

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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.10693 of 2017

(Arising out of Revision Order-V-CH-72-15-01-RSL-DGCEI-ADJ-COMMR-2013-14 dated 05/01/2017 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

Rajputana Steel Ltd

.....Appellant

213, Madhwas, Halol-Kalol Road, Taluka- Kalol, Panchmahal, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-ii

.....Respondent

1st Floor... Room No.101,

New Central Excise Building, Vadodara, Gujarat-390023

WITH

- i. Excise Appeal No. 10826 of 2017 (Shakti Freight Carriers)**
- ii. Excise Appeal No. 10872 of 2017 (Moongipa Roadways Pvt. Ltd)**
- iii. Excise Appeal No.10880 of 2017 (Shankar Singh Shekhawat)**
- iv. Excise Appeal No. 10881 of 2017 (Rajesh Sanghvi)**
- v. Excise Appeal No. 10892 of 2017 (Rajputana Stainless Ltd)**
- vi. Excise Appeal No. 10893 of 2017 (Mr Shankar Deepchand Mehta)**
- vii. Excise Appeal No.10919 of 2017 (Shri Vishnuprased Kalyajsahai Sharma)**
- viii. Excise Appeal No. 10920 of 2017 (Dilipbhai Hanwantraj Gulecha)**
- ix. Excise Appeal No. 11025 of 2017 (Shri Mukesh Bhabhutmal Bokadia)**
- x. Excise Appeal No. 11249 of 2017 (Sunil Kumar Natwarlal Parikh)**

(Arising out of OIO-VAD-EXCUS-002-COM-045-16-17 dated 20/01/2017 passed by Principle Commissioner Customs, Excise and Service Tax-VADODARA-II)

APPEARANCE:

Shri H.G Dharmadhikari, Sh. V.B Joshi, Sh. Vikas Mehta (Consultant), Sh. Anil Gidwani (Consultant), Sh. Sarju Mehta (CA), Sh. D.A Bhalarao, Mrs. Lalita S. Bhadke, Advocates for the Appellant

Shri T.G Rathod, Additional Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 10256-10266 /2022DATE OF HEARING: 30.11.2021
DATE OF DECISION: 17.03.2022**RAMESH NAIR**

Appellants have filed these appeals against Order-In-Original No. VAD-EXCUS-002-COM-045-16-17 dated 20.01.2017. M/s Rajputana Stainless Ltd. also filed the Appeal No. E/10693/2017 against Order-In-Original Revision Order-V-CH-72-15-01-RSL-DGCEI-ADJ-COMMR-2013-14 dated 05/01/2017. Being aggrieved with the denial of request of cross-examination of Director and employee of the Company. All these appeals are taken up together for disposal since they are arising out of same investigation and involved the identical facts. For the sake of convenience, the brief facts are as under:

1.1 M/s Rajputana Stainless Ltd. are engaged in the manufacturing of Stainless Steel Billets, Bright Bars, Rounds, Flats etc. They are availing the benefit of Cenvat credit facility. During the investigation, it was found that they had availed the cenvat on old and used plates obtained from breaking of ships and also SS Cold Rolled Patta Pattis /flat and other scrap. Statements of persons including Director & employees of appellant's company were recorded. Inquiry had been extended to suppliers and transporters who had issued invoices and transported the goods respectively. The DGCEI undertook investigation and came to the conclusion that Appellant have wrongly availed the Cenvat Credit on the strength of Invoices of SS Cold Rolled Patta Patti / SS Flats , SS Circles, SS Rounds, SS Bright Bars, SS Angle, SS Hex, SS Squares, Iron & Steel plate obtained from breaking of ships etc. without actual purchase, receipts & consumption of inputs. After completion of the investigation, show cause notices were issued to the appellants seeking to recover the Cenvat credit under Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Section 11A(1) of the Central

Excise Act, 1944, impose penalty under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. The notices also sought to impose penalty on others under Rule 26 of the Central Excise Rules, 2002 for their various acts of omission and commission. The show cause notices were adjudicated by the Principal Commissioner of Central Excise & Service tax, Vadodara-II by impugned Orders-in-Original and Cenvat credit demand were confirmed against the appellant company along with interest on it under section 11AA and erstwhile Section 11AB and penalty of equal amount was imposed on the appellant company under Rule 15(2) read with Section 11AC. In addition Penalty under Rule 26 was imposed on co-noticees. Aggrieved by the said Order-In-Original the appellants are in appeal before us.

2. On behalf of appellant the Shri H.G Dharmadhikari, Learned Counsel explained the background of initiation of investigation conducted by DGCEI / DGGI and details of the credit availed by the appellant. He submits that it is settled preposition of law that on fulfillment of condition under Cenvat Credit Rules, 2004 the Cenvat Credit should not be denied. For manufacturing of final products major raw materials required is scrap of stainless steel. The said raw materials is procured by the Appellant from various manufacturers and dealers engaged in the business of steel products. The Scrap of steel includes wastage, end cuts, trimmings, bad rolled material of patta-patti generated during the manufacture of finished goods. They accounted for all the steel scrap received under the cover of invoices under the heading of Steel Scrap and cannot be recorded as separate head irrespective their origin, size, shape since same is melted in furnace along with rest of scrap. All the scrap received by Appellant duly accounted and entered in to RG23A Part-I and has issued for production and maintain in FORM-IV records. They paid the duty on final products. The allegations of department are that

materials namely SS Patta, SS Angle, SS Cold Rolled Patti, SS Coil, SS hex, SS Square, SS Bright Bar, SS Flat are finished goods themselves and are not manufactured for further melting for manufacturing of SS Billets are baseless as arose out of misunderstanding of process of manufacture of above products. All the above products are emerged by process of Hot Rolled or Cold Rolled of Billets or Wire Rods. At the time of rolling certain miss- roll or reject or short length products are also emerged and the same cannot be sold in to the market as finished products. Though the same are looks like finished goods. The said rejects are sold under the same nomenclature to scrap-melters for melting process as the same cannot be used for further production and needs to be converted into Billet again for further processing. The department has not considered that Appellant has manufactured 44,696MT of Finished Goods by using raw material to the tune of 52,157 MT during the impugned period. The allegation of department if assumed to be true that the appellant have not received the alleged quantity of input to the tune of 15,804MT then the Appellant could not have manufactured the finished goods as above. The goods manufactured by appellant is not controverted by the department. In the absence of cogent evidence of replacement of raw material the confirmation of demand by disallowing the Cenvat Credit on the inputs which are received by the Appellant and as admitted by the Suppliers and transporters in cross examination is unsustainable. The Appellant have fulfilled the conditions for availment of Cenvat Credit. He relies upon the following judgments:

- Sidhartha Bronze Products Pvt. Ltd. Vs. CCE Bhavnagar- 2015(328)ELT429
- CCE Vs Juhi Alloys Ltd. – 2014(328) ELT 429 (Tri. Ahmd)
- Commissioner of Cus.& C.Ex, Kanpur Vs. Juhi Alloys Ltd – 2013(296)ELT533
- Monarch Metals Pvt. Ltd. Vs. CCE Ahmedabad – 2010(261 ELT 508 (Tri.-Ahmd.)

- Gian Castings Pvt. Ltd. Vs. CCE, Chandigarh – 2015 (319) ELT 339 (Tri. Del)
- Commissioner Vs Dhanlaxmi Tubes & Metal Industries 2012 (282)ELT 206 (Guj.)
- Adhunik ferro Alloys Ltd. Vs CCE, Chandigarh -2009 (233) ELT 131 (Tri. Del)
- Adhunik Steel Ltd Vs CCE, Ludhiana/ Chandigarh 2007(213)ELT 97 (Tri Del)

2.1 He further submits that the statements which are not examined or cross-examined as per Section 9D of Central Excise Act, 1944, the findings based on it in the light of the following judgments is unsustainable.

- Jindal Drugs Pvt. Ltd. Vs UOI – 2016 (340) ELT67 (P&H)
- Andaman Timber Industries Vs CCE 2015 (324) ELT 641(SC)
- Basudev Garg Vs Commissioner of Customs 2013 (294) ELT 353 (De.)
- CCE Vs German Dyes & Chemicals 2016(332)ELT599 (Del.)
- German Dyes & Chemicals Ltd. Vs. CCE, Delhi 2010(361)ELT 722(Tri. Del)
- CCE Ahmedabad Vs Samir Synthetics Mills – 2009(240)ELT 732 (Tri. Ahmd)

2.2 He argued that the majority of persons, whose statements were relied upon in the impugned matter, in cross- examination stated that the goods were supplied to the Appellant company. The impugned order have not considered the said outcome of cross -examination by simply observing that they are co-noticees. It is settled preposition of law that statement retracted in cross -examination are not relevant as evidence unless contrary is proved by way of cogent evidences. The Original authority also relied upon the statements of the some persons who have not been offered for cross examination and they have been examined by the original adjudicating authority on the back the Appellant's advocate. Such reliance on the evidence which is recorded on the back of the Appellant is unsustainable as per ratio led down by the Hon'ble Apex Court in the case of Anil Chemical

and Industries Ltd. reported in 2005 (183) ELT A31 (SC) and in the light of Judgment of Hon'ble Tribunal in case of Metro (India) Woodcrafts Pvt. Ltd. Vs CCE, Patna reported in 2016 (333) ELT 418.

2.3 In respect of Appeal No. E/10693/2017-DB he submits that in the present matter show cause notice was issued to the appellant only on the basis of the Statements so recorded without establishing that the appellant have procured the material without cover of invoice. Thus the impugned show cause notice is only based on the statements without adducing any corroborative evidence. In the aforesaid facts appellant moved an application for cross-examination. The Original Adjudicating authority allowed the cross-examination of the manufacturer suppliers under whose cover of invoices the material were received by the appellant and cross examination was also allowed of transporters and their employees vide its order dated 01.02.16 and 03.03.16. Accordingly cross examination was conducted and during the cross-examination all those persons whose statements initially were recorded by the department negated the same and stated that they have supplied the material to the appellant under the cover of invoices which is proposed to be denied by the department. The transporters also admitted in their cross examination that they have transported the goods i.e. scrap to the factory of the appellant. In view of this cross examination and retraction of earlier statements during the cross examination the appellant preferred an application to cross -examine the director and employee of the appellant company. The original authority rejected the application dated 07.10.2015 of appellant. He passed a cryptic order of rejecting the application for cross -examination vide its order dated 05.01.2017 which is issued by Superintendent for and on behalf of the Commissioner. Being Aggrieved by the said order the appellant has preferred this appeal.

2.4 He submits that it is settled preposition of law that even through order of commissioner which is communicated by Superintendent of Central Excise in writing the said order is appealable before Hon'ble Tribunal. Ld. Commissioner without granting the personal hearing passed the impugned order of rejection of application requesting cross -examination. He relies the following judgment in support:

- CCE Vs Techno Rings – 2013(288) ELT 410 (Tri. Bang.)
- Foutansey Engg. Exports Pvt. Ltd. Vs. CC(Export), Mumbai – 2008 (232)ELT100(Tri.- Mumbai)
- Order of Hon'ble Mumbai Tribunal No. A/1460/WZB/06-C-III(EB) dated 22.06.2006 in the case of CCE Raigad and Parle International P. Ltd. in Appeal No. E/88/03.

2.5 He also submits that it is settled preposition of law that the statements which are relied upon needs to be examined and cress -examined. By rejecting request of cross-examination the adjudicating authority denied the natural justice. He has not followed the Judicial discipline by not allowing the cross examination as per the decisions of Hon'ble Tribunal and Hon'ble High Court in the following cases:

- Emco Ltd. Vs. CCE Mumbai -II- Order No. A/85631/17/EB dated 17.01.17
- Gunjan Jewels Pvt. Ltd. Vs. Commissioner of Customs – Order No. M/4394/15/CB dated 17.08.2015
- Jindal Drugs Pvt. Ltd. Vs. UOI 2016(140) ELT 67 (P&H)
- Arya Abhushan Bhander Vs UOI- 2002 (143) ELT 25 (SC)
- Swadesh Polytex Ltd. – 2000(122) ELT 641 (SC)

2.6 He also submits that it is settled preposition of law that for the purpose of relevance of statement as evidence, Section 9D of Central Excise mandates cross examination of person whose statement is relied upon, otherwise the said statement cannot be relied upon in the proceedings. Not allowing the cross -examination it tantamount to breach of provisions of

Section 9D of Central Excise Act, 1944. He place reliance on the following judgments in support of this contention.

- Mahek Glazes Pvt. Ltd. Vs. UOI 2014(300)ELT 25 (Guj)
- Wellsuit Glass & Ceramic Pvt. Ltd. vs. CCE 2014(304) ELT 618(Tri. Ahmd)
- PMS Int. Pvt. Ltd. Vs CCE 2014-TIOL-1669-CESTAT -DEL
- J&K Cigarettes VS CCE 2011(22)STR 225 (Del)
- Basudev Garg Vs CC – 2013(294)ELT 353
- Swiber Offshore Construction Pvt. Ltd. – 2014 (301) ELT 119

3. On behalf of Revenue Shri T.G.Rathod, Additional Commissioner (AR) appeared and reiterated the findings in the impugned order. He submits that from the investigations conducted by DGCEI /DGGI it is clearly brought out that Appellant has taken fraudulent credit without the receipts of materials/ goods in the factory. He strongly argued that, on enquiry at the end of suppliers and transporters revealed that Appellant have not received the goods. Adjudication order should be upheld in its entirety. He placed reliance on the following decisions:

- 2018(5)TMI 1456 – CESTAT, New Delhi - Guruharkrishan Industries Vs CCE, Delhi
- 2019(1) TMI 909 – CESTAT, Bangalore - KK Plastics Vs CST, Cochin
- 2018(361)ELT 1054 (Tri.-Del) – Laxmi Enterprises Vs. CC (Prev.) New Delhi
- 2020(372) ELT A33(SC) – Laxmi Enterprises Vs. Commissioner
- 2013(295) ELT 116(Tri. Bang) -Ramchandra Rexins Pvt. Ltd. Vs Commissioner
- 2008 (225) ELT 267 (Tri. Del) -Sai Synthetics Processors Vs CCE, Surat -II
- 2003 (152) ELT 352 (Tri.-Mum) Shalu Dyg & Ptg Mills Vs CCE Surat
- 2010(251) ELT 123 (Tri- Kol) Shri Ram Rubber Products Vs CCE, Shilong
- 2009 (241) ELT 348 (Bom) Shailesh Amulakh Jogani Vs Union of India
- 2017 (358) ELT 1149 (Tri. Del) -Prakash Industries Ltd Vs CCE Raipur

- 2017 (358) ELT 1014 (Tri- Bang) Usman Suleiman Darvesh Vs. CCE Calicut
- 2017 (350) ELT 474 (P&H) -CCE Panchkula Vs. Vardhman Strips Pvt. Ltd.
- 2021 (376)ELT476(Mad) – K Rahuman Sait Vs CC, Trichy.
- 2017(346)ELT A149 (Guj.) – Principal Commissioner Vs. Rajputana Steel Casting Pvt. Ltd.
- 2020 (372) ELT 321 (Chhattisgarh) – N.R. Sponge Pvt. Ltd. Vs CCE, Raipur

4. We have carefully considered the submissions made by both the sides. The case of the Revenue is that Appellant have availed the Cenvat Credit merely on the strength of invoices issued by the suppliers without physical receipts of the goods in their factory. In Cenvat credit rules some minimum precaution was prescribed to ascertain the bona fide on the part of consignor of input or capital goods i.e. under Rule 4 and Rule 9 of Cenvat Credit Rules, 2004 which are reproduced below:

RULE 4. Conditions for allowing CENVAT credit. — (1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service [or in the premises of the job worker, in case goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be] :

RULE 9. Documents and accounts. —(1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

- (a) an invoice issued by -*
 - (i) a manufacturer for clearance of -*
 - (I) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;*
 - (II) inputs or capital goods as such;*
 - (ii) an importer;*
 - (iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;*
 - (iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or importer of*

inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made there under with intent to evade payment of duty.

Explanation. - *For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or*

- (c) a bill of entry; or*
- (d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; or*
- (e) a challan evidencing payment of service tax by the person liable to pay service tax under [sub-clauses (iii), (iv), (v) and (vii)] of clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994; or*
- (f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of, September, 2004; or*
- (g) an invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994 :*

[Provided that the credit of additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975) shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible.]

[(2) No CENVAT credit under sub-rule(1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document :

Provided that if the said document does not contain all the particulars but contains or the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be, name and address of the factory or warehouse or premises of first or second stage dealers or provider of taxable service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit]

(4) The CENVAT credit in respect of input or capital goods purchased from a first stage dealer or second stage dealer shall be allowed only if

such first stage dealer or second stage dealer, as the case may be, has maintained records indicating the fact that the input or capital goods was supplied from the stock on which duty was paid by the producer of such input or capital goods and only an amount of such duty on pro rata basis has been indicated in the invoice issued by him.

(5) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(6) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(7) The manufacturer of final products shall submit within ten days from the close of each month to the Superintendent of Central Excise, a monthly return in the form specified, by notification, by the Board :

Provided *that where a manufacturer is availing exemption under a notification based on the value or quantity of clearances in a financial year, he shall file a quarterly return in the form specified, by notification, by the Board within twenty days after the close of the quarter to which the return relates.*

(8) A first stage dealer or a second stage dealer, as the case may be, shall submit within fifteen days from the close of each quarter of a year to the Superintendent of Central Excise, a return in the form specified, by notification, by the Board.

(9) The provider of output service availing CENVAT credit, shall submit a half yearly return in form specified, by notification, by the Board to the Superintendent of Central Excise, by the end of the month following the particular quarter or half year.

[(10) The input service distributor, shall furnish a half yearly return in such form as may be specified, by notification, by the Board, giving the details of credit received and distributed during the said half year to the jurisdictional Superintendent of Central Excise, not later than the last day of the month following the half year period.]

[(11) The provider of output service, availing CENVAT credit referred to in sub-rule (9) or the input service distributor referred to in sub-rule (10), as the case may be, may submit a revised return to correct a mistake or omission within a period of sixty days from the date of submission of the return under sub-rule (9) or sub-rule (10), as the case may be.

4.1 We note from the above rules, that credit can be taken on the basis of Invoice after the inputs covered by such Invoice is received. It is important that goods covered by the invoices are received by the manufacturer. In the facts of the present case we find that the appellant have received the goods on duty paying documents and recorded the receipt of the goods in their raw material account and cenvat account i.e. RG-23A-Pt. I and Pt. II and the said disputed inputs used in manufacture of dutiable goods. The purchase of the goods under the invoices in question were booked in books of account. The payment against the said invoices were made through cheque. On the above statutory compliance, the Appellant correctly availed the cenvat credit. Thus the contention of the department that appellant have availed cenvat credit without receipt of goods (raw material) is not tenable. Further, as the Appellant have discharged the Central Excise duty on the final product manufactured out of the alleged raw material. If the department is of the opinion that the alleged goods was not received by the appellant then it is the onus on the department to prove that any other alternative raw material was used in the final products, Department has failed to do so.

4.2 We observed that for confirmation of cenvat demand the learned Adjudicating Authority relied upon the admission of Director of Appellant recorded during the Panchanama dated 21.01.2011, wherein he admitted that they did not receive these goods physically but availed the Cenvat credit only on the basis invoices and Statement dated 28.01.20211 of Bhavani Shankar Vasu, Induction Furnace In-charge. It is on record that in the present matter Appellant also requested for cross -examination of Director and aforesaid Employee which has been denied by the adjudicating authority and for this only the separate appeal also filed by the Appellant. We find that this denial of cross-examination has resulted in denial of principle of natural justice. For compliance of the principles of natural

justice cross examination is mandatory as has been held in the case of *Andaman Timber Industries v. Commissioner* - 2015 (324) E.L.T. 641 (S.C.) and *Commissioner v. Kurle Pan Products Pvt. Ltd.* - 2014 (307) E.L.T. 42 (All.), the assessee is required to be afforded the opportunity of cross-examination of persons whose statements have been relied by the Department for confirmation of demand. Here Learned Adjudicating authority failed to do so. It is now well settled law that cross-examination of the persons whose statements are relied upon by the Revenue should be extended to the assessee and in the absence of such cross-examination, the statements of such persons cannot be relied upon as evidence. We also find that the Hon'ble Chhattisgarh High Court in the matter of *HI TECH ABRASIVES LTD. Versus COMMISSIONER OF C. EX. & CUS., RAIPUR* 2018 (362) E.L.T. 961 (Chhattisgarh) held as under :

9.5 *Undoubtedly, the proceedings are quasi criminal in nature because it results in imposition of not only of duty but also of penalty and in many cases, it may also lead to prosecution. The provisions contained in Section 9D, therefore, has to be construed strictly and held as mandatory and not mere directory. Therefore, unless the substantive provisions contained in Section 9D are complied with, the statement recorded during search and seizure operation by the Investigation Officers cannot be treated to be relevant piece of evidence on which a finding could be based by the adjudicating authority. A rational, logical and fair interpretation of procedure clearly spells out that before the statement is treated relevant and admissible under the law, the person is not only required to be present in the proceedings before the adjudicating authority but the adjudicating authority is obliged under the law to examine him and form an opinion that having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice. Therefore, we would say that even mere recording of statement is not enough but it has to be fully conscious application of mind by the adjudicating authority that the statement is required to be admitted in the interest of justice. The rigor of this provision, therefore, could not be done away with by the adjudicating authority, if at all, it was inclined to take into consideration the statement recorded earlier during investigation by the Investigation officers. Indeed, without examination of the person as required under Section 9D and opinion formed as mandated under the law, the statement*

recorded by the Investigation Officer would not constitute the relevant and admissible evidence/material at all and has to be ignored. We have no hesitation to hold that the adjudicating officer as well as Customs, Excise and Service Tax Appellate Tribunal committed illegality in placing reliance upon the statement of Director Narayan Prasad Tekriwal which was recorded during investigation when his examination before the adjudicating authority in the proceedings instituted upon show cause notice was not recorded nor formation of an opinion that it requires to be admitted in the interest of justice. In taking this view, we find support from the decision in the case of Ambica International v. UOI rendered by the High Court of Punjab and Haryana. Reliance has been placed by the Counsel for the Revenue on the decision in the matter of Commissioner of Central Excise v. Kalvert Foods India Private Limited (Laws (SC) 2011 838) = [2011 \(270\) E.L.T. 643](#) (S.C.). That decision turned on its own facts. In para 19 of the judgment, it was concluded as below :

"19. We are of the considered opinion that it is established from the record that the aforesaid statements were given by the concerned persons out of their own volition and there is no allegation of threat, force, coercion, duress or pressure being utilized by the officers to extract the statements which corroborated each other. Besides the Managing director of the Company of his own volition deposition the amount of Rs. 11 lakhs towards excise duty and therefore in the facts and circumstances of the present case, the aforesaid statement of the Counsel for the Respondents cannot be accepted. This fact clearly proves the conclusion that the statements of the concerned persons were of their volition and not outcome of any duress."

Accordingly, on the first and second question of law, we hold that the statement of the Director could not be treated as relevant piece of evidence nor could be relied upon without compliance of Section 9D of the Act. The two questions of law accordingly, stand answered in that manner.

4.3 The approach of the Ld. Adjudicating Authority is not only serious violation of principle of Natural Justice, which was stressed by the Id. Advocate before us, but shows unfair bias on part of the Adjudicator. The impugned order suffers from the vice of denial of Principle of Natural Justice as held by various decisions of courts.

4.4 In the present matters, the case of revenue also on the ground of transporters' admission that the goods were not supplied to the appellant and according to their statements the vehicle number shown in invoices are

not capable of transporting the goods. During the Cross- Examination the transporter has clearly stated that the goods have been delivered to the appellant. We find that the appellant have recorded the receipt of the goods in their raw material account i.e. RG-23A-Pt. I and Pt. II and the said disputed inputs used in the manufacture of dutiable goods. It is also not the case of the department that the appellant have procured some unaccounted inputs to cover up the quantity of input shown in the invoices. There is no evidence that the inputs shown in the invoices received by the appellant were not used in the manufacture of final product. Department has not disputed the correctness of quantity manufactured by the appellant recorded in their daily stock account. There is no allegation by the department regarding the financial flow back that against the invoices for which the payments were made through cheque, any cash payment was received by the appellant. It is further noticed that nothing objectionable has been mentioned in the panchnama of search dated 21-01-2011 at the factory premises of Appellant in respect of the stock of finished goods/inputs. Nothing has been brought on record to show as to how Appellant produced their final products in the event of not having received the inputs in their factory. It is on the record that neither the department have produced evidence beyond doubt that the alleged inputs were not received in the unit and it was only a paper transaction nor able to prove that any other raw material was received and used by the appellant for production of their final product. On the contrary, records produced by the Appellant shows *bona fide* transaction on their part. Thus the contentions of the adjudicating authority in absence of any positive and tangible evidences are not tenable.

4.5 The Hon'ble Gujarat High Court in the case of **Commissioner vs. M/s. Motabhai Iron & Steel Industries - 2015 (316) E.L.T. 374 (Guj.)**

on the identical situation, dismissed the appeal filed by the Revenue. It has been held as under:-

"19. From the findings recorded by the Tribunal, it is apparent that payment to M/s. Vasmin Corporation in respect of purchases as made through banking channels. Under the circumstances, the Tribunal has lightly held that the demand cannot be confirmed against the assessee. The Tribunal has further found that it is an undisputed fact that all the purchases were duly recorded in the statutory books of the assessee and the goods were also found to be entered in its statutory records. That the Department-had not made any investigation at the unit of the assessee, which could have supported the findings of the Adjudicating authority. None of the consignors of the goods have denied the clearance of goods to the assessee. There was no evidence on record to show that the records maintained by the assessee were not correct. The Tribunal, was accordingly, of the view that on the basis of statements of some transporters which were not corroborated by any material on record, a huge credit could not be disallowed. It is under these circumstances that the Tribunal has set aside the demands and the penalties imposed upon the assessee and the co-noicees."

4.6 Further, from the records of cross-examination of suppliers and some transporters we find that they have admitted that the goods were delivered to Appellant. Hence, we do not find any reason to deny the Cenvat credit to Appellant. Further, we also note that some persons were not cross-examined in this matter and learned Adjudicating Authority by relying the statements of said person contended that the Appellant availed the cenvat credit without receipts of the goods. It was held by Hon'ble Allahabad High Court in the case of **Commissioner of Central Excise v. Parmarth Iron Pvt. Ltd.** (supra) reported at **2010 (260) E.L.T. 514 (All)**, that if Revenue does not allow cross-examination of any prosecution witness then Revenue cannot rely on the statement given by such prosecution witness for confirmation of demand. Therefore, following the ruling by Hon'ble Allahabad High Court, we hold that none of the said statements were admissible evidence in the present case.

4.7 In view of above observations, we are of the considered view that the Cenvat demands and penalties imposed against M/s Rajputana Stainless Ltd. are not sustainable. For the same reason, the penalty against other appellants is also not sustainable.

5. The impugned order denying Cenvat credit and ordering its recovery along with interest and imposing penalties is set aside and all the appeals are allowed with consequential reliefs, if any.

(Pronounced in the open court on 17.03.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

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