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

REGIONAL BENCH – COURT NO.1

Excise Appeal No.75608 of 2019

(Arising out of Order-in-Appeal No.478/HWH/CE/2018-19 dated 15.11.2018 passed by Commissioner (Appeals) of CGST & Central Excise, Kolkata)

Commissioner of CGST & Central Excise, Howrah
(15/1, Strand Road, Kolkata-700001)

Appellant

VERSUS

M/s Hindalco Industries Limited
(39, G.T.Road, Belurmath, Howrah-711202)

Respondent

APPERANCE :

Shri A.Mukherjee, Authorised Representative for the Appellant
Shri Deepro Sen & Ms.Payel Bharwani, both Advocates for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75676/2026

DATE OF HEARING : 26 MAY 2026
DATE OF DECISION : 26 MAY 2026

Per Ashok Jindal :

The Revenue is in appeal against the impugned order.

2. The facts of the case are that the respondents are engaged in the manufacture and clearance of rolled products of Aluminum in different forms such as corrugated or plain sheet of various thickness falling under Chapter Heading 7606 & 7607 of the First Schedule to the Central Excise Tariff Act, 1985 to its other units for use in further manufacture of final products.

2.1 The Respondent receives duty paid slabs, strips in coil form, pigs, ingots and other rolled products of aluminium required for the manufacture of final products from their own factories/units at Hirakud and Renukoot on payment of duty. The Respondent avails CENVAT credit for the duty paid on the aforesaid raw materials received from their own factories/units on the basis of excise invoices issued by them. Such products received by the Respondent are worked upon by the Respondent and subsequently, the final products are cleared to the Respondent's own factories/units at Hirakud, Kollur, Mouda, Kalwa, Muri, Belgaum, Taloja, Silvassa, Alupuram, etc.

2.2 The assessable value of the inter-unit transfers is determined by cost-construction method, i.e., 110% of the cost of production. The cost of production determined for the final products cleared to the other factories/units of the Respondent is the sum total of the landed cost of metal products as raw materials received from other units and fabrication cost incurred for manufacture of final product at Belur factory.

2.3 Therefore, for determination of assessable value under the Central Excise Act, 1944, the cost of production is calculated based on CAS-4 certificate received from the Cost Accountant.

2.4 While maintaining books of accounts, the Respondent follows an accounting practice for management information purpose to comply with Accounting Standards, whereby inter-unit transfers are recorded in books of the units at a notional price (hereinafter referred to as "transfer price") linked to prices of metals prevailing at London Metal Exchange.

2.5 Based on audit of such records of the Respondent, the underlying Show-cause notice was issued upon the Respondent, alleging undervaluation of the final products cleared to their own factories while determining the assessable value on the basis of 'Cost Construction

Method' in terms of Rule 8 of the Central Excise Valuation Rules, 2000. It was alleged that the value for the purpose of excise law ought to have been computed by adopting such transfer price, which is a notional cost, rather than actual cost.

2.6 According to the underlying Show-cause notice, while calculating the assessable value of the final products cleared to their own factories, the Respondent took the cost of raw materials procured from their own factories in the CAS-4 method which was less than the Transfer Price of raw materials considered in 'Annual Closing Schedule' of the Respondent for such raw material.

2.7 In response to the underlying Show-cause notice, the Respondent filed a detailed reply rebutting all allegations therein. The Respondent explained that the internal accounting is done on the basis of the transfer price fixed by the head office of the Respondent to arrive at the profitability of each unit internally for management information system and for the purpose of complying with the Accounting Standards, and therefore, such transfer price has no relation with the cost of production of the stock so transferred to the other units. Hence, such transfer price should not be taken for the purpose of calculating the cost of production under Rule 8. Such internal transfer price is recorded in internal accounting as revenue of one unit and cost of another unit, and thus, its effect gets nullified in the financial statements of the Respondent. The said fact was affirmed by the Cost Auditor as well as the certificate issued by the statutory auditor of the Respondent which clearly stated that "hence the values of the inter unit transfers/receipts and inventory appearing in the stock card/ trial balance of the Belur Unit are based on notional 'transfer price' which is not the 'actual cost'".[Para 13 of the impugned OIA]

2.8 Without considering such submissions, the underlying Order-in-Original confirmed the demand of excise duty along with interest and penalty, by applying Rule 8 of the Central Excise Valuation Rules, 2000 by adopting the internal/ notional 'transfer price' of the inputs received from other units, instead of the actual costs incurred while arriving at the cost of production of the rolled products stock transferred by the Respondent to its other units. The impugned Order-in-Original further states that the Respondent deliberately misstated their assessable value and attempted to prepare CAS-4 on the basis of wrong or mis-declared cost of production and hence, the extended period is rightly invoked.

2.9 Being aggrieved by the underlying Order-in-Original, the Respondent preferred an appeal before the ld.Commissioner (Appeals) of CGST & Central Excise, Kolkata, who set aside the entire demand based on the following findings:

(i) The Respondent correctly valuated the goods in accordance with Rule 8 read with the CBEC Circular No.692/8/2003-CX dated 13.02.2003 which provide for valuation in accordance with CAS-4.

(ii) Reliance was placed upon the decision pronounced in the case of CCE, Chennai v. Eveready Industries (I) Ltd., 2011 (274) E.L.T. 564 (Tri. Chennai).

(iii) The transfer price as per ACS relied upon in the underlying SCNs is a notional price and not the actual price as per the certificate of the statutory auditor.

(iv) Demand is completely time barred since the extended period of limitation cannot be invoked since the matter is periodical in nature there being earlier Show Cause Notices issued on the same issue.

2.10 Being aggrieved by the impugned Order-in-Appeal, the Revenue has preferred the present appeal before this Tribunal.

3. The ld.A.R. for the Revenue, has reiterated the grounds urged in the Revenue's Appeal and prays for setting aside the impugned Order-in-Appeal by restoring Order-in-Original passed by the lower authority.

4. The ld.Counsel for the respondent submits that the Respondent has rightly paid the excise duty in accordance with Rule 8 of the Central Excise Valuation Rules, and in compliance with the cost of production as provided in the CAS-4 certificate. He further submits that the 'transfer price' adopted in the internal accounting cannot be a basis for computing the cost of production since it is a notional price linked to prices prevailing at the London Metal Exchange, adopted in financial records, and has no relation to the cost of production. Such transfer price is adopted solely for management information purpose to arrive at the profitability of the units and to comply with the Accounting Standards. This has been clarified vide certificates of the Cost Auditor &Statutory Auditor of the Respondent. In fact, at the time of consolidation of individual financial accounts of all units of the Respondent at corporate level, all such inter-unit transactions get offset on consolidation and are thus eliminated to reflect the actual income/expenditure and profit/loss.

4.1 On the other hand, CAS-4 value is based on actual landed cost of inputs and actual fabrication and other manufacturing costs, which are incurred by the Respondent. It does not include any notional values. Thus, such CAS-4 value is increased by 10% as per the mandate of Rule 8 of the Valuation Rules, to arrive at the assessable value.

4.2 He further submits that the present issue regarding correctness in adoption of CAS-4 over the transfer price value for the purpose of Rule 8, is no longer res integra being covered by the decision of this Tribunal in the respondent's own case i.e. Hindalco Industries Ltd. Vs. Commissioner of Central Excise & Customs, Kolkata II : 2023 (8) TMI 1676 CESTAT-Kolkata and CCEx. & CGST, Howrah Commissionerate, Kolkata Vs. M/s Hindalco Industries Ltd. : 2025 (11) TMI 1335-CESTAT-Kolkata.

4.3 He further submits that even as per Circular No. 692/8/2003-Cx dated 13.02.2003 issued by the CBIC, it has been duly clarified that the cost of production of captively consumed goods should be done strictly in accordance with CAS-4 as issued by Cost Accountant. Therefore, the differential valuation attempted to be adopted by the Department is in direct contravention to this Circular, which as per the trite law, is binding on the Revenue. Reliance in this regard is placed on the decision of UOI v. Arviva Industries (I) Ltd., 2007 (209) E.L.T. 5 (SC). Hence, in compliance with Circular No.692/8/2003-Cx, the Respondent has correctly valued the cost of production in accordance with the CAS-4 certificate issued by the Cost Accountant.

4.4 Therefore, the impugned Order-in-Appeal rightly upheld that the valuation adopted by the Respondent is in accordance with the CAS-4.

Without prejudice thereto, during the underlying period, as evident from the certificates submitted before the Appellate Authority, the Respondent paid higher excise duty than duty payable as per the period's cost valuation under CAS-4.

4.5 It is further submitted that in addition to the above, the entire demand is not sustainable on the ground of revenue neutrality. The final product cleared from the Respondent's factory to their other units are used by such other units to manufacture dutiable finished products which are cleared on payment of applicable excise duty. Such other units of the Respondent avail credit of duty paid by the Respondent and utilize the same for payment of duty on the final product cleared. The Respondent as well as the other units are paying significant amounts of excise duty through PLA as is rightly captured at Para 13 of the impugned Order-in-Appeal. Thus, the differential duty confirmed shall be available as credit to the Respondent's other factories/units. Hence, demand of differential duty is clearly revenue neutral. In support of his contention, he relies on the following decisions :

(i) Hindalco Industries Ltd. v. CCE & Cus., Kolkata-II, 2023 (8) TMI 1676 - CESTAT Kolkata

(ii) CCE & CGST, Howrah Commissionerate, Kolkata v. M/s. Hindalco Industries Ltd., 2025 (11) TMI 1335 – CESTAT Kolkata

(iii) Hindalco Industries Ltd. v. CCE, Bhubaneswar-II, 2023-TIOL-403-CESTAT-KOL.

(iv) Jai Balaji Industries Ltd. v. CCE, Bolpur, 2023 (6) TMI 1102-CESTAT Kolkata

4.6 Further he submits that firstly, the entire demand in the instant case is revenue neutral since the differential duty confirmed is available as credit to the Respondent's other factories/units. In a catena of decisions, it has been held that when the demand is revenue neutral, there can be no suppression of facts or intent to evade payment of duty and hence extended period cannot be invoked. Secondly, the issue in the instant case being periodic in nature, extended period cannot be invoked. Reliance is placed on the decision of the Hon'ble Apex Court in Nizam Sugar Factory v. CCE, AP, 2006 (197) E.L.T. 465 (SC). Lastly, he submits that the Hon'ble Gujarat High Court in the case of Commissioner v. Meghmani Dyes & Intermediaries Ltd. – 2013 (288) E.L.T. 514 (Guj.) held that a longer period of limitation is not invokable when the required details were furnished in the periodic returns. In the instant case as well, the Respondent duly disclosed the required data in ER-1 returns, and therefore, as per this decision, the extended period of limitation is not invokable.

4.7 Hence, he submits that the entire demand has been rightly set aside by the ld.Commissioner (Appeals) of CGST & Central Excise, Kolkata II.

5. Heard both the parties and considered the submissions.

6. After considering the submissions made by both the sides, we find that the following issues have been framed for consideration :

(i) Whether the cost of production as per CAS-4 adopted by the Respondent 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?

(ii) Whether the extended period of limitation can be invoked for a periodical Show Cause Notice?

(iii) Whether the demand can be sustained where the entire demand is revenue neutral ?

Issue No.(i)

Whether the cost of production as per CAS-4 adopted by the Respondent 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 ?

7. We find that the said issue is no longer res-integra and has been decided by this Tribunal in favour of the respondent in their 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], wherein this Tribunal 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.

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."

8. Again, on the identical issue, this Tribunal in the case of CCE & CGST, Howrah Commissionerate, Kolkata v. M/s. Hindalco Industries Ltd., 2025 (11) TMI 1335 – CESTAT Kolkata, has held as under :

"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 Page 9 of 12 Appeal No.: E/78666/2018-DB 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,"

In view of the above, the Issue No.(i) is answered in favour of the Respondent.

Issue No.(ii) & (iii)

(ii) Whether the extended period of limitation can be invoked for a periodical Show Cause Notice?

(iii) Whether the demand can be sustained where the entire demand is revenue neutral ?

9. We find that the issue in the instant case being periodic in nature, the extended period of limitation cannot be invoked in terms of the decision of the Hon'ble Apex Court in the case of Nizam Sugar Factory v. CCE, AP, 2006 (197) E.L.T. 465 (SC). We also find that the entire demand in the instant case is revenue neutral since the differential duty confirmed is available as credit to the Respondent's other factories/units. In a catena of decisions, it has been held that when the demand is revenue neutral, there can be no suppression of facts or intent to evade payment of duty and hence extended period cannot be invoked.

10. We also find that the Hon'ble Gujarat High Court in the case of Commissioner v. Meghmani Dyes & Intermediaries Ltd. – 2013 (288) E.L.T. 514 (Guj.) held that a longer period of limitation is not invokable when the required details were furnished in the periodic returns. In the instant case, the Respondent has duly disclosed the required data in ER-1 returns, and therefore, as per this decision, the extended period of limitation is not invokable.

In view of the above, the Issue Nos.(ii) & (iii) are also answered in favour of the Respondent.

11. In view of the foregoing, we do not find any infirmity in the impugned order dated 15.11.2018 passed by the ld.lower appellate

authority. Accordingly, we hold that the Revenue's appeal deserves no merits.

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

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
mm **Member (Technical)**