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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.626 of 2010

(Arising out of Order-in-Appeal No.43/KOL-II/2010 dated 04.05.2010 passed by Commissioner(Appeals) of Central Excise, Kolkata-II.)

M/s. Hindalco Industries Ltd.

(Belur Works, 39, G.T. Road, P.O. Belurmoth-711202, Dist. Howrah.)

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-II

.....Respondent

(15/1, Strand Road, Custom House, M.S. Building, Kolkata-700001.)

APPEARANCE

Shri Deepro Sen & Shri Vasudev A., Advocates for the Appellant (s)
Shri P.K.Ghosh, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 75160/2025

DATE OF HEARING : 15.01.2025
DATE OF DECISION : 15.01.2025

Per : R. MURALIDHAR :

M/s. Hindalco Industries Limited, Belur (hereinafter referred to as the '**Appellant**'), formerly known as Indian Aluminium Co. Ltd., is *interalia* engaged in the manufacture and clearance of rolled products of Aluminium falling under Chapter Heading 7606 & 7607 of the First Schedule to the Central Excise Tariff Act, 1985.

2. The Appellant receives duty paid input material such as ingots required for the manufacture of finished products from their own factory/unit at Hirakud on payment of duty. Such input materials being cleared to the Appellant by the Hirakud unit are valued at 110% of the cost of production as per Rule 8 of theCentral Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (hereinafter referred to as '**Valuation Rules**'). Such products received by the Appellant are worked upon by the Appellant and subsequently, a part

of the finished products iscleared to the Appellant’s own factories/units at Hirakud, Kalwa, Taloja, Silvassa, and Belgaum.

3. The assessable value of the inter-unit transfers by the Appellant is also determined on cost-construction method, i.e., 110% of the cost of production as per Rule 8 of the Valuation Rules. The cost of production determined for the final products cleared to the other factories/units of the Appellant is the sum total of the actual cost of raw materials received from Hirakudunit, fabrication costand conversion cost incurred for manufacture of final product at Belur factory.

4. The Appellant was issued a Show Cause Notice,invoking the extended period of limitation, by alleging that the Appellant while stock transferring the goods to its related units, undervalued the same, thereby contravening Section 4(1)(b) of the Central Excise Act, 1944 read with proviso to Rule 9 and Rule 8 of the Valuation Rules. The crux of the allegation is that the Appellant, while computing the cost of production for the relevant period (01.07.2005 to 31.12.2005), considered the cost of raw materials as per the Cost Certificate instead of the assessable value of raw materials declared in the invoices when the Appellant received such inputs from its related units. Accordingly, it was alleged that the Appellant undervalued to the extent of3,82,622 kgs of goods stock transferred, thereby leading to short payment of duty amounting to Rs. 1,72,872/-.

5. The Appellant duly furnished a detailed reply [now given at *pages 52 to 69 of the Appeal Paper Book*] to the underlying Show Cause Notice rebutting all the allegations made in the underlying Show Cause Notice. However, the Order-in-Original dated 30.10.2007 was passed confirming the demand based on the finding that the Appellant had undervalued the goods during inter-unit transfer by taking the value of raw materials as per the cost certificate which is less than the value on the invoices vide which the Appellant received the goods.

6. The Appellant being aggrieved by the Order dated 30.10.2007, preferred an appeal before the Ld. Commissioner (Appeal) [*Copy of*

appeal enclosed in pages 75 to 96 of the Appeal Paper Book].The Appellant duly reiterated in the appeal that the actual cost of raw materials has to be taken into consideration for the purpose of valuation of cost of production and not the 110% of the value of raw materials as declared in invoices by the Hirakud unit while stock transferring the inputs to the Appellant.

7. Without considering such submissions, the impugned Order dated04.05.2010 [***Pgs 111 to 122 of the Appeal Paper Book***] upheld the demand of excise duty of Rs. 1,69,482/- and Education Cess of Rs. 3,390/-, along with applicable interest and equivalent penalty.The impugned order adopted theassessable valueof the raw materials, i.e., ingots, declared in the invoices, which were received from the Hirakud unit, instead of the actual costswhile arriving at the cost of production of the rolled products stock transferred by the Appellant to its other units as per the Cost Certificate. The impugned Order was passed based on the finding that the value of the raw materials which is determined under Rule 8 of the Valuation Rules while transferring the goods to the Appellant would prevail at all stages.

8. The Ld.Counsel submits that the entire demand is not sustainable on the ground of revenue neutrality. The final product cleared from the Appellant's factory to their other units are used by the other factories in the manufacture of their dutiable finished products which are cleared by them on payment of applicable excise duty. The other factories of the Appellant are availing the credit of duty paid by the Appellant and utilizing the same for payment of duty on the final product cleared. It is submitted that the differential duty confirmed shall be available as credit to the Appellant's other factories/units. Hence, demand of differential duty is clearly revenue neutral.

9. It is submitted that this Hon'ble Tribunal in the Appellant's own case **Hindalco Industries Ltd. v. Commissioner of Central Excise, Bhubaneswar-II – 2023 (5) TMI 720 – CESTAT Kolkata**concerning an issue pertaining to valuation of inter-unit transfer in, had held that no demand is sustainable in cases of revenue neutral situations.

10. Based on this submission, he prays that the Appeal may be allowed on merits.

11. Heard the Ld.AR for the department, who reiterates the findings of the lower authority.

12. We have heard both sides and perused the appeal papers and cited case laws.

13. We find that the issue is no more *res integra*. In the case of **Hindalco Industries Ltd. v. Commissioner of Central Excise, Bhubaneswar-II**, cited supra, this Bench has held as under:-

> *"15. The Appellant has argued that the entire exercise is revenue neutral as the duty paid by them will be available as credit for their sister unit. We agree with this view of the Appellant. The duty paid by the Appellant would be available as credit to their sister unit. This the entire exercise is revenue neutral…..*
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> *16. We find the above decisions are squarely applicable to the Appellant. As the entire exercise would be revenue neutral, there is no loss of revenue to the exchequer."*

14. On an identical issue in the case of **M/s H. V. Transmission Ltd. v. CCE, Jamshedpur - 2023 (12) TMI 118 – CESTAT Kolkata**, this Bench has held as under:-

> *The Appellant was 100% fully owned subsidiary of M/s. Tata Motors Limited during the period under dispute i.e. April 2000 to March 2001. Subsequently, the appellant company was amalgamated and merged with M/s. Tata Motors Ltd.. The issue is as to whether the assessable value followed by the appellant for clearing their gear boxes to M/s. Tata Motors Ltd. (TML) was correct or not. The appellant has followed the cost + 15% for arriving at the assessable value. The Department alleged that certain elements of cost were not included in the computation of the total cost and accordingly the demand was raised.*
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> *2. The Ld.Counsel submits that the entire issue is that of revenue neutrality. The excise duty paid by the appellant was*

availed as Cenvat Credit by TML. He relies on the following case law:-

a) Jai Balaji Indus. V. CCE, Bolpur
[2023 (6) TMI 1102-CESTAT Kolkata]
b) HIndalco Indus. Ltd. v. CCE, Bhubaneswar-II
[2023 (5) TMI 720 – CESTAT Kolkata]

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8. We find that the issue is squarely covered by the cited decisions of this Tribunal, wherein it has been held that when the duty paid by the parent unit is eligible as Cenvat Credit to the receiving unit, the entire proceeding becomes revenue neutral.

9. We also find force in the Appellant's submissions that the Department has issued the Show Cause Notice in a belated way though all the details were available with the Department in view of their Monthly Returns being filed. Since the issue is that of revenue neutrality, in such a case, it has been held that the question of suppression would not arise.

10. Therefore, in view of the foregoing, we allow the appeals both on merits as well as on limitation. The Appellant would be eligible for consequential relief, if any, as per law.

15. Following the ratio of the cited case laws, we set aside the impugned order and allow the Appeal.

16. The Appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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