CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 2

EXCISE APPEAL NO. 10757 OF 2023

[Arising out of BHV-EXCUS-000-APP-275-276-2023 dated 22/08/2023 passed by Commissioner (Appeals), Rajkot]

K B ISPAT PVT LTD **Appellant**
Tirupati House, Plot No. 93/Arpita,
Geeta Chowk, Bhavnagar-364001

Vs.

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX-CGST & CENTRAL EXCISE BHAVNAGAR **Respondent**
Siddhi Sadan, Plot No. 67-76/B-1,
Narayan Upadhyay Marg,
Bhavnagar-364 001

WITH

EXCISE APPEAL NO. 10756 OF 2023

[Arising out of BHV-EXCUS-000-APP-275-276-2023 dated 22/08/2023 passed by Commissioner (Appeals), Rajkot]

HEMANT R VORA **Appellant**
Director K B Ispat Pvt Ltd
Tirupati House, Plot No. 93/Arpita,
Geeta Chowk, Bhavnagar -364001

Vs.

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX-CGST & CENTRAL EXCISE BHAVNAGAR **Respondent**
Siddhi Sadan, Plot No. 67-76/B-1,
Narayan Upadhyay Marg,
Bhavnagar-364 001

Appearance:
Shri P D Rachchh, Advocate for the Appellant
Shri Sarjeet Kumar, Superintendent (AR) for the Respondent

CORAM:
HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10431-10432/2026

Date of Hearing : 06/01/2026
Date of Decision : 06/07/2026

Dr. AJAYA KRISHNA VISHVESHA

These appeals are directed against the impugned Order-in-Appeal passed by the Commissioner (Appeals) Rajkot dated 22.08.2023 through which the learned Commissioner upheld the Order-in-Original passed by the Adjudicating Authority, Joint Commissioner Central Excise and CGST Bhavnagar dated 13.01.2023 and rejected the appeal.

1.2 The facts of the case in brief are that the appellant K B Ispat Pvt Ltd was engaged in manufacturing of MS Plates and was registered with the Central Excise department. They were availing credit of input / capital goods / input services under the provisions of Cenvat Credit Rules, 2004 and were filing ER-1 returns. The Anti-evasion wing of Central Excise at HQ Bhavnagar carried out simultaneous searches at office premises of the appellant K B Ispat Pvt Ltd and residential premises of the Director of the company Shri Hemant R Vora and factory premises of the company. On the basis of the information that the appellant company was engaged in evasion of Central Excise duty by way of utilizing single Central Excise duty payment challan more than one time for payment of Central Excise duty liabilities in more than one month. It was also gathered that the appellant company was procuring raw materials from local market without cover of invoices and without accounting for same in their financial / statutory records. The search resulted into seizure of incriminating documents under panchnamas dated 22.02.2018.

1.3 The scrutiny of records seized during the search operation revealed that the appellant company had utilized Central Excise duty payment Challan No. 00022880909201600319 dated 09.09.2016 for Rs. 8,00,000/- for payment of their Central Excise duty liability for the month of August-2016. They have deliberately utilized the same Challan of Rs. 8,00,000/- for payment of Central Excise duty for the month of September-2016 again by changing the date as 09.10.2016 as mentioned in their ER-1 returns for the month of September-2016. On verification, it was found that no such Challan dated 09.10.2016 existed and the date of earlier Challan was just changed. Further, Appellant company had utilized Challan No. 00022883103201703974 dated 31.03.2017 of Rs. 10,00,000/- for payment of their Central Excise duty liabilities for the month of March-2017. However, they have deliberately utilized the same Challan of Rs. 10,00,000/- for payment of their Central Excise duty liabilities for the month of May-2017, just by changing its date 31.05.2017 as mentioned in their ER-1 returns for the month of May-2017. On verification, it was found that no such Challan dated 31.05.2017 existed and appellant company had just changed the date of earlier Challan for Rs. 10,00,000/- dated 31.03.2017. The appellant company in their ER-1 returns for the month of June-2017 showed payment vide challan No. 00022881007201700096 dated 10.07.2017 for Rs.10,00,000/- towards their Central Excise duty liabilities for the month of June-2017. While on verification, it was found during further verification that the amount of Rs.10,00,000/- did not match. It was found during further verification that the said challan was tendered for Rs. 1,00,000/- only for Central Excise duty payment and appellant had mis-stated the amount as Rs. 10,00,000/- in their ER-1 returns and defrauded the Revenue by Rs. 9,00,000/-. Further, Appellant company in their ER-1 returns for the month July-2016 showed as utilized Challans of Rs. 1,05,110/- towards their Central Excise duty liabilities for the month of July-2016.

1.4 On scrutiny of ER-1 returns for the above mentioned period and other documents, the investigation revealed that the Appellant had not paid Central Excise duty of an amount of Rs. 27,19,520/-. During investigation, it was also found that the said challans were paid for Service Tax payment and were tendered by the Appellant company towards their Service Tax liabilities under RCM. They had taken the credit of the said Challans in the PLA register and utilized for payment of Central Excise duty instead of taking the credit in their Cenvat Credit Register (RG-23 Part-II). On verification, it was observed that the amount of Rs. 19,520/- paid towards Swachha Bharat Cess, credit of which was not admissible to them either under PLA or under Cenvat Credit Register and appeared to be recovered from the Appellant company, hence the said amount of Swachha Bharat Cess was according to the department recoverable under the proviso to Section 11A of the Central Excise Act, 1944 and rules made thereunder.

1.5 These facts were noticed by Jurisdictional Range Superintendent during the course of scrutiny of ER-1 returns and the same was communicated to the Appellant company for payment of Central Excise duty along with applicable interest and penalty but the appellant company failed to comply with. Thus according to the department total Central Excise duty to the tune of Rs. 27,19,520/- was liable to be recovered from the Appellant no. 1 along with interest and penalty.

1.6 A statement of Shri Hemant R Vora Director of the appellant company was recorded. From his statement, it emerged that the Appellant company, after initiation of inquiry by the department, has paid total Rs. 27,00,000/- as Central Excise duty liabilities, total Rs. 3,42,913/- as interest amount and total Rs.2,72,000/- as penalty. During investigation, it was also revealed that Shri Hemant R. Vora, Director of the Appellant company looked after entire affairs of the Appellant company including purchase of raw materials and sales of finished goods and its financial transactions. As per panchnama dated 22.08.2018 drawn at the factory premises of the Appellant company, it appeared that there was an excess quantity of 55 MT of raw material MS plates, Waste and Scraps / Melting scrap, for which Shri Hemant R Vora could not produce any invoices or any documentary evidence. It was found that appellant company used to procure its raw materials MS plates, Waste and Scraps / Melting Scrap without cover of Central Excise invoice and without payment of Central Excise duty thereon. Appellant company have not taken into account the raw material procured in such manner in their records i.e. Purchase Register. Thus Billets manufactured out of such inputs appears to have been cleared clandestinely without payment of Central Excise duty. Assessable value of the said 55 MT of raw material comes to Rs. 13,20,000/- and Central Excise duty comes to Rs. 1,65,000/- which is recoverable from the Appellant company. It was also found that Appellant company had wrongly taken credit of Rs. 25,57,455/- of 2% Education Cess, 1% Secondary and Higher Education Cess even during and after March-2015 (after abolition of the said cesses in February-2015 budget). It also appeared that Appellant company had deliberately taken credit of Rs. 25,57,455/- of 2% Education Cess, 1% Secondary and Higher Education Cess and thereafter out of this amount utilized Rs. 23,01,558/- towards their Basic Central Excise duty liabilities. Thus, according to the department, wrongly taken and utilized credit of 2% Education Cess and 1% Secondary and Higher Education Cess required to be recovered along with interest and penalty under Rule 15 of Cenvat Credit Rules-2004.

1.7 In view of the above facts, Show Cause Notice was issued to the Appellant company. Show Cause Notice was also issued to Shri Hemant R Vora Director of the appellant company. The Show Cause Notice was adjudicated by the Joint Commissioner, Central Excise and CGST, Bhavnagar who ordered to recover Central Excise duty of Rs. 27,00,000/-. As the Appellant company had already paid the amount, therefore, it was ordered to be appropriated against the Central Excise duty liabilities. The Adjudicating Authority also ordered to recover interest on the amount mentioned above but as the appellant company had paid the interest amount of Rs. 3,82,913/-, it was ordered to be appropriated against their interest liability. The Adjudicating Authority also ordered to recover Central Excise duty of Rs. 1,65,000/- from appellant company on Billets and also ordered to recover interest on this amount. The Adjudicating Authority dropped the proposal of demand of Rs. 25,57,455/- imposed on the Appellant company for wrong availment of Cenvat Credit of 2% Education Cess and 1% Secondary & Higher Education Cess. Adjudicating Authority also ordered to recover wrong availment of credit of Swachha Bharat Cess of Rs. 19,520/- along with interest and also imposed penalty of Rs. 28,84,520/- under Section 11AC of Central Excise Act on the

Appellant company. The Adjudicating Authority also imposed penalty of Rs. 19,520/- on the appellant company under Rule 15 of Cenvat Credit Rules, 2004 and also imposed penalty of Rs. 28,65,000/- on Appellant Shri Hemant R. Vora under Rule 26 of Central Excise Rules, 2002.

1.8 Being aggrieved from the Order-in-Original, the Appellant company filed appeal before the Commissioner but the learned Commissioner upheld the Order-in-Original and rejected the appeal. Being aggrieved from the Order-in-Appeal the present appeals have been filed before this Tribunal.

2. The learned Counsel for the appellant submitted that the appellant had already paid the amount of Rs. 8,00,000/- on 5th January, 2018 regarding which the department has alleged that such challan dated 09.10.2016 of Rs. 8,00,000/- does not exist. The learned Counsel for the appellant also submitted that the appellant had also paid the amount of Rs. 8,00,000/- on 21.02.2018 regarding which the department has alleged that such challan dated 31.05.2017 of Rs. 10,00,000/- does not exist. The learned Counsel for the appellant also submitted that appellant had paid the amount of Rs. 9,00,000/- on 21.02.2018 regarding which the department has alleged that challan dated 10.07.2017 of Rs. 10,00,000/- does not exist, but challan of only Rs. 1,00,000/- exists. The learned Counsel for the appellant also submitted that appellant has already paid interest of Rs. 87,070/-, Rs. 1,07,350/- and Rs. 1,50,493/- (total Rs. 3,42,913/-) for the total Central Excise duty of Rs. 27,00,000/-. Further penalty of Rs. 80,000/-, Rs. 72,000/- and Rs. 1,20,000/-(Total Rs. 2,72,000/-), has been paid which is 10% of the Excise Duty.

2.1 The learned Counsel for the appellant also submitted that the appellant company has therefore, paid duty of Rs. 27,00,000/-, interest of Rs. 3,42,913/- and penalty of Rs. 2,72,000/- between 5th January, 2018 to 22nd

March, 2018 as provided under Section 11AC (1) (a) of the Central Excise Act, 1944, well before the issue of Show Cause Notice dated 30th March, 2022.

2.2 The learned Counsel for the appellant also submitted that the fact of short paid excise duty was within the knowledge of the department on the basis of scrutiny of the returns in view of the letters dated 2nd November, 2017, 21st February, 2018 and 21st February, 2018 issued by the Department.

2.3 The learned Counsel for the appellant also submitted that in proviso to Section 11AC (1) (a) of the Central Excise Act, 1944 it has been provided that where such duty and interest payable under Section 11AA is paid either before the issue of the Show Cause Notice or within 30 days of issue of the Show Cause Notice, no penalty shall be payable by the person liable to pay duty or the person who has paid the duty and all proceedings in respect shall be deemed to be concluded. Therefore, in view of the provisions of Section 11AC (1) (a) proviso, no penalty was payable by the appellant as entire amount of duty with interest was paid well before the issue of the Show Cause Notice. Further 10% penalty was also paid by the appellant. Therefore, no further amount of interest and penalty is payable by the appellant and the order demanding interest and penalty equal to the said Central Excise duty is liable to be set aside.

2.4 The learned Counsel for the appellant also submitted that when the appellant company is not liable to pay any penalty in view of the proviso to Section 11AC (1) (a) of the Central Excise Act, 1944 and all the proceedings in respect of duty and interest shall be deemed to be concluded, therefore, penalty equal to Central Excise duty imposed upon the Director may also be considered as deemed concluded because penalty is imposed under Rule 26 of Cenvat Credit Rules, 2002 for alleged short payment of duty of excise only and it is not the case of the Revenue that the appellant Shri Hemant R Vora had dealt with the goods in the manner stated in Rule 26 that too with reason to believe that goods are liable to confiscation. Therefore, order imposing penalty upon the appellant Shri Hemant R. Vora is also liable to be set aside.

2.5 The learned Counsel for the appellant also submitted that it is settled legal position that in subsequent Show Cause Notices, extended period cannot be invoked by alleging suppression of facts because all the facts were within the knowledge of the department about short paid duty of excise in view of the letters issued by the department dated 2nd November, 2017, 21st February, 2018 and 21st February, 2018 and the proceedings were deemed to be concluded as per the above mentioned provisions. The learned Counsel for the appellant relied upon the law laid down in following cases:-

(a) **Nizam Sugar Factory** vs. **Collector of Central Excise, A.P.** 2006 (197) ELT 467 (SC)

(b) **ECE Industries Limited** vs. **Commissioner of Central Excise, New Delhi** – 2004 (164) ELT 236 (SC)

(c) **Gujarat Ambuja Exports Ltd** vs. **Union of India** – 2012 (26) STR 165 (Guj)

(d) **Commissioner of Central Excise & Customs** Vs. **Rivaa Textiles Inds. Ltd** – 2015 (322) ELT 90 (Guj.)

2.6 The learned Counsel for the appellant also submitted that as regard to demand of Central Excise duty of Rs. 1,65,000/- on the ingots which can be manufactured out of the unaccounted raw materials along with interest and equal penalty, the same is also liable to be set aside because duty of excise is leviable on manufacture and it is payable at the time of clearance of the finished goods. Since the unaccounted raw material was lying in the factory at the time of search, no duty of excise can be demanded on the goods lying in the factory. Thus, demand of Rs. 1,65,000/- with interest and equal amount of penalty is liable to be set aside.

2.7 The learned Counsel for the appellant also submitted that regarding the impugned order confirming the demand of wrongly availed Cenvat Credit of Rs. 19,520/- with interest and equal amount of penalty, the same is also erroneous as the said amount was also paid on 18th July, 2016 during the course of audit as per Revenue para 2 of the Final Audit Report dated 22nd August, 2016 and the para was treated as settled.

2.8 Concluding his arguments learned Counsel for the appellant submitted that in view of the above mentioned factual and legal position, no amount is payable by the appellant and the impugned Order-in-Appeal passed by the learned Commissioner (Appeals) must be set aside and appeals may be allowed

3. The learned AR has reiterated the impugned order and submitted that the appellant has deliberately evaded excise duty and manipulated the challans. It has been clearly held in the impugned Order-in-Appeal that the conduct of the appellant constitute fraud, wilful mis-statement and suppression of facts with intent to evade duty and therefore, extended period of five years has been rightly invoked. The learned AR also submitted that subsequent payment of Rs. 27,00,000/- as C.E. duty, 3,42,913/- interest and Rs. 2,72,000/- penalty during investigation only confirms the liability and appropriation but does not wipe out the offence after issuance of Show Cause Notice, where ingredients of Section 11A (4) are satisfied.

3.1 The learned AR also submitted that appellant has relied upon pre amendment Section 11A (2B) / 11A(6) and on the case law where Show Cause Notice was held unnecessary after voluntary payment which is misplaced because Section 11AC was comprehensively amended in 2015 and the present case involved admitted fraud and falsification of statutory returns and not a bonafide short payment. The learned AR prayed that the impugned Order-in-Appeal may be upheld and the appeals may be rejected.

4. I have heard the learned Counsel for the appellant and the learned AR for the department and perused the records.

4.1 In the present case, it has been alleged that Appellant company has deliberately utilized Challan dated 09.09.2016 No. 00022880909201600319 for Rs. 8,00,000/- for payment of Central Excise duty for the month of August 2016 and thereafter for September 2016 again by changing and manipulating the date as 09.10.2016 which did not exist in the system. Appellant company also utilized Challan date 31.03.2017 No. 00022883103201703974 for Rs. 10,00,000/- for payment of Central Excise duty for the month of March 2017 and thereafter for May-2017 by changing and manipulating the date of earlier challan as date 31.05.2017 which never existed in the system. In the ER-1 return for the month of June 2017 the appellant company has shown payment of Rs. 10,00,000/- towards Central Excise Duty vide Challan dated 10.07.2017 No. 00022881007201700096 which was in fact rendered for Rs. 1,00,000/- only and thus they have defrauded the revenue by Rs. 9,00,000/-.

4.2 The learned Counsel for the appellant has submitted that the appellant is entitled to get the benefit of proviso to Section 11AC(1)(a) of the Central Excise Act, 1944. The learned Counsel contended that appellant has paid Central Excise Duty of Rs. 27,00,000,/-, interest amount of Rs. 3,42,913/- and amount of penalty Rs. 72,000,/- between 05.01.2018 to 22.03.2018 as provided under proviso to Section 11AC(1)(a) of the Central Excise 1944, well before the issuance of the Show Cause Notice dated 30.03.2022. All the facts alleged by the department regarding short paid duty of Excise were within the knowledge of the department on the basis of scrutiny of the returns in view of the letters dated 02.11.2017, 21.02.2018 and 21.02.2018 of the Jurisdictional Superintendent. The contention of the learned Counsel is that when the Central Excise duty along with interest was paid before issuance of the Show Cause Notice then no penalty should be payable by the appellant.

4.3 I have gone through the provisions of Section 11AC(1)(a) of the Central Excise Act, 1944 which is as follows:-

> "*11AC. Penalty for short-levy or non-levy of duty in certain cases*
>
> *(1) The amount of penalty for non-levy or short-levy or non-payment or short-payment or erroneous refund shall be as follows:-*
>
> *(a) where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason other than the reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section IIA shall also be liable to pay a penalty not exceeding ten per cent. of the duty so determined or rupees five thousand, whichever is higher:*
>
> *PROVIDED that where such duty and interest payable under section 11AA is paid either before the issue of show cause notice or within thirty days of issue of show cause notice, no penalty shall be payable by the person liable to pay duty or the person who has paid the duty and all proceedings in respect of said duty and interest shall be deemed to be concluded...*"

4.4 From the perusal of the proviso to Section 11AC(1)(a) as mentioned above, it is clear that when the assessee has paid the Central Excise duty along with interest before the issuance of Show Cause Notice then no penalty shall be payable by the assessee and all proceedings in respect of such duty and interest shall be deemed to be concluded. Therefore, I agree with the learned Counsel for the appellant that when the appellant company has paid the Central Excise duty of Rs. 27,00,000/-, interest of Rs. 3,82,913/- and penalty of Rs. 2,72,000/- between the 05.01.2018 to 22.03.2018 during investigation but before issuance of Show Cause Notice on 30.03.2022, then, no penalty shall be payable by the appellant and all proceedings regarding the said Central Excise duty and interest shall be deemed to be concluded.

4.5 It is also pertinent to note here that though no penalty was payable as entire amount of duty along with interest was paid before the issuance of the Show Cause Notice, 10% penalty was also paid by the appellant. Therefore, I am of the view that no further amount of interest and penalty is payable by the appellant and the impugned order passed by the learned Commissioner and Order-in-Original demanding interest and penalty equal to the Central Excise duty is not sustainable and liable to be set aside.

4.6 I am also of the view that when the appellant company is not liable to pay any penalty in view of the proviso to Section 11AC(1)(a) of the Central Excise Act, 1944 and all the proceedings in respect of duty and interest shall be deemed to be concluded, therefore, penalty equal to Central Excise duty imposed upon the appellant Shri Hemant R Vora, Director of the appellant Company shall also be considered as deemed concluded because penalty was imposed under Rule 26 against Shri Vora, Directorfor alleged short payment of duty of Central Excise only and it is not the case of the Revenue that he had dealt with goods in the manner stated in Rule 26 and had reason to believe that goods are liable to confiscation. Therefore, I am of the view that the order imposing penalty upon Shri Hemant R Vora Director of the Appellant Company is also not sustainable and is liable to be set aside.

4.7 I also agree with the learned Counsel for the appellant that, it is a settled position of law, as laid down in *catena* of cases that in subsequent Show Cause Notices, extended period cannot be invoked by alleging suppression of facts as all the facts were within the knowledge of the department about short paid Central Excise duty. Such cases are as follows:-

(a) **Nizam Sugar Factory** vs. **Collector of Central Excise, A.P.** 2006 (197) ELT 467 (SC)

(b) **ECE Industries Limited** vs. **Commissioner of Central Excise, New Delhi** – 2004 (164) ELT 236 (SC)

(c) **Gujarat Ambuja Exports Ltd** vs. **Union of India** – 2012 (26) STR 165 (Guj)

(d) **Commissioner of Central Excise & Customs** Vs. **Rivaa Textiles Inds. Ltd** – 2015 (322) ELT 90 (Guj.)

4.8 In the present case, the facts regarding short paid Central Excise duty were within the knowledge of the department, which is clear from the three letters issued by the Jurisdictional Superintendent dated 02.11.2017, 21.02.2018 and 21.02.2018, therefore, proceedings in this regard shall be deemed to be concluded.

4.9 I also agree with the arguments furnished by the appellant that demand of Central Excise duty of Rs. 1,65,000/-, confirmed on the ingots which can be manufactured out of unaccounted raw materials in question, along with interest and equal penalty is also not sustainable because duty of excise is leviable on manufacture and payable at the time of clearance of the final goods. Since the unaccounted raw material were lying in the factory at the time of search, no duty of excise can be demanded on the goods lying in the factory. Therefore, I have come to the conclusion that demand of Rs. 1,65,000/- along with interest and equal amount of penalty is liable to be set aside.

4.10 I also agree with the contention of the learned Counsel for the appellant that the demand confirmed by the Commissioner in the impugned order regarding wrongly availed Cenvat Credit of Rs. 19,520/- along with interest and equal amount of penalty is also not sustainable as the said amount was also paid by the appellant on 18.07.2016 during the course of audit as per the Revenue para 2 of Final Audit Report dated 22.08.2016 and the para was treated as settled, therefore, the impugned order confirming of wrongly availed Cenvat Credit of Rs. 19,520/- along with interest and equal amount of penalty is also liable to be set aside.

4.11 In view of the above discussion, I have come to the conclusion that the appellant has already paid the Central Excise duty of Rs. 27,00,000/-, interest of Rs. 3,42,913/- and penalty of Rs. 2,72,000/- before the issuance of Show Cause Notice and the proviso to Section 11AC(1)(a) of the Central Excise Act, 1944 is attracted in this case and as held above, no amount of Central Excise duty, interest or penalty is payable by both the appellants and therefore, the impugned Order-in-Appeal passed by the learned Commissioner (Appeals) is liable to be set aside whereas, the appeals deserve to be allowed.

5. Both the Appeal are allowed with consequential relief.

(Order pronounced in the open Court on 06/07/2026)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

Dharmi