duty charged by the said conversion agent is being availed as Cenvat Credit by the Appellant.

2.2 Proceedings were initiated by the Central Excise Department against the said conversion agents wherein it was alleged that there was short payment of Central Excise Duty due to undervaluation. Pursuant to the said proceedings, the said agents accepted the enhancement of assessment by 4% as pointed out by the Central Excise Department. The differential Excise Duty, consequent to the said enhancement in the valuation, was charged by the conversion agent by raising supplementary excise invoices which was issued to the Appellant.

2.3 The Appellant claimed credit of Central Excise duty charged on aforesaid supplementary invoices which is the subject matter of dispute in the present Appeal. It is the contention of the Central Excise Department that in terms of Rule 9(1)(b) of the CENVAT Credit Rules, 2004, the assessee would not be entitled to claim credit of duty on the strength of supplementary invoices issued by the supplier pursuant to payment of duty that became recoverable on account of non-levy or short levy by reasons of fraud or collusion. Show Cause Notice was issued and the demand proposed therein was confirmed vide adjudication order dated 18.02.2011 consequent to disallowance of Cenvat Credit. The Appeal filed by the assessee before the Ld. Commissioner (Appeals) was also rejected against which the assessee is in appeal before me.

3. Sri S.P.Majumdar, Ld.Advocate appeared for the appellant and Sri A.Roy, Ld. Authorised Representative (A.R.) appeared for the Revenue.

4. The Ld. Advocate appearing for the assessee submitted that the bar of credit under Rule 9(1)(b) of the Credit Rules with regard to supplementary invoices is applicable only when the goods are sold by the supplier, which is not the fact herein. He submitted that the present arrangement does not involve any sale of goods by the conversion agent to the assessee appellant. To support his arguments that restriction for availing credit will only apply in case of sale of goods by the supplier, he relied on the decision of the Tribunal in the case of Karnataka Soaps and Detergents Ltd. vs. CCE, 2005 (192) E.L.T. 892 (Tri. Bang) as well as the decision of the Hon'ble Karnataka High Court in the case of Karnataka Soaps and Detergents Ltd. vs CCE, 2010 (258) E.L.T. 62 (Kar). He also relied on the following decisions which has held the legal position in similar lines:

- United Phosphorus Ltd. vs. Commr, C. Ex & S.T., Surat-II 2014 (313) E.L.T.418 (Tri. Ahmd.)

- Godrej Industries Ltd. vs. CCE, Mumbai-II 2008 (232) E.L.T. 108 (Tri. Mumbai).

5. The Ld. A.R. for the Revenue submitted that the above decisions are applicable only in case of transactions which are in the nature of stock transfer amongst sister units. He submitted that since the Appellant and the conversion agents are in no manner related to each other, but independent manufacturers, the aforesaid decisions would not be applicable in the present case. On the basis of above, he distinguished the above Tribunal decisions to submit that the Appellant is not entitled to Cenvat credit availed on the strength of supplementary invoice of the excise duty paid by the conversion agents pursuant to the recovery proceedings for evasion of duty, in view of specific bar under Rule 9(1)(b) of the Credit Rules. He accordingly prayed that the Appeal be rejected.

6. Heard both sides and perused the appeal records.

7. I find that the only issue to be decided in this appeal is whether the restrictions from availing credit on the strength of supplementary invoice would apply in terms of Rule 9(1)(b) of the Credit Rules.

8. The Revenue does not dispute the legal position that the aforesaid Rule restricting the credit would not apply in case the credit has been availed on goods which are not sold by the supplier manufacturer, as already decided in the above referred judgements. It is the case of the Revenue that the assessee and the conversion agents are neither related nor sister unit and there is no stock transfer amongst the aforesaid parties. On perusal of Rule 9(1)(b), I find that the bar from availing credit on the supplementary invoice is only when the goods are sold to the recipient who has claimed the credit on the basis of supplementary invoices. There is no criterion laid down in the said Rules that the transferring unit should be a sister unit or a related party in order to become eligible for availing credit. The Revenue has not disputed the arrangements between the parties that the converted aluminium ingot has not been sold by the conversion agent to the assessee appellant. In view of the above facts of the case and the legal position already laid down by the Hon'ble Karnataka High Court as well as various coordinate Benches of this Tribunal, in my view, the restriction imposed under Rule 9(1)(b) has no application in the present case so as to deny the credit availed by the Appellant on the basis of supplementary invoices issued by the conversion agents in absence of sale of goods by the conversion agents to the assessee appellant herein.

9. In view of the findings above, the demand cannot be sustained and is hence, set aside. The appeal is allowed with consequential relief as per law.

(Pronounced in the open court on **16.09.2022**)

Sd/
(P. K. Choudhary)
Member (Judicial)

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