

***In The Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad***

Appeal No.E/524/2009-DB

[Arising out of OIA-KRS/001/VAPI/2009 dated 15.01.2009 passed by the CCE (A) Vapi]

C.C.E. & S.T. Vapi

Appellant

Vs

M/s Hindalco Industries Limited

Respondent

Represented by:

For Appellant: Mr. A Mishra (AR)

For Respondent: Mr. A. Nainawati (Advocate)

CORAM:

HON'BLE PRESIDENT DR. SATISH CHANDRA

HON'BLE Mr. C.J. MATHEW, MEMBER (TECHNICAL)

Date of Hearing/Decision:23.04.2018

Final Order No. A / 10756 /2018

Per: Dr. Satish Chandra

The present appeal is filed against Order-in-Appeal No. 001/2009 dated 15.01.2009.

2. The brief facts of the case are that the Aluminum Dross is manufactured during the course of manufacturing of Aluminum Alloy Wheels by the Respondent and they had cleared the Aluminum Dross under the Commercial invoices without payment of duty and not showing the details of manufacturing and clearance of Aluminum Dross in the monthly ER-1 Returns for the period of February to December 2007, so the duty was demanded. Being aggrieved the appellant had filed appeal before the Commissioner (Appeals) who has deleted the demand by following the decision of the Hon'ble Supreme Court. Still not satisfied, the Department has filed this appeal.

3. With this background, we heard Sh. A. Mishra (AR) for the Appellant and Sh. A. Nainawati (Advocate) for the Respondent.

4. After hearing both the parties and on perusal of the record, it appears that the identical issue has come up before the Tribunal in the appellant's own case M/s Hindustan Industries Ltd. vs UOI 2015 (315) ELT 10 (Bom.), where it was observed that Dross and Skimming of Aluminum, Zinc or other non-ferrous metals are not subjected to excise duty as per the ratio laid down by the Hon'ble Supreme Court in the case of UOI vs M/s DSCL Sugar Ltd. 2015-TIOL-240-SC. The similar view was upheld by the Board's Circular 1027/15/2016 dated 25.04.2016.

5. By following the ratio laid down in the above mentioned cases as well as the clarification provided by the Board in the above mentioned Circular, we are of the view that the Dross and Skimming were non-ferrous metal for any such by-product or waste which are non-excisable goods and are cleared for a consideration from the factory need to be treated like exempted goods for the purpose of reversal of credit of input or input service in terms of Rule 6 of the CENVAT Credit Rules, 2004.

6. In view of the above, we find no reason to interfere with the impugned order, the same is here by sustained alongwith the reasons mentioned therein. In the result, the appeal filed by the Department is dismissed.

(Dictated and pronounced in the open court)

**(JUSTICE DR. SATISH CHANDRA)
PRESIDENT**

**(C.J. MATHEW)
MEMBER (TECHNICAL)**

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