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

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 78666 of 2018

(Arising out of Order-in-Appeal No. 114-115/HWH/CE/2018-19 dated 05.06.2018 passed by the Commissioner of Central Excise (Appeals-II), Kolkata, Bamboo Villa, 3rd Floor, 169, A.J.C. Bose Road, Kolkata – 700 014)

The Commissioner, C.G.S.T. and Central Excise **: Appellant**
Howrah Commissionerate
M.S. Building, Custom House, 15/1, Strand Road,
Kolkata – 700 001

VERSUS

M/s. Hindalco Industries Limited **: Respondent**
[Formerly 'M/s. Indian Aluminium Co. Limited']
39, G.T. Road, Belurmath,
Howrah – 711 202

APPEARANCE:

Shri S.K. Singh, Authorized Representative,
For the Appellant / Revenue

Smt. Payal Bharwani and Shri Rahul Tangri, both Advocates,
For the Respondent

CORAM:

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

FINAL ORDER NO. 77725 / 2025

DATE OF HEARING / DECISION: 17.11.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed by the Revenue challenging the Order-in-Appeal No. 114-115/HWH/CE/2018-19 dated 05.06.2018 passed by the Commissioner of Central Excise (Appeals-II), Kolkata, Bamboo Villa, 3rd Floor, 169, A.J.C. Bose Road, Kolkata – 700 014, wherein the ld. lower appellate authority has dropped the demands confirmed in the Order-in-Original No. 01/ADC/CE/KOL-II/Adjn/2017-18 dated 01.06.2017.

2. The facts of the case are that M/s. Hindalco Industries Limited, formerly M/s. Indian Aluminium Co. Limited, 39, G. T. Road, Belurmath, Howrah - 711 202 [hereinafter referred to as the "respondent"] having Central Excise Registration No. AAACH1201RXM010 for the manufacture and clearance of Rolled products of Aluminium viz. corrugated and plain sheet of various thickness, both alloy and non-alloy, falling under Tariff Code No. 7606 of the first schedule to the Central Excise Tariff Act, 1985 allegedly contravened Rules 4, 6, 7(1) & (2) and 8 of the Central Excise Rules, 2002 read with Rules 8 and 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 in as much as the said company short paid Central Excise duty during the impugned period (Financial Years 2009-10 to 2014-15) by means of undervaluation of assessable value of the said goods supplied to their sister units by wrongful application of CAS-4 method to arrive at the value of the finished product and had allegedly wilfully suppressed the above mentioned fact of undervaluation and wrongful application of CAS-4 method with intention to evade Central Excise duty mentioned above. Shri Amitava Ghosh, in his official capacity as the Deputy Manager - Accounts of the respondent-company was held responsible for all the activities related to the Central Excise matters.

2.1. It appeared to the Revenue that the respondent had undervalued the assessable value of their excisable finished product cleared under such stock transfer to their sister units and thereby determined wrong self-assessment in violation of Rule 6 of the Central Excise Rules, 2002 read with Rule 8 & 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000; it was also gathered

that the respondent has failed to comply with this obligation and thereby violated the provision of the Rule 7(1) and (2) of the Central Excise Rules, 2002. An allegation as to wilful suppression of facts with a motive to evade / short pay government revenue was also levelled.

3. On the basis of the above, three Show Cause Notices were issued to the respondent, proposing to demand short-paid excise duty, totally amounting to Rs.1,69,87,141/- from the respondent under Section 11A(4) of the Central Excise Act, along with interest under Section 11AA and penalty under Section 11AC of the said Act. The details of the said Show Cause Notices are as under: -

Sl. No.	**SCN No. and date**	**Duty demanded**	**Period**
1.	V.CH76(15)49/CE/KOL-II/ADJN/2011/10900-901-A dated 10.10.2011	Duty Rs.62,86,802/- E.Cess Rs.1,25,735/- S&HE Cess Rs.62,868/-	2009-10
2.	V.CH.76(15)49/CE/KOL-II/ADJN/2014/14933-A dated 24.12.2014	Duty Rs.1,00,83,832/- E.Cess Rs.2,01,676/- S&HE Cess Rs.1,00,839/-	2010-11 to 2013-14
3.	V(3)27-SCN/CE/HINDALCO/ADJN/HD-I/15/2731 dated 30.07.2015	Duty Rs.1,21,736/- E.Cess Rs.2,435/- S&HE Cess Rs.1,218/-	2014-15

3.1. By way of adjudication Order dated 01.06.2017, the Ld. Additional Commissioner, Central Excise, Kolkata-II Commissionerate, confirmed the above proposals made against the respondent.

3.2. Thereafter, the respondent preferred appeals before the Ld. Commissioner of Central Excise (Appeals-II), Kolkata, who vide the order impugned herein, has set aside the order of the lower authority.

3.3. Aggrieved, the Revenue has filed the instant appeal before the Tribunal.

4. The Ld. Authorized Representative representing the Revenue has reiterated the grounds urged in the Revenue's Appeal. The same are summarized hereinbelow: -

(1) The appellate authority has erred in not considering the fact that the appellant No. 1 did not consider the cost of raw materials as per Annual Closing Schedule (ACS) for the year 2009-2010 and thereby they undervalued the finished products dispatched to their sister units and made short payment of duty. It was found that Annual Closing Schedule (2009-2010) was prepared by the appellant and it was also a part of their audited accounts. Hence there is justification for consideration of cost of raw materials as per Annual Closing Schedule and it was more appropriate to adopt the said cost of raw materials as per Annual Closing Schedule than the one worked out on the basis of data for a short period of time.

(2) As per Rule 7(1) of the Central Excise Act, 1944 where the assessee is unable to determine the value of excisable goods or determine the rate of duty applicable thereto, he may request the AC/DC in writing, giving reasons for payment of duty on provisional basis and the AC/DC may order allowing payment of duty on provisional basis at such rate or on such value as may be specified by him. The appellate authority has not considered that this provision of law was not at all abided by the appellant

though the same should have been the proper procedure in the instant case.

(3) That the appellate authority had erred in not noticing the fact that no documentary evidence was produced by the appellant before the adjudicating authority in support of their contention that transfer price was linked with London Metal Exchange (LME) prices irrespective of the actual cost of production, moreover the formula of arriving at such price was also not elaborated by the appellants with supporting documents. Also the appellate authority had failed to realize that in the instant demand notices, cost of raw material was as per Annual Closing Schedule which was part of audited Accounts and the said value was used to issue debit notes for determination of notional profit of different units, whereas for reasons unknown the same value was not used for determination of assessable value which cannot be justified.

(4) That the Commissioner (Appeals) has erred in finding that 'transfer price as per Annual sing Schedule is a notional price as relied in Show Cause Notice and subsequently held by Lower authority cannot be treated as assessable value for the purpose of transfer to the sister units of the appellant though in his finding the lower authority has clearly stated that in the impugned Show Cause Notices cost of raw materials was considered as per Annual Closing Schedule and not as per transfer price.

(5) The Commissioner (Appeals) has erred in not realizing the logic of the lower authority in his (latter's) findings that the case of Nizam Sugar Factory Vs CCE, A.P. [2006(197) ELT 465 (SC)] is not applicable in this case because in the instant case there was no repetition of period covered by earlier Show Cause Notice. Also in the case of second Show Cause Notice the appellant No. 1 did not respond to the repeated request of the Department regarding submission of relevant information and the department was ultimately compelled to issue summon to the appellant No. I to obtain the necessary information. Hence this is definitely a case of suppression for which provision of extended period is rightly invokable in this case.

(6) That the Commissioner (Appeals) while deciding the instant case vide Order-in-Appeal No. 114-115/HWH/CE/2018-19 dated 05.06.2018, has decided the same without due consideration of the facts placed on record in respect of the said Noticee/respondent. Thereby, the impugned Order-in-Appeal does not satisfy the test of being a reasoned order to that extent only.

(7) That the Commissioner (Appeals), while dropping the proceedings initiated against the respondent. did not properly and adequately analyze the facts and circumstances of the instant case, and in turn has failed to appreciate the event of contravention of existing laws of Central Excise and involvement by the said respondent.

4.1. Accordingly, he prays for setting aside the impugned order and restoration of the Order-in-Original passed by the lower authority.

5. On the other hand, the Ld. Advocates appearing on behalf of the respondent submitted at the outset that the issue involved herein is no longer *res integra* and the same stands settled by this Tribunal in the respondent's own case, vide *Final Order No. 76601 of 2023 dated 30.08.2023.* Accordingly, stating that the factual matrix of the instant case being identical to those in the case cited supra, they prayed that the Revenue's appeal merits rejection in view of the decision rendered by the Tribunal therein.

5.1. Without prejudice to the above, the respondent has also tendered a written submission dated 17.11.2025 making various submissions on merits as well limitation aspects of the issue; various case-law have also been cited by the respondent in support of the said contentions.

6. Heard both the sides and perused the records placed before us.

7. After considering the submissions made by both the sides, we find that the issue involved in the present appeal is whether the cost of production as per CAS-4 adopted by the respondent (value the goods cleared to other units of the respondent under Rule 8) has to be arrived at on the basis of actual costs of inputs, fabrication, etc., or on the basis of 'notional transfer price' adopted by the respondent for its internal profitability assessment of units. The Revenue seeks to treat such notional transfer price as costs to arrive at the CAS-4 value.

8. The 'transfer price' adopted in the internal accounting cannot be a basis for computing the cost of production since such transfer price adopted in the financial records has no relation to the cost of production and is only a notional price linked to prices prevailing at the London Metal Exchange. It is to be noted in this context that the transfer price adopted is solely for the purpose of management information to arrive at the profitability of the units and to comply with the Accounting Standards. This has also been clarified by the Cost Auditor as well as the Statutory Auditor of the respondent by way of certificates.

8.1. We also take note of the submission made by the respondent that at the time of consolidation of individual financial accounts of all factories of the respondent at the corporate level, all inter-unit transactions, i.e., transfer-out shown by the dispatching factory and exactly the identical amount shown as transfer-in by the recipient factory gets offset on consolidation and are thus eliminated to reflect the actual income/expenditure and profit/loss. It is to be observed that the respondent's CAS-4 value is based on the actual landed cost of materials/ inputs as well as actual fabrication cost and other manufacturing costs, which have been incurred by the Respondent. It does not include any notional values. The CAS-4 value arrived at, is increased by 10% as per the mandate of Rule 8 of the Valuation Rules, to arrive at the assessable value.

8.2. Thus, we find the finding of the ld. lower appellate authority that the transfer price recorded in the books of accounts of the units should not be adopted as cost of raw material for the purpose of CAS-4 certificate to be correct inasmuch as such price

is only a notional value for internal accounting purposes and such notional value is neither recorded nor its impact is captured in the financial statements of the respondent.

9. Further, as has been rightly pointed out by the counsel representing the respondents, we find the instant issue before us to be no longer res integra. This Tribunal, in the respondent's own case in *Hindalco Industries Ltd. v. Commissioner of C.Ex. & Cus., Kolkata [Final Order No. 76601 of 2023 dated 30.08.2023 in Excise Appeal No. 116 of 2012 – CESTAT, Kolkata]* has already examined an identical issue, observing as follows: -

> *"9. We observe that the issue involved in the present appeal is valuation of goods cleared by the Appellant to their own units located at various places. For the determination of assessable value under the Central Excise Act, 1944, the Appellant arrived at the cost of production based on the CAS-4 certificate received from the Cost Accountant. However, at the time of supply of final products to their other factories, the CAS-4 certificate for the current year was not available. Therefore, the Appellant determined the assessable value on the basis of estimated cost of production based on CAS-4 certificate of previous year plus addition for inflation and forecast of price increase in the current year. Later, as soon as the CAS-4 certificate was received and the cost of the current year was known to them, they ensured that the central excise. duty paid was equal to or higher than duty payable as per CAS-4 certificate of the current year. We observe that the method adopted by the Appellant to arrive at the assessable value is legally tenable and there is no infirmity in it.*
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> *10. We observe that the impugned order has confirmed the demand by adopting a notional price linked to prices of metals prevailing at London Metal Exchange. In their submissions, the Appellant stated that while maintaining their books of account, they follow an accounting practice for the purpose of management Information and to comply with the Accounting Standards, whereby the Inter-unit*

transfers are recorded in the books of the respective units at a notional price called "transfer price", which is linked to prices of metals prevailing at London Metal Exchange. This practice is followed only for their internal purpose and duty cannot be demanded based on this notional value.

11. We observe that CAS-4 value is based on the actual landed cost of materials/ inputs as well as actual fabrication cost and other manufacturing costs, which have been incurred by the Appellant. It does not include any notional values. We observe that the finding of the Ld. Commissioner that the transfer price recorded in the books of accounts of the units should be adopted as cost of raw material for the purpose of CAS-4 certificate is incorrect since such price is only a notional value for internal accounting purposes and such notional value is neither recorded nor its impact is captured in the financial statements of the Appellant.

12. In this regard, the Appellant relied upon the decision of the Tribunal, chennai in the case of ITC Limited v. CCE, Chennai I 2015 (315) E.L.T. 143 (Tri. Chennai), wherein on identical set of facts, the Department wanted to include the value of IDSC/ICNS debit notes issued for inter-plant transfers for the purpose of determination of value under CAS-4 certificate. Such debit notes reflected notional value of profit on inter-plant transfers for the purpose of evaluating the operational efficiencies/ profitability of their various units/divisions. However, the Tribunal held that "the value of IDSC/ICNC debit note is notional in nature and cannot be considered as cost of raw material for the purpose of determining value under Rule 8 of Valuation Rules for captive consumption". It was held that only actual costs are includible to arrive at the CAS-4 value under Rule 8.

13. We find that Circular No. 692/8/2003-Cx dated 13.02.2003 issued by the Department of Revenue has clarified that the cost of production of captively consumed goods should be done strictly in accordance with CAS-4. The Circular makes it very clear that the CAS-4 certificate issued by Cost Accountant is the sole method for calculating the cost of production for captively consumed products. Therefore, we hold that the differential valuation method adopted by the Department is against this Circular which mandates that the valuation in such

cases must be on the basis of the CAS-4 certificate issued by the Cost Accountant only. It is a well settled position of law that Circulars issued by Revenue are binding on the Department. Hence, we observe that in compliance with the Circular No. 692/8/2003-Cx, the Appellant has correctly valued the cost of production in accordance with the CAS-4 certificate issued by the Cost Accountant.

14. We observe that the Tribunal in the case of M/s. Hindustan Unilever Ltd. vs. Commissioner of Central Excise, Haldia 2018 (7) TMI 1930 CESTAT Kolkata, has held that the CAS-4 certificate issued by the Cost Accountants must be given due weightage for the purpose of costing. The same view has been taken by the Tribunal in the case of Uflex Limited vs. Commr. Of. C.Ex., Cus. & S.T., Noida - 2016 (335) E.L.T. 376 (Tri. All.). By following the above cited decisions, we hold that the Department cannot disregard the valuation provided in the CAS-4 and frame a new method of valuation on its own which is contrary to the observation made by the Tribunals. Therefore, in the instant case, we hold that the Revenue has erred in law by disregarding the valuation adopted by the Appellant in accordance with the CAS-4 without providing any corroborative evidence to prove that the CAS-4 certificate issued by the Cost Accountant was wrong.

15. We also find that the differential duty confirmed shall be available as credit to the Appellant's other units. Hence, demand of differential duty is clearly revenue neutral and hence not sustainable. Since the demand itself is not sustainable, the question of demanding interest and imposing penalty does not arise.

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

10. In view of the foregoing, we do not find any infirmity in the impugned order dated 05.06.2018 passed by the ld. lower appellate authority. Accordingly, we hold that the Revenue's appeal deserves no merits.

11. In the result, the appeal filed by the Revenue stands rejected.

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

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

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

Sdd