CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

EXCISE APPEAL NO. 55659 OF 2023

(Arising out of Order-in-Original No. 1-5/Pr.Commr./ST/BPL-Korba/2023-24 dated 13.06.2023 passed by the Principal Commissioner, CGST & Central Excise, Bhopal)

The Commissioner, **.....Appellant**
CGST & Central Excise,
GST Building, Dhamtari Road,
Tikrapara, Raipur (C.G.) - 492001

VERSUS

M/s. Bharat Aluminium Co. Ltd., **.....Respondent**
1st Floor, CDO Building, Balco Nagar,
Korba (C.G.)

APPEARANCE:

Shri Rakesh Agarwal and Shri S.K. Ray, Authorized Representatives for the Department

Shri Rajeev Agarwal, Advocate for the Respondent

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

DATE OF HEARING: 08.05.2025
DATE OF DECISION: 06.11.2025

FINAL ORDER NO. 51677/2025

JUSTICE DILIP GUPTA:

The department has filed this appeal to assail the order dated 13.06.2023 passed by the Principal Commissioner dropping the demand raised against M/s. Bharat Aluminium Co. Ltd.[1] in the five show cause notices issued for the period 2006-2007 to 2010-2011.

2. It transpires from the records that BALCO had availed services in respect of "mining services" carried out for extraction of bauxite from its mines at Kawardha by engaging the services of a service provider and the service provider charged service tax under the category of "mining services". The bauxite so extracted from the mines was directly dispatched to M/s.

---

1. **BALCO**

Vedanta Aluminium Limited[2] for the purpose of conversion into alumina on job work basis. The converted alumina was thereafter returned by Vedanta to BALCO in terms of the conversion agreement and thereafter used by BALCO for manufacture of the final product aluminium. BALCO availed CENVAT credit of the service tax for payment of central excise duty on the final product i.e. aluminium and articles thereof, removed by BALCO from its factory.

3. Five show cause notices were issued to BALCO alleging that the "mining services" on which CENVAT credit was availed by BALCO was not an "input service" as the same was not "in or in relation to manufacture" of the final product aluminium. The show cause notices also allege that Vedanta had not availed the benefit of Notification No. 214/86 dated 25.03.1986[3] and so BALCO would not be entitled to avail "input service" credit in terms of rule 3(1)(xi)(ii) of the CENVAT Credit Rule, 2004[4].

4. The relevant portions of the last show cause notice dated 03.02.2017 are reproduced below:

> "**6.** In this case the Bauxite Ore is extracted by the service providers engaged in extraction of Bauxite Ore thereby paying the service tax under "Mining Services". The Bauxite Ore so extracted is claimed to be dispatched to M/s Vedanta Aluminium Ltd., Lanjigarh for manufacture of Alumina. The Alumina manufactured by M/s Vedanta Aluminium Ltd. Lanjigarh using the said extracted Bauxite Ore, is procured by the Noticee on payment of duty of which it claims Cenvat Credit.
>
> **6.1. The Noticee is not entitled to take CENVAT Credit of Service Tax paid on mining service, as the said mining service is not an input service for the Noticee. The extraction of Bauxite at the mines has no nexus with the manufacturing of final product of the Noticee as Bauxite is not used**

---

2. Vedanta
3. the Exemption Notification
4. the 2004 Credit Rules

in Noticee's factory. However service used in extracting of Bauxite cannot be an input service to the Noticee as neither Bauxite nor mining service being an input/input service for the Noticee at any stage for the manufacture of its final product viz Aluminium. From aforesaid, it appears that the Noticee has failed to ensure the aforesaid fulfillment of the condition and has willfully and deliberately availed and utilized improper CENVAT Credit of service tax paid on "Mining Service" of Rs. 6,62,12,000/- during the period from January, 2015 to October, 2016. The copy of wrong availment of Cenvat credit /Duty calculation sheet is marked as Annexure-D. Thus, the CENVAT Credit amounting to Rs. 6,62,12,000/-, so irregularly availed in contravention of the provision of Rule (2) (1), Rule (3) (1) and Rule (9)(6) of the CENVAT Credit Rules, 2004, is recoverable from them alongwith interest under the provision of Rule 14 of the CENVAT Credit Rule' 2004 read with Section 114(1) & 11AA of the Central Excise Act' 1944.

7. **Thus, the said "Mining Service" has no direct or indirect relation with the manufacture of its final products. Therefore, the Service Tax credit of Rs. 6,62,12,000/- (including Ed. Cess & S.H.Ed. Cess) availed and utilized by the Noticee appears to be inadmissible and therefore recoverable from them alongwith interest, as the Mining Service is not input services as defined in clause (1) of Rules 2 of the Cenvat Credit Rules, 2004.**"

(emphasis supplied)

5. BALCO filed detailed replies to the show cause notices and contended that it had correctly availed CENVAT credit on "input service" in respect of service tax charged by the service provider for extraction of bauxite from the captive mines owned by BALCO for the reason that bauxite was converted into alumina by Vedanta, which was subsequently received by BALCO for use in the manufacture of final product i.e., aluminium. It was, therefore, stated that the mining services received by the appellant for extraction of bauxite at its captive mines would be in relation to manufacture of aluminium, which

was the final product and so would be an "input service" as defined in rule 2(1) of the 2004 Credit Rules. BALCO also submitted that there was no legal compulsion for Vedanta to claim the benefit of the Exemption Notification and that the provisions of rule 3(1)(xi)(ii) of the 2004 Credit Rules would not be applicable.

6. The adjudication of the show cause notices was initially kept in the "call book" for the reason that the department had filed an appeal before the Supreme Court against the judgment of the Bombay High Court in **Coco Coal India Pvt. Ltd.** vs. **Commissioner of C. Ex., Pune**[5] on which reliance was placed by the appellant. The matter was taken up for adjudication after the Supreme Court dismissed the appeal filed by the department on 06.02.2019.

7. As noticed above, by the order dated 13.06.2023, the Principal Commissioner dropped the demands raised in the five show cause notices. The Principal Commissioner first examined the allegation raised in the show cause notices that as Vedanta had not taken the benefit of the Exemption Notification dated 25.03.1986, the appellant would not entitled to avail CENVAT credit as the procedure contemplated under rule 3(1)(xi)(ii) of the 2004 Credit Rules was not followed. This allegation in the show cause notices was not accepted by the Principal Commissioner for the following reasons:

> "**35.1 The show cause notice allege that notification no. 214/86 dated 25.3.1986 was required to be followed as per the provisions of Rule 3(1)(xi)(ii) of the Cenvat Credit Rules.** *****
>
> *****
>
> **It reflects from plain reading of Rule 3(1)(xi)(ii) of Cenvat Credit Rules that cenvat credit would be**

---

5. 2009 (242) E.L.T. 168 (Bom.)

available for any duties, or tax, or cess paid on any input or input service used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86 – Central Excise, dated the 25th March, 1986. Evidently the said provision is an enabling one which allows Cenvat credit of input or input service used in manufacture of intermediate product by a job worker. Basically this provision clarifies that any input or input service which is used by job worker in manufacture of intermediate product would also be eligible as credit at the end of the principal manufacturer if benefit of notification no. 214/86 is availed by the job worker. This is because job worker who is availing benefit of the said notification would not be paying Central Excise duty upon clearance of the intermediate product. **Hence this provision enables a principal manufacturer to avail credit of duty paid on inputs/input services which are used by a job worker in the job worker's premises for manufacturer of intermediate product. In the present case, the input service of mining is not used by VAL but by the noticee (BALCO) himself. So here it is not the case that the noticee has availed an input service which was used by the job worker (VAL) whereas the noticee himself had used mining service in own mines. For these reasons, in my considered view, the provision of Rule 3(1)(xi)(ii) does not get attracted to the issue at hand.**

35.2 As already discussed above the show cause notices allege that for getting the benefit of Rule 3(1)(xi)(ii) it is mandatory for the job worker to avail the benefit of notification no. 214/86. Though I have given my findings above that in the circumstances specific to the present case provision of rule 3(1)(xi)(ii) does not get attracted because the input service has been availed by the noticee and not the job worker (VAL), for the sake of academic discussion I proceed to examine the validity of the claim in the

SCNs that – it is mandatory for the job worker to avail the benefit of notification no. 214/86 in order to be eligible for being covered by Rule 3(1)(xi)(ii) of the Cenvat Credit Rules.*****

*****

I do not find that the inclusion clause in this rule restricts or reduces the scope of the main clauses in the Rule 3 of Cenvat Credit Rules. The expression is only an enabling provision which permits credit on input/input services to the principal manufacturer even in cases where the input is not received by it but received directly by the job worker even when no duty is to be paid on the intermediate products. This is only an additional facility which is provided in the law and is not restrictive in any manner.

*****

Therefore, it is now settled that Rule 3(1)(xi)(ii) of the Cenvat Credit Rules is an enabling provision and is not intended to be applied only where notification no. 214/86 has been followed. However, as already discussed in the present matter the issue pertains to availment of Cenvat credit on input service of mining by the principal manufacturer i.e. BALCO (the noticee) while the job worker (VAL) has paid Central Excise duty on the intermediate product i.e. Alumina and has also not taken credit of Service Tax paid on mining service. Hence in the present matter Rule 3(1)(ix)/(ixa)/(ixb) is applicable. *****

*****

Here BALCo (the noticee) (the manufacturer of final products i.e. Aluminium) would be eligible to take credit of input service of mining as it was received by the manufacturer i.e. the noticee themselves. Hence the allegation in the show-cause notices that Rule 3(1)(xi)(ii) gets attracted to the impugned matter is wrong and irrelevant ab initio."

(emphasis supplied)

8. The Principal Commissioner then examined whether mining services in respect of extraction of bauxite has a direct or indirect relation to the manufacture of the final product i.e. aluminium and articles thereof. This allegation in the show cause notices was also not accepted by the Principal Commissioner for the following reasons:

> "**36.1** ***** I also find that the basis of the allegation of not having nexus of mining service with manufacture was based on the premise that in order to have nexus it was mandatory for the job worker to follow the procedure under notification no. 214/86. As regards requirement of following 214/86, I have already given my findings based on case laws that following 214/86 was not mandatory in the context of Rule 3(1)(xi)(ii). Moreover, in the present case Rule 3(1)(xi) (ii) itself does not get attracted for the reasons already discussed in detail above. **In light of the foregoing discussions I find that allegation of the input service of mining not having any nexus with manufacture of final product i.e. Aluminum also falls.**
>
> *****
>
> **36.2.** It would be seen from the aforesaid definition of 'input service' in rule 2(1) of the Credit Rules that while the 'means' part of the definition has continued to remain the same pre amendment or post amendment, but the 'includes' part and the 'excludes' part of the definition of 'input service' have underdone changes.
>
> **It can be seen from bare perusal of the above that the 'means' clause of rule 2(1) of the Credit Rules (first limb) continued to remain the same whether, before 01.04.2011 or after 01.04.2011. In other words changes made in definition w.e.f 1.4.2011 pertain only to the second limb of the definition whereas the wordings of the first limb remained the same - prior as well as post 1.4.2011.** That is there has been no change in the first limb in the definition which says that Input service is any service used by the manufacturer whether directly or indirectly, in or in relation to the manufacture of the

final products and clearance of final products, upto the place of removal.

*****

36.3 Plain reading of the above reflects that any service which is used not only in manufacture but also 'in relation to' manufacture will qualify as input service. The scope is further enlarged as the expression used here is 'whether directly or indirectly used'. So the definition is wide enough to cover all processes which are incidental or ancillary to manufacture. *****

*****

In the present matter it is not in dispute (except for FY 2006-07) that the mining service was used in mining of bauxite. The bauxite was sent to VAL for conversion into alumina which is basic raw material used in manufacture of Aluminum by the noticee. **Without alumina there cannot be any aluminium and there cannot be any alumina without Bauxite. Hence I do not find any rational basis for not finding any nexus of Bauxite mining with production of aluminium.** The courts have taken a much more liberal view of the definition of input service while interpreting the expression directly or indirectly, in or in relation to the manufacture of the final products.

*****

36.5.1 In aforesaid paras I have discussed how the activity of mining is covered by the 'means' clause of the definition of the input service. In addition to this I would also like to discuss for academic sake that services used in relation to 'procurement of inputs' and 'activities relating to business' are also covered in the inclusive clause i.e. 2nd limb of the definition of input service.

*****

36.5.3 In the case of Coca Cola India Pvt. Ltd. Vs. CCE Pune the hon'ble High Court of Bombay

> **had given an expansive interpretation of the definition of input service and the Supreme Court had dismissed the Revenue's appeal vide order dated 06.02.2019 against the said order. In this case it was held that input service of 'advertisement' was covered under the definition of 'input service' as it was activity related to business.** *****"
>
> **(emphasis supplied)**

9. It is this order passed by the Principal Commissioner that has been assailed by the department in this appeal.

10. Shri Rakesh Agarwal and Shri S.K. Ray, learned authorized representatives appearing for the department made the following submissions:

(i) Input tax credit is not an inherent right but is a statutory concession subject to the conditions contained in the 2004 Credit Rules. The appellant failed to comply with the requirements of rule 3(1)(xi)(ii) of the 2004 Credit Rules and, therefore, became disqualified from claiming input tax credit on mining services;

(ii) Though the Principal Commissioner acknowledged the link between bauxite mining, alumina production and manufacture of aluminium, but failed to appreciate that the mandatory provisions of rule 3(1)(xi)(ii) of the 2004 Credit Rules had not been complied with;

(iii) Rule 3(1)(xi)(ii) allows a principal manufacturer to claim input tax credit on input services used by a job worker in producing an intermediate product if the job worker avails the benefit of the Exemption Notification;

(iv) The Principal Commissioner committed an error in holding that since mining services were used by BALCO and not Vedanta the

said rule was not applicable. The fact is the mining services was used by Vedanta to produce aluminium necessitating compliance of the said rule;

(v) The judgment of the Bombay High Court in **Coco Cola** and the decision of the Larger Bench of the Tribunal in **Reliance Industries** are not applicable to the facts of the present case and have, therefore, wrongly been relied upon by the Principal Commissioner;

(vi) The Principal Commissioner committed an error in finding a nexus between mining services and aluminium production as the order overlooks the physical and transactional separation between the captive mines of BALCO and its factory; and

(vii) The Principal Commissioner was not justified in giving an expansive interpretation to "directly or indirectly" and "activities relating to business".

11. Shri Rajeev Agarwal, learned counsel appearing for BALCO, however, supported the impugned order and made the following submissions:

(i) BALCO had correctly availed CENVAT credit on input services in respect of service tax charged by the service provider for extraction of bauxite from the captive mines owned by BALCO;

(ii) There was no legal compulsion for Vedanta to claim the exemption benefit from payment of central excise duty by availing the benefit of the Exemption Notification;

(iii) The provisions of rule 3(1)(xi)(ii) of the 2004 Credit Rules are not applicable in the present case;

(iv) Bauxite was converted into alumina by Vedanta which was subsequently received by BALCO for use in the manufacture of the final product aluminium and so mining services received for extraction of bauxite would be in relation to manufacture of

aluminium as the same is used "in or in relation to manufacture of final product" and hence eligible for "input services" as defined in rule 2(l) of the 2004 Credit Rules; and

(v) The extended period of limitation could not have been invoked in the facts and circumstances of the case.

12. The submissions advanced by the learned authorized representative appearing for the department and the learned counsel for BALCO have been considered.

13. The issue that arises for consideration in this appeal is whether BALCO was justified in availing CENVAT credit of the service tax paid on mining services.

14. BALCO has mines at Kawardha. It engaged the services of a service provider for extraction of bauxite and the service provider charged service tax under the category of mining service. It is credit of this service tax that was availed by BALCO for payment of central excise duty on the final product i.e. aluminium removed by BALCO from its factory. The bauxite extracted from the mine was directly dispatched to Vedanta for the purpose of conversion of bauxite into alumina on job work basis. The converted alumina was returned by Vedanta to BALCO and was used by BALCO for manufacture of the final product i.e. aluminium.

15. The case of the department is that the mining services on which credit has been availed by BALCO is not an "input service" as the same is not "in or in relation" to manufacture of the final product i.e. aluminium. The department also alleges that as Vedanta had not availed the benefit of the Exemption Notification, BALCO will not be entitled to avail input service credit in terms of rule 3(1)(xi)(ii) of the 2004 Credit Rules.

16. "Input service", as it stood at the relevant time prior to 01.04.2011, has been defined in rule 2(l) of the 2004 Credit Rules as:

> "**2(l)** "input service" means any service,-
>
> (i) used by a provider of taxable service for providing an output service, or
>
> (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,
>
> and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security inward transportation of inputs or capital goods and outward transportation upto the place of removal;"

17. A bare perusal of the definition of "input service" reproduced above shows that it would mean any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and includes services used in relation to activities relating to business or capital goods.

18. In this connection, it would be appropriate to refer to the decision of the Bombay High Court in **Coca Cola**, wherein the definition of "input service" under rule 2(l) of the 2004 Credit Rules, as stood prior to its amendment made on 01.04.2011, came up for interpretation. The issue was as to whether the appellant, a manufacturer of non-alcoholic beverage bases, was eligible to avail credit of the service tax paid on advertising services, sales promotion, market research and the like service availed by

the appellant. The High Court held that the expression "means and includes" is exhaustive and that the expression "business" is an integrated/continued activity and is not confined or restricted to mere manufacture of the product and, therefore, activities in relation to business can cover all activities that are related to the functioning of a business. The definition of "input service" was divided into five limbs/categories, and it was held that if an assessee could satisfy any one of the five limbs, then credit of the input service would be available, even if the assessee did not satisfy other limbs of the above definition.

19. The Bombay High Court in **Commissioner of C. Ex., Nagpur** vs. **Ultratech Cement Ltd.**[6], after considering the earlier judgment of the Bombay High Court in **Coca Cola**, took the same view.

20. A Larger Bench of the Tribunal in **Reliance Industries** followed the judgments of the Bombay High Court in **Coco Cola** and **Ultratech Cement**. The Commissioner, by order dated 29.12.2011, had confirmed the demand made in the show cause notice observing that from a perusal of the definition of "input service" in rule 2(l) of the 2004 Credit Rules, it transpired that it was necessary for an assessee to establish that the premium paid to the insurance company for the medical insurance of its retired employees under Voluntary Separation Scheme had some connection or nexus with the manufacturing activities of the assessee in order to avail CENVAT credit of the service tax paid on the insurance premium. The contention of **Reliance Industries** was noted in paragraph 30 of the decision, which paragraph is reproduced below:

> "30. The contention of the appellant is that the Scheme was announced to keep the business operations of the appellant viable and sustainable in the long run because the continued losses incurred by IPCL would

---

6. 2010 (20) S.T.R. 577 (Bom.)

> have increased and the appellant would not have been in a position to carry the manufacturing operations if the business itself had became unviable. The submission, therefore, is that the premium paid by the appellant for providing medi-claim to such employees who had adopted VSS was aimed at keeping the manufacturing operations viable and running and, therefore, had a direct nexus to the manufacturing operations."

21. This submission of **Reliance Industries** was accepted by the Larger Bench of the Tribunal in paragraph 31 of the decision, which paragraph is reproduced below:

> "31. This submission of learned counsel for the appellant has substance. As noticed above, VSS was for the existing employees and was not an option to be exercised by those employees who had retired. In fact, compensation/benefits under the VSS were to extend only up to the notional age of superannuation of the employees who had opted for VSS. It was in order to avoid continued losses and to bring about a situation that would enable the appellant to run its business and manufacturing activities that the Scheme was floated. Input service, as defined in rule 2(l) of the 2004 Rules, means any service used by the manufacturer directly or indirectly, in or in relation to the manufacture of final products and includes services used in relation to activities relating to business. The aforesaid service has been used by the appellant directly in relation to activities relating to business. The Scheme, therefore, certainly has a direct nexus to the manufacturing operations."

22. Initially the adjudication of the show cause notices was kept in the call book since the judgment of the Bombay High Court in **Coco Cola** had been assailed by the department before the Supreme Court. Upon dismissal of the appeal by the Supreme Court, the show cause notices were taken up for adjudication by the Commissioner.

23. The impugned order notices that since mining services were used for extraction of bauxite from the mines owned by BALCO and this bauxite was sent to Vendanta for conversion into alumina, which is a basic raw material used in the manufacture of aluminium by BALCO, there is a direct nexus between extraction of bauxite from the mines and the production of aluminium. The impugned order, therefore, going by the enlarged definition of input service in rule 2(l) of the 2004 Credit Rules held that all processes which are incidental or ancillary to the manufacture of final product would be input services. To arrive at this conclusion, the Principal Commissioner placed reliance upon the judgment of the Bombay High Court in **Coco Cola**.

24. There is no error in the findings recorded by the Principal Commissioner in the order impugned in this appeal. Only a bald allegation has been made in the show cause notice that there is no nexus between the extraction of bauxite from the mines owned by BALCO and the manufacture of the final product i.e. aluminium. As noticed above, there is a nexus as bauxite that is mined is converted into alumina which is then used by BALCO for manufacture of the final products i.e. aluminium. It is necessary to give an expanded definition of "input service" in terms of the judgment of the Bombay High Court in **Coco Cola**.

25. The next issue that arises for consideration is whether rule 3(1)(xi)(ii) of the 2004 Credit Rules would be applicable in the facts of the present case.

26. It would, therefore, by appropriate to reproduce the said rule, which is as follows:

> "**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 –
>
> *****

> (xi) the additional duty of excise leviable under section 85 of Finance Act, 2005 (18 of 2005), paid on –
>
> (i) any input or capital goods received in the factory of manufacture of final product or by the provider of output service on or after the 10th day of September, 2004; and
>
> (ii) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004
>
> including the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86-Central Excise, dated the 25th March, 1986, published in the Gazette of India vide number G.S.R. 547(E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final product, on or after the 10th day of September, 2004"

27. A perusal of the aforesaid rule 3(1)(xi)(ii) of the 2004 Credit Rules shows that the manufacturer of final product shall be allowed to take credit of the additional duty of excise paid on any input service received by the manufacturer of final product, including the said duties, or tax, paid on any input used in the manufacture of intermediate product by a job worker availing the benefit of exemption specified in the Exemption Notification. The Principal Commissioner examined this issue at length and held that the input service of mining was not used by Vedanta but by BALCO. The impugned order also holds, in the alternative, that it was not mandatory for a job worker to avail the benefit of the Exemption Notification in order to be eligible to be covered under rule 3(1)(xi)(ii) of the 2004 Credit Rules.

28. A perusal of rule 3(1)(xi)(ii) shows that it is applicable in situations where a job worker has opted to avail the benefit from payment of excise

duty under the Exemption Notification, in which case the principal manufacturer can avail CENVAT credit of duty paid on input used by a job worker. It provides a special dispensation to the principal manufacturer to avail CENVAT credit of duty paid on input used by the job worker since the job worker would not be availing the CENVAT credit. It is not in dispute that Vedanta, as a job worker, had not opted for claiming excise duty exemption and had paid excise duty. The Exemption Notification is optional which may or may not be claimed by the job worker. Merely because the job worker had not opted to avail the exemption benefit under the Exemption Notification, CENVAT credit, which is otherwise available to BALCO, cannot be denied.

29. In this connection, it would be useful to refer to the decision of the Tribunal in **Haldia Petrochemicals Ltd.** vs. **Commissioner of C. Ex., Haldia**[7] and the relevant portion is reproduced below:

> "**23. It has been argued on behalf of Revenue that under Rule 3 of the Cenvat Credit Rules, the credit is available only when the job worker avails the benefit of Notification No. 214/86. We do not read Rule 3 in this manner.** The Cenvat credit is admissible when the inputs are received in the factory and used in or in relation to the manufacture of final products. The inclusion clause in the Rule does not restrict or reduce the scope of the main clauses in the Rule. **Moreover, the expression "availing the benefit of exemption specified in the Notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86-C.E., dated 25th March 1986" is only an enabling provision which permits credit on inputs to the principal manufacturer, even in cases where the input is not received by it, but is received directly by the job worker and provides for taking Cenvat credit of the duty paid on the inputs used in the manufacture of intermediate products even when**

---

7. 2006 (197) E.L.T. 97 (Tri. – Del.)

> **no duty is required to be paid on the intermediated products..,** Rule 57AC of the 2000 Rules and Rule 4(5)(a) of July 2001 Rules provide an additional facility, and do not lay down any requirement that the following of Notification 214/86-C.E. is precondition for availment of Cenvat credit, in any case, where the intermediate product is not excisable or otherwise exempted from payment of duty, the question of availing the benefit of Notification No. 214/86 does not arise. We, therefore, do not see any force in the contention of the Revenue."
>
> **(emphasis supplied)**

30. There is, therefore, no error in the findings recorded by the Principal Commissioner that rule 3(1)(xi)(ii) of the 2004 Credit Rules would have no application to the facts.

31. It is also the contention of the department with respect to the first show cause notice that BALCO did not receive bauxite nor alumina.

32. This issue has been examined at length by the Principal Commissioner and on the basis of documentary evidence, a finding has been recorded that alumina was received after conversion and the cost of mining of bauxite also formed part on the cost of production of the final product. No perversity has been pointed out in the said finding recorded by the Principal Commissioner.

33. It is also not possible to accept the contention of the learned authorized representative appearing for the department that BALCO was disqualified for claiming input tax credit on mining services as there is no inherent right with BALCO to claim so and it is only a statutory concession subject to the conditions contained in the 2004 Credit Rules. It may be correct that BALCO does not possess an inherent right to claim input tax credit, but the 2004 Credit Rules do provide for claiming such credit. It has also been found as a fact that BALCO was not required to comply with the requirements of rule 3(1)(xi)(ii) of the 2004 Credit Rules.

34. It would, therefore, not be necessary to examine the contention advanced by BALCO that the extended period of limitation could not have been invoked in the facts and circumstances of the case.

35. Thus, for all the reasons stated above, there is no error in the impugned order which may call for any interference in this appeal. The appeal is, accordingly, dismissed.

(Order Pronounced on **06.11.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Shreya