

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

EXCISE APPEAL NO: 86977 OF 2016

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/93/16-17dated 31st May 2016 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Hindalco Industries Ltd

Ramtek Road, Village Dahali, Tal: Mauda
Dist: Nagpur

... Appellant

versus

Commissioner of Central Excise & Customs

Kendriya Utpad Shulk Bhavan, Telangkhedi Road,
Civil Lines, Nagpur - 440001

...Respondent

APPEARANCE:

Shri Rajesh Ostwal, Advocate for the appellant

Shri Rajiv Ranjan, Assistant Commissioner (AR) for the respondent

CORAM:

**HON’BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON’BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

FINAL ORDER NO: 85093/2026

DATE OF HEARING:	06/08/2025
DATE OF DECISION:	22/01/2026

PER: C J MATHEW

M/s Hindalco Industries Ltd is aggrieved by order¹ of

¹ [order-in-appeal no. NGP/EXCUS/000/APPL/93/16-17dated 31st May 2016]

Commissioner of Customs, Central Excise & Service Tax (Appeals), Nagpur for affirming the order of the lower authority for recovery of credit of ₹ 1.07,23,732, along with applicable interest thereon, under rule 14 of CENVAT Credit Rules, 2004, and imposition penalty of like amount under rule 15 of CENVAT Credit Rules, 2004 for having been irregularly availed between March 2007 and June 2014 on the ground that ‘cost-sharing’ for which remittance was made to M/s Aditya Birla Management Corporation Pvt Ltd was contrived to be passed off as ‘service’ that it was not. The appellant is a group company of the ostensible service provider which met expenditure for certain services used in common for the group and passed on to the participating companies in proportion determined by the Board of Directors of M/s Aditya Birla Management Corporation Pvt Ltd on certain pre-determined criteria for which bills were raised, including on the appellant, claiming to have provided ‘support service of business or commerce’ during the period of dispute.

2. We have heard Learned Counsel who submitted that the same activity was impugned in proceedings against the appellant at different locations and that the issue stands decided in their favour in *Hindalco Industries Limited v. Commissioner of Central Excise* [2023 (6) TMI 457 – CESTAT KOLKATA], in *Hindalco Industries Limited v. Commissioner of Central Excise* [2023 (12) TMI 117 – CESTAT KOLKATA] and in *Hindalco Industries Limited v. Commissioner of*

Central Excise [2023 (9) TMI 1403 – CESTAT KOLKATA] and, similarly, in the case of other group companies by order² of the Tribunal in *Ultratech Cement Ltd v. Commissioner of Central GST* and in *Aditya Birla Science & Technology Co Pvt Ltd v. Commissioner of CGST & Central Excise [2019 (5) TMI 1147 – CESTAT MUMBAI]*.

3. It was further contended that judicial determination holds that central excise authorities cannot deprive assessee of credit in the jurisdiction of the recipient while holding on to tax collected for the service in another jurisdiction. Reliance was placed on the decision of the Hon'ble High Court of Madras in *Modular Auto Limited v. Commissioner of Central Excise [2018 (8) TMI 1691 – MADRAS HIGH COURT]* and by the Tribunal in *Future Generali India Insurance Co. Ltd v. Commissioner of Central Excise [2023 (4) TMI 922 – CESTAT MUMBAI]*, in *Cholamandalam MS General Insurance Co Ltd v. Commissioner of Central Excise [2021 (3) TMI 24 – CESTAT CHENNAI]* and in *ICICI Lombard General Insurance Company Ltd v. Commissioner of Central Excise [2023 (2) TMI 1093 – CESTAT MUMBAI]*.

4. Responding with excerpts from the impugned order, Learned Authorized Representative placed reliance on the decision of the Hon'ble Supreme Court in *Maruti Suzuki Ltd v. Commissioner of Central Excise, Delhi-III [2009 (240) ELT 641 (SC)]* and of the

² [final order no. FA/A/87431-87432/2024 –EX[DB] dated 27th November 2024]

Hon'ble High Court of Bombay in *Commissioner of Central Excise, Nagpur v. Manikgarh Cement* [2010 (20) STR 456 (Bom)].

5. Services, on which taxes are leviable under Finance Act, 1994, cannot be mapped physically in the manner in which goods may be. Its passage is determined by consideration purportedly made, or agreed to be made, over as *quid pro quo*. That such remittance has been made from appellant's end is not in dispute just as the uncontroverted invoices evidence inclusion of tax in addition to the cost and there is no allegation that the taxes so collected were not deposited with the exchequer.

6. In *re Modular Auto Ltd*, it has been held that

'15. From the reasons assigned by the Commissioner (Appeals), we find that the Commissioner (Appeals) has travelled beyond the scope of allegation made in the show cause notices. By giving a different interpretation to the nature of transaction, which, in our considered view, could not have been done by the Appellate Authority in the light of the settled position with regard to the Service Tax liability admitted and paid by BIL. Therefore, unless and until, the assessment on BIL had been reopened, the nature of transaction as referred by BIL has to be held to be wrong and the Commissioner (Appeals) could not have given a different interpretation to the nature of claim made by the Bel from the assessee by interpreting the terminology used in the invoice. The correct test, which ought to have been applied by the Adjudicating Authority, Appellate Authority and the Tribunal, is as to what

is the character of payment made by the assesseees on which they have availed the CENVAT credit.

16. In the instant cases, it is not in dispute that whatever the portion of Service Tax component which was collected from the assesseees by BIL was only the amount on which the CENVAT credit has been claimed by the assesseees. Therefore, unless and until the assessment made on BIL was revised, which obviously could have been done, at this juncture, on account of the expiry of the period of limitation, the interpretation given by the Commissioner (Appeals) as well as the Tribunal with regard to the nature of invoice raised on the assesseees is unsustainable. Furthermore, we find that the reason assigned by the Tribunal in paragraph 6.2 stating that the activity performed by the BIL for monitoring of production activities of the assesseees cannot by any stretch of imagination be considered as an input service or in relation to the manufacture of final products of the assesseees, is a statement, which is unsubstantiated by any record. At best, it can be taken as a personal opinion of the Tribunal, which could not have been a reason to reverse the credit availed by the assesseees.'

and which was relied upon in the decisions of the Tribunal to affirm the lack of legality in denying credit despite tax having been accepted without demur on the allegedly non-existent or ineligible service procured as input.

7. In *re Hindalco Industries Limited*, it has been held that

'16. From the above definition it can be seen that providing operational or administrative assistance in any manner or providing infrastructure support service or managing distribution and logistics service, fall within the ambit of

'Business Support Service'. The ABMCPL has been providing these services to their group companies. As per the definition of BSS mentioned above, the services rendered by ABMCPL to their group companies would rightly fall under the category of 'Business Support Service'. We observe that ABMCPL has been rightly paying Service Tax under BSS for the services rendered by them to their group companies. The department has also not disputed the payment of service tax by ABMCPL under the category of BSS.

12. The Appellant referred the Board Circular No. 102/3/2009-S.T. dated 23.02.2009 and TRU's Letter No. 334/4/2006-TRU, dated 28.02.2006 which clarified the scope of BSS. As per the Board Circular cited above, services which are in the nature of assistance or support provided by the principal to the service recipient would fall under BSS. In the present case, the services rendered by ABMCPL being in the nature of support service provided to the Appellant, qualify as BSS as defined under section 65(104c) of the Finance Act, 1994. The manner of arriving at the value of services rendered would not change the nature of BSS provided by ABMCPL i.e., whether ABMCPL only recovered the expenses incurred or even charged a profit element. Section 67 of the Finance Act, 1994 provides that value of any taxable service is the gross amount charged for such service provided. It neither restricts a service provider from allocating expenses to the recipients nor mandates charging profit margins in exchange for the provision of such services. Therefore, even if ABMCPL merely apportioned expenses incurred by it to support the group entities, such apportioned amount represents the value of taxable service of BSS provided by ABMCPL.

13. The Appellant availed BSS provided by the ABMCPL, wherein ABMCPL carried on these functions on behalf of the

Appellant, thus enabling the Appellant to benefit from specialization in their manufacturing activity and achieve economies of scale. The nature of the activities so performed and their close nexus with the business of the Appellant is also clearly visible from the mails exchanged by ABMCPL with the group companies.

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16. In view of the above discussion, we hold that the services rendered by the ABMCPL is rightly classifiable under the category of 'Business Support Service' and ABMCPL has rightly paid Service Tax under the said category. The service tax paid by ABMCPL has been rightly distributed to their group companies, including Appellant. 15. The Appellant has raised the issue of limitation. They stated that the period involved in the Notice is from March 2007 to March 2012 whereas the Show cause Notice was issued on 22.02.2012 and 29.06.2012. Thus, part of the demand in the Notices is beyond the normal period of limitation. We observe that the availment of CENVAT credit by the Appellant based on the invoices issued by ABMCPL is known to the Department. There is no suppression of facts involved in this case. Accordingly, the notices issued beyond the normal period is hit by limitation.'

8. The decision in *re Maruti Suzuki Ltd* pertained to the scheme of credit preceding CENVAT Credit Rules, 2004 and was concerned with 'inputs' used for generation of power, a non-excisable good, that was not captively consumed but transmitted to others. The dispute in this appeal deals with taxable services deployed for manufacturing activity. The availing of credit of duty paid on 'inputs' that were not used for manufacture of excisable goods is far removed from the factual matrix

of the dispute before us. In *re Manikgarh Cement*, the issue under dispute was nexus of taxable service with manufacturing activity while, here, it is the lack of service – an existential issue – that is in dispute. Both these decisions have no bearing in resolution of this issue.

9. In view of the above, the impugned order is set aside to allow the appeal.

(Order pronounced in the open court on 22/01/2026)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)