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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 76330 of 2014

(Arising out of Order-in-Appeal No. 30/Kol-II/2014 dated 02.07.2014 passed by the Commissioner of Central Excise (Appeals), Kolkata-III Kendriya Utpad Shulk Bhawan, R. B. Connector, Rajdanga Main Road, 180, Shantipally, 6TH Floor, Kolkata 700107)

M/s. L. Madanlal (Aluminium) Limited **: Appellant**
2/1, Haren Mukherjee Road,
Belurmath, Howrah 711 202

VERSUS

Commissioner of Central Excise , Kolkata-II **: Respondent**
Kendriya Utpad Shulk Bhawan, R. B. Connector,
Rajdanga Main Road,
180, Shantipally, 6TH Floor, Kolkata 700107

APPEARANCE:

Ms. Subhangi Lata, Advocate for the Appellant

Shri P. K. Ghosh, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.76570/2024

DATE OF HEARING / DECISION: 30.07.2024

Order: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order wherein demand of CENVAT Credit has been confirmed, along with interest, and penalty has been imposed in terms of Rule 25(1)(a) and (d) of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944.

2. The facts of the case are that the appellant is engaged in manufacture of utensils and notch bar of Aluminium. The appellants were engaged in

conversion of Aluminium Scrap and scalping into Aluminium ingots against payment of conversion charges @ Rs.2500/- per M.T. on behalf of M/s. Hindalco Industries Limited as per the agreement entered into by them during the period from 2005-06 to 2008-09. As per the agreement, a normal melting loss of 5% of input was allowed. On scrutiny of records and documents of the appellant, the Revenue felt that the appellant had not made sufficient value addition on Aluminium ingots, so manufactured and cleared by them.

2.1. Accordingly, the appellant agreed with the observation of the respondent and enhanced the value of the said converted goods viz. Aluminium ingots @ 4% on the assessable value and paid the differential duty. Thereafter, the appellant issued supplementary invoices for passing CENVAT Credit to M/s. Hindalco Industries Ltd.

3. The Revenue felt that the appellant had suppressed the fact of such undervaluation during the aforesaid period and contravened the provisions of Section 4(1)(b) of the Central Excise Act, 1944 read with the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and Rules 4,6 and 8 of the Central Excise Rules, 2002, with an intent to evade payment of Central Excise Duty. It was alleged that the appellant had contravened Rule 9(1)(b) of the CENVAT Credit Rules, 2004 by irregularly raising supplementary invoices.

4. Accordingly, a Show Cause Notice was dated 29.04.2010 issued to the appellant with a direction to explain why CENVAT Credit of Rs.4,64,466/- should not be demanded and recovered from them

along with appropriate interest, under proviso to Section 11A(1) and Section 11AB of the Act and penalty equivalent to the demand should not be imposed.

5. The Show Cause Notice was adjudicated and the demand was confirmed along with interest and penalty equal to the amount of CENVAT Credit was also imposed

5.1. The said order was challenged before the Ld. Commissioner (Appeals), who affirmed the order of the ld. adjudicating authority vide the impugned order.

Against the said order, the appellant is before us.

6. The Ld. Counsel appearing on behalf of the appellant submits that the appellant is engaged in the activity of conversion of Aluminium scrap into Aluminium ingots and for that, the appellant is charging Rs.2,500/- per M.T. from M/s. Hindalco Industries Ltd. as conversion charges and on the said amount, they are paying duty; but the Revenue has felt that it is a case of undervaluation. It is submitted that the appellant, instead of going into litigation, accepted the proposal made by the Revenue and made an addition of 4% in the assessable value and paid duty accordingly; thereafter, the appellant has issued supplementary invoices on M/s. Hindalco Industries Ltd.; however, instead of issuing a Show Cause Notice to M/s. Hindalco Industries Ltd., the Revenue sought reversal of CENVAT Credit availed by M/s. Hindalco Industries Ltd. by issuing the Show Cause Notice to the appellant.

6.1. He contended that It is a case where the appellant has paid duty and hence, the matter ends there itself; however, the Revenue, instead of issuing the Show Cause Notice to M/s. Hindalco Industries Ltd., sought recovery from the appellant and to impose penalty on the appellant; accordingly, these proceedings were initiated, which are in violation of the law. Therefore, it is prayed that the impugned order is to be set aside.

7. On the other hand, the Ld. Authorized Representative for the Revenue supported the impugned order.

8. Heard the parties and considered their submissions.

9. We find that in this case, the Revenue has accepted that the appellant has paid duty, which had been alleged to them on undervaluation.

9.1. However, it is not understandable as to why CENVAT Credit has been sought to be reversed by the appellant, which was never taken by the appellant in this case. When the appellant had not taken any CENVAT Credit, we are afraid and do not see any reason as to why recovery of CENVAT credit of duty paid by them. In these circumstances, the Show Cause Notice issued to the appellant is violation of the Central Excise Act and/or Rules and therefore, the impugned proceedings against the appellant are set aside.

10. Consequently, we hold that no recovery can be made from the appellant by way of reversal of CENVAT Credit along with interest and imposing penalty on the appellant.

11. In view of this observation, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Dictated and Pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

rkp