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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 1009 of 2011

(Arising out of Order-in-Original No. CCE/BBSR-II/NO-35/COMMISSIONER/2011 dated 26.09.2011 passed by the Commissioner, Central Excise, Customs and Service Tax, Bhubaneswar-II, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007)

M/s. Hindalco Industries Limited **: Appellant**
Hirakud Complex, Hirakud – 768 016
District: Sambalpur (Orissa)

VERSUS

Commissioner of Central Excise, Customs and Service Tax **: Respondent**
Bhubaneswar-II, C.R. Building, Rajaswa Vihar,
Bhubaneswar – 751 007

WITH

Excise Appeal No. 663 of 2012

(Arising out of Order-in-Original No. CCE/BBSR-II/NO-38-39/COMMISSIONER/2012 dated 31.07.2012 passed by the Commissioner, Central Excise, Customs and Service Tax, Bhubaneswar-II, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007)

M/s. Hindalco Industries Limited **: Appellant**
Hirakud Complex, Hirakud – 768 016
District: Sambalpur (Orissa)

VERSUS

Commissioner of Central Excise, Customs and Service Tax **: Respondent**
Bhubaneswar-II, C.R. Building, Rajaswa Vihar,
Bhubaneswar – 751 007

AND

Excise Appeal No. 71439 of 2013

(Arising out of Order-in-Original No. CCE/BBSR-II/NO. 09/COMMISSIONER/2013 dated 16.09.2013 passed by the Commissioner, Central Excise, Customs and Service Tax, Bhubaneswar-II, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007)

M/s. Hindalco Industries Limited **: Appellant**
Hirakud Complex, Hirakud – 768 016
District: Sambalpur (Orissa)

VERSUS

Commissioner of Central Excise, Customs and Service Tax **: Respondent**
Bhubaneswar-II, C.R. Building, Rajaswa Vihar,
Bhubaneswar – 751 007

APPEARANCE:

Shri Rahul Tangri and Shri Vasudev A., Advocates for the Appellant

Shri K. Chowdhury, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 75498-75500 / 2024

DATE OF HEARING / DECISION: 06.03.2024

Order : [Per Shri Ashok Jindal]

All the appeals are having a common issue and therefore, all are disposed of by a common order.

2. The facts of the case are that the appellant is engaged in the manufacture of electrodes of Aluminium and carbon electrodes paste. They were availing CENVAT Credit of duty paid on inputs and capital goods as well as Service Tax paid on input services, and utilized the same for payment of duty on their final product. In order to manufacture Aluminium, the appellant requires various inputs, which are procured from time to time. During the relevant period i.e., February 2007 to January 2012, the appellant procured various materials for consumption in the process of manufacture of Aluminium, namely: -

i. Pre-baked Anode
ii. Cathode Carbon Block
iii. Ceramic Fibre Blanket Cera
iv. Aluminium Pipes and Tubes
v. Ceramic Foam Filter Plate
vi. Feed Tip Board (without paper coating case)
vii. Fiberfrax Cervac Board
viii. CF Paper DS
ix. Silicon Carbide Block (IMP)

and the appellant availed CENVAT Credit on such consumable materials at the time of receipt since they were inputs for the appellant's Aluminium manufacturing business. The appellant did not claim depreciation on the said goods because the same were consumable items and have to be procured from time to time. The process of manufacture of Aluminium starts with Bauxite ore leading to extraction of Alumina (Al_2O_3); electrolytic reduction then separates Alumina into Aluminium and Oxygen. During the process of electrolysis, each pot consists of Cathode carbon block linings, which act as negative electrodes, and pre-baked Anodes, where the former facilitates reduction and latter gets oxidised forming Carbon Dioxide and Oxygen. Regular Anode and Cathode replacement is essential for sustained production since the former is consumed and latter gets eroded.

3. The appellant were issued three Show Cause Notices with regard to the availment of CENVAT Credit on pre-baked Anode and Cathode carbon block, proposing to deny CENVAT Credit on electrodes on the ground that the appellant has incorrectly considered the electrodes as "inputs" and availed full credit whereas they are capital goods, in respect of which only 50% of CENVAT Credit is available in the year of receipt as per the CENVAT Credit Rules, 2004.

3.1 Further, in the Show Cause Notice dated 11.06.2010, issued for the period from February 2007 to March 2010, demands were raised for Ceramic Fibre Blanket Cera, Aluminium Pipes and Tubes, Ceramic Foam Filter Plate, Feed Tip Board (without paper coating case), Fiberfrax Cervac Board, Silicon Carbide Block (IMP) and C.F. Paper DS, alleging that the said goods are also capital goods.

4. The appellant contested the Show Cause Notices and submitted that the electrodes that are used in the electrolytic processes are "input". It was also contended that the electrodes fulfilled all the criteria mentioned in the definition of "input" and therefore, the same indeed qualifies as an input within the meaning of Rule 2(k) of the CENVAT Credit Rules, 2004.

4.1 Without prejudice, it was submitted that there is no provision in the Rules to disallow 50% of credit on electrodes since even if the same are classified as 'capital goods', still the remaining 50% of the credit would be eligible in the subsequent year.

5. The adjudicating authority confirmed the demands against the appellant and denied CENVAT Credit. Against the said orders, the appellant is before us.

6. The Ld. Counsel appearing on behalf of the appellant submits that the issue is no longer *res integra* since this Tribunal held that electrodes used in the process of electrolysis are inputs, in the case of *Commissioner of G.S.T. and Central Excise v. M/s. Chemfab Alkalies Limited [2023 (7) TMI 947 – CESTAT, Chennai] (Final Order No. 40609 of 2023 dated 24.07.2023 in Excise Appeal No. 40446 of 2014)*; therefore, it is contended that the demands raised by denying the CENVAT Credit are not sustainable against the appellant.

6.1 It is also contended that Circulars issued by the Board also clarified that carbon electrodes are inputs, which are binding on the Department. The same has been clarified by way of Circular No. B.22/51/86-TRU dated 21.10.1986.

6.2 It is submitted that the CENVAT Credit was denied on other items which were also inputs which have been used in the manufacture of their final product; therefore, CENVAT Credit cannot be denied on the said items as the same are inputs.

6.3 He further submitted that the extended period of limitation is not invokable in the facts and circumstances of the case.

6.4 In view of this, he prayed that the impugned orders are to be set aside.

7. The Ld. Authorized Representative appearing on behalf of the Revenue reiterated the findings in the impugned orders.

8. Heard the parties and considered the submissions.

9. We find that the Circular No. B22/51/86-TRU dated 21.10.1986 clarified the position that: -

> *"3. As regards carbon electrodes used in the manufacture of aluminium, Modvat credit appears to have been denied on the ground that graphite electrodes are to be treated as "machines" since they fall under Chapter 85 and all goods under Chapters 84 or 85 should be treated as machines in view of Section XVI Note 5 which reads as under:-*
>
> > *"For the purposes of these notes, the expression 'machine' means any machine, machinery, plant, equipment, apparatus or appliance cited in the heading of Chapter 84 or 85."*
>
> *4. This contention does not appear to be correct. It is only for the purposes of Notes 1 to 4, Section XVI that the word 'machine' (used in Notes) refers to any machine, machinery, plant, equipment, apparatus or appliance mentioned in the heading of Chapter 84 or 85. Otherwise, the whole phrase "machine, machinery, plant, equipment, apparatus, etc." would have to be used wherever the word "machine" is used in the Notes. <u>As carbon electrode is essential for manufacture of aluminum, it should be eligible for Modvat credit, as it would satisfy the criterion of input.</u>"*

(Emphasis added)

9.1 Further, Circular No. 54/89/Cx.8 dated 04.12.1989 also clarifies the position, the relevant portion of which reads as under: -

> *"2...... The Deputy Chief Chemist has confirmed that Carbon Electrodes are used in the manufacture of Aluminium, and therefore, should be regarded as an 'input'.*
>
> *3. In view of the above, the instructions contained in Board's letter F. No. B-22/51/86-TRU, dated 21-10-1986 are hereby reiterated."*

10. We further take note of the fact that the issue whether electrodes can be treated as 'input' for availment of CENVAT Credit or 'capital goods' came before the Tribunal in the case of *M/s. Chemfab Alkalies Limited (supra)* wherein the Tribunal observed as under: -

> *"5. The issue that arises for consideration is whether the Titanium Cathodes used in the course of manufacture of Caustic Soda Lye and Liquid Chlorine is eligible for credit as 'inputs'. The Tribunal in the case of Collector of Central Excise Vs Meetur Chemical & Industrials (supra) held that cathodes used in the electrolytic process being incidentally consumed in the manufacture of caustic soda is an 'input' as defined under erstwhile Rule 57A of Central Excise Rules, 1944 and eligible for modvat credit. The revision application filed by the department against this decision of the Tribunal was dismissed by the Tribunal vide Final Order No.170/1995 and the order has been accepted by the Department. Similarly, reference application was filed in the case of CCE Vs Modi Alkalies & Chemicals Ltd. - 1994 (74) ELT 966 (Tri.) and in the case of CCE Vs Kanoria Chemicals & Industries (supra). The appeals filed by the department against such decisions were also dismissed. In the case of Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. - 1988 (35) ELT 227 (T) it was categorically held that electrodes takes part in the manufacturing process and though no doubt that electrodes did not enter the stream of manufacture as raw materials, they are eligible for credit. This decision of the Tribunal was upheld by the Apex Court as reported in 1992 (59) ELT A77 (SC). The decision of the Tribunal rendered in Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd (supra) has been relied in various other cases to hold that anodes/cathodes used in the electrolytic process is eligible for credit as inputs. We do not find any grounds to deviate from the view taken by the Commissioner (Appeals). The Department's appeal is devoid of merits. The same is dismissed."*

11. As the issue is no longer *res integra* in view of the clarifications issued by the C.B.E.C. by way of Circulars from time to time and the decision in the case of *M/s. Chemfab Alkalies Limited (supra)*, we hold that on all the items which have been used by the appellant in the process of manufacture of their final product, the appellant is entitled to avail CENVAT Credit, as inputs.

12. Therefore, we do not find any merit in the impugned orders and accordingly, the same are set aside.

13. The appeals filed by the appellant are allowed.

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

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sdd