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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 351 of 2012

(Arising out of Order-in-Original No.16/Commissioner/CE/Kol-II/2011-12 dated 21/03/2012 passed by Commissioner of Central Excise, Kolkata-II.

M/s. Hindalco Industries Ltd
(Belur Works, 39, G. T. Road,
P. O. Belurmoth-711202, Dist. Howrah)

Appellant

VERSUS

Commr. of Central Excise, Kolkata-II
(Customs House, M. S. Building, 15/1, Strand Road, Kolkata-700001)

R**espondent**

APPEARANCE :

Mr. Satyaprem Majumdar, Advocate for the Appellant
Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER NO. 77589/2023

Date of Hearing : 16 November 2023
Date of Decision: 16 November 2023

PER R. MURALIDHAR:

The Appellants were issued Show Cause Notice on the ground that the freight charges collected by them from their buyers was not included in the assessable value. After due process, the demand was confirmed. Being aggrieved, the Appellant is before the Tribunal.

2. The Learned Advocate submits that the sales takes place at the factory of the Appellant therefore, they are eligible to get the abatement of the freight charges collected by them from their buyers. He submits that this issue is no more *res integra*. This issue has been decided by the Hon'ble Supreme Court in the case of CCE, Nagpur Vs. Ispat Industries Ltd.-2015 (324) ELT 670 (SC). He further submits that this decision has been followed by several Tribunals. He prays that the present Appeal may be allowed.

3. The Learned AR reiterates the findings of the lower authority.

4. Heard both sides and perused the documents.

5. After going through the factual matrix, we find that the issue is squarely covered by the judgment of Hon'ble Supreme Court in the case of Ispat Industries Ltd. wherein it has been held as under:-

> ***23.*** *It is clear, therefore, that on and after 14-5-2003, the position as it obtained from 28-9-1996 to 1-7-2000 has now been reinstated. Rule 5 as substituted in 2003 also confirms the position that the cost of transportation from the place of removal to the place of delivery is to be excluded, save and except in a case where the factory is not the place of removal.*
>
> ***32.*** *It will be seen that this is a decision distinguishing the Escorts JCB's case on facts. It was found that goods were to be delivered only at the place of the buyer and the price of the goods was inclusive of transportation charges. As transit damage on the assessee's account would imply that till the goods reached their destination, ownership in the goods remained with the supplier, namely, the assessee, freight charges would have to be added as a component of excise duty. Further, as per the terms of the payment clause contained in the procurement order, payment was only to be made after receipt of goods at the premises of the buyer. On facts, therefore, it was held that the sale of goods did not take place at the factory gate of the assessee. Also, this Court's attention was not drawn to Section 4 as originally enacted and as amended to demonstrate that the buyer's premises cannot, in law, be "a place of removal" under the said Section.*
>
> ***33.*** *As has been seen in the present case all prices were "ex-works", like the facts in Escorts JCB's case. Goods were cleared from the factory on payment of the appropriate sales tax by the assessee itself, thereby indicating that it had sold the goods manufactured by it at the factory gate. Sales were made against Letters of Credit and bank discounting facilities, sometimes in advance. <u>Invoices were prepared only at the factory directly in the name of the customer in which the name of the Insurance Company as well as the number of the transit Insurance Policy were mentioned. Above all, excise invoices were prepared at the time of the goods leaving the factory in the name and address of the customers of the respondent. When the goods were handed over to the transporter, the respondent had no right to the disposal of the goods nor did it reserve such rights inasmuch as title had already passed to its customer.</u> On*

facts, therefore, it is clear that Roofit's judgment is wholly distinguishable. Similarly in Commissioner Central Excise, Mumbai-III v. M/s. EMCO Ltd., this Court re-stated its decision in the Roofit Industries' case but remanded the case to the Tribunal to determine whether on facts the factory gate of the assessee was the place of removal of excisable goods. This case again is wholly distinguishable on facts on the same lines as the Roofit Industries case. [Emphasis supplied]

6. Respectfully following this judgment, we set aside the impugned OIO and allow the Appeal with consequential relief, if any, as per law.

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

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Pooja