

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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 76476 of 2024

(Arising out of Order-in-Original Bearing F. No. (i) S 34M-02/2019 BRFC (DBK) dated 20.02.2019 (ii) Bearing F. No. S 34M-02/2019 BRFC (DBK) dated 18.11.2019 (iii) Bearing F. No. S 34M-02/2019 BFRC (DBK) dated 22.05.2020 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s Hindalco Industries Limited,
(Mahan Aluminum, NH 75 E, Singrauli Sidhi Road,
P.O.- Bargawan, Dist.- Singrauli, M.P. Pin-486886)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata,
(15/1 Strand Road, Kolkata-70001)

...Respondent

..
APPEARANCE :

Shri Tarun Govil, Advocate for the Appellant

Shri S. Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER No...75524/2026

DATE OF HEARING : 26.03.2026

DATE OF DECISION : 26.03.2026

Per R. Muralidhar :

The appellant has filed 32 applications for fixation of drawback rate under Rule 7 of the Drawback Rules on 30.08.2017 (18 applications and 9.10.2017 (14 applications) in respect of 32 consignments which were exported.

2. On 22.05.2020, the Assistant Commissioner of Customs, Brand Rate Fixation Cell, Custom House, Kolkata sent a letter stating that as the exporter had declared that they had availed the benefits of CENVAT Credit, which is not permissible in the light of the Board's Circular No.

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89/2003-Cus dated 06.10.2003, vide letter dated 20.02.2019, their request for brand rate of drawback fixation, filed was already rejected by the competent authority.

3. Being aggrieved, with this arbitrary action the appellant has come up before the Tribunal.

4. The Ld. Counsel appearing on behalf of the appellant submits that no query was raised by the authorities after the aforesaid applications for fixation of brand rate were filed. He states that even after the appellant's regular follow-up vide their letters dated 09.08.2020, 30.8.2021 & 21.9.2021 no response was received nor any PH was granted. They were surprised to receive the letter dated 22.05.2020 informing that their earlier application had been rejected on 20.02.2019 itself. He submits that in this case, the principles of natural justice have not been followed; no Show Cause Notice was issued, nor any personal hearing was granted. The purported order dated 20.02.2019 was passed *ex-parte*, behind his back, without any intimation whatsoever to the appellant. In view of these submissions, he prays that the Tribunal may set aside the purported communication dated 20.02.2019 under challenge as well as subsequent letter dated 22.05.2020.

5. Heard both sides, perused the appeal papers and the submissions made by both the sides.

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6. We find that the issue is in a very short compass. Admittedly, the appellant has followed up with the officials vide his letters dated 27.10.2019, 01.02.2020, 09.08.2020 to know about the fate of their application for fixation of brand rate of drawback filed by them on 30.08.2017 and 9.10.2017. He submits that much later, vide letter dated 22.5.2020 has, the Department communicated to him that their 33 application filed had been rejected. The communication dated 22.05.2020 takes note of the rejection letter dated 20.02.2019, while considering the appellants request for inclusion of Clean Energy Cess in the rate fixation calculations.

7. The appellant has also taken us through the said application made, showing clearly that CENVAT Credit of Clean Energy Cess has not been taken. We find that as a matter of fact, the Clean Energy Cess is not Cenvatable at all in terms of Cenvat Credit Rules 2004. Therefore, we do not know as to how this stand was taken by the Revenue to reject the appellant's claim.

8. We also find that a similar matter had come up before this Bench in respect of the Renukoot unit of the appellant. Vide Final Order No. 77638/2025 dated 3.11.2025, we had remanded the said matter to the concerned authority to go through the documentary evidence and pass a considered order.

9. Since the principles of natural justice have not been adhered to and the concept of *audi alterum partem* has been given a complete

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goby, we remand the matter to the concerned authority for consideration of the appellant's applications, duly adhering to the principles of natural justice before arriving at a considered decision. The appellant should be made aware of the grounds for rejection and granted personal hearing so as to enable them to make their submissions.

10. A reasoned order should be passed, adhering to the principles of natural justice within a period of three months from the date of communication of this order deciding the fate of the aforesaid applications.

(Dictated and pronounced in the open court)

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

Sd/-
(Rajeev Tandon)
Member (Judicial)

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