(2011) 06 BOM CK 0016

In the Bombay High Court

Case No : Central Excise Appeal No. 73 of 2010

Commissioner of C. Ex., Navi Mumbai APPELLANT

Vs

Hindalco Industries Ltd. RESPONDENT

Date of Decision : 07-06-2011

Acts Referred:

Central Excise Rules, 2002 — Rule 21
CENVAT (Credit) Rules, 2004 — Rule 3(5), 3(5B), 5(C)

Citation : (2011) 272 ELT 161

Hon'ble Judges : D.Y. Chandrachud, J;Anoop V. Mohta, J

Bench : Division Bench

Advocate : Suchitra Kamble, for the Appellant; Prakash Shah with Jas Sanghavi instructed by y M/s. PDS Legal, for the Respondent

Final Decision : Dismissed

Judgement

1. This Appeal arises out of an order of the Tribunal dated 11 September 2009.

2. A notice to show cause was issued to the assessee on 4 June 2007. The notice essentially dealt with two aspects. Firstly, it had been observed that the assessee had a practice of identifying stores which were no more useful or which were unfit for consumption in its Taloja plant. According to the Revenue, Cenvat credit covered by the list of cancelled bins for the years 2003-2004, 2004-2005 and 2005-2006 which was reversed by the assessee had to be demanded and appropriated. The second aspect related to inputs, spares and components which had been lost or destroyed in the floods of July 2005. The Revenue took the estimated loss, reduced therefrom the salvage value and computed the Cenvat credit availed of on the estimated value of the loss.

3. The Tribunal has dealt with both the aspects which form the subject matter of the notice to show cause. Rule 3(5) of the CENVAT Credit Rules, 2004 provided that when inputs or capital goods on which Cenvat credit has been taken, are removed as such from the factory or premises of the manufacturer of the final products or provider of output service, as the case may be, he shall pay an

amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in Rule 9.

4. Sub-rule (5B) was inserted by an amendment with effect from 7 July 2009, while sub-rule (5C) was inserted into Rule 3 by an amendment on 7 September 2007. Under sub-rule (5B) as amended, if the value of any input or capital goods before being put to use on which CENVAT credit has been taken is written off fully or where any provision to write off fully has been made in the books of account, then the manufacturer or service provider is required to pay an amount equivalent to the cenvat credit taken in respect of the said input or capital goods. Under sub-rule (5C), where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under Rule 21 of the Central Excise Rules, 2002, the cenvat credit taken on the inputs used in the manufacture or production of the said goods shall be reversed. Rule 21 of the Central Excise Rules, 2002 deals with a situation where the goods have been lost or destroyed by natural causes. A provision has been made in Rule 21 for the remission of duty payable on such goods.

5. The period involved in the present Appeal is prior to the insertion of sub-rules (5B) and (5C) in Rule 3.

6. In Commissioner of Central Excise v. Indian Petrochemicals Corporation Limited, 2008 (226) E.L.T. 339 a Division Bench of this Court had noted that the Tribunal in a long line of judgments had taken the view that where the goods have been shown as written off goods, the benefit is available. In the present case, as already noted earlier, the period to which the dispute relates is prior to the insertion of sub-rules (5B) and (5C) in Rule 3. The Tribunal held that the case of the assessee was covered by several of its judgments which have been adverted to in para 11 of the judgment. Counsel appearing on behalf of the Revenue has not submitted before the Court that any of those judgments have been overruled by any decision of this Court or of the Supreme Court. This case relates to a period prior to the amendment of Rule 3 by the insertion of sub-rules (5B) and (5C). In that view of the matter and for the reasons already noted, the Appeal would not raise any substantial question of law and shall accordingly stand dismissed. There shall be no order as to costs.

