

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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.76266 of 2017

(Arising out of Order-in-Original No.72-80/CCE/CEX/RKL/2016-17 dated 31.03.2017 passed by Commissioner of Central Excise, Customs & Service Tax, Rourkela.)

M/s. Hindalco Industries Limited

(Hirakud Complex, P.O. Hirakud, District-Sambalpur, Odisha-768016.)

...Appellant

VERSUS

**Commissioner of Customs, Central Excise & Service Tax,
Rourkela**

.....Respondent

(KK-42, Civil Township, Odisha-769004.)

WITH

(i) Excise Appeal No.75170 of 2014 (M/s. Hindalco Industries Limited Vs. Commissioner of Central Excise, Kolkata-II); (ii) Excise Appeal No.75316 of 2015 (M/s. Hindalco Industries Limited Vs. Commissioner of Central Excise, Kolkata-II); (iii) Excise Appeal No.75995 of 2016 (M/s. Hindalco Industries Limited Vs. Commissioner of Central Excise, Kolkata-II); (iv) Excise Appeal No.79730 of 2018 (M/s. Hindalco Industries Limited Vs. Commissioner of CGST & CX, Howrah Commissionerate); (v) Excise Appeal No.79731 of 2018 (M/s. Hindalco Industries Limited Vs. Commissioner of CGST & CX, Howrah Commissionerate); (vi) Excise Appeal No.79732 of 2018 (M/s. Hindalco Industries Limited Vs. Commissioner of CGST & CX, Howrah Commissionerate);

(i) (Arising out of Order-in-Original No.06/COMMR./CE/KOL-II/Adjn/2013-14 dated 31.10.2013 passed by Commissioner of Central Excise, Kolkata-II.)

(ii) (Arising out of Order-in-Original No.08/COMMR./CE/KOL-II/Adjn/2014-15 dated 19.12.2014 passed by Commissioner of Central Excise, Kolkata-II.)

(iii) (Arising out of Order-in-Original No.22/COMMR./CE/KOL-II/Adjn/2015-16 dated 18.03.2016 passed by Commissioner of Central Excise, Kolkata-II.)

(iv) (v) & (vi) (Arising out of Order-in-Appeal No.214/HWH/XAP-2, 82 & 81/2017-18 dated 29.06.2018 passed by Commissioner of CGST & CX, Kolkata North Commissionerate.)

APPEARANCE

Ms. Payal Bharwani, CA & Shri Deepto Sen, Advocate for the Appellant (s)
Shri P.K.Ghosh, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)**

FINAL ORDER NO 77540-77546/2023

DATE OF HEARING : 23 November 2023
DATE OF DECISION : 23 November 2023

Per : K. ANPAZHAKAN :

There are seven appeals filed by the Appellant. These appeals have been filed against the impugned orders as mentioned below:

- (i) 72-80/CCE/CEX/RKL/2016-17 dtd. 31.3.2017 - involving Rs. 26,29,50,145/- along with interest and equal amount of tax as penalty.
- (ii) 06/Commr/CE/KOL-II/Adjn/2013-14 dt 31.10.2013 - involving Rs. 57,98,371/- along with interest and equal amount of tax as penalty.
- (iii) 08/Commr/CE/Kol-II/Adjn/2014-15 dated 19.12.2014 - involving Rs. 55,70,677/- along with interest and equal amount of tax as penalty.
- (iv) 22/Commr./CE/Kol-II/Adjn/2015-16 dated 18.03.2016 - involving Rs. 59,72,253/- along with interest and equal amount of tax as penalty.
- (v) 04/DC/CE/HD-I/2017-18 dated 02.05.2017 - involving Rs. 39,46,252/- along with interest and equal amount of tax as penalty.
- (vi) 43/ADC/CE/KOL-II/Adjn/2016-17 dated 11.11.2016 - involving Rs. 43,79,937/- along with interest and equal amount of tax as penalty.
- (vii) 03/DC/CE/HD-I/2017-18 dated 02.05.2017 - involving Rs. 39,81,428/- along with interest and equal amount of tax as penalty.

As the issue involved in all these appeals are common, they are taken up together for decision.

2. There are two issues to be decided in these appeals.

(i) Whether the Appellant is eligible to avail CENVAT Credit of Business Support Services received by them from ABMCPL (group company) for the period from April 2006 to March 2016?

(ii) Whether the Appellant is eligible to avail CENVAT Credit on Mining Services received from Avian Overseas Pvt. Ltd. for the period from April 2006 to June 2011? *This issue is to be decided only Appeal No. E/76266/2017.*

3. In respect of the first issue mentioned above, 17,40,76,082/- has been confirmed in the impugned orders along with interest and penalty. The Appellant submits that common infrastructural facilities were provided by ABMCPL to group companies of Aditya Birla group, in the areas of human resource, information technology, business strategies, marketing, legal support, accounting support, knowledge and training etc. At the end of each month, the expenses incurred by ABMCPL to provide such facilities were apportioned and allocated between the group companies in the ratio as decided by the Board of Directors of ABMCPL which was computed by taking into account various elements like profit, revenue, net worth and net block. On such invoices raised by ABMCPL, service tax used to be discharged, which was availed as Cenvat credit by the group companies, including the Appellant, which has been disputed by the department.

4. The Appellant submits that the issue is squarely covered in their own case, reported as **Hindalco Industries Ltd. v. CCE, Kolkata-II, 2023 (6) reported in TMI 457 - CESTAT Kolkata** as well as **Final Order No. 77232-77235/2023 dated 25.09.2023** of this **Tribunal, Kolkata**, wherein it has been held that the services rendered by ABMCPL qualifies as support services for business. It has been held that these services have nexus with the manufacturing of goods by the Appellant and thus, qualify as 'input services'.

5. The Appellant further submits that service recipient cannot be denied the Cenvat credit, where the provision of service and service

tax paid by the service provider has not been disputed by the department at the end of the service provider. In this regard, they placed their reliance on the following decisions:

- **Modular Auto Ltd. v. CCE, Chennai, 2018 (8) TMI 1691 (Madras HC)**
- **Future Generali India Insurance Co. Ltd. V. CC, Mumbai Central – 2023 (4) TMI 922 – CESTAT MUMBAI.**
- **Cholamandalam MS General Insurance Co. Ltd. v. Commr. of GST & CE, Chennai – 2021 (3) TMI 24 – CESTAT CHENNAI**
- **Amara Raja Electronics Ltd. v. CCE, Tirupathi - 2016 (43) S.T.R. 601 (Tri. - Hyd.)**
- **Sarvesh Refractories (P) Ltd. v. Commr. of Central Excise & Customs – 2007 (11) TMI 23 - SUPREME COURT**

Thus, They contended that the demands confirmed in the impugned orders on this count are not sustainable.

6. Regarding the second issue mentioned in para 2 supra, the Appellant submits that they have received mining services from Avian Overseas Private Limited ('**AOPL**') at their Talabira-I mines, Sambalpur, which are captive mines obtained on of lease from the government. As per the admitted facts in impugned order, the services ancillary to mining of coal in the Appellant's mine was used for generation of electricity at their Captive Power Plant located in their factory at Hirakud, Sambalpur, Orissa. The said electricity is supplied to their manufacturing unit for use in manufacture of dutiable goods. Thus, the Appellant claimed the Cenvat credit on the said services since the same have intricate nexus with manufacturing. The Appellant also stated that to the extent the electricity is not used in production, the Cenvat credit was reversed.

7. The Appellant submits that in the impugned order, the adjudicating authority observed that AOPL was providing 'site formation services' and not 'mining services'. Hence, it has no nexus with the manufacturing process of excisable goods. The adjudicating authority has also observed that AOPL issued the invoices on the Appellant's mines and not the factory address/ registered premise. On these ground the credit availed by the Appellant was denied.

8. The Appellant submits that the findings regarding the classification of services procured at mines or the invoices not being addressed to the factory were never alleged in the SCN. The SCN only alleged that the 'mining services' are not specified in the 'inclusive clause' of the definition of 'input services' as a reason for denying the credit thereon. Thus, the findings of the impugned order being beyond the SCN, the same is liable to be set aside on this ground alone. In this regard they placed their reliance on the following decisions:

- **Caprihans India Ltd. v. CCE, 2017 (51) S.T.R. 239 (S.C.)**
- **Inox Leisure Ltd. v. Commr. of ST, Hyderabad, 2022 (60) G.S.T.L. 326 (Tri. - Hyd.) as affirmed in 2022 (61) GSTL 342 (Supreme Court)**

9. The Appellant submits that the classification of service as either 'mining service or 'ancillary to mining service' or 'site formation services' is not relevant to determine the eligibility to Cenvat credit on the subject services, inasmuch as the services are used in the mines, coal extracted wherefrom has been used in their manufacturing unit. In this regard, reliance is placed on **CCE, Raipur v. Jindal Steel and Power Ltd., 2017 (3) TMI 59-CESTAT, New Delhi.**

10. The Appellant submits that the nexus between the services at mines and the manufacturing of final products at their manufacturing unit is clearly evident since as per the admitted facts, the coal mined is used to generate electricity, which is used in the factory to run

machines for production of final products. The services obtained fall under the 'means' clause of the definition of input services, being used in or in relation to the manufacture of final products. The non-specification of the same in the 'inclusive portion' is not fatal to the claim of Cenvat credit on subject services by the Appellant. The mines being captive mines taken on lease from government, and coal obtained being used in the captive power plant of the Appellant, the Cenvat credit on services used in mines is admissible. In this regard, they placed their reliance on the following judgments:

- **Usha Martin Ltd. v. CCE, Jamshedpur, 2023 (6) TMI 1153 - CESTAT Kolkata** – various input services including transportation services received and used at mines.
- **India Cements Ltd. v. CCE, Guntur, 2016 (45) S.T.R. 557 (Tri. – Hyd.)** – input services used in captive mines.
- **Vikram Cement v. CCE, Indore - 2006 (197) E.L.T. 145 (S.C.)** - pari-materia judgment for capital goods used in captive mines.
- **Hindalco Industries Ltd. v. CCE, Allahabad, 2017 (52) S.T.R. 408 (Tri. – Del.)** – input services used in captive power plant located outside factory.
- **Hindustan Zinc Ltd. v. CCE, Jaipur-II, 2017 (9) TMI 271 - CESTAT New Delhi** – consultancy services to lay laying pipelines for water supply to mine.
- **Northern Coalfields Ltd. v. CCE, Bhopal, 2017 (5) G.S.T.L. 217 (Tri. - Del.)** – tyre retreading and vehicle maintenance services used in mines.

11. Regarding the Invoices not addressed to the factory / registered premises, the Appellant submits that even if such invoices were addressed to the mines, the Cenvat credit ought not be denied thereon on account of such procedural infirmities, in the absence of any dispute as to usage of such services by the Appellant. In this regard, reliance is placed on the decision in the case of **Karaikal Chlorates v.**

CCE, Puducherry, 2023 (69) GSTL 405 (Tri.-Chennai). Thus, the Appellant contended that Cenvat credit on the subject services obtained from AOPL in its captive mines cannot be denied.

12. The Ld. D.R. reiterated the findings in the impugned order.

13. Heard both sides and perused the appeal documents.

14. We observe that there are two issues to be decided in these appeals. The first issue to be decided is whether the Appellant is eligible to avail CENVAT Credit of Business Support Services received by them from ABMCPL (group company) for the period from April 2006 to March 2016?. We observe that the issue is no longer *res integra as the same issue has been decided by this Tribunal* in Appellant's own case, reported as Hindalco Industries Ltd. v. CCE, Kolkata-II, 2023 (6) reported in TMI 457 - CESTAT Kolkata. The relevant portion of the said decision is reproduced below:

10. We observe that the Appellant has provided various services to their group companies to enable them to optimize the benefit of specialization and achieve economies of scale. The Appellant claimed that the services provided by ABMCPL to the group companies fall within the definition of 'Business Support Service' defined under Section 65(104c) of the Finance Act, 1994, which is reproduced below:-

"support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, [operational or administrative assistance in any manner], formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

Explanation- For the purpose of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel

to handle messages, secretarial services, internet and telecom facilities, pantry and security;]

11. From the above definition it can be seen that providing operational or administrative assistance in any manner or providing infrastructural support service or managing distribution and logistics service, fall within the ambit of 'Business Support Service'. The ABMCPL has been providing these services to their group companies. As per the definition of BSS mentioned above, the services rendered by ABMCPL to their group companies would rightly fall under the category of 'Business Support Service'. We observe that ABMCPL has been rightly paying Service Tax under BSS for the services rendered by them to their group companies. The department has also not disputed the payment of service tax by ABMCPL under the category of BSS.

12. The Appellant referred the Board Circular No.102/3/2009-S.T. dated 23.02.2009 and TRU's Letter No.334/4/2006-TRU, dated 28.02.2006 which clarified the scope of BSS. As per the Board Circular cited above, services which are in the nature of assistance or support provided by the principal to the service recipient would fall under BSS. In the present case, the services rendered by ABMCPL being in the nature of support service provided to the Appellant, qualify as BSS as defined under section 65(104c) of the Finance Act, 1994. The manner of arriving at the value of services rendered would not change the nature of BSS provided by ABMCPL i.e., whether ABMCPL only recovered the expenses incurred or even charged a profit element. Section 67 of the Finance Act, 1994 provides that value of any taxable service is the gross amount charged for such service provided. It neither restricts a service provider from allocating expenses to the recipients nor mandates charging profit margins in exchange for the provision of such services. Therefore, even if ABMCPL merely apportioned expenses incurred by it to support the group entities, such apportioned amount represents the value of taxable service of BSS provided by ABMCPL.

13. The Appellant availed BSS provided by the ABMCPL, wherein ABMCPL carried on these functions on behalf of the Appellant, thus enabling the Appellant to benefit from specialization in their manufacturing activity and achieve economies of scale. The nature of

the activities so performed and their close nexus with the business of the Appellant is also clearly visible from the mails exchanged by ABMCPL with the group companies.

14. Further, most of the activities done by ABMCPL are covered under the inclusive portion of the definition of 'input services' viz. advertisement and market research, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, security, legal services etc.

15. Hence the Appellant is entitled to avail the CENVAT Credit of service tax paid on BSS since they have a nexus with the overall business activity of manufacturing final goods and are essential for the day-to-day operations of the Appellant.

16. In view of the above discussion, we hold that the services rendered by the ABMCPL is rightly classifiable under the category of 'Business Support Service' and ABMCPL has rightly paid Service Tax under the said category. The service tax paid by ABMCPL has been rightly distributed to their group companies, including Appellant.

15. We also observe that Cenvat credit ought not to have been denied to service recipient when service tax paid by service provider has not been disputed at service provider's end. The service provider ABMCPL has filed returns intimating the payment of service tax on the Business support Service rendered by them to its group companies and filed their returns. The department has not challenged the assessment made by ABMCPL in the returns and accepted it. Without challenging the assessment, the department cannot question the Cenvat credit passed on by ABMCPL to the Appellant. We observe that the decisions cited by the Appellant mentioned in Para 5 supra supports this view. By following the decisions cited above, we hold that the demands confirmed in the impugned orders along with interest and penalty on this count are not sustainable and accordingly, we set aside the same.

16. The next issue to be decided is whether the Appellant is eligible to avail CENVAT Credit on Mining Services received from Avian Overseas

Pvt. Ltd. for the period from April 2006 to June 2011? We observe that Cenvat credit amounting to Rs.11,85,22,981/- along with interest and penalty has been confirmed in the impugned order. The Appellant submits that they are entitled to avail all input services received and used in mines in accordance with the definition of 'input services'. We observe that the services ancillary to mining of coal in the Appellant's mine was used for generation of electricity at their Captive Power Plant located in their factory at Hirakud, Sambalpur, Orissa. The said electricity is supplied to their manufacturing unit for use in manufacture of dutiable goods. Thus, we observe that the services have intricate nexus with manufacturing of dutiable goods. The Appellant cited a plethora of decisions in support of their contention that the input services used in captive mines are available as credit to the manufacturing unit.

17. In the case of **India Cements Ltd. v. CCE, Guntur, 2016 (45) S.T.R. 557 (Tri. – Hyd.)**, the tribunal has held that the input services used in captive mines are available as credit. The relevant portion of the decision is reproduced below:

11. In respect of Appeal No. 20555/2015, I find that none of the input services on which credit has been availed by the appellant are excluded or barred by the provisions of the said Rule 2(l) as amended w.e.f. 1-3-2011. I also find that the said input services are very much in the nature of services directly or indirectly required in relation to the manufacturing/production activities carried out by the appellant at the impugned mine. In the circumstances, I hold that the disputed credits amounting to Rs. 83,823/- availed by the appellants on the aforesaid input services are eligible and correct in law. In consequence, the portion of impugned Order-in-Appeal Nos. 01 and 02/2014 upholding the order dated 26-3-2014 of adjudicating authority, who inter alia disallowed the aforesaid amount, will require to be set aside, which I hereby do. Appeal No. 20555/2015 is thus allowed in toto.

18. In the case of **Vikram Cement v. CCE, Indore - 2006 (197) E.L.T. 145 (S.C.)**, the Hon'ble Supreme Court has held that capital goods and inputs used in captive mines available as credit to the manufacturing unit. The relevant portion of the decision is reproduced below:

5.As regards the Modvat/Cenvat credit on capital goods, if the mines are captive mines so that they constitute one integrated unit together with the concerned cement factory, Modvat/Cenvat credit on capital goods will be available to the assessee. On the other hand, if the mines are not captive mines but they supply to various other cement companies of different assessees, Modvat/Cenvat credit on capital goods used in such mines will not be available to the concerned assessee under the appropriate Modvat/Cenvat Rules. The matters are remanded to the respective original authorities for decision only on the above issue.

19. By following the decisions cited above, we hold that the Appellant is eligible for the Cenvat credit of the input services received and used in the captive mines as the said services were used in mining of coal which was used for generation of electricity at their Captive Power Plant and the electricity was used in the manufacturing unit for manufacture of dutiable goods. Thus, we hold that there is a clear nexus between the input services on which Cenvat credit was availed and the manufacturing activity undertaken by the Appellant. Thus, we hold that the impugned order demanding reversal of such credit along with interest and penalty is not sustainable and accordingly, we set aside the same.

20. Regarding the grounds taken by the adjudicating authority to confirm the demands in the impugned order, we observe that the adjudicating authority has observed that AOPL was providing 'site formation services' and not 'mining services'. Hence, it has no nexus with the manufacturing process of excisable goods. We observe that the classification of service as either 'mining service or 'ancillary to mining service' or 'site formation services' is not relevant to determine the eligibility to Cenvat credit on the subject services, inasmuch as the services are used in the mines, coal extracted wherefrom has been used in their manufacturing unit. Accordingly, we hold that the demands cannot be confirmed on this ground. The adjudicating authority has also observed that AOPL issued the invoices on the Appellant's mines and not the factory address/ registered premise. On

these ground the credit availed by the Appellant was denied. We observe that even if such invoices were addressed to the mines, the Cenvat credit ought not be denied thereon on account of such procedural infirmities, in the absence of any dispute as to usage of such services by the Appellant. Accordingly, we hold that the Cenvat credit cannot be denied on this ground.

21. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the Appellant.

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

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Tushar