



Reportable

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

D.B. Central/excise Appeal No. 5/2022

CNR: RJHC010156582022 | URN: EXCIA / 11U / 2022

Union Of India Through The Commissioner, Cgst, And Central
Excise Commissionerate, Udaipur, Rajasthan.

-----Appellant

Versus

Hindusthan Zinc Ltd, Chanderia Lead Zinc Smelter ,putholi
Chittorgarh.

-----Respondent

Connected With

D.B. Central/excise Appeal No. 4/2022

CNR: RJHC010141312022 | URN: EXCIA / 10U / 2022

Union Of India, Through The Commissioner, Cgst, And Central
Excise Commisionerate Udaipur, Rajasthan

-----Appellant

Versus

M/s. Hindustan Zinc Limited, Zawar Mines, Zawar Mines,
Udaipur, Rajasthan

-----Respondent

D.B. Central/excise Appeal No. 6/2022

CNR: RJHC010140852022 | URN: EXCIA / 12U / 2022

Union Of India Through The Commissioner, Cgst, Central Excise
Commissionerate, Udaipur, Rajasthan

-----Appellant

Versus

M/s. Hidustan Zinc Limited, Raipura Dariba Mines, P.o. Dariba,
Tehsil Railmagra, Rajsamand, Rajasthan

-----Respondent

D.B. Central/excise Appeal No. 7/2022

CNR: RJHC010156412022 | URN: EXCIA / 13U / 2022

Union Of India Through The Commissioner, Commissioner Cgst
And Central Excise Commissionerate, Udaipur, Rajasthan

-----Appellant

Versus



M/s. Hidustan Zinc Limited, Chanderia Lead Zinc Smelter Putholi
Chittoargarh

----Respondent

D.B. Central/excise Appeal No. 8/2022

CNR: RJHC010146642022 | URN: EXCIA / 14U / 2022

Union Of India, Through The Commissioner, Cgst And Central
Excise Commissionerate, Udaipur, Rajasthan

----Appellant

Versus

M/s. Hidustan Zinc Limited, Raipura Dariba Mines, P.o. Dariba,
Tehsil Railmagra, Rajsamand, Rajasthan

----Respondent

For Appellant(s) : Mr. Rajat Arora.
For Respondent(s) : Mr. Vinay Jain.
Mr. Aditya Singhi.

HON'BLE THE CHIEF JUSTICE MR. SANJAY K. AGRAWAL
HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU

Order

05/10/2026

1. Since all these appeals arise out of the common final order dated 2nd September, 2021 and common question of law is involved in all these appeals except period and mines, the appeals are being heard together and disposed of by this common order.
2. This batch of five central excise appeals have been directed against the common order dated 2nd September, 2021 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short, 'the learned Tribunal'), whereby the learned Tribunal, while allowing the five appeals filed by the assessee finally, has quashed the order dated 26th February, 2019 passed by the Commissioner, Central Goods & Service Tax, Udaipur.



3. This Court vide order dated 10.08.2023 while admitting the appeals has framed following common substantial question of law in all five appeals:-

"Whether the additional duty of Customs paid @ 1%/2% was not the duty of the excise as specified under the Central Excise Tariff Act, 1985 and whether Cenvat credit of additional duty of customs paid under the Customs Notification No.12/2012-Cus dated March, 17, 2022, as amended, is admissible to the assessee."

4. The factual backdrop of the present appeals are as under :-
- 4.1. Assessee is a major producer of Zinc and Lead concentrates falling under Chapter 26 of the First Schedule to the Central Excise Tariff act, 1985 having captive mines at various places in Rajasthan.
- 4.2. The assessee availed the CENVAT Credit of CVD paid in terms of Serial No.122A/123 of Customs Notification No. 12/2012-Cus dated 17.3.2012 ("Customs Notification"), on imported steam coal/steam non-cooking coal which is used in generation of electricity at the captive thermal power plant in its different mines.
- 4.3. The Revenue issued five separate show cause notices ("SCNs") proposing to dispute CENVAT Credit on CENVAT Credit of CVD paid in accordance with the Customs Notification on the ground that the same is in contravention of provisions of Rule 3 of the CENVAT Credit Rules, 2004. Details of the show cause notices are as follow:

S.No.	Name of Mine/Unit	SCN Date	Period of Dispute	CENVAT Credit Involved
1.	Zawar Mines	01.05.2017	April 2012 to June 2016	Rs.5,32,24,752/-
2.	Chandaria Lead Zinc Smelter	01.05.2017	April 2012 to June 2016	Rs.23,47,64,043/-
3.	Chandaria Lead Zinc Smelter	27.07.2018	July 2016 to June 2017	Rs.7,83,55,643/-
4.	Rajpura Dariba Mines	01.05.2017	April 2012 to July 2016	Rs.10,24,52,194/-
5.	Rajpura Dariba Mines	05.09.2018	August 2016 to June 2017	Rs.4,59,31,082/-



4.4. A common order, Order in Original No. UDZ-EXCUS-000-COM-0076-0080-18-19 dated 26.2.2019 ("order-in-original") for all the five SCNs was passed by the Commissioner, Central Goods & Service Tax, 142-B Hiran Magri, Udaipur vide which the demand proposed in the five SCNs was confirmed.

4.5. The Order-in-Original was challenged by the assessee before CESTAT, New Delhi (for short 'the learned Tribunal') vide Appeal No. 51311-51313/2019, 51648/2019 and 52703/2019. The Tribunal vide Final Order No. 51785-51789/2021 dated 2.9.2021 decided all five appeals and passed a common order.

4.6. The Tribunal while passing the final order held that the Commissioner had erroneously denied CENVAT credit by applying the restrictions contained in Rule 3(1)(i) of the CENVAT Credit Rules to credit availed under Rule 3(1)(vii) The learned Tribunal observed that the appellant had paid additional duty of customs (CVD) on imported goods after availing the benefit of Customs Notification, and not excise duty under the Central Excise notifications referred to in Rule 3(1)(i). Consequently, the conditions attached to Rule 3(1)(i) could not be imported into Rule 3(1)(vii) which independently permits availment of credit of additional duty of customs. The learned Tribunal also noted that departmental authorities, including the Regional Advisory Committee, Hyderabad Zone, had recognized the admissibility of such credit.



4.7. Relying on its earlier decision in Hindalco Industries Ltd. v. GST, Bhopal, 2018 (363) E.L.T.1085 (Tri.-Del.), the learned Tribunal reiterated that where additional duty of customs is paid after availing the benefit of Customs Notification, there is no prohibition under Rule 3(1)(vii) against availment of CENVAT credit. Since the denial of credit was founded on an incorrect interpretation of the CENVAT Credit Rules, the Tribunal set aside the Commissioner's order adjudicating the five show cause notices and allowed the appeals in favour of the assessee.

4.8. Now, the following Appeals have been preferred against the order of the learned Tribunal before this Court.

Item No.	Appeal No.	Name of Mine/Unit	Period of Dispute	CENVAT Credit Involved
37	EXCIA 4/2022	Zawar Mines	April 2012 to June 2016	Rs.5,32,24,752/-
36	EXCIA 5/2022	Chandaria Lead Zinc Smelter	April 2012 to June 2016	Rs.23,47,64,043/-
39	EXCIA 7/2022	Chandaria Lead Zinc Smelter	July 2016 to June 2017	Rs.7,83,55,643/-
40	EXCIA 8/2022	Rajpura Dariba Mines	April 2012 to July 2016	Rs.10,24,52,194/-
38	EXCIA 6/2022	Rajpura Dariba Mines	August 2016 to June 2017	Rs.4,59,31,082/-

5. The Union of India (Revenue) has questioned the order dated 2nd September, 2021 by filing the present appeals before this Court.

6. Mr. Rajat Arora, learned counsel for the Revenue would submit that the learned Tribunal has committed grave illegality in passing the impugned order as the same is contrary to the materials available on record. He would also submit that the learned Tribunal has erred in holding that the assessee is entitled for CENVAT credit of 1% / 2% additional duty of customs paid on the imported coal under the Customs Notification No.12/2012-Cus





dated 17th March, 2012, as amended by Notification dated 1st March, 2016. He would further submit that the learned Tribunal has not properly considered the submissions made by the Revenue, which are extracted hereinbelow:-



- “(i) the appellant has wrongly availed CENVAT credit of CVD paid on imported Steam Coal during the period April 2012 to June 2017, as it is in contravention of the provisions of rule 3 of the Credit Rules;
- (ii) CENVAT credit is allowed to be taken in respect of duty of Excise specified in the First Schedule to the Excise Tariff Act leviable under Central Excise Act;
- (iii) The credit of CVD paid under Notification No. 12/2012-CU dated March 17, 2012 in general is not allowed to be taken under Credit Rules, as CVD cannot be treated as duty of excise per se, but as per clause (vii) of sub-rule (1) of rule 3 of Credit Rules, CENVAT credit of the additional duty i.e. CVD leviable under section 3(1) of the Customs Tariff Act, is allowed equivalent to the duty of excise specified in clauses (i) to (via) of sub-rule (1) of rule 3 of Credit Rules. Thus, as regards CVD, CENVAT credit of CVD paid on imports is governed by rule 3(1)(vii) read with rule 3(1)(i) of the Credit Rules. This linkage is further qualified by proviso (b) to clause (i) of sub-rule (1) of rule 3 of Credit Rules, wherein, it has been stipulated that CENVAT credit of such duty of excise shall not be allowed to be taken when paid on any goods in respect of which the benefit under Serial No.67 of Notification No. 12/2012-CE dated 17.03.2012 is availed;
- (iv) Under the CENVAT credit scheme, rule 3(1)(vii) allows credit of the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act. Further, the proviso to the said rule provides that CENVAT credit of such duty of excise shall not be allowed to be taken when paid on any goods specified in serial number 67 in respect of which the benefit of an exemption under Notification No. 12/2012-C.E., dated March 17, 2012 is availed. It may be noted that serial number 67 relates to the coal falling under heading 2701 with a rate of 1%. Thus, the downstream buyers of coal which is manufactured and cleared by availing of the benefit of exemption under Serial No. 67 of the Notification No. 12/2012-CE cannot take credit of such 1% excise duty paid. CENVAT credit cannot be taken on domestically produced coal, cleared at concessional rate of 2% by virtue of this proviso”

7. Learned counsel for the assessee, Mr. Vinay Jain, would submit that the learned Tribunal is absolutely justified in allowing



the appeals in view of the minutes of the meeting of the Regional Advisory Committee (RAC), Hyderabad Zone, held on 9th February, 2015. Furthermore, the Calcutta High Court in the case of **Commissioner of CGST & CX Bolpur Commissionerate Vs. Ms. Shyam Steel Industries Ltd. (IA No.GA/01/2022 – decided on 05.09.2022)**, has dismissed the appeal of the Revenue. Thus, the appeals of the Revenue deserves to be dismissed.

8. We have heard learned counsel for the parties and considered their rival submissions made hereinabove and went through the materials available on record with utmost circumspection.

9. It is not in dispute that the assessee is engaged in manufacture of zinc and lead concentrates falling under Chapter 26 of the First Schedule to the Central Excise Tariff Act, 1985 and availed facility of CENVAT credit on inputs, capital goods and input services as contemplated under the CENVAT Credit Rules, 2004. it is also the case of the assessee that for manufacture of the final products, it consumes power generated from its captive thermal plant wherein steam coal/steam non-cooking coal, falling under Chapter heading 27.01 of the Customs Tariff Act, 1975 is used as input. It is also the case of the assessee that during the relevant period, it has paid CVD in terms of Section 3(1) of the Act on the importation of steam coal. The assessee was also availing CENVAT credit of CVD in accordance with the provisions of Rule 3(1)(vii) of the Credit Rules.



10. Rule 3 of the CENVAT Credit Rules is reproduced hereinbelow:-

"RULE 3. CENVAT credit- (1) A manufacturer or producer of final products or a, provider of output service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of-

(i) The duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act:

Provided that CENVAT credit of such duty of excise shall not be allowed to be taken when paid on any goods-

(a) in respect of which the benefit of an exemption under Notification No. 1/2011-C.E., dated the 1st March, 2011 is availed; or

(b) specified in serial numbers 67 and 128 in respect of which the benefit of an exemption under Notification No. 12/2012-C.E., dated the 17th March, 2012 is availed.

(ii) the duty of excise specified in the Second Schedule to the Excise Tariff Act, leviable under the Excise Act;

(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);.

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);

(vi) the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004);

(via) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007);

(vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v), (vi) and (via):"





11. A careful reading of Rule 3(1)(i) of the Rules would show that a manufacturer shall be allowed to take CENVAT credit of the duty of excise specified in the First Schedule to the Excise Tariff Act leviable under the Excise Act subject to twin conditions incorporated in proviso (a) & (b). However, Rules 3(1)(ii) provides that a manufacturer shall be allowed to take credit of additional duty leviable under Section 3 of the Act equivalent to the duty of exercise specified under clauses (i), (ii), (iii), (iv), (v), (vi) and (via).

12. The learned Tribunal has given its finding in para 16 of the impugned order that the assessee had paid additional duty of customs by availing the benefit under Serial Number 122A/123 of the Customs Notification dated 17th March, 2012 and the assessee had not paid the duty of excise specified in the First Schedule of the Excise Tariff Act, nor it had availed the benefit of the Central Excise notification dated 1st March, 2011 or that specified in Serial Numbers 67 and 128 in respect of which the benefit of an exemption under Central Excise Notification dated 17th March, 2012 had been availed. Para 16 of the order dated 2nd September, 2021 reads as under:-

"16. The Commissioner has mixed up rule 3(1)(i) and rule 3(1)(vii) of rule 3 of the Credit Rules. It is for this reason that the conditions specified in rule 3(1)(i) have also been imported into rule 3(1)(vii) of the Credit Rules. In the first instance, Hindustan Zinc had not paid duty of excise specified in the First Schedule of the Excise Tariff Act, nor it had availed the benefit of the Central Excise Notification dated March 1, 2011 or that specified in serial numbers 67 and 128 in respect of which the benefit of an exemption under Central Excise Notification dated March 17, 2012 had been availed. In fact, Hindustan Zinc had paid additional duty of customs by availing the benefit under serial number 122A/123 of the Customs Notification dated March 17,



2012. It is because of this misreading of rule 3(1) of the Credit Rules that led the Commissioner to commit an error.”

13. The said finding of the learned Tribunal could not be substantially questioned and contradicted by the learned counsel for the Revenue. Furthermore, the position has been clarified by the minutes of the meeting of Regional Advisory Committee (RAC), Hyderabad Zone held on 09.02.2015. Point No.1 of the minutes and its reply are reproduced hereunder:-



“Point No.1 – Credit on imported Coal:

Many manufacturers are importing steam coal on payment of duties. As per Customs Notification No.12/2012-Cus. They are availing concessional CBD @ 2%. Audit is of the view that since CVD has been paid @ 2% on imported coal, the credit under Cenvat Credit Rules, is not available. Audit is taking a view that CVD in lieu of Excise duty and if 2% duty has been paid on imports the credit is not admissible because a manufacturer who is procuring coal domestically where excise duty has been paid @ 2%, the credit is not available.

Board has issued a circular No.41/2013-Cus. Dated 21.10.2013 where it has been clarified that 2% of CVD is “general applied” rate and therefore it is industry’s view that credit of CVD is available as per Rule 3(1)(vii) of Cenvat Credit Rules. Please clarify.

Reply :

Since the subject goods were levied to reduced rate of 2% CVD on their importation in terms of Section 3 of the Customs Tariff Act, 1975 read with Notification issued therein i.e. under Notification NO.12/2012-Cus. Dated 17.03.2013 (and not under Notification no.1/2011 (CE) which was not excluded from the purview of Rule 3 of Cenvat Credit Rules, 2004, It appears that the Cenvat credit of CVD paid on imported coal (i.e. 2% adv.) under Notification No.12/2012-Cus. Dated 17.03.2013 is eligible for credit.”

14. Furthermore, the Calcutta High Court in the case of Shyam Steel Industries Ltd. (supra) has framed following issues:

“Whether the respondent is eligible to avail Cenvat Credit availed in respect of 1% / 2% (concessional rate) Additional Duty of Customs (CVD) paid on imported coal in terms of Notification No.12/2012-cus dated 17.03.2012 and 12/2013-Cus dated 01.03.2013, in view of restriction for



availing Cenvat Credit in terms of the Notification No.12/2012-CE dated 17.03.2012 (sl. No.67 condition no.25)?

Whether the Learned Tribunal has misdirected itself by allowing the appeal of the respondent without appreciating that if no credit of excise duty at the concessional rate of 1% is available under the proviso to Rule 3(1)(i) of the Cenvat Credit Rules, the credit of CVD at the rate of 1% / 2% is also be restricted?

Whether the restricted as prescribed in respect of duty of excise in the Notification No.1/2011 CE dated 01.03.2011 and in Notification No.12/2012 CE dated 17.03.2012 read with Rule 3 of the Cenvat Credit Rules, 2004 is applicable to the countervailing duty?"

15. The Calcutta High Court has answered these questions in paras No.7, 8 and 9, which reads as under :-

"7. The Learned Senior Advocate appearing for the respondent assessee to explain meaning of the word "equivalent" referred to the decision in Chandrakala Trivedi v. State of Rajasthan (2012) 3 SCC 129 wherein it was held that the said word must be given a reasonable meaning and by using the expression "equivalent" one means that there are some degree of flexibility or adjustments which do not allow this rated requirements; there has to be some difference between what is equivalent and what is exact. The circular issued by CBEC in Circular No. 41/2013-Cus dated 21.10.2013 is also of relevance to the case on hand. The necessity to issue the circular arose as doubt was raised whether an importer, while availing the "Basic Customs Duty" (BCD) Exemption at 10% under FTA can simultaneously avail of the concessional countervailing duty (CVD) at 2% as per notification No. 12/2012-Customs or he has to pay the CVD at 6%, which is rate of excise duty applicable on Steam Coal when CENVAT facility has not been availed. The issue was clarified on the following terms:-

- ◆ *In the present case, the excise duty applicable on Steam Coal is 6%, if CENVAT benefit is availed of an 1% if the CENVAT benefit is not availed of, Normally, Steam Coal will suffer 6% CVD, as the condition of non-availment of cenvat benefit cannot be satisfied in respect of imported goods. However, in the Budget 2013-2014, as a conscious policy decision, it was decided to levy 2% CVD both on steam coal and bituminous coal. This is the general applied rate of CVD on all imports of steam coal and bituminous coal regardless of the excise duty leviable on like domestic coal. No such condition has*





been laid down that an importer cannot avail of this concessional CVD of 2% if he has availed of the concessional BCD on steam coal under another notification.

- ◆ *It is therefore clarified that an importer while availing of BCD exemption on steam coal under FTA notification No. 46/2011-Cus can simultaneously avail of concessional CVD at 2% under notification No. 12/2012-Cus.*

8. *That apart, we find that the Regional Advisory Committee for Hyderabad zone which is the Committee consisting of 10 Members, 5 from the department who are all in the rank of Commissioners/Joint Commissioners and 5 Members representing the industry considered this issue. The question which has arisen in the case on hand was subject matter of discussion in Point No. 1 and in the Minutes of the Meeting of the Committee dated 09.02.2015 it was decided as follows:-*

Since the subject goods were levied to reduced rate of 2% CVD on their importation in terms of Section 3 of Customs Tariff Act, 1975 read with Notification issued therein i.e. under Notification No. 12/2012-Cus. Dated 17.03.2013 (and not under Notification No. 1/2011 CE) which was not excluded from the purview of Rule 3 of Cenvat Credit Rules, 2004. It appears that the Cenvat Credit of CVD paid on importer coal (i.e. 2% adv.) under Notification No. 12/2012-Cus. Dated 17.03.2013 is eligible for credit.

9. *Identical issue has been decided in favour of the assessee by the tribunal in Hindalco Industries Limited v. GST, Bhopal (2018) 363 ELT 1085 (Tri.-Del), holding that taking into consideration Notification No. 12/2012-Cus there is no bar for availment of CENVAT Credit in terms of the Rule 3(7) where duty paid under Notification No. 12/2012-Cus and CENVAT Credit cannot be denied. Identical view was taken by the tribunal in CCE and ST, Surat-I v. M/s. Aarti Industries Limited 2019 (3) TMI 240-CESTAT Ahmedabad, M/s. Asahi Songwon Colors Limited v. CCE & ST, Vadodara 2018 (9) TMI 159-CESTAT Ahmedabad, Commissioner of Central Excise, Customs & CGST, Jaipur-I v. Shree Cement Limited 2022 (7) TMI 978-CESTAT New Delhi, SRF Limited v. Commissioner of Customs, Chennai (2015) 318 ELT 607 (SC), and M/s. Tamil Nadu Newsprint & Papers Limited v. Commissioner of GST & Central Excise, Tiruchirappalli 2021 (10) TMI 13-CESTAT Chennai. The above decisions rendered by the tribunal have not been shown to have been reversed or modified by the High Court."*





16. In view of the above, we are of the considered opinion that the learned Tribunal has rightly held that the assessee is entitled to CENVAT credit of 1% / 2% additional duty of customs paid on the imported coal under the Customs Notification No.12/2012-Cus dated 17th March, 2012, as amended by Notification dated 1st March, 2016. The findings so recorded by the learned Tribunal are strictly based on the material available on record. The question of law is accordingly answered in favour of the assessee and against the Revenue.

17. The appeals are, accordingly, dismissed, leaving the parties to bear their own costs.

18. A copy of this order be placed in all these files.

(BALJINDER SINGH SANDHU),J

(SANJAY K. AGRAWAL),CJ

36/Anil Asopa